

THIS AGREEMENT is dated this 20<sup>th</sup> day of AUGUST, 2020.

Appendix E

BETWEEN:

**THE CORPORATION OF THE CITY OF RICHMOND HILL**

(the "City")

**John Sherwood, Linda Graham, Lei Wang, Martha Lotto, Gina Gross, Paul Nudyk,  
Yasya Pegata, Seema Relekar**

(Collectively the "Licensee")

**WHEREAS:**

- A. The City owns lands known as Pioneer Park (the "Lands");
- B. The Licensee is a group of individuals who wish to control invasive garlic mustard and plant and maintain garden areas to grow native wildflowers and other butterfly attracting plants;
- C. The City has agreed to permit the Licensee to use a portion of the Lands for a Collective Garden (as defined Article 1 below).

**TERMS AND CONDITIONS:**

**ARTICLE 1 - DEFINITIONS**

**1.1 Definitions**

In this Agreement, the following terms shall have the following meanings:

- (a) "**Community Garden**" means an area of land allocated for use by members of the public in connection with Gardening Activities as shown on Schedule "A";
- (b) "**Collective Garden**" means a Community Garden that is administered and maintained by the Licensee for use by it and by Participants;
- (c) "**Coordinator**" means John Sherwood or such other individual selected pursuant to Section 4.2;
- (d) "**Lands**" means Pioneer Park;
- (e) "**Licensee**" means those individuals named above or any one of them;
- (f) "**Manager**" means the Manager of Natural Environment of the City and any successor position, and includes the Manager's designate;
- (g) "**Gardening Activities**" means the mowing of lands to control invasive garlic mustard and the growing of native wildflowers and other native butterfly attracting plants;
- (h) "**Participants**" means those individuals permitted by the Licensee to undertake Gardening Activities in the Collective Garden and includes volunteers and members of the Licensee;
- (i) "**Rules and Regulations**" means those policies, rules and regulations that must be complied with in using, operating and maintaining a Community Garden as set out in Schedule "B" (Garden Rules and Regulations);
- (j) "**Site**" means the area indicated by the shaded portion of the map attached hereto as Schedule "A" (the "Site") within the Lands or such other area selected by the City that is to be used by the Licensee for a Collective Garden; and

(k) "Term" has the meaning set out in Section 2.1

## ARTICLE 2 - TERM

### 2.1 Term

The term of this Agreement shall be five years commencing August 20, 2020 and terminating August 19, 2025 ("Term").

### 2.2 Extension of Term

Provided that the City does not require the Site for other use(s) and that the Licensee is not in default of any of its obligations under this Agreement, the City shall provide the Licensee with the opportunity to renew this Agreement in writing no later than three (3) months prior to the expiry of this Agreement. The Licensee shall provide written notice of its intentions to renew no later than two (2) months prior to the expiry of this Agreement. If the aforementioned notice is not given, this Agreement shall automatically terminate on the final day in the Term.

## ARTICLE 3 - PERMITTED USE OF SITE

### 3.1 Operation of Collective Garden

For the duration of the agreement, the Licensee may use the Site for the sole purpose of operating and maintaining a Collective Garden at the Site.

### 3.2 Non Availability of Site

Notwithstanding anything contained in this Agreement, in the event that the Site is no longer available for use by the Licensee, the City shall be excused from failure to make available the Site to the Licensee and the Licensee's rights to access and use the Site and this Agreement shall be terminated.

## ARTICLE 4 - COMMUNITY GARDEN COORDINATOR

### 4.1 Role of Coordinator

By naming an individual as Coordinator, the Licensee represents and warrants to the City that such individual has the authority to represent the Licensee and act as the Licensee's primary contact for the City in connection with this Agreement.

### 4.2 Selection of Alternate Coordinator

The Licensee may replace the Coordinator named in paragraph (c) of Section 1.1. by providing written notice of such replacement to the Manager and such replacement shall be effective on the date of such notice.

## ARTICLE 5 - CONDITIONS OF USE

### 5.1 General

The Licensee shall abide by the conditions set out in this Agreement and shall ensure that any Participants it permits to use the Collective Garden do so as well.

### 5.2 Care and Maintenance

The Licensee shall maintain the Community Garden in a good state of repair to a standard that ensures a safe environment to the satisfaction of the City and be responsible for the following:

- (a) The mowing of no more than a 5 metre swath behind the rear property line of 63, 65, 67, 69, 71, 73, 75, 77 and 79 Carrington Drive
- (b) the creation of nine garden areas, each with an area of no less than 4.5m<sup>2</sup>, planted within the Site behind 63, 65, 67, 69, 71, 73, 75, 77 and 79 Carrington Drive
- (c) ongoing maintenance of the Collective Garden including but limited to planting, weeding and watering
- (d) the correct disposal of trash, debris and organic matter.

### 5.3 Fees

The Licensee may not charge Participants a fee.

### 5.4 Improvements

No installation of any structural improvements or fittings will be permitted to the Site. There will be no storage of materials permitted on the Site.

### 5.5 Removal of Property and Equipment

On or before the last day in which the Licensee is entitled to use the Site, the Licensee shall remove all its property, and leave the Site in a clean and tidy condition. If the Licensee fails to remove its property, the City shall arrange for its removal, storage and cleaning at the Licensee's risk and expense. The Licensee shall pay all costs, expenses and charges, including storage charges, together with any amounts required to compensate the City for any loss sustained by the City by reason of the Licensee's failure to remove its property or leave the Site in a clean and tidy condition and the Licensee agrees that any sums payable under this section shall be determined solely by the City.

### 5.6 External Funding

The Licensee shall be permitted and is encouraged to pursue external funding opportunities for its activities at the Community Garden.

### 5.7 Compliance with Applicable Laws

The Licensee shall comply, and shall ensure all its Participants comply, with all federal, provincial and municipal laws, rules, regulations and by-laws, and the orders and directions of the Regional Municipality of York Police Department or any other department having jurisdiction over such an operation, including but not limited to the Rules and Regulations, and shall indemnify the City for any failure or negligence to do so.

### 5.8 Non-Assignment

Except as expressly permitted by the provisions of this Agreement, the Licensee shall not assign this Agreement or any part thereof or share the occupation of the

Site or any part thereof without the written consent of the City, which the City may withhold in its sole and absolute discretion.

## **ARTICLE 6 - CITY'S RIGHTS AND RESPONSIBILITIES**

### **6.1 Access to Site**

The City, and any of its elected officials, officers, employees and authorized agents and/or sub-contractors shall at all times have access to the Site via Pioneer Park for all reasonable purposes and nothing shall be construed as granting to the Licensee an exclusive right of possession or occupancy to the exclusion of the City.

### **6.2 Inspections and Site Rectification**

Without limiting the generality of the City's right to access the Site as set out in Section 6.1, the City or any person authorized by the City may, at any time and from time to time, enter the Site for the purpose of performing inspections in accordance with City policies and procedures for the purpose of taking any other actions the City deems necessary. The City will advise the Licensee of the results of any inspection of the Community Garden and will give the Licensee any orders or directions to rectify or improve the conditions of the Community Garden. The Licensee shall forthwith comply, and shall ensure that its Participants forthwith comply, with any orders or directions from the City to rectify the conditions of the Community Garden.

In addition to any other right or remedy set out in this Agreement, the City may, in its sole and absolute discretion, perform the work necessary to rectify or improve conditions of the Site.

### **6.3 Objectionable Persons**

The City may eject any objectionable person or persons from the Site and upon exercise of this authority through City staff, the Licensee hereby waives any right and all claims for damages.

### **6.4 Site Construction and Preparation**

The City may, from time to time as deemed necessary by the City in its sole and absolute discretion, undertake any repairs to the Site. Advanced notice will be provided at least 24 hours prior to entering the Site.

### **6.5 Services Provided by City**

The City will not provide any services or support to the Collective Garden other than educational resources issued through the City's Natural Environment Section.

The Collective Garden group will be responsible for all set-up, planting, maintenance and upkeep of the Collective Garden.

## **ARTICLE 7 - INDEMNITY AND INSURANCE**

### **7.1 Non-Liability of City**

The City shall not be responsible in any way for any injury to any person, including death, or for any loss of the Licensee, or for any damage to any property belonging to the Licensee or its officers, directors, employees, agents, sub-contractors, invitees or Participants while such persons or property are in or about the Site.

Without limiting the generality of the foregoing, the City shall not be responsible for any loss of, or damage to, any plant material, property, including the fixtures, equipment or inventory belonging to the Licensee or its officers, directors, employees, agents, sub-contractors, invitees or Participants caused by pests,

disease, theft or breakage, fire, steam, water, rain or snow which may leak into, issue or flow from any part of the Site.

## **7.2 Indemnification**

The Licensee hereby releases, discharges, covenants and agrees at all times to indemnify and save harmless the City, its elected officials, employees, officers, agents and servants from and against all claims, demands, liability, losses, costs, damages, expenses, compensation, awards, judgments or payments of every kind or nature whatsoever, and all actions, suits or proceedings of every kind or nature whatsoever by whomsoever incurred, sustained, suffered, made, brought or taken including those relating to:

- (a) property damage or injuries to any property or person or persons, including to Participants, and any consequential damages as arising from such damage or injuries, and;
- (b) all demands, liability, loss, costs, damages, expenses, compensation, awards, or payments of every kind or nature whatsoever, and all actions, suits or proceedings of every nature of kind whatsoever by whomsoever incurred, sustained, suffered, made, brought or taken;

in any manner connected with, caused by or attributable to the entry into of this Agreement and the Licensee's or Participants' use of the Site.

## **ARTICLE 8 - ENFORCEMENT AND TERMINATION**

### **8.1 Termination by Notice**

This Agreement may be terminated by either party for any reason whatsoever upon the giving written notice to do so at least ninety (90) days in advance of such termination date.

### **8.2 Termination for Default by Licensee**

Should the Licensee fail to perform any obligation or obligations under this Agreement, the City shall give written notice to rectify any such default within seven (7) days of the giving of the notice. In the event that the Licensee does not rectify the default within the said seven (7) day period, the City may terminate this Agreement on the giving of ten (10) days' written notice to that effect, provided that if the Licensee rectifies any such default to the satisfaction of the Manager before the expiry of the ten (10) day period, such notice shall be null and void.

### **8.3 Rights of City Cumulative**

All rights and remedies of the City for any breach of the Licensee's obligations under the Agreement shall be cumulative and not exclusive or mutually exclusive alternatives and shall not be deemed to be in exclusion of any other rights or remedies available to the City under this Agreement or otherwise at law. No delay or omission by the City in exercising any right or remedy shall operate as a waiver of them or of any other right or remedy, and no single or partial exercise of a right

or remedy shall preclude any other or further exercise of them or any other right or remedy.

**ARTICLE 9 - GENERAL**

**9.1 Notice**

Any notice required to be given under this Agreement shall be in writing and delivered by mailing said notice by prepaid registered post or by facsimile or by e-mail, to the City and Licensee at the following addresses:

City:  
The Corporation of the City  
of Richmond Hill  
225 East Beaver Creek Road  
Richmond Hill, ON L4B 3P4  
Attention: Manager of  
Natural Environment  
Facsimile: 905-771-2481  
E-mail: [anmarie.farrugia@richmondhill.ca](mailto:anmarie.farrugia@richmondhill.ca)

Licensee:  
John Sherwood  
  
75 Carrington Drive  
Richmond Hill, ON L4C 7Y1  
Attention: REPRESENTATIVE  
  
E-mail: [jeshewood@rogers.com](mailto:jeshewood@rogers.com)

or to such other address or facsimile number or e-mail address as the parties may respectively from time to time advise in writing, and any such notice, if mailed, shall be conclusively deemed to be received by the other party five (5) business days after the date of mailing, or on the day of transmission by facsimile or e-mail, unless such facsimile or e-mail is transmitted after 4:30 p.m., in which case, it shall be deemed to have been received on the next business day.

**9.2 Joint Responsibility**

All persons comprising the Licensee together with all approved assignees are to be held and hereby agree to be held jointly and severally responsible for the faithful fulfilment of all the covenants, terms and conditions of this Agreement.

**IN WITNESS WHEREOF** the parties have hereunto affixed their corporate seals, duly attested by the hands of the proper signing officers in that behalf.

**SIGNED, SEALED AND DELIVERED** )

**in the presence of** )

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Yasya Pegeta, 65 Carrington Drive

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Seema Relekar, 67 Carrington Drive

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Lei Wang, 69 Carrington Drive

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Linda Graham, 71 Carrington Drive

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Paul Nudyk, 73 Carrington Drive

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John Sherwood, 75 Carrington Drive



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Martha Lotto, 77 Carrington Drive

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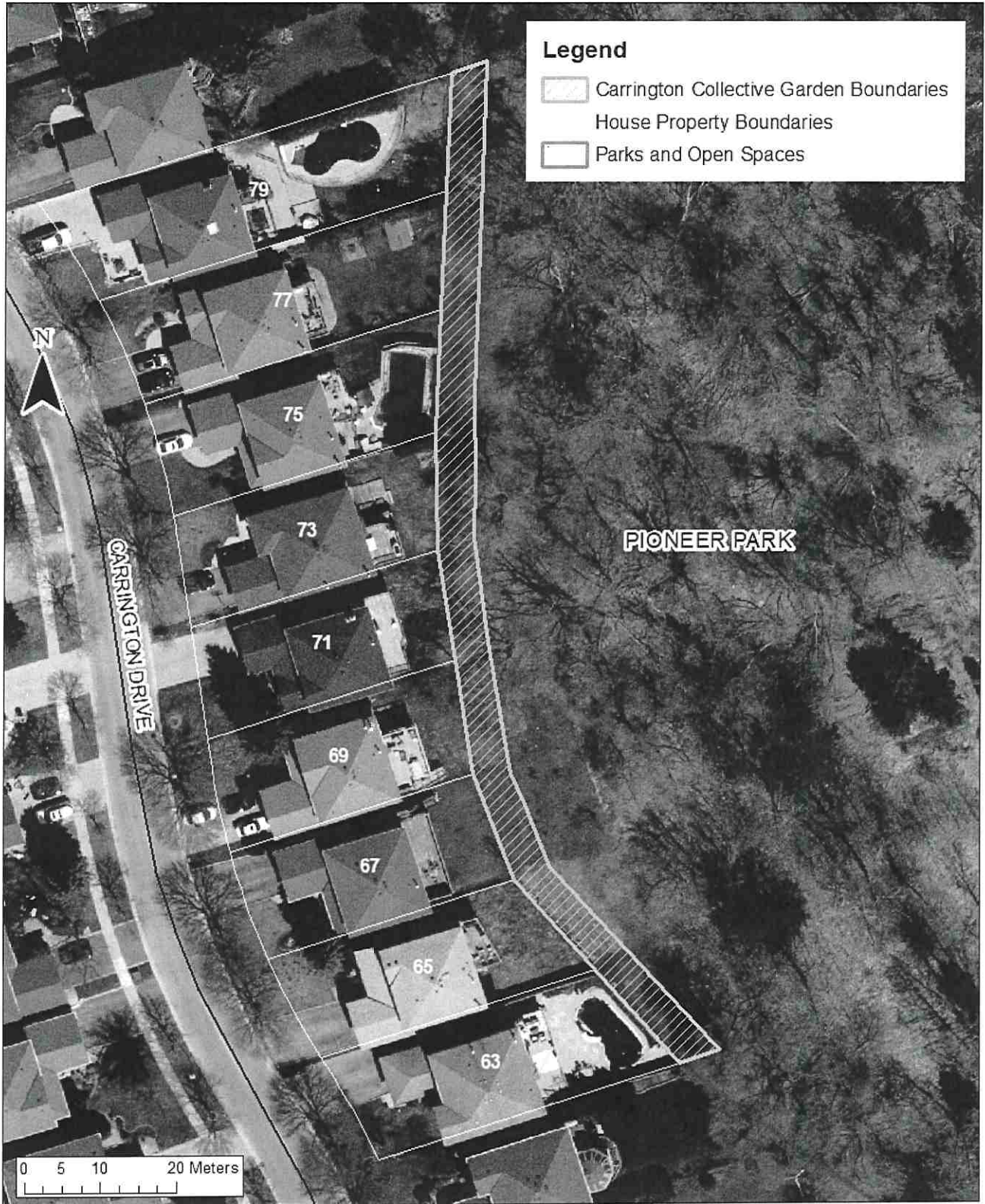
Gina Gross, 79 Carrington Drive





**SCHEDULE "A"  
THE SITE**

**Carrington Pollinator Collective Garden**



## SCHEDULE "B"

### GARDEN RULES AND REGULATIONS

- A Community Garden is not to be used to raise animals, livestock and/or poultry.
- Plants not to be grown for the purpose of sale.
- Plants of the genus *Cannabis* and *Nicotiana* are prohibited.
- Invasive species are prohibited. Two good reference guides are the Ontario government's Grow Me Instead Guide and the Quick Reference Guide to Invasive Plant Species. If you're not sure if a species is invasive, contact the City.
- The Community Garden must be maintained throughout the growing season. This may include, as appropriate to the garden type, weeding, watering, mulching, proper disposal of plant materials, removal of dead plants, organic pest control, garbage pick-up, etc.
- Chemical insecticides, herbicides and fertilizers are not permitted
- The Licensee are required to provide their own equipment, tools and plant materials.
- Only biodegradable mulch is permitted.
- The City reserves the right to amend, and or remove rules and regulations that govern the Community at any time.

**Extract from Council Meeting  
C#29-20 held July 8, 2020  
Confirmatory By-law 95-20**

**14. Emergency/Time Sensitive Matters**

**Delegation addressing Item 14.2:**

Linda Graham, 71 Carrington Drive, addressed Council regarding the Time Sensitive matter of Regional and Local Councillor DiPaola related to providing the residents at 63, 65, 67, 69, 71, 73, 75 and 79 Carrington Drive permission to cut, control and maintain the invasive garlic mustard weed on the City of Richmond Hill's property. She advised of the abundance of toxic garlic mustard weed creeping up on the backlots to residents of Carrington Drive, noted their efforts to control the weeds, and advised of a notice issued from the City's By-law Division to cease the maintenance of City property. Ms. Graham advised of her on-site meeting with the City's Natural Environment staff, and requested Council support the residents to work collaboratively with City staff to develop and maintain a community Milkweed Garden Project on the subject lands to support the protection and recovery of the Monarch butterfly.

**Extract from Council Meeting  
C#29-20 held July 8, 2020  
Confirmatory By-law 95-20**

**14.2 Time sensitive matter - Member Motion of Regional and Local Councillor DiPaola - Provide permission to residents of Carrington Drive to maintain the invasive Garlic Mustard weed on City property**

Moved by: Regional and Local Councillor DiPaola

Seconded by: Councillor West

a) That Council grant the residents at 63, 65, 67, 69, 71, 73, 75 and 79 Carrington Drive permission to cut, control and maintain the invasive Garlic Mustard weed on City of Richmond Hill property, and no greater than an 5 metre distance of their respective backlot property lines;

b) That staff in the City's Natural Environment Section be directed to develop a partnership agreement and pilot project with the residents at 63, 65, 67, 69, 71, 73, 75 and 79 Carrington Drive to develop and maintain a milkweed pollinator garden. This garden will be a 3 metre swath along the back lot lines of the participating properties, and located as directed under the guidance of the City's Natural Environment Section.

Carried Unanimously