THE CORPORATION OF THE TOWN OF SOUTH BRUCE PENINSULA

BY-LAW NUMBER 67-2012

Being a By-Law to Authorize Mayor and Clerk to
Execute a License and Use Agreement with the
County of Bruce for the Operation of a Community
Garden

WHEREAS Section 8 of the Municipal Act, 2001, Chapter 25, as amended, provides
that Section 8 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 WHEREAS Section 9 of the Municipal Act, 2001, Chapter 25, as amended,
provides that a municipality 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 the Town of South Bruce Peninsula has deemed it expedient to enter
into a license and use agreement with the County of Bruce for the operation of a
community garden on property owned by the County of Bruce, namely the site of
Gateway Haven in Wiarton, Ontario.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN
OF SOUTH BRUCE PENINSULA ENACTS AS FOLLOWS:

1. THAT the Mayor and Clerk are hereby authorized to sign the license and use
agreement with the County of Bruce for the operation of a community garden.

2. THAT the agreement referred to herein shall be attached hereto and form part of
this by-law.

3. THAT any by-law inconsistent with this by-law shall be hereby repealed.

4. THAT this by-law shall come into full force and effect upon the final passing
thereof.
READ a FIRST and SECOND time this 15th day of May, 2012.

READ a THIRD time and FINALLY PASSED this 15th day of May, 2012.
THIS AGREEMENT made in triplicate this day of , 2012

BETWEEN

THE CORPORATION OF THE COUNTY OF BRUCE
(the “County”)

and

THE TOWN OF SOUTH BRUCE PENINSULA
(the “Licensee”)

LICENCE AND USE AGREEMENT

WHEREAS the Licensee and the County desire to enter into an agreement to permit the Licensee to enter onto County-owned land for the purpose of operating a Community Garden;

AND WHEREAS the Parties recognize that encouraging and promoting the operation of Community Gardens is a valuable recreational activity that contributes to the health, well-being of the residents of the County;

AND WHEREAS the County desires to encourage community gardening through the collaboration with neighbourhood associations, community groups, individuals and/or non-profit organizations;

AND WHEREAS the Licensee acknowledges and agrees that its right to occupy County-owned land exists at the pleasure of the County and that such right may be revoked by the County;

AND WHEREAS the parties agree that the mutual exchange of obligations constitutes satisfactory consideration to bind the parties to this agreement;

NOW THE PARTIES AGREE AS FOLLOWS:

DEFINITIONS:

Community Garden – means a site that is operated by an individual or group on a non-profit basis for one or more of the following purposes:

a. Production of produce for:

   i. Personal use
   ii. Donation to a local food cause; or
   iii. Generating revenue to reinvest in the Community Garden.
b. Production of a floral or landscape display; or

c. Demonstration gardening or other related instructional programming.

**Lands (the)** – means the lands upon which the Licensee is operating a Community Garden as described in Schedule A [Schedule A to be (1) a legal description, or (2) municipal address (if known) and/or map showing location and approximate extent of the Lands]

**Plot Holder** – means a member of a Community Garden who has:

a. The responsibility, solely or in conjunction with another Plot Holder, for gardening at least one garden plot within the Community Garden; and

b. Executed a Plot Holder Agreement and a Liability Waiver as per Schedule B.

**Plot Holder Agreement** – means an agreement executed by the Licensee and each Plot Holder;

**Release and Waiver** – means a release and waiver signed by each Plot Holder in favour of the Licensee and the County;

**Season** – means the period between 1 May and 31 October in each year of the Term;

**Hours of Usage**– means the hours in each day of the season available to Plot Holders to access the Lands. Actual hours to be mutually agreed upon by the County and the Licensee.

**Community Garden Policy** – means a document created by the Community Garden Committee that identifies how the Community Garden will be operated.

**ARTICLE 1 – RELEASE, WAIVER AND INDEMNITY**

a. The Licensee voluntarily assumes any risk of injury, damage or legal action and shall indemnify and save harmless The Corporation of the County of Bruce and its officers, employees, agents, and representatives (the “County”), from and against all liability, actions, claims, losses, costs and damages which may be brought against or suffered by the Licensee or the County and which the Licensee or the County may incur, sustain or pay arising out of or in connection with the Licensee’s use of and the County’s provision of or termination of any County services or facilities associated with this Agreement. The Licensee releases and forever discharges the County, from any claim or demand whatsoever in respect of injury, death, loss or damage to property caused by or arising from the Licensee’s or the Plot Holder’s use of the Community Garden. The Licensee also agrees to hold and save harmless the County from any and all causes of action brought by third parties, including Plot Holders, against the County arising out of the Licensee’s or the Plot Holder’s presence on or use of the Community Garden and/or arising out of any cause of action associated with the Licensee’s or the County’s deposit of material on the Community Garden.
ARTICLE 2 – OBLIGATIONS AND RIGHTS OF THE COUNTY

a. The County shall support the Community Garden in accordance with its approved Community Gardens Policy.

b. In its sole discretion, the County may alter or terminate this agreement without giving cause or reason at any time. While the County will use its best efforts to provide the Licensee with notice in excess of five (5) days prior to altering or terminating this agreement, the parties agree that the provision of five (5) days written notice prior to any alteration to, or termination of, this agreement is satisfactory. Notwithstanding the foregoing, in the event the County desires to terminate this agreement during any Season, it shall provide the Licensee with ninety (90) days notice of such termination.

c. The County shall:

i. Provide a water extension to the site from Gateway Haven. This will be in the form of a separate water meter and waterline to the garden site as agreed by both parties. The Licensee will pay for costs incurred for the meter and waterline installation; the ongoing costs of charges for water usage and any other ongoing charges associated with the provision of water to the gardens

ii. Allow public access to the Lands during the Season through the back parking lot entrance of Gateway Haven.

iii. Provide the Licensee with a photocopy of the License Agreement upon receiving the Licensee Fee, if any, and a duly executed copy of the License Agreement from the Licensee.

ARTICLE 3 – OBLIGATIONS AND RIGHTS OF THE LICENSEE

a. The Licensee shall only permit a Plot Holder to plant or grow plants that are permitted within the definition of Community Garden.

b. In the event of a disagreement concerning the suitability of all or some of the plants a Plot Holder desires to plant or grow on the Lands, the Licensee in first instance shall resolve such dispute in consultation with the County’s Corporate Services Department, in the event the County and the Licensee do not agree on what constitutes a suitable plant, the Licensee acknowledges and agrees that the County shall be the sole final arbiter of what constitutes an acceptable plant and may, in the County’s sole discretion, require the Licensee to:

i. Remove such plant or plants from the Lands; or

ii. Refuse permission to the Plot Holder to plant such plants on the Lands.
c. The Licensee shall:

1. Ensure that each Plot Holder, prior to commencing occupation of a plot within the Community Garden, executes a Plot Holder Agreement with the Licensee;
2. Ensure that each Plot Holder, prior to commencing occupation of a plot within the Community Garden, executes a Release and Waiver;
3. Develop the Town of South Bruce Peninsula Community Garden Policy that identifies (as per Schedule B):
   a. How their Community Garden will be operated
   b. Governance
   c. Communication
   d. Plot Holder Fees
   e. Financial Management and Fundraising
   f. Plot Holder Responsibilities
   g. Community Garden Rules
   h. Garden Facilities, Tools and Equipment
   i. Risk Management and Site Security
4. Ensure that the County’s Corporate Services Department always has a current version of the Town of South Bruce Peninsula Community Garden Policy;
5. Operate their Community Garden in accordance with their Town of South Bruce Peninsula Community Garden Policy;
6. Report any significant vandalism to the County’s Corporate Services Department as soon as practicable after becoming aware of such vandalism.

d. The Licensee shall maintain at their sole risk and expense such gating, fencing, locks, and supervision of the Lands as they consider reasonably necessary to ensure that:

1. Only Plot Holders are permitted to enter into the Community Garden during hours of usage for the purpose of growing plants that are permitted within the definition of Community Garden;
2. That any improvement made to the Community Garden by the County or by the Licensee, including the installation of running water, is kept reasonably secure.
3. Rain barrels will be installed only by the Town of South Bruce Peninsula and monitored and maintained by the Site Supervisor.
4. The Site Supervisor will monitor and maintain the compost pile. The accumulation of excessive composting materials will not be permitted. Excess materials will be removed by the Licensee at the Licensee’s expense.

e. The Licensee shall not permit any of the following:

1. The deposit of construction or demolition debris (including drywall or lumber) or any such other items such as, but not limited to, metal, plastic, porcelain;
2. The use of non-horticultural oils, detergents, pesticides, fungicides or insecticides.

f. The Licensee shall upon any demand from the County made in accordance with Article 2(b) forthwith surrender the Lands to the County. Prior to surrendering the Lands the
Licensee shall restore the Lands to their original condition including the removal of all structures or as otherwise negotiated between the County and the Licensee.

g. The Licensee acknowledges and agrees that its right to occupy the Lands exists at the pleasure of the County and that such right may be revoked by the County, in accordance with Article 2(b), in the event the County:

i. Requires use of the Lands and the continued operation of the Community Garden is, in the sole and unfettered discretion of the County’s Corporate Services Department, incompatible with the County’s use of the Lands;

ii. Is satisfied that the operation of the Community Garden has become a nuisance and the Licensee has not rectified the nuisance within ten (10) calendar days or such other reasonable period of time as the County may permit;

iii. The Licensee is in breach of its obligations hereunder and has not rectified the breach within ten (10) business days or such other reasonable period of time as the County may permit.

h. The Licensee shall make no claim against, nor make any kind of demand of the County arising out the County’s decision to terminate this agreement.

ARTICLE 4 – INSURANCE

The Licensee shall carry a Two Million Dollar ($2,000,000.00) Commercial General Liability Policy, underwritten by an insurer licensed to conduct business in the Province of Ontario. The coverage shall include but not be limited to:

a. Premises & Operations

b. Products & Completed Operations

c. Non-owned Automobile

d. Cross Liability

e. Contractual Liability

f. Hostile Fire

The County shall be added to the policy as an additional Insured.

The County must receive a Certificate of Insurance ten (10) days prior to assumption of the Lands.
The policy of insurance shall provide the County with thirty (30) days notice of cancellation.
ARTICLE 5 – RELATIONSHIP OF THE PARTIES

a. The relationship between the County and the Licensee is solely that of proprietor and a party licensed for the non-full-time use and occupation of the Lands and is not a relationship of Landlord and Tenant.

b. The Licensee acknowledges and agrees that nothing contained herein, and no action taken by the Licensee or any Plot Holder shall confer on or vest in the Licensee or any Plot Holder any title, any interest of any kind including an ownership interest, or estate in the Lands.

ARTICLE 6 – OTHER TERMS AND CONDITIONS

a. The County and Licensee agree that the recitals form part of this agreement and may be relied upon by either party.

b. The Term of this agreement shall commence on May 1, or on such later date as it is signed by the County, and will continue until terminated by either party. Termination of the agreement will be given by service of notice one party to the other in a written format. Either party shall provide sixty (60) days’ notice, one party to the other.

c. This agreement is a public document and may be released to anyone who makes a lawful inquiry.

d. This agreement constitutes the whole agreement between the parties and not prior or subsequent representation or warranty, given orally or in writing shall bind the parties unless it is executed in writing and signed by both parties.

e. Except as provided in this agreement, the agreement shall operate to the benefit of the parties and shall bind the parties and their prospective heirs, executors, administrators, successors and assigns.

f. This Agreement will be governed by the Laws of Ontario.

g. In the event any portion of this agreement is found to be unenforceable, the offending portion shall be severed and the remainder of the agreement shall remain in effect and bind the Parties.
IN WITNESS WHEREOF THE PARTIES hereto have set their hands as duly attested to by the hands of their duly authorized signing officers.

SIGNED AND DELIVERED THE CORPORATION OF THE COUNTY OF BRUCE

Mike Smith  
Chair – Homes Committee  
County of Bruce

Charles Young  
Department head/Administrator  
Gateway Haven

SIGNED AND DELIVERED THE TOWN OF SOUTH BRUCE PENINSULA

Mayor John Close  
Deputy Chair Jay Kirkland

Clerk Angie Cathrae
Schedule A
Description/Map of the Lands
To be Used as a Community Garden
Schedule B
Community Garden Policy And Plot Holder Agreement

The Town of South Bruce Peninsula and County of Bruce supports the use of public and private land for community gardening. Community Garden sites will be subject to Council approval, and shall only be used by Town of South Bruce Peninsula residents in accordance with the Community Garden Policy and Plot Holder Agreement. Where land is owned by the County of Bruce but leased to another party, use of that proposed site as a Community Garden shall be subject to the lessee's approval as well. Gardeners shall sign the Community Garden Plot Holder Agreement and abide by the Community Garden Policy.

Town of South Bruce Peninsula Community Gardens are outdoor spaces on designated public lands where Town of South Bruce Peninsula residents meet to grow and care for vegetables and flowers, and where the gardeners pay a small annual fee to the Town to register and rent their own plot and take initiative and responsibility for organizing, maintaining and managing the garden area. Each Community Garden location must select one person to act as their Garden Coordinator who shall be the main contact person with the Town.

Rules and Responsibilities

1. Plots will be assigned on a first-come/first-serve basis. Gardeners wishing to reserve their same plot for the next year shall register for that plot by October 31 of the current year.
2. Gardeners will pay an annual plot rental fee to rent a garden plot within the designated Community Garden Area located prior to June 1. Rental fees will be set by the Town of South Bruce Peninsula and reviewed on an annual basis.
3. Garden plots must be planted by June 15. If a gardener is unable to continue gardening, he/she shall notify the Town of South Bruce Peninsula Recreation Programmer. Gardeners wishing to cancel mid-season should notify Town of South Bruce Peninsula Recreation Programmer so that plots may be reassigned. There will be no fee reimbursement and all planted material must be removed by the gardener within seven (7) days of notification.
4. The period of the plot rental shall be seasonal. Fall cleanup of the garden is required. All above ground material, including stakes, must be removed by October 31.
5. All produce, crops, or personal property belonging to the gardener must be removed by October 31. Gardeners that reserve the same plot for the following year may only leave perennials in the garden plot. After the expiration of the above period, any produce, crops, or other personal property shall be disposed of at the discretion of the Town and the County, and there shall be no liability of such disposal. In the event that costs are incurred by the Town of South Bruce Peninsula, the Gardener will be invoiced.
6. The Garden plots site must be vacated from sunset to sunrise in the interest of security.
7. Each Community Garden plot will measures four (4) feet by eight (8) feet.
8. Town staff will supply, place and empty recycling and trash containers as part of routine property maintenance.
9. The Garden Coordinator will conduct the regular inspection of garden areas. If any contravention of rules is found, it may result in the cancellation of the gardener's privileges.
10. The Town of South Bruce Peninsula and the County of Bruce reserves the right to discontinue the program at any time with written notice to all gardeners.
11. Each gardener’s contact information will be provided to the Town of South Bruce Peninsula.
12. Gardeners will notify the Garden Coordinator or the Town of South Bruce Peninsula Recreation Programmer if they will be absent for more than seven (7) days or if they have asked a friend to tend their garden plot.
13. No gardeners shall let anyone sublet, take over or use their plot without permission from the Town of South Bruce Peninsula Recreation Programmer.
14. If a gardener’s garden bed is unkempt, they will be given ten (10) days’ notice to clean it up. If they do not comply in ten days, their bed may be reassigned and their annual fee forfeited at the discretion of the Town of South Bruce Peninsula Recreation Programmer.
15. In the interest of their safety and in respect to fellow gardeners, smoking in Community Garden area is not recommended.
16. Children must be closely supervised.
17. Pets are not allowed in the garden.
18. Gardener will not feed dogs, cats or other animals around the garden.
19. All structures shall be approved by the Town of South Bruce Peninsula Recreation Programmer and must be in compliance with zoning and building requirements. Installation of any fencing, boards or any other materials to enclose the individual garden plots requires consent from the Town of South Bruce Peninsula Recreation Programmer.
20. Motorized vehicles are not permitted on grassed area and must park in designated parking areas. Cars may not be left idling while at the garden.
21. Please report any vandalism to the Garden Coordinator and the Town of South Bruce Peninsula Recreation Programmer.
22. Theft of property not belonging to a gardener will result in expulsion from the garden.
23. Any member who feels rules governing the garden have been violated is to provide a written complaint to the Town of South Bruce Peninsula Recreation Programmer.
24. The bulletin board is a way for all of us to stay in touch and may be used for garden-related purposes only. All postings must be approved by the Site Supervisor or Town of South Bruce Peninsula Recreation Programmer.
25. Gasoline or other flammable or toxic substances are prohibited.
26. Use of herbicides, pesticides and black plastic mulches is prohibited.
27. Fertilizers must be used as per manufacturer's instructions and shall not be left on-site unattended at any time. Organic fertilizers are recommended.
28. Weeds and plant materials must be disposed of in designated compost areas.
29. Respect the Garden's property and assets. Use equipment and tools owned by the Community Garden responsibly and treat them with care. Return them to the shed promptly and clean to be stored neatly and securely for the safety and convenience of fellow gardeners. Tools are not to be taken home overnight.
30. Gardeners shall keep their plots weeded and tidy, and maintain tidy pathways surrounding their plots.
31. Gardeners will not plant corn or any tall crops where they will shade other people’s plots unless the gardener can demonstrate that there will not be a negative effect.
32. Illegal plants are strictly prohibited.
33. Trees and other woody plants are not allowed on garden plots unless the gardener can demonstrate that there will not be a negative effect.
34. Vegetables, grains, berries, fruits, beans, herbs and flowers (annuals and perennials) are allowed on garden plots.
35. Gardeners will not plant invasive plants.
36. Gardeners will grow food in the garden plot only for personal consumption or to be distributed to a charity. Food may not be grown for commercial purposes.
37. No unattended or overnight watering permitted.
38. Gardeners must obey municipal water restrictions.
39. To lessen the threat of West Nile virus and mosquito breeding areas, do not leave any standing water in watering buckets or cans, plant pots, etc. Turn them upside down.
40. In the case of damage to the water system, or apparent leakage, turn off the water supply, if capable and notify the Garden Coordinator or the Town of South Bruce Peninsula Recreation Programmer immediately. Check bulletin boards to see where to turn off water systems.
41. Gardeners must notify the Garden Coordinator of any leaks in the water line. All faucets must be turned off each night. Hoses must be neatly rolled up and stored in the storage shed.

**Gardener’s Code of Conduct:**

1. Be considerate of neighbours when planting garden plots.
2. Pick only your own crops unless permission is given by the other gardener.
3. Gardeners are responsible for supervising those individuals they bring to the garden including other adults, youths and children.
4. Abide by all Town of South Bruce Peninsula By-laws.
5. Work to keep the garden a happy, secure, and enjoyable place where all participants can garden peacefully in a neighbourly manner.
6. Use on-site compost and trash bins as provided. Community Garden groups are encouraged to establish and maintain a composting area.
7. Laneways and paths are to be kept clear of obstacles. Tools and personal property must not be left on the site overnight.
8. Loud music is prohibited. Please respect the neighbours. I will respect the other gardeners. I will not have amplified sounds except through headphones.
9. Abusive or profane language and discrimination against others is prohibited.

Return completed forms to: Town of South Bruce Peninsula, Attention: Recreation Programmer, Box 310, 315 George Street, Wiarton, N0H 2T0
Community Garden Plot Holder Agreement

Name of Gardener(s): ________________________________________________________________

Address: _______________________________________________________________________

Town: ___________________________ Postal Code: ______________________________

Home Phone: __________________ Work Phone: _____________________________

Email: __________________________ Plot #: _____________________________

Type of Garden: ☐ Raised Bed ☐ Ground Bed Amount due: __________

_____ Payment: ☐ Cash ☐ Debit ☐ Cheque (Payable to Town of South Bruce Peninsula)

The Plot Holder voluntarily assumes any risk of injury, damage or legal action and releases and
forever discharges The Licensee and The Corporation of the County of Bruce and their officers,
employees, agents, and representatives (the “Licensee and the County”), from and against all
liability, actions, claims, losses, costs and damages which may be brought against the Licensee
and the County and which the Licensee or the County may incur, sustain or pay arising out of or
in connection with the Plot Holder’s use of and the Licensee’s and/or the County’s provision of
or termination of land and/or a plot of land for community gardening and the County’s provision
of services, materials or facilities associated with community gardening. The Plot Holder
releases and forever discharges the Licensee and the County, from any claim or demand
whatsoever in respect of injury, death, loss or damage to property caused by or arising from the
Licensee’s or the Plot Holder’s use of the Community Garden. The Plot Holder also agrees to
hold and save harmless the Licensee and the County from any and all causes of action brought
by third parties, including other Plot Holders, against the Licensee and the County arising out of
the Licensee’s or the Plot Holder’s presence on or use of land for purposes associated with
community gardening and/or arising out of any cause of action associated with the Licensee’s or
the County’s provision of services, materials of facilities associated with community gardening.

The relationship between the Plot Holder and the County and the Licensee is solely that of
proprietor and a party licensed for the non-full-time use and occupation of County-owned land.
The Plot Holder, in consideration of being granted permission to use and occupy a plot within
the community garden, for the purpose of engaging only in permitted forms of community
gardening, forever releases and waives any argument or claim the Plot Holder may have or may
wish to make that a relationship of Landlord and Tenant exists between the Plot Holder and the
Licensee or between the Plot Holder and the County. The Plot Holder acknowledges and agrees
that nothing contained herein, and no action taken by the County, the Licensee or the Plot Holder
shall confer on or vest in the Plot Holder any title or any interest of any kind including an
ownership interest, or estate in the County-owned lands and the Plot Holder specifically releases
and waives any argument or claim the Plot Holder may have or may wish to make that the Plot
Holder has any interest of any kind including any kind of ownership interest, or estate in the
County-owned land being used as a community garden.

Signature: __________________________ Date: __________________________

For further information, contact Karen Neerhof, Recreation Programmer, 519-534-1400 ext. 132
or email tsbpprogrammer@bmts.com.