

THIS AGREEMENT made effective this X day of MONTH, 2017,

BETWEEN:

COTTAM ROTARY CLUB
(hereinafter called the “**Donor**”)

and

THE CORPORATION OF THE TOWN OF KINGSVILLE
(hereinafter called the “**Town**”)

WHEREAS the Donor was incorporated by Letters Patent pursuant to the *Corporations Act* as a non-profit corporation without share capital on the 25 day of February, 1991 for the purposes and objects, among others as hereinafter described (the “**Objects**”):

- a) To pursuing interests in the civic, commercial, social and moral welfare of the community; ...
- d) To promoting the principles of good government and good citizenship.

AND WHEREAS the Donor acquired title and ownership to the lands and premises described in Schedule “A” (the “**Premises**”), attached hereto, and from time to time has maintained a community park;

AND WHEREAS in keeping with the Objects, the Donor desires to donate/gift the Premises to the Town to be used for the benefit of the community as a whole, as more particularly described below (the “**Town Uses**”), and reserving unto the Donor the ability to continue to use same for certain Rotary purposes, as more particularly described below (the “**Donor Uses**”) (the Town Uses, as hereinafter described, and the Donor Uses, as hereinafter described, are collectively referred to as the “**Restrictions**”);

AND WHEREAS the Town is authorized to receive the gift of the Premises by the Donor and has agreed to accept same subject to the Restrictions;

NOW THEREFORE in consideration of the promises and mutual agreements contained in this Agreement and of other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged, the Parties agree with one another as follows:

Donation

1. Subject to the terms and conditions of this Agreement, the Donor hereby agrees to transfer and convey all its right, title and interest in the Premises as a gift for the sole and exclusive use of the Town, subject to the provisions of this Agreement.

2. The Premises shall be named "*Cottam Rotary Park*".
3. The Donor shall be permitted to use the Premises for Rotary Activities including, but not limited to, Christmas tree sales and picnic, provided that such use is in accordance with the Town's policies, procedures and by-laws in effect from time to time.
4. The Donor shall be permitted to decorate the Premises for the Christmas holiday season with lights and decorative light fixtures ("decorative fixtures") each year from December 1 to January 15. The Donor shall:
 - a. Assume the responsibility for the installation, operation and removal of the decorative fixtures;
 - b. Assume all liability associated with the installation, operation and removal of the decorative fixtures; and
 - c. At its expense, take out and maintain in full force and effect, for the period of time in which the decorative fixtures are installed on the Premises, general liability and property damage insurance of no less than two million dollars (\$2,000,000) per occurrence, and name the Town as an additional insured.

In the event that the monthly electrical (hydro) utility bill for the Premises exceeds \$450.00 during the period in which the light fixtures belonging to, or used by, the Donor are operating, the Donor shall assume the cost of bill which exceeds \$450.00.

5. The Town hereby accepts this gift from the Donor of the Premises and all benefits attaching to it and agrees to assume the following encumbrances (the "**Permitted Encumbrances**"):
 - a. The outstanding real property tax, if any,and agrees to be bound by the Restrictions attached to the donation/gift.
6. The Town agrees that the Premises, while owned by the Town, may only be used by it for municipal purposes benefitting the community at large (the "**Town Uses**") and for no other purposes.
7. The Donor and the Town agree that the Town will make best efforts to ensure the Premises contains the following features for as long as reasonably practical:
 - a. Playground equipment;
 - b. Pond; and

c. Pavilion.

8. The stone building currently situated at the west corner of the Premises, as depicted in the attached Schedule "B" has historical significance to the Donor and therefore, such structure shall remain on the Premises, for as long as reasonably practical. Usage of the stone building shall remain exclusively with the Town, with the following exception:
 - a. The Donor shall be permitted to store its decorative fixtures and lights, and Horse Show signs in the stone building on the condition that storage is kept neat and tidy, to the Town's satisfaction. Such permission may be revoked at the Town's sole discretion, which discretion will not be unreasonably exercised.
9. The pavilion shall be available for use by the public at large in accordance with Town policies, procedures and by-laws in effect from time to time. The Town, at its discretion, may manage the use of the pavilion by way of a booking system.
10. The parties shall meet annually for the purposes of the Donor providing suggestions to the Town for improvements to the Premises. The Town is under no obligation to implement the suggestions received by the Donor. For greater clarity, the Town, in its sole discretion and subject to the provisions of this Agreement, determines what improvements or alterations will be implemented at the Premises.
11. The Donor shall be permitted to use an additional 90 square feet of storage at Ridgeview Park, which storage shall be immediately adjacent to the current 90 square feet of storage that the Donor currently enjoys as more particularly described in the sketch attached at Schedule "C" (the "**Ridgeview Park Storage**").
12. The parties agree that effective June 1, 2017, the Town may, at its discretion, enter the Premises for the purposes of removing playground equipment, with the understanding that the Town shall ensure that the Premises contains playground equipment in accordance with its obligations under paragraph 6 of this Agreement.
13. The parties agree that in the event that the Town wishes to sell or convey its interest in the Premises on or before December 31, 2032, the Town must provide the Donor with a right of first refusal to purchase the Premises for an amount equal to the fair market value of the Premises at that time minus the fair market value of the Premises as stated in Schedule "D". Fair market shall be agreed between the parties, unless the parties cannot agree, then such will be determined by an appraisal provided by a qualified appraiser. The Donor shall have fifteen (15) business days from the day the purchase price is agreed or determined to notify the Town whether it intends to purchase the Property. Failure to provide notification within the time required will be considered a response in the negative, and that the Donor does not want to purchase the Premises. The Donor acknowledges and agrees that in the event that it refuses to purchase the Premises, as offered by the

Town, or fails to notify the Town of its intention to purchase the Premises within the time period provided, or at any time after December 31, 2032, the Town shall be permitted to sell or convey its interest in the Premises in accordance with the Sale and Other Disposition of Land Policy, in effect from time to time, or other successor or applicable policy, or if no such policy exists, in its sole and absolute discretion.

Non Assumption of Liabilities

14. Except as is provided for in this Agreement, it is understood and agreed between the parties that the Town is not assuming and shall not be liable or responsible for any liabilities, debts or obligations of the Donor existing or accruing on the closing date, whether or not relating to the Donor's ownership or use of the Premises and the Donor shall indemnify and save harmless the Town from and against all costs, expenses, losses, claims or liabilities, including reasonable legal fees and disbursements suffered or incurred by the Town arising out of any liabilities, debts and obligations, save and except the Permitted Encumbrances as hereinbefore described.

Closing

15. The transfer of title and ownership of the Premises shall take place on July 31, 2017 (the "**Closing Date**"), on which date, the Donor shall execute and deliver to the Town's solicitor, a Deed to the Premises, the bill of sale, assurances, consents and other documents that shall be necessary to effectively transfer to the Town all the Donor's right, title and interest in, to and under, or in respect of the Premises and shall deliver up the Premises free and clear of any liens, charges and encumbrances or rights of third person, other than the Permitted Encumbrances and those encumbrances, restrictions and rights, specifically reserved or created in this Agreement. The Donor shall cooperate with the Town, at such time or thereafter, effecting the registrations, recordings and filings with public authorities as may be required in connection with the transfer of ownership to the Town of the donated property.

Representations and Warranties

16. The Donor represents, warrants and agrees to and with the Town that:

- a. The Donor is a corporation duly incorporated, organized and validly existing under the laws of its jurisdiction of incorporation.
- b. The Donor has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement; the execution and delivery of this Agreement and the consummation of the transactions contemplated have been duly authorized by all necessary corporate actions on the part of the Donor.
- c. The Donor is the absolute beneficial owner of the donated property with good and valid title, free and clear of any mortgages, liens, charges, pledges,

security interests or encumbrances or any rights of others to acquire any ownership interest in any of the donated property (save and except in each case for the Permitted Encumbrances, or restrictions and reservations specifically provided for in this Agreement) and is exclusively entitled to possess and dispose of same.

- d. There is no suit, action, litigation, investigation, claim, complaint, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or, to the best of the Donor's knowledge, threatened against, or involving the donors or any judgment, decree, injunction, rule or order of any court, governmental dependent, commission, agency, instrumentality or arbitrator which, in any case, might adversely affect the property being donated or the ability of the Donor to enter into this Agreement or to consummate the transaction contemplated in this Agreement, and the Donor is not aware of any existing ground on which any action, suit or proceeding may be commenced with any reasonable likelihood of success.
- e. The Donor maintains policies of insurance, issued by responsible insurers licensed to do business in the Province of Ontario, as are appropriate to the business and the donated property, in the amounts and against the risks that are customarily carried and insured against by owners of comparable businesses, properties and assets (which are insured to full value); all policies of insurance are in full force and effect and the Donor is not in default, whether as to the payment of premiums or otherwise, under the terms of any policy, and the Donor has not failed to give any notice or present any claim under any insurance policy in a due and timely fashion.
- f. The Donor is not a non-resident of Canada for the purposes of the *Income Tax Act (Canada)*.
- g. On the Closing Date, there will be no Leases affecting the Premises.
- h. The occupation of the Premises by the Donor does not contravene any environmental law and there are no Hazardous Substances located on, or in, or under the surface of the Premises, and no release of any Hazardous Substances has occurred on, in or from of the Premises or has resulted from the conduct of activities thereon.
- i. The Donor is not required to obtain, nor has it obtained, nor is it subject to any certificate, approval, permit, consent, direction or order of any court or governmental authority in respect of the ownership or sale of the Premises.
- j. On the Closing Date, there will not exist any written work order, deficiency notice, notice of violation or other similar communication from any municipal or governmental authority, board of insure underwriters, regulatory authority

or otherwise that is outstanding requiring or recommending that work or repairs in connection with the Premises or any part of the Premises is necessary, desirable or required;

17. Except for the representations and warranties made by the Donor in this Agreement, the Donor makes no further representations or warranties to the Town of any kind, character or nature, whether express or implied, statutory or otherwise, with respect to the property donated including, without limitation, any representations or warranties regarding the fitness of the property for a particular purpose.

18. The Town represents, warrants and agrees to and with the Donor that:

- a. The Town is a municipal corporation duly incorporated and validly existing under the laws of the Province of Ontario.
- b. The Town has all necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations under this Agreement; the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action on the part of the Town.
- c. This Agreement constitutes a valid and binding obligation of the Town, enforceable against it in accordance with the terms of this Agreement.
- d. No investigations made by or on behalf of the Town at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation or warranty made by the Donor in this Agreement. No waiver by the Town of any condition, in whole or in part, shall operate as a waiver of any other condition.

19. All representations, warranties, covenants and agreements contained in this Agreement on the part of each of the Parties shall survive the Closing, the execution and delivery of any bill of sale, instrument of conveyance, assignments or other instrument of conveyance, assignments or other instrument of transfer of title to any donated property.

Conditions Precedent to the Performance of the Town and the Donor

20. The obligation of the Town to accept the donated Premises shall be subject to the fulfillment or satisfaction of, or compliance with, on or before the date hereinafter specified, each of the following conditions precedent:

- a. All of the representations and warranties of the Donor made in or pursuant to this Agreement including, without limitation, the representations and warranties made by the Donor shall be true and correct in all material respects at the Closing Date and with the same effect as if made at and as of the Closing Date (except the representations and warranties which may be

affected by the occurrence of events or transactions expressly contemplated and permitted).

- b. The Donor shall have performed, or complied with, in all respects, each of its obligations, covenants and agreements, and all instruments of conveyance and other documentation relating to the donation including, without limitation, deeds, bill of sale, documentation relating to the authorization and completion of the donation of property and the taking of all actions and proceedings on or prior to the Closing Date in connection with the performance by the Donor of its obligations under this Agreement.
- c. All consents, approvals, orders and authorizations of persons or any governmental authorities in Canada or any province (or registrations, declarations, filings or recordings with any of those authorities) including, without limitation, all clearance certificates required pursuant to any applicable retail sales tax legislation which are required to be obtained in connection with the completion of any of the transactions contemplated by this Agreement, the execution of this Agreement the closing or the performance of any of the terms and conditions (other than any which are the responsibility, under applicable law, of the Town to obtain) shall have been obtained by the Donor on or before the Closing Date.
- d. No substantial damage by fire or other hazard to the donated property shall have occurred from the date of this Agreement to the Closing Date which shall not have been fully insured.

The foregoing conditions are inserted for the exclusive benefit of the Town. In the event that any of the conditions shall not be fulfilled or complied with by the Donor within the time provided for in this Agreement or prior to the Closing Date, the Town may rescind this Agreement by notice to the Donor and in that event the Town shall be released from all obligations of the Agreement provided that any conditions may be waived in whole or in part by the Town without prejudice to its right of rescission in the event of non-fulfilment of any other condition or conditions, any waiver to be binding on the Town only if it is in writing.

21. The obligation of the Donor to complete the transfer of the Premises shall be subject to the fulfilment or satisfaction of, or in compliance with, on or before the Closing Date, each of the following conditions precedent:

- a. All of the representations and warranties the Town made in or pursuant to this Agreement including, without limitation, the representations and warranties made by the Town shall be true and correct in all material respects at the closing date and with the same effect as if made at and as of the Closing Date (except the representations and warranties which may be affected by the occurrence of events or transactions expressly contemplated and permitted).

- b. The Town shall have performed, or complied with, in all respects, each of its obligations, covenants and agreements, and all documentation relating to the due authorization and completion by the Town of the Premises and the taking of all actions and proceedings on or prior to the Closing Date in connection with the performance by the Town of its obligations under this Agreement shall be satisfactory to the Donor and its counsel, acting reasonably, and the Donor shall have received copies of all documentation and other evidence as the Donor may reasonably request in order to establish the consummation of the transactions contemplated and the taking by the Town of all corporate proceedings in connection with such transaction, in compliance with these conditions, in form (as to certification and otherwise) and substance satisfactory to the Donor and its counsel.
- c. All consents, approvals, orders and authorizations of persons or any governmental authorities in Canada or any province (or registrations, declarations, filings or recordings with any of those authorities) which are required to be obtained in connection with the completion of any of the transactions contemplated by this Agreement, the execution of this Agreement the closing or the performance of any of the terms and conditions (other than any which are the responsibility, under applicable law, of the Donor to obtain) shall have been obtained by the Town on or before the Closing Date.
- d. The Town shall have made arrangements reasonably satisfactory to the Donor to pay, directly to the appropriate taxing authority, within the time period specified therefor, all provincial sales taxes payable by it in respect of the donated lands sold to it under this Agreement.

The foregoing conditions are inserted for the exclusive benefit of the Donor. In the event that any of the conditions shall not be fulfilled or complied with by the Town at or prior to the Closing Date, the Donor may rescind this Agreement by notice to the Town and in that event the Donor shall be released from all obligations of the Agreement provided that any conditions may be waived in whole or in part by the Donor without prejudice to its right of rescission in the event of non-fulfilment of any other condition or conditions, any waiver to be binding on the Donor only if it is in writing.

Examination of Title

- 22. The Donor shall immediately make available to the Town and its directors, officers, counsel and other authorized representatives, all title documents, abstracts of title, deeds, contracts and agreements and other documents in its possession or under its control relating to any of the Premises, all of the foregoing to become the property of the Town as the Closing Date. The Donor shall afford the Town and its authorized representatives every reasonable opportunity to have access to and to inspect the donated property, it being agreed that the exercise of any rights of access or

inspection by or on behalf of the Town under this paragraph shall not affect or mitigate the covenants, representations and warranties of the Donor under this Agreement which shall continue in full force and effect.

23. The Town shall have until 5 business days prior to the Closing Date to investigate title at its own expense and must within that time deliver in writing its objections to title, if any, to the Donor or its counsel. The Donor shall not be bound to produce or furnish any title deeds, documents of title, evidences of title or other title documents save only those as are in its possession or control. If any valid objection or requisition be made within that time which the Donor does not within a further period of 3 business days remove or comply with, and which the Town will not waive, either the Donor or the Town shall, notwithstanding any intermediate negotiations, be at liberty to cancel this Agreement by notice in writing to the other party and neither party shall have any remedy against the other for damages, costs, compensation or otherwise.

Notice

24. Any notice required or permitted to be given to a party under this Agreement shall be in writing and shall be sufficiently given if delivered personally, or sent by regular or registered mail, or if transmitted via facsimile, or by electronic mail, to such Party:

To the Donor

Cottam Rotary Club
Address
Town, ON
Attention:

To the Town

The Corporation of the Town of Kingsville
2021 Division Road N
Kingsville, ON N9Y 2Y9
Attention: Director of Corporate Services

Any Notice shall be deemed to have been given and received on the date on which it was personally delivered at that address and if mailed shall be deemed to have been given and received on the fifth business day following the date it was mailed; provided, however, that if at the time of mailing the notice, normal postal service is not interrupted by a strike or other similar irregularities and if so, the notice shall be deemed to be given and received on the fifth day following the resumption of normal mail service. Any notice transmitted by facsimile or electronic mail shall be deemed given and received on the date of transmission if received during the normal business hours of the recipient and on the first business day after its transmission if it is received after the end of normal business hours on the date of its transmission.

Insurance

25. All buildings on the property and all other things being purchased shall be and remain until completion at the risk of the Donor. Pending completion, the Donor shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, the Town may either terminate this Agreement and have all monies theretofore paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion.

Planning Act

26. Provided that this agreement shall be effective to create an interest in the property only if the subdivision control provisions of The Planning Act are complied with by Donor on or before completion and Donor hereby covenants to proceed diligently at its expense to obtain any necessary consent on or before completion.

UFFI

27. The Donor represents and warrants to the Town that during the time the Donor has owned the Premises, the Donor has not caused any building on the Premises to be insulated with insulation containing ureaformaldehyde, and that to the best of the Donor's knowledge no building on the Premises contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction.

General

28. All costs and expenses (including without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement and the transactions contemplated shall be paid by the Party incurring that expense.

29. 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.

30. This Agreement and the schedules, together with all agreements and other documents to be delivered pursuant to this Agreement, 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.

31. Time shall be of the essence in the performance of the Parties' respective obligations.

32. The Parties shall with reasonable diligence do all things and provide all reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and to carry out its provisions, whether before or after the Closing Date and without limiting the generality of the foregoing the Donor shall provide the following on closing to the Town's solicitor:
- a. a good and valid conveyance in one deed/transfer of the Premises in registrable form (save for any Land Transfer Tax Affidavits);
 - b. a clearance certificate pursuant to Section 6 of the *Retail Sales Tax Act*, if applicable; and
 - c. such further documentation and assurances as the Town may reasonably require to complete the transaction contemplated by this Agreement.
33. Except as specifically set forth or referred to in this Agreement, nothing herein, expressed or implied, is intended or shall be construed to confer on or given any person other than the Parties and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.
34. Words importing the singular include the plural, and vice versa; words, importing gender shall include all genders.
35. 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 BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF the Town has hereunto duly executed this Agreement this day of _____, 2016

THE CORPORATION OF THE
TOWN OF KINGSVILLE

Nelson Santos, Mayor

Jennifer Astrologo, Clerk

IN WITNESS WHEREOF the Donor has hereunto duly executed this Agreement this day of _____, 2016

COTTAM ROTARY CLUB

Name, Office

Name, Office

We have authority to bind the corporation

Schedule "A"

Legal Description of the Premises

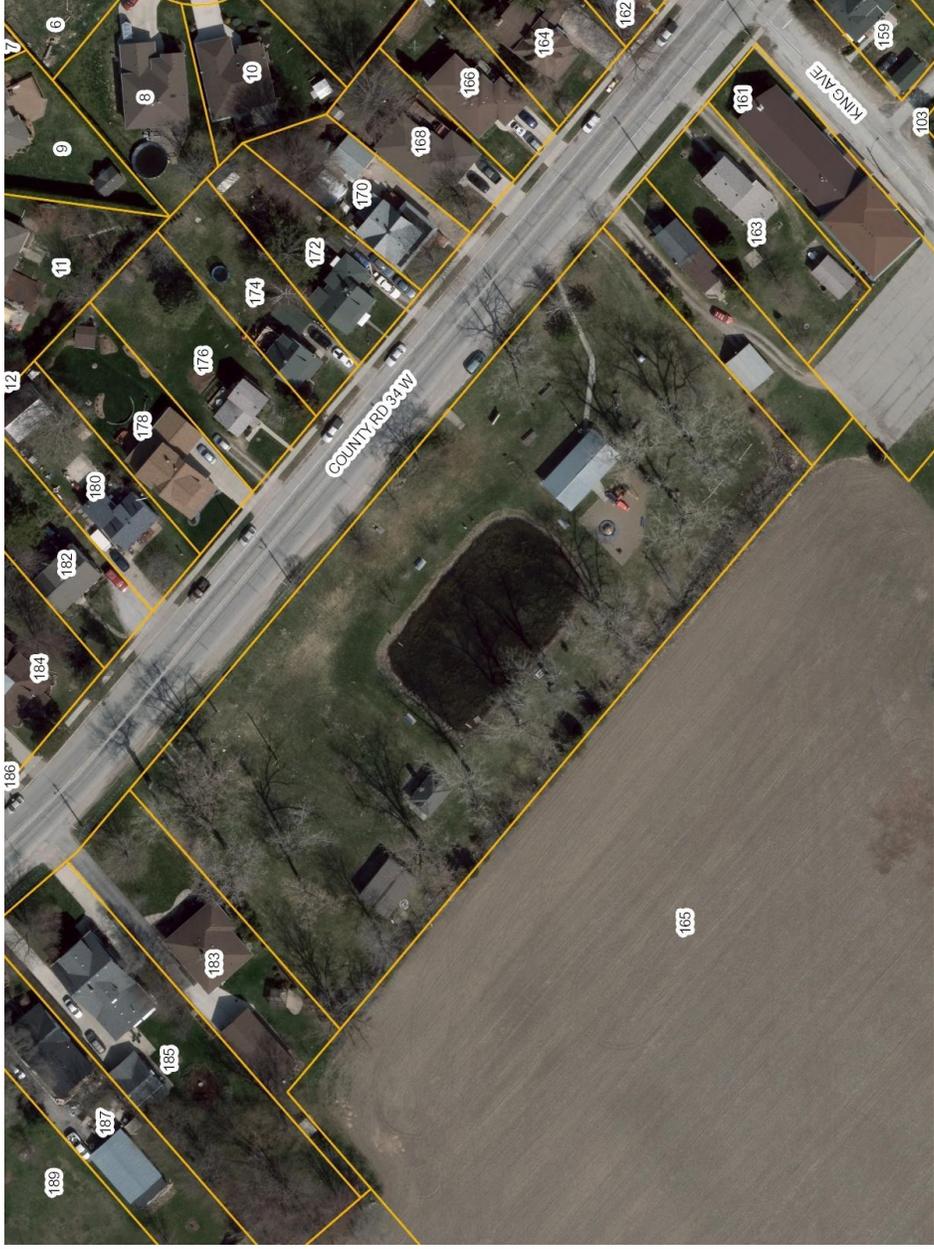
CON STR PT LOT 270 RP 12R9541 PART 1 EXCEPT PT PART 1 12R-10416

Schedule "B"

Kingsville Mapping Depiction of Premises



Kingsville Mapping



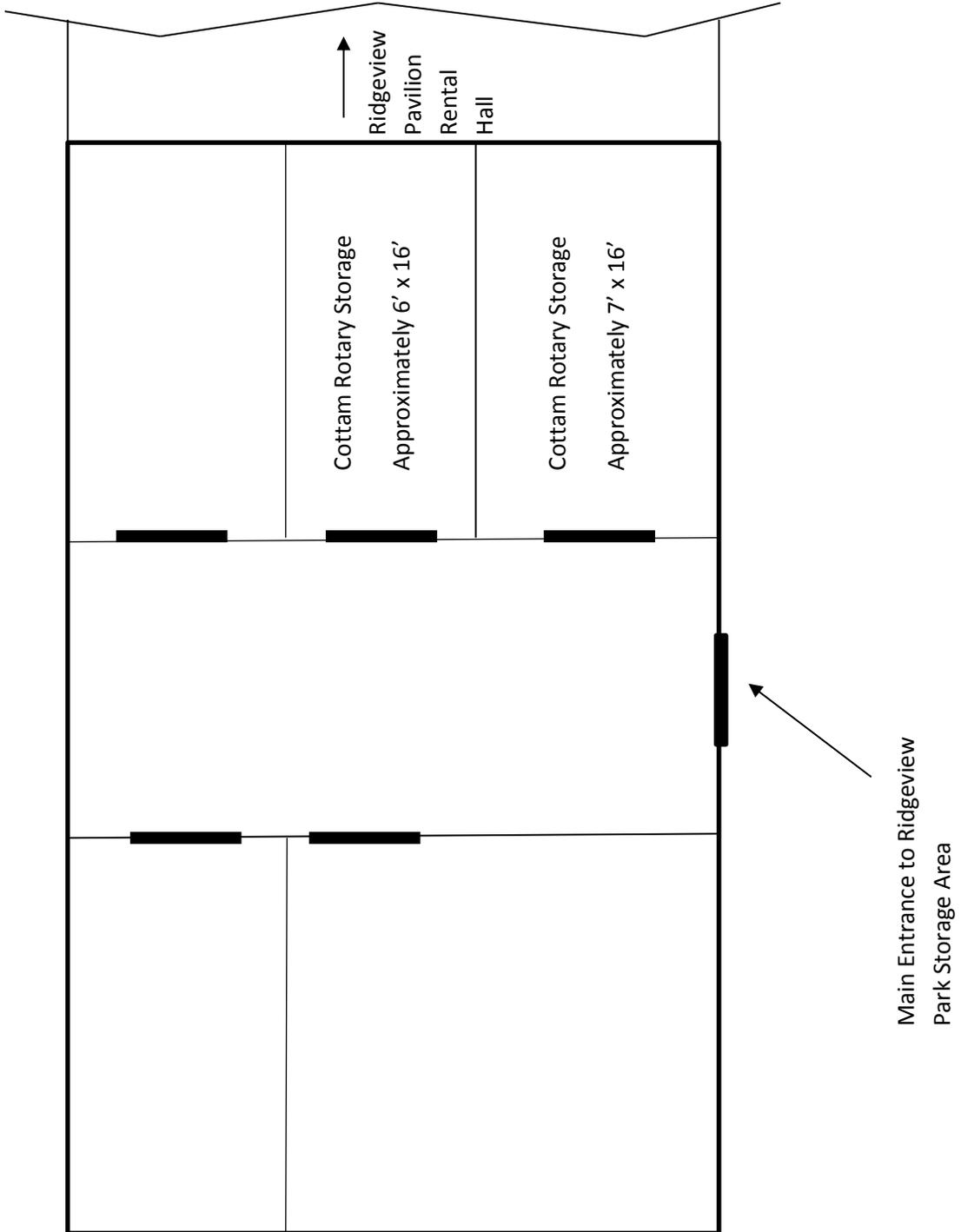
- Legend**
- Essex Municipalities
 - <all other values
 - Kingsville
 - Street
 - Severance
 - Kingsville Assessment

THIS MAP IS NOT TO BE USED FOR NAVIGATION 20.00 40.00 Meters
 Copyright the Corporation of the County of Essex, 2012. Data provided by the Corporation of the County of Essex on an "as is" basis. Assessment parcel provided by Teranet Enterprises Inc. Data layers that appear on this map may or may not be accurate, current, or otherwise available.
 3/29/2017

Notes
 Cottam Rotary Park

Schedule "C"

Sketch of the Ridgeview Park Storage



Note: Drawing
not to scale