

CORPORATE POLICIES AND PROCEDURES				
SECTION: Development and Property				POLICY #: GA-13
POLICY: Land Use Agreement Policy – County of Renfrew Owned Trails				
DATE: August 2022	REV. DATE:	REVIEW DATE: August 2027	COVERAGE: All County Trails	PAGE #: 1 of 15

BACKGROUND

County of Renfrew Trail lands including the Algonquin and K&P Recreational Trails shall be kept free of encroachments. However, under certain circumstances the County may allow encroachments to take place. This Policy outlines the steps necessary to address existing or proposed encroachments on County-owned Trail lands.

PURPOSE

The purpose of this Policy is to provide guidelines for dealing with encroachments on County-owned Trail lands, and if warranted, the processing of applications to recognize existing encroachments on County-owned Trail lands, and proposed encroachments on County-owned Tail lands.

There are numerous examples around the County where individual property owners innocently, or with intent, have improved or built on County-owned Trail lands without the express permission of the County.

Where these situations exist, the County has the authority under the provisions of its policies and the *Municipal Act, 2001, S.O., 2001, c.25* (the "*Municipal Act, 2001*") as amended, to deal with the encroachments accordingly to manage the risk to the Municipality and continue to maintain access to public property either by removing the encroachments or entering into a Land Use Agreement with the adjacent property owner.

POLICY

All existing and proposed privately owned encroachments onto trails owned and under the jurisdiction of the County of Renfrew shall be subject to this Land Use Agreement Policy.

It is the general policy of the County that encroachments not be allowed onto County-owned Trail lands. Except as otherwise specifically permitted by the County, where an encroachment has been identified it must be removed and the lands returned to their original state to the satisfaction of the County. All related costs shall be at the expense of the encroaching party.

The County may approve encroachments under special circumstances where public safety is not affected, County interests are not adversely affected, and the public right of usage is not materially diminished by permitting the encroachment. Permission to allow an encroachment shall be by written agreement between the property owner and the County. Failure on the part of the encroaching party to agree to this process will result in the removal of the encroachment at the encroaching party's expense.

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When an existing or proposed building or structure encroaches onto County-owned Trail lands, the County will require a Land Use Agreement if the County decides to allow the encroachment to remain under certain terms and conditions.

All encroachments, whether existing or proposed, shall be reviewed on a case-by-case basis. No decision by the County on one case shall be deemed to bind the County on another case.

Encroachments

No person shall encroach upon or take possession of any County-owned Trail lands by any means whatsoever, including the construction, installation or maintenance of any fence or structure, the dumping or storage of any materials or plantings, or planting, cultivating, grooming or landscaping thereon.

Other encroachments may be structural (e.g. construction of decks, pools, and retaining walls), non-structural (e.g. pool drainage, application of pesticides, waste dumping), or vegetative (e.g. planting of vegetable gardens, removal of wildflowers, shrubs, and trees).

When an encroachment is discovered, the encroaching party may make an application to the County to continue the encroachment. See Application for a Land Use Agreement set out below.

Applications to continue encroachments/land uses, or to propose new encroachments/land uses will only be considered in the event that the encroachments/land uses do not materially interfere with County operations and/or capital construction or the public right of usage.

Standards for Assessing Encroachments

The following is a non-exhaustive list of factors that will be considered by the County to militate against permitting an encroachment/land use:

- The encroachment/land use creates an unsafe condition/poses a danger to the public, such as but not restricted to:
 - impeding or restricting sight lines, impedes normal access, obstructs vision of traffic or pedestrians, creates operational conflicts or creates hazards during the winter season (when snow covers the ground, such as rocks, boulders, wires, lines, etc.).
- The encroachment/land use diminishes the public's right of usage, such as but not restricted to:

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- impedes the public’s passage and/or access along a travelled portion of a road or trail; or interferes or obstructs normal pedestrian, or vehicular use.
- The encroachment/land use interferes with the County’s current or future intent and purpose in holding the County owned Trail land.
- The encroachment/land use is an addition to existing buildings or other structures that would encroach or do encroach onto County-owned Trail land.
- The encroachment/land use creates liabilities for which the County cannot assign full responsibility to the owner of said encroachment.
- Construction has commenced prior to the issuance of a required permit from the County.
- The encroachment/land use adversely affects County operations, work, plans, efforts or initiatives of the County to maintain County-owned Trail lands.
- The encroachment/land use interferes with any utility or other similar installation located on County-owned Trail lands including underground infrastructure.
- The encroachment/land use creates a situation that is contrary to the any County By-law, County policy or resolution or any provincial or federal regulation or legislation.
- The applicant is unable to reasonably demonstrate a need for the encroachment/land use.
- The encroachment/land use will be in conflict with and/or create an issue with future capital works projects.

Insurance and Indemnity

In cases of an approved encroachment/land use, the landowner must provide insurance in a form satisfactory and acceptable to the County, at the time the Land Use Agreement is signed by the property owner.

The encroaching party must be capable of holding adequate insurance in perpetuity and indemnifying the County from all claims that may result by reason of the existence of the encroachment/land use.

The applicant will be required to maintain property damage and general liability insurance in the amount of \$2,000,000 (individual) or \$5,000,000 (corporation), or such higher amount as determined by the County as a condition of approving an encroachment, and the Corporation

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of the County of Renfrew must be named an additional insured on such policy. Specific coverages required under such policy may be different for individual applicants and corporate applicants, and may differ as between applicants depending on the nature of the encroachment and the use of the lands. Please refer to Schedule “C” Form of Agreement for further specifics. The onus is on the landowner to carry the insurance in perpetuity and to provide the County with a certificate of insurance at renewal, or such other frequency as reasonably required by the County.

The applicant agrees to indemnify and hold harmless the County from and against all liability in respect to all claims that may arise or be made against the County resulting from the encroachment.

All approved encroachments/land uses are considered to be placed at the property owner’s own risk. The County is not responsible for repairing or replacing the lands that are subject to the encroachment/land use, or for any damages arising from normal County operation over lands onto which the encroachment may extend, including removal of snow, ice, trees, brush or other vegetation therefrom, or as a result of County repairs or reconstruction of the Trails.

Implementation Procedure

Upon the discovery of an encroachment, the registered owner of the encroaching property will be notified in writing of the encroachment and the options available to such owner, namely:

1. **REMOVAL:** Where the encroachment/land use is to be removed, removal and the associated expenses are the responsibility of the encroaching party, at the encroaching party’s own expense. Should the encroaching party not remove the encroachment within the specified period of time, then the County shall do so at the expense of the encroaching registered owner. All associated fees and charges will be billed to the encroaching registered owner. If the fees and charges are not paid as requested, they will be added to the tax roll as provided for under section 398(2) of the Municipal Act, 2001, as amended.
2. **LAND USE APPLICATION:** If the encroaching party wants to apply to the County of Renfrew for the right to continue the encroachment/land use, or propose a new encroachment/land use, they may make an application to the County following the process as outlined below under the Application for a Land Use Agreement.
3. **PURCHASE:** Where the encroachment/land use has existed for a period of time that the County deems to be significant, and the use throughout such period of time has been exclusive to the encroaching party, consideration may be given to the

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disposition of the occupied lands for costs including, but not limited to, survey, legal and registration fees. Following the County of Renfrew **Corporate Policies and Procedures GA-02 Disposal of Assets**, the County may, in its unfettered discretion, require that the fair market value of any lands to be so transferred also be paid to the County upon such disposition, and the County’s own determination as to fair market value shall be final and not subject to appeal or assessment by any other party other than the County.

4. **LEASE:** If the encroaching party does not wish to purchase the lands, then a lease agreement may be considered for a period equal to the shorter of:
 - a) As long as the occupant continues to be the registered owner of the adjoining lands;
 - b) Until the encroachment is removed; or
 - c) Until the property is required for County purposes.

5. **LICENSE:**
 - a) If the land use or encroachment is intended to continue for a brief period not exceeding five years, or such longer period as the County may unilaterally determine is appropriate, and is not otherwise contrary to this Policy and may have commercial benefit, then a license agreement may be considered. Any such license granted shall be to the present owner of the adjacent property, and shall not run with the land and shall terminate on any transfer of the adjacent property by the licensee.

Application for Land Use Agreement

The following information must be submitted before the County will consider an Application for Land Use Agreement to authorize an existing or proposed encroachment upon County-owned Trail land:

1. A completed Application Form attached as Appendix “A” to this Policy.
2. An application fee as established from time to time by the County.
3. A copy of the deed of the encroaching party’s lands which abut the subject County-owned Trail lands.
4. A plan or sketch of the subject lands with details of the land use clearly indicated thereon.

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- Any pertinent history of the land use such as the estimated length of time of the said land use has been in place, purpose, need to extend, etc.

The Application will be submitted to the County of Renfrew and circulated to appropriate Departments for review, comment and recommendations.

A staff report with a recommendation is then presented to the appropriate Committee for their consideration. Nothing in such staff report shall bind the said Committee or Council.

If approved by the County, the applicant will be required to pay all costs associated with the transaction, including the costs of the registration of the Land Use Agreement. A Registered Reference Plan indicating the land use as a Part thereon is required for the preparation of the Land Use Agreement and for registration purposes.

The Land Use Agreement will be prepared by the County of Renfrew and registered by the County's Solicitors.

Form of Agreement

Attached as Schedule "C" to this Policy is the Form of Agreement to be used in cases where a Land Use Application has been approved. Minor deviations not impacting the nature of the Agreement may be permitted at the discretion of the County, and upon approval by the County's Solicitors.

Enforcement

Encroaching on County-owned Trail land and/or failing to remove land uses by the owner may result in penalties pursuant to the *Municipal Act, 2001* and County policy.

The County of Renfrew shall have the right to remove any encroachments and unauthorized land uses upon County-owned Trail land in contravention of County policy at the cost of the property owner.

Any fees, costs, and expenses incurred by the County in the enforcement of this Policy shall be added to the tax roll pursuant to Section 398 of the *Municipal Act, 2001*, as amended, from time to time.

ATTACHMENTS

- Schedule "A" – Land Use Agreement Application Form
- Schedule "B" – Land Use Agreement Proposal Sketch Form

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Schedule “C” – Sample of Form of Land Use Agreement

POLICY REVIEW AND PROCEDURE

This Policy will be reviewed as required, but in any case no later than five years from the date of the most recent review.

The County will be responsible for initiating the review of this Policy.

Compensation Requirements

All approved Land Use Applications are subject to a one-time Administration Fee of \$250.00. Annual fees are in addition to the Administration Fee.

Annual Fees: Flat rate of \$2.50/square metre, plus HST, or a minimum of \$250 + HST annually with an escalation clause of 1.5%. For clarity, requests to cross the Trail for utilities and for non-registered on title access agreements, the fee is \$250 + HST annually with an escalation clause of 1.5%.

Waiving of Compensation Requirements

1. Should a new request for use of the County-owned Trail lands be beneficial to the County of Renfrew, the County may in its discretion waive the annual fees. A written request must be made to the Director of Development and Property.
2. The Forestry and GIS Services Division will review the request and make recommendations to the Director of Development and Property.
3. The Director of Development and Property is responsible for ensuring County staff have:
 - (a) reviewed the condition of the requested portion of the County-owned Trail.
 - (b) ensured compliance issues, as per the approved Land Use Policy, are extended to capture requested use of County-owned trail lands.
 - (c) informed the Development and Property Committee of the request, through the appropriate Ad-Hoc Committee .
 - (d) submitted a memorandum to the Director of Development and Property confirming acceptance of all necessary conditions.
4. The Director of Development and Property will submit a memorandum to the Chief Administrative Officer/Clerk, who has the approval to authorize the waiving of fees as per the Land Use Policy to the lease schedule.

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5. The Chief Administrative Officer/Clerk will approve or disapprove the request.

THE CORPORATION OF THE COUNTY OF RENFREW APPLICATION FOR LAND USE ON COUNTY-OWNED TRAIL LAND

This is an application to consider the possibility of allowing land use or encroachment upon County-owned Trail land.		
Applicant Name:		
Mailing Address/County/Postal Code:		
Telephone:	Email address:	
LAND USE or ENCROACHMENT INFORMATION		
Physical Address of property to encroach onto County-owned Trail land:		
Legal Description of Property: Roll #	Lot #	Con #
Plan #	Parts #	
Description of the land uses and/or encroachment: (sketch/survey must be attached or application will be considered incomplete)		
Land Use / Encroachment Already Exists:	Yes	No
Proposed Land Use/Encroachment:	Yes	No
Reasons for requesting land use/encroachment:		
Do you have a survey showing the land uses?	Yes	No
If yes, please submit two (2) full sized copies of the survey. Survey plan will be required for Agreement.		
The Applicant understands that this application is being made in accordance with the County's Land Use Policy and may be denied on any basis, including the presence of any of the following negative factors:		
<ol style="list-style-type: none"> 1. The land use interferes with the County's intent and purpose in holding the County-owned Trail land; 2. New land uses onto park property; 3. Additions to existing buildings or other structures that would encroach or do encroach onto County-owned Trail lands; 4. The land use poses a danger to the public; 5. The land use creates an unsafe condition; 6. The land use creates liabilities for which the County cannot assign full responsibility to the owner of said land use/encroachment; 7. Construction has commenced prior to the issuance of a required permit from the County; 8. Adversely affects County operations, work, plans, efforts or initiatives of the County to maintain County-owned Trail lands; 9. The land use interferes with any utility or other similar installation located on County-owned Trail lands; 10. The land use creates a situation that is contrary to the any County By-Law, County policy or resolution or any provincial or federal regulation or legislation; 11. The applicant is unable to reasonably demonstrate a need for the encroachment. 		

In the event that this application is approved, it will be necessary for the Applicant to execute a Land Use Agreement.

FEES ASSOCIATED WITH APPLICATION

One Time Administration Fee	\$250.00 once approved
Annual Fee	\$2.50 per metre sq + HST or minimum \$250 + HST

SOLICITOR (if applicable)

Name:

Address:

Telephone #

Email:

CONSENT

I/We understand and agree to provide the County with an annual Certificate of Insurance, in perpetuity, as per County policy, and to provide evidence of such insurance annually at the time the annual license fee is paid.

I/We understand and agree to the terms of this Application.

I/We have enclosed the application fee: Yes No

I/We have enclosed a detailed sketch, site plan, or survey, "to scale", which clearly shows the location and measurements of all existing and/or proposed structures/land uses on the applicant's property and all existing and/or proposed structures/land uses on the abutting County-owned Trail land (i.e. septic systems, well, landscaping, vegetation, fence/wall, driveways and paths) Yes No

I/We have enclosed a letter of authorization from the applicant/property owner appointing an agent:
Yes No

I/We agree to pay the current applicable application and agreement fees and annual license fee.

I/We authorize County staff to enter onto the subject lands to conduct a site visit in accordance with the processing of this Land Use Agreement.

SIGNATURE(S)

Owner

Owner

Authorized Agent (please attached letter of authorization)

_____ Date

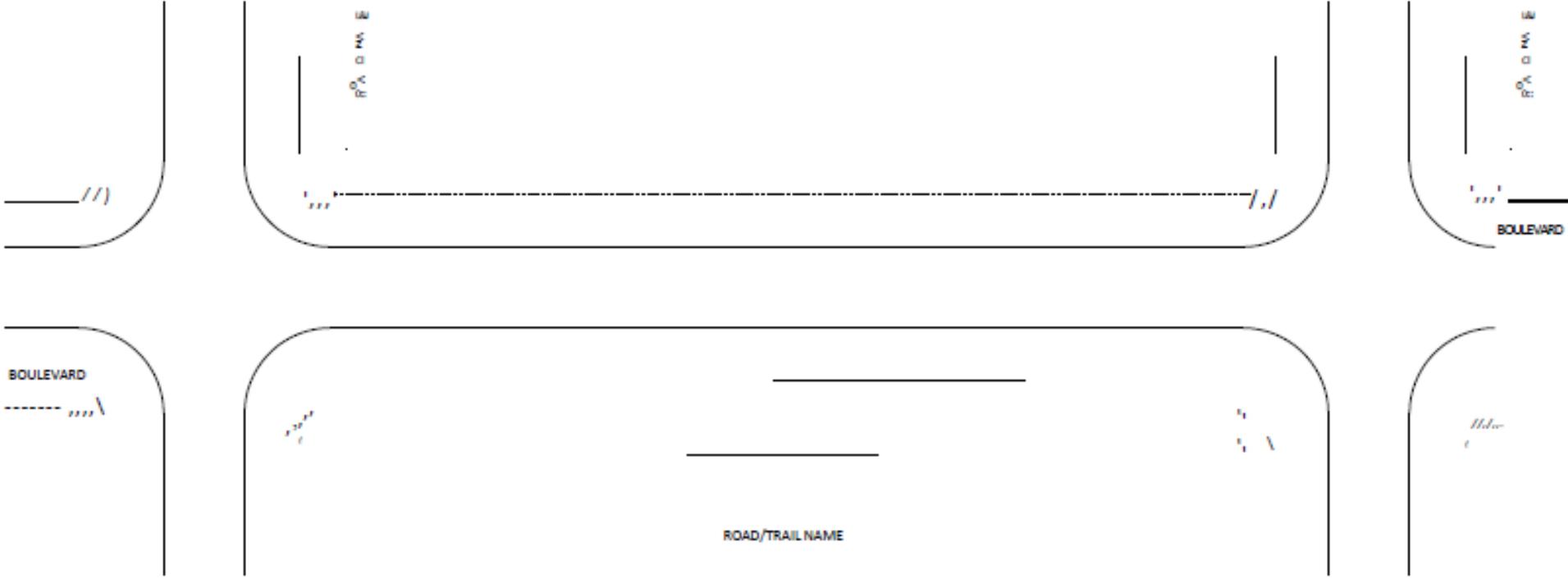
Schedule B

COUNTY OF RENFREW LAND USE AGREEMENT
APPLICATION DRAWING OF LAND USES

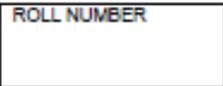
ROLL NUMBER



INDICATE NORTH



ROAD/TRAIL NAME



ROLL NUMBER

BOULEVARD

ROAD/TRAIL NAME

BOULEVARD

DRAWN BY: _____

DATE: _____

Schedule "C"

SAMPLE AGREEMENT

THIS AGREEMENT made in duplicate this day of _____

B E T W E E N:

THE CORPORATION OF THE COUNTY OF RENFREW

(hereinafter called the "County") OF THE FIRST PART

A N D

XX

(hereinafter called the "Owner") OF THE SECOND PART

WHEREAS the Owner represents that they are the registered owner of certain lands and premises in the County of Renfrew, which abut on the side of [TRAIL], known municipally as [ADDRESS], in the County of Renfrew, and being more particularly described in Appendix "A" attached hereto;

AND WHEREAS [DESCRIBE LAND USE (in Appendix if necessary)], hereinafter referred to as "Land Use", has been wholly or partly constructed by the Owner, or its predecessors, in the County of Renfrew ;

AND WHEREAS the Owner has petitioned the Municipality of the Corporation of the County of Renfrew that they be allowed to maintain and use the said Land Use;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the sum of TWO DOLLARS (\$2.00) of lawful money of Canada, now paid by the Owner to the County, the receipt whereof is hereby acknowledged, the Owner covenants and agrees with the County as follows:

1. The Owner, their executors, administrators, successors and assigns, are hereby allowed to use and maintain the Land Use, for so long as the Land Use shall remain in its present location, provided the Owner is not in default of the terms of this Agreement.
2. Upon demolition or removal of the Land Use, all parts of the Land Use upon County-owned Trail land for [ADDRESS] shall be removed by the Owner to the satisfaction of the County at the expense of the Owner, and without compensation to the Owner.
3. In the event of failure by the Owner to remove the Land Use as required by Section 2 hereof, the same may be removed by the forces of the County, without compensation to the Owner, and the cost of said removal shall be a first priority encumbrance upon the Owner's lands and may be recovered in a like manner as municipal taxes.

4. The Owner shall pay to the County so long as the said Land Use is used and maintained upon the road/trail the sum of [SUM] as an [ANNUAL CHARGE OR ONE TIME FEE] for such privilege and such fee or charge shall form a charge upon the lands of the Owner of the said lands, his executors, administrators, successors and assigns, and upon default of payment after reasonable notice may be recovered as a lien upon the said lands in a like manner as taxes. Failure to make payment in accordance with this section shall be considered a default under this Agreement, and at the election of the County, the County may revoke the Owner's use of the Land Use and require removal of the Land Use in accordance with Section 2 above.

5. [optional clause]

If, during the term of this Agreement, the County requires the use of part or all of the Land Use lands for any County purpose, the County may terminate this Agreement and require the Owner to remove the Land Use at the Owner's expense upon 90 days written notice being given to the Owner by the County. The Owner shall not make any claim against the County on account of such removal and will restore the Land Use lands to a safe and proper condition satisfactory to the County. Provided that if the Owner neglects, refuses or fails to do so within the time specified, the County may remove the Land Use and restore the lands to a safe and proper condition and may charge the cost thereof to the Owner, of which cost the invoice of the County will be final and the County may recover such cost from the Owner in any court of competent jurisdiction as a debt due by the Owner to the County. In addition, any fees due and any costs incurred upon termination of this Agreement shall be a first priority encumbrance upon the said lands herein described and may be recovered in like manner as municipal taxes. No remedy conferred upon or reserved to the County is intended to be exclusive of any other remedy whether given herein or not, but every such remedy shall be cumulative and shall be in addition to every other remedy.

6. for companies

The Owner shall at their own expense obtain and maintain during the term of this Agreement, and provide the County with evidence of comprehensive general liability insurance for an amount not less than Five Million (\$5,000,000.00) Dollars and shall include the County as an additional insured with respect to the Owners' use and operations on the property described in this Agreement; such policy to include non-owned automobile liability, personal injury, broad form property damage, contractual liability, owners' and contractors' protective, completed operations, contingent employers liability, cross liability and severability of interest clauses. The

above-mentioned policy will not be cancelled or permitted to lapse unless the insurer notifies the County in writing at least thirty (30) days prior to the date of cancellation or expiry. The Owner will provide that evidence of such insurance shall be delivered to the County promptly at inception of this Agreement and thereafter on the insurance renewal date.

for homeowners

The Owner shall at their own expense obtain and maintain during the term of this Agreement, and provide the County with evidence of general liability insurance (homeowners) for an amount not less than Two Million (\$2,000,000.00) Dollars and shall include the County as an

additional insured with respect to the Owners' use and operations on the property described in this Agreement. The aforementioned policy will not be cancelled or permitted to lapse unless the insurer notifies the County in writing at least thirty (30) days prior to the date of cancellation or expiry. The Owner will provide that evidence of such insurance shall be delivered to the County promptly at inception of this Agreement and thereafter on the insurance renewal date.

7. The Owner covenants that they shall maintain the Land Use in a good and safe condition, at their own expense, and that the Owner, their heirs, executors, administrators, successors and assigns, as Owner and occupiers from time to time of the said lands described in Appendix "A" attached hereto, will at all times indemnify and save harmless the County of and from all claims, loss, costs, damages and expenses of every nature whatsoever which the County or any third party, may suffer, be at or be put to, for or by reason of or on account of the existence of, use, maintenance or repair, or lack of repair of the said Land Use or anything done or purported to be done pursuant to this Agreement, or any act or neglect in carrying out anything to be done pursuant to this Agreement.

8. The Owner waives the right to make any claim against the County, its contractors, employees, or agents, relating in any way to the Land Use, for any losses or damage incurred by the Owner as a result of the actions or omissions of the County, whether or not those actions or omissions arise from the negligence of the County, its contractors, agents or employees.

9. Such sums as may become due or for which the Owner may be obligated under this Agreement respecting the said Land Use shall be a first priority encumbrance and charge upon the said lands and premises described in Appendix "A" attached hereto in priority to all other claims, liens, mortgages or charges.

10. The Owner covenants and agrees that this Agreement shall cover the Land Use upon the County owned property adjacent to the said lands described in Appendix "A" attached hereto, and does not imply or grant any permission to erect any part of any new building on the said encroachment, or enlarge or extend the said encroachment, unless otherwise explicitly stated in this Agreement.

11. This Agreement may, at the expense of the Owner, be registered on title to the property of the Owner, and the lands upon which the Land Use is conducted.

12. This agreement shall be binding upon the Owner, their heirs, executors, administrators, successors and assigns, as Owner and occupier from time to time of the lands and premises described in Appendix "A" attached hereto and the covenants herein contained shall be deemed to run with the lands and premises and bind the owners and occupiers thereof from time to time.

IN WITNESS WHEREOF the County and Owner have hereunto set their hand and seal.

THE CORPORATION OF THE COUNTY OF RENFREW

Per:
Title:
I have the authority to bind the Corporation

Per:
Title:
I have the authority to bind the Corporation

Witness:

OWNER

Witness:

OWNER #2 (if applicable)

OR

[CORPORATE OWNER]

Per:
Title:
I have the authority to bind the Corporation