



## BY-LAW

No. 2023 – 023

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### Being a By-law to Authorize a Parking Lot Use Agreement with Dennis Pierson Chevrolet Oldsmobile Ltd.

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**Whereas** Section 8 (1) and 9 of the Municipal Act, 2001 S.O. 2001, c. 25, as amended, provide that the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues and has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act; and

**Whereas** Dennis Pierson Chevrolet Oldsmobile Ltd. is the owner of the property located at 856 Queen Street, Municipality of Kincardine; and

**Whereas** The Council of the Corporation of the Municipality of Kincardine is desirous of entering into an Agreement with Dennis Pierson Chevrolet Oldsmobile Ltd., to permit a Municipal parking lot; now therefore be it

**Resolved** that the Council of The Corporation of the Municipality of Kincardine **Enacts** as follows:

1. The Agreement includes rental of the property located at 856 Queen Street for a parking lot and shall be subject to the terms and conditions of the Parking Lot Use Agreement attached as Schedule 'A' to this By-law, in consideration of rents, covenants and obligations.
2. That the Mayor and Chief Administrative Officer be authorized and directed to execute, on behalf of the Council of The Corporation of the Municipality of Kincardine, to sign the Parking Lot Use Agreement.
3. This By-law shall come into full force and effect upon its final passage.
4. This By-law may be cited as the "Dennis Pierson Chevrolet Oldsmobile Ltd Agreement (2023) By-law".

**Read a First and Second Time** this 13<sup>th</sup> day of February, 2023.

**Read a Third Time and Finally Passed** this 13<sup>th</sup> day of February, 2023.

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Mayor

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Deputy Clerk

## Parking Lot Use Agreement

THIS Parking Lot Use Agreement (this "Agreement") is effective as of February 13, 2023 (Effective Date") and is entered into by and between **Dennis Pierson Chevrolet Oldsmobile Ltd. (Owner)** and The Corporation of the **Corporation of the Municipality of Kincardine ("Renter")**.

### RECITALS

- A. Dennis Pierson Chevrolet Oldsmobile Ltd. is the owner of the Parking located at 856 Queen Street, Kincardine ("Parking Lot").
- B. Renter desires non-exclusive use of the Parking Lot for parking of vehicles under the terms and conditions set forth below.

### AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein as though set forth in full, and in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

**1. Grant of Use.** Owner hereby grants a non-exclusive right, privilege, and permission, subject to the terms and provisions of this Agreement, to possess and occupy the Parking Lot for the sole purpose as defined and set forth below.

**2. Term of Agreement.** The term of this Agreement shall commence on March 1<sup>st</sup>, 2023, the Effective Date and end on December 31<sup>st</sup>, 2023 ("Term"), unless terminated sooner in accordance with paragraph 3 of this Agreement.

2.1 Option to Extend Initial Term. Upon the mutual written agreement of the parties, the Term may be extended. Neither party shall be under any obligation to agree to an extension of the Term. In the event the parties mutually agree to an extension under this Subsection 2.1, the Term shall be deemed to end on the date as agreed amount the parties. "Term" shall include the initial term and any extension thereof.

**3. Early Termination.** Either party, the Owner or Renter shall have the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice as provided in paragraph 15 herein.

**4. Limitations to Agreement.** The Renter has exclusive use of sections 286 and 866 as identified on schedule 'A' of this agreement.

**5. Agreement Fee.** It is mutually understood and agreed that the agreed upon monthly fee for use of the Parking Lot ("Agreement Fee") was determined based upon an estimate of the cost of surface care and use of the Parking Lot. The monthly/annual Agreement Fee of \$3,000 plus HST will be due upon the 1<sup>st</sup> day of each month.

**6. Compliance with Laws.** Renter shall, at all times during the Term, comply with all laws, codes, statues, ordinances and regulations applicable to this Agreement and Renter's use of the Parking Lot. In conjunction therewith, Renter shall obtain, at its sole cost and expense, any other approvals and permits necessary to use the Parking Lot if applicable.

**7. Maintenance and Notice of Necessary Repairs.** The Renter is responsible for Parking Lot maintenance as it relates to line striping, trash clean-up, weed abatement, parking enforcement, parking violators/violations, fencing, and signage. The Owner will be responsible for the Parking Lot surface care.

**8. Signage, Alterations and Modifications.** The Owner will review and inspect signage posted at the Parking Lot. If the Owner identifies signage that needs repair or in poor condition, the Renter will replace and/or repair the signage identified by the Owner. Renter shall not, without prior written consent from Owner, place any signage on, or otherwise alter, modify, improve or change the Parking Lot. Any and all such Owner approved signage, alterations, modifications, improvements or changes shall be at the sole cost and expense of Renter.

**9. Indemnification.** Renter agrees to defend, indemnify and hold harmless the Owner, its members, employees, agents, officers and officials from and against liabilities, losses, penalties, damages and expenses, including costs and attorney fees, arising out of all claims, liens, damages, obligations, actions, suits, judgments or settlements, or causes of action, of every kind, nature and character arising or alleged to arise out of the negligent or willful acts or omissions of Renter, its officials, agents and employees in the performance of this Agreement. Renter shall, at its sole cost and expense, appear, defend and pay all attorney fees and, other costs and expenses arising hereunder. In addition, if any judgment shall be rendered against Owner in any such action, Renter shall, at its sole cost and expense, satisfy and discharge such obligation of the Owner. Owner shall have the right, at its own expense, to participate in the defense of any suit, without relieving Renter of any of its obligations hereunder. Owner retains final approval of any and all settlements or legal strategies which involve the interest of Owner. The indemnities set forth herein shall survive the expiration or termination of this Agreement.

**10. Assumption of Risk.** Renter acknowledges and agrees that by use of the Parking Lot, Renter assumes all risk of loss or damage to property, including, without limitation, property damage, and all risk of personal injury, including but not limited to death, attributable to any cause other than negligence or unlawful conduct of Owner. Renter further agrees that it is familiar with the condition of the Parking Lot and the suitability of the Parking Lot for its intended use and accepts the Parking Lot on an "AS-IS" "WHERE-IS" basis. Renter forever releases Owner, its agents, manager, affiliates, members, volunteers and employees from and against any and all of Renter's claims, causes of action, liabilities and expenses arising out of or relating to any such loss, damage, or injury. Owner, its agents, manager, affiliates and employees shall not be responsible or liable for loss or damages by reason of fire, theft, collision or any other cause to parked vehicles or their contents, provided no unlawful act of Owner or its employees resulted in the loss or damages.

**11. Security.** Renter acknowledges that as of the Effective Date and at all times during the Term, it shall maintain security measures appropriate to reasonably protect the Parking Lot and any and all users of the Parking Lot.

**12. Insurance Requirements.** The procuring of required policies of insurance shall not be construed to limit Licensee's liability thereunder, nor to fulfill the indemnification provisions and requirements of this License. Notwithstanding said policies of insurance, Licensee shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this License or with Licensee's use or occupancy of any portion of the Premises.

The Licensee shall purchase, maintain and keep in force during the term of this License at Licensee's sole cost and expense the following insurance:

A. CERTIFICATE OF WORKERS' COMPENSATION INSURANCE as required by the statutory laws of the State Labor Code.

B. CERTIFICATE OF GENERAL LIABILITY INSURANCE with accompanying "Additional Insured" endorsement documents. All endorsements shall clearly state policy number.

Commercial General Liability policies shall include endorsements naming Owner, Its Officers, Agents, Members, Volunteers and Employees as additional insured.

Minimum Insurance Requirements – General Liability Insurance:

One million dollars (\$1,000,000) each occurrence (combined single limit)

One million dollars (\$1,000,000) for personal injury liability

Two million dollars (\$2,000,000) in the aggregate

**13. Renter Events of Default.** Events of default (“Events of Default”) include, but are not limited to, the following:

A. Any material misrepresentation by Renter in the inducement of this Agreement or the use of the Parking Lot;

B. Breach of any agreement, representation or warranty made by Renter in this Agreement;

C. Failure of Renter to perform in accordance with or comply with the terms and conditions of this Agreement, including, but not limited to the following:

i) Action or failure to act which affects the safety and/or welfare of individuals on or around the Parking Lot;

ii) Failure to perform in accordance with terms and conditions of this Agreement;

iii) Failure to operate and maintain the Parking Lot in a manner satisfactory to Owner, or inability to operate and maintain the Parking Lot satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;

iv) Abandonment of the Parking Lot for reasons not beyond Renter’s reasonable control;

v) Failure to comply with any term of this Agreement, including but not limited to, the provisions concerning insurance and nondiscrimination, and any other acts specifically and expressly stated in this Agreement constituting an Event of Default;

vi) Default by Renter under any other agreement Renter may have with Owner.

vii) Owner has the option to terminate Agreement based upon events that cannot be predicted by the Owner.

**14. Assignment and Successor and Assigns.** The interest of Renter under this Agreement is personal to Renter and may not be assigned or transferred to any other individual or entity without Owner’s prior written consent.

**15. Notices.** Notices. All notices or other documents which are required or contemplated by this Agreement shall be: (i) in writing and delivered personally or sent by registered or certified mail, overnight courier service or facsimile or electronic transmission to the address designated in writing, (ii) by electronic mail, to the electronic mail address most recently provided to such party or such other electronic mail address as may be designated in writing by such party. Any notice or other communication so transmitted shall be deemed to have been given on the day of delivery, if delivered personally, on the business day following receipt of written confirmation, if sent by electronic transmission, one (1) business day after delivery to an overnight courier service or five (5) days after mailing if sent by mail.

**16. Severability.** In the event that any provision(s) of this Agreement is (are) determined to be legally invalid, the parties hereto agree that that particular provision shall be null and void, but that the remainder of this Agreement shall remain in full force and effect.

**17. No Third-Party Beneficiary.** This Agreement is not intended and shall not be construed so as to grant, provide or confer any benefits, rights, privileges, claims, causes of action or remedies to any person or entity as a third-party beneficiary under any statutes, laws, codes, ordinances or otherwise.

**18. No Waiver.** No waiver of any default under this Agreement shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege or option under this Agreement shall constitute a waiver, abandonment or relinquishment thereof.

**19. Entire Agreement and Amendment.** The Agreement, including all exhibits and referenced documents, constitutes the entire Agreement of the parties with respect to the matters contained herein. No modification of or amendment to the Agreement shall be effective unless such modification or amendment is in writing and signed by both parties hereto. Any prior agreements or representations, either written or oral, relating to the subject matter of the Agreement, are of no force or effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**Owner**

Dennis Pierson Chevrolet Oldsmobile Ltd.

Per: \_\_\_\_\_  
Dennis Pierson, Owner

**Renter**

The Corporation of the Municipality of Kincardine

Per: \_\_\_\_\_  
Kenneth Craig, Mayor

Per: \_\_\_\_\_  
Jillene Bellchamber-Glazier, CAO

We have authority to bind the Corporation