

MUTUAL DRAINAGE AGREEMENT

This Agreement made this _____ day of October, 2019 and is made under the authority of Section 2 of the *Drainage Act*, R.S.O. 1990, c. D.17.

BETWEEN:

770022 ONTARIO LIMITED

(hereinafter "770022")

-and-

ANNA JUGOVIC

(hereinafter "Jugovic")

-and-

THE CORPORATION OF THE TOWN OF KINGSVILLE

(hereinafter the "Town")

WHEREAS:

- A. 770022 is the owner of the property legally described as PT LT 2 CON 1 as in R431661 s/t R1343858 (PIN 75178-0360), and municipally known as 195 Main Street East, Kingsville, Ontario (the "770022 Property");
- B. Jugovic is the owner of the property legally described as PT LT 1 CON 1 EASTERN DIVISION GOSFIELD (KINGSVILLE) PT 62 & 63, 12R14638; S/T R1343858 (PIN 75178-0476), and municipally known as 151 Train Court, Kingsville, Ontario (the "Jugovic Property");
- C. The Town is seeking to upgrade and improve drainage in and around the Train Court subdivision, located in the Town of Kingsville;
- D. It is necessary to construct the Drainage Works, as hereinafter described, on certain portions of the 770022 Property, and the Jugovic Property;
- E. The parties hereby agree that the Drainage Works shall be constructed, repaired, and maintained according to the terms herein; and,
- F. The Parties hereto agree to enter into this agreement and have same registered against title to the Jugovic Property and the 770022 Property.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

1. Section 2 of the *Drainage Act* provides for the establishment of drainage works whereby the affected land owners are in mutual agreement to establishing the drainage works.

Description of Drainage Works

2. For the purposes of this Agreement, the drainage works which are the subject matter of this agreement are comprised of the following (collectively called the "**Drainage Works**"), as more particularly shown on the sketch attached at Schedule "A":
 - a. A 1200mm x 1200mm ditch inlet catch basin on the south-western portion of the 770022 Property (hereinafter called the "**770022 Catch Basin**");
 - b. 10 meters of 150mm polyvinyl chloride (PVC) pipe (the "**150mm PVC Pipe**") connecting the 770022 Catch Basin to the Jugovic Rear Yard Catch Basin, as hereinafter described;
 - c. A 24 x 30-inch catch basin located in the south-eastern portion of the Jugovic Property's rear yard (hereinafter called the "**Jugovic Rear Yard Catch Basin**"); and,
 - d. 31 meters of 200mm PVC pipe (the "**200mm PVC Pipe**") connecting the Jugovic Rear Yard Catch Basin to an existing double catch basin currently located at the drive-way entrance of the Jugovic Property (the "**Existing Double Catch Basin**").
3. The Parties hereto acknowledge that surface and subsurface water shall flow through the Drainage Works as follows:
 - a. Surface and subsurface water which enters the 77022 Catch Basin will flow westerly through the 150mm PVC Pipe to the Jugovic Rear Yard Catch Basin. The flow of water shall continue westerly from the Jugovic Rear Yard Catch Basin, through the 200mm PVC pipe to the Existing Double Catch Basin.

GRANT OF ACCESS

4. Jugovic hereby grants, conveys and transfers unto the Town, its employees, servants, workmen, invitees, successors and assigns, a right-of-way in perpetuity on, over, under, across, along and through the Jugovic Property for the purposes of constructing, maintaining, reconstructing and repairing the Drainage Works, as and when required.
5. 770022 hereby grants, conveys and transfers unto the Town, its employees, servants, workmen, invitees, successors and assigns, a right-of-way in perpetuity, subject to Section 14 herein, on, over, under, across, along and through the 770022 Property for the purposes of constructing, maintaining, reconstructing and repairing the Drainage Works, as and when required.
6. Jugovic and 770022 for itself, its servants, employees, workmen, invitees, successors and assigns, covenants and agrees to remove from and keep the Jugovic Property and the 770022 Property, as applicable, free and clear of any buildings, structures or obstructions of any kind

and shall be liable for any and all costs incurred by the Town or its successors in the removal of such obstructions, which in the opinion of the Town will potentially affect the maintenance, operation, and/or reconstruction of the Drainage Works.

7. No party to this Agreement shall obstruct the flow, or cause the obstruction of flow, of the Drainage Works by filling in the Drainage Works or by placing, or causing to be placed, obstructions within the Drainage Works.
8. On reasonable notice by the Town, the parties hereto agree to provide access to the Jugovic Property and the 770022 Property, for the purpose of inspection, repair or maintenance of/to the Drainage Works, as and when required.
9. The Parties hereto agree that each party shall be responsible for any damage to the Drainage Works caused by their activities and negligence.

Future Development

10. Without limiting the generality of the foregoing, the Parties hereto agree that this Agreement shall be binding with respect to the Drainage Works as they exist on the date of this Agreement and the Parties hereto agree that prior to any development, redevelopment or upgrade to:
 - a. the 770022 Property; and/or,
 - b. the Jugovic Property,

which will impact the Drainage Works or be reasonably expected to impact the Drainage Works, the Parties shall be required to enter into a written agreement which shall provide for i) the nature of the development, redevelopment, or upgrade and the parties consent thereto, which consent may not be unreasonably withheld; and, ii) an apportionment of the costs relating to any changes or upgrades to the Drainage Works as a result of the proposed development, redevelopment, or upgrade to the said lands. Should the Parties hereto be unable to agree as to such apportionment of the costs relating to the proposed Drainage Works, the Party or Parties, as the case may be, who propose to undertake such development, redevelopment or upgrade shall obtain, and bear all costs in relation to a 3rd party engineers report with respect to such determination and the Parties hereto agree to abide by any decision of such 3rd party engineer.

Costs

11. The Town shall be responsible for the costs associated with the Drainage Works as described below:
 - a. The costs of installing and maintaining the Drainage Works; and,
 - b. All legal fees incurred by the Town, which shall include the cost to register this Agreement on title to the Jugovic Property and the 770022 Property.

Construction

12. The parties agree that construction on the Drainage Works shall begin as soon as reasonably possible.

13. The method of construction, reconstruction, maintenance, alteration or removal of the Drainage Works shall be subject to the sole discretion of the Drainage Superintendent of the Town of Kingsville. Any work completed with respect to the Drainage Works shall be completed in a good and workmanlike manner, in accordance with industry standard and all applicable laws of Ontario.

Removal of Catchment System

14. Upon completion of construction of the storm water management system by 770022 on the 770022 Property, the Town agrees to remove the catchment system, to be installed on the 770022 Property, as set forth herein, at the Town's sole cost and expense.

Notice

15. Any notice required under this Agreement shall be directed as follows:

To 770022

Address: 195 Main Street East,
Kingsville, Ontario
N9Y 1A5

Attention: Tony Youssef

To the Town

Address: 2021 Division Road North
Kingsville, ON
N9Y 2Y9

Attention: Drainage Superintendent

To Jugovic

Address: 151 Train Court,
Kingsville, Ontario
N9Y 3ZY

Attention: Anna Jugovic

General

16. This Agreement, when executed by the parties hereto, shall be registered in the appropriate Registry Office and the provisions herein contained shall ensure to the benefit of and be

binding upon the parties hereto and their respective heirs, administrators, executors, successors and assigns.

17. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, and the laws of Canada applicable therein and shall be treated, in all respects, as an Ontario contract.
18. This Agreement and the schedules, together with all agreements and other documents to be delivered pursuant to this Agreement, except as otherwise specifically set forth herein, shall constitute the entire agreement between the Parties pertaining to the subject-matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and, except as stated, contain all of the representations warranties of the respective Parties. This Agreement may only be amended or modified in writing and executed by both Parties.
19. The parties agree that this Agreement may be signed in counterparts and may be transmitted by facsimile transmission, and any copy delivered in such fashion shall be deemed to be an original signed copy.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK. SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF 770022 has hereunto duly executed this Agreement this _____ day of _____, 2019

770022 ONTARIO LIMITED

Per: _____

Name:

Title:

I have authority to bind the corporation

IN WITNESS WHEREOF the Town has hereunto duly executed this Agreement this _____ day of _____, 2019


**THE CORPORATION OF THE
TOWN OF KINGSVILLE**

Nelson Santos, Mayor

Jennifer Astrologo, Clerk

IN WITNESS WHEREOF Anna Jugovic has hereunto duly executed this Agreement this _____ day of _____, 2019

Witness



Anna Jugovic

IN WITNESS WHEREOF 770022 has hereunto duly executed this Agreement this 11 day of DECEMBER, 2019

770022 ONTARIO LIMITED

Per: 

Name:

Title:

I have authority to bind the corporation

IN WITNESS WHEREOF the Town has hereunto duly executed this Agreement this _____ day of _____, 2019

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TOWN OF KINGSVILLE**

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Jennifer Astrologo, Clerk

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Witness

Anna Jugovic

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770022 ONTARIO LIMITED

Per: _____

Name:

Title:

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TOWN OF KINGSVILLE**

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Jennifer Astrologo, Clerk

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Witness



Anna Jugovic