

## EASEMENT AGREEMENT

THIS AGREEMENT is made as of the \_\_\_\_ day of December, 2019.

### **BETWEEN:**

**1646322 ONTARIO LIMITED** (the “**Transferor**”)

-and-

**THE CORPORATION OF THE TOWN OF KINGSVILLE** (the “**Transferee**”)

### **WHEREAS:**

- A. The Transferor is the owner of certain lands legally described as PT LT 9-10 CON 1 WESTERN DIVISION GOSFIELD; KINGSVILLE DESIGNATED AS PT 9 12R21935; KINGSVILLE (PIN 75184-0720), and PART LOT 9 CON 1 WESTERN DIVISION GOSFIELD DESIGNATED AS PART 7 ON 12R21935; KINGSVILLE T/W R868579 (PIN 75184-0721). The Transferor has agreed to grant a non-exclusive easement over part of the lands more particularly described and identified as Parts 1 and 2 on Reference Plan 12R-27687 attached at Schedule “A” (the “**Servient Tenement**”);
- B. The Transferor has agreed to grant the Transferee an easement in gross over the Servient Tenement in favour of the Transferee, pursuant to the terms hereinafter set-forth.

**NOW THEREFORE IN CONSIDERATION OF THE SUM OF ONE (\$1.00) DOLLAR AND SUCH OTHER GOOD AND VALUABLE CONSIDERATION (THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED), THE PARTIES HERETO AGREE AS FOLLOWS:**

#### **1. Grant of Easement:**

- a. The Transferor, on behalf of itself, its successors and assigns, hereby grants an easement, in favor of the Transferee and its successors, assigns, agents, and invitees, a non-exclusive right of way in perpetuity over, on, upon, along and across the Servient Tenement, in common with the Transferor and its successors, assigns, agents, and invitees, for ingress and egress on foot, bicycle and/or with plants, materials, vehicles, machinery and equipment, as may be reasonably required in accordance with this Agreement (the “**Right of Way**”).
- b. The Transferor and Transferee mutually agree not to construct, install, erect, affix or permit to be constructed, installed, erected or affixed any building, structure, fence, wall, barrier, fixture or other material obstruction whatsoever in or on, the Servient Tenement, including between the Servient Tenement and Conservation Boulevard, Lake Drive, and/or Scratch Lane or make any change whatsoever to same, that would prevent the use and enjoyment of this Right of Way.

- c. The Transferor acknowledges and agrees that the Transferee shall have the right, at the Transferee's sole cost and expense, to construct a trail over, across and through the portion of the Right of Way, as more particularly identified with diagonal markings on the sketch attached hereto as Schedule "B" (the "**Trail**"). The method of construction, reconstruction, maintenance, alteration or removal of the Trail over, across or through the Right of Way, including but not limited to size, material and grading, shall be subject to the sole discretion of the Director of Municipal Services of the Town of Kingsville. Any work completed with respect to the Trail shall be completed in a good and workmanlike manner, in accordance with industry standard and all applicable laws and building codes of Ontario. The Transferee agrees that in the event that construction of the Trail over the easement area connecting Conservation Drive to Lake Drive is not substantially completed within two (2) years from the date hereof then the Transferee shall execute a release of this said easement and have such release registered on title to the property at the Transferee's expense. The said release shall not be required if the Transferor has granted an extension in writing of the two (2) year period, which consent shall not be unreasonably withheld provided that the Transferee is proceeding reasonably and expeditiously in obtaining all requisite environmental consents and completing construction of the Trail.
- d. The Transferee acknowledges that the Servient Tenement is governed by the terms and conditions of Permit Number AY-C-008-17 (the "**Permit**"), issued pursuant to the Endangered Species Act, 2007, a copy of which is attached hereto as Schedule "C". The Transferee agrees, prior to entering the Servient Tenement to commence construction activities, to retain the services of a qualified Biologist and preferably a Biologic Incorporated, to perform the obligations contained in the said Permit, including providing education and training, supervising and preparing required written reports to the Ministry of the Environment, Conservation and Parks all at the Transferee's expense. The Transferee shall, at all times, conduct its activities on the Servient Tenement in a manner consistent with the provisions of the said Permit.
- e. The Transferee acknowledges that the Transferor's future development plan will require a right-of-way connection to Lake Drive over a portion of the easement area. The Transferee agrees that it will not oppose any such right-of-way construction and connection to Lake Drive.
- f. The Transferor hereby agrees to maintain and keep in good condition and repair the Servient Tenement, including but not limited to landscaping, salt/snow removal, and keeping the Servient Tenement generally clean and free from debris in accordance with all municipal property standards by-laws as may be in force

from time to time. Notwithstanding the foregoing, upon completion of construction, the Transferee agrees to maintain and repair the Trail, including but not limited to landscaping, salt/snow removal, and keeping the Trail generally clean and free from debris in accordance with all municipal property standards by-laws as may be in force from time to time.

- g. The Transferor shall not incur any liability to the Transferee or anyone claiming through or on behalf of Transferee in relation to the construction and/or use of the Trail by the Transferee or its respective agents, contractors, invitees or anyone claiming through them. With the exclusion of the Trail, the Transferee shall not incur any liability to the Transferor or anyone claiming through the Transferor, or on behalf of the Transferor in relation to the Servient Tenement by the Transferor or its respective agents, contractors, invitees or anyone claiming through them.
  - h. The Transferee hereby releases, indemnifies and saves harmless the Transferor, its directors and officers, employees and agents from and against any and all liability, actions, causes of actions, claims, damages, expenses, costs, debts, demands or losses suffered or incurred by the Transferee, or anyone claiming through or on behalf of Transferee, and its agents, contractors, invitees arising from the construction, use and maintenance of the Trail, except such liability, actions, causes of actions, claims, damages, expenses, costs, debts, demands or losses occasioned by the intentional misconduct or omissions of the Transferor, its employees, agents, invitees, or suppliers.
  - i. The Transferee agrees to maintain a policy of general liability insurance covering its use of the Trail and Servient Tenement for an amount not less than \$2,000,000.00 dollars as of the date hereof, which limit may be increased from time to time as is reasonable given the passage of time, naming the Transferor as an additional insured. The Transferee further agrees to indemnify and save the Transferor harmless from any claims, damages, liability whatsoever in connection with the use of the Trail by the Transferor, its agents, and invitees.
2. **Term and Planning Act:** The burdens on the Servient Tenement and benefits of the Transferee and the rights, obligations and liabilities created hereby on the Transferor and Transferee contained in this Agreement shall, to the extent permitted by law and in accordance with the *Planning Act* (Ontario), be deemed to run with the land in perpetuity.
3. **General:**
- a. This Agreement may be signed in counterpart and/or by facsimile or .pdf.

- b. Any amendments to this Agreement shall be in writing and acknowledged by all parties.
- c. Time shall be of the essence.
- d. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the parties hereto or those deriving an interest in the land described herein.
- e. This Agreement shall be governed by the laws of the Province of Ontario.

***[Balance of this page left intentionally blank; signature page follows]***

TRANSFEROR:

**1646322 ONTARIO LIMITED**

Per: \_\_\_\_\_

Name:

Title:

*I have authority to bind the Corporation.*

TRANSFeree:

**THE CORPORATION OF THE TOWN OF KINGSVILLE**

\_\_\_\_\_  
Nelson Santos, Mayor

\_\_\_\_\_  
Jennifer Astrologo, Clerk

**Schedule "A"**

**Plan 12R-27687**

## **Schedule “B”**

### **Sketch**

**Schedule "C"**

**Permit AY-C-008-17**