

EASEMENT AMENDING AGREEMENT

THIS AGREEMENT made in triplicate this _____ day of January, 2020.

B E T W E E N:

THE CORPORATION OF THE TOWN OF TECUMSEH,
hereinafter called the "**Municipality**" or "**Town**"

OF THE FIRST PART

-and-

2041235 ONTARIO LTD.
hereinafter called "**the Owner**"

OF THE SECOND PART

HEREINAFTER collectively referred to as the "**Parties**"

RECITALS

WHEREAS THE OWNER, owns certain lands situated within the corporate limits of the Town, said lands being more particularly described in Schedule "A" hereto (the "Lands");

AND WHEREAS THE OWNER granted an easement in gross to the Town registered on title as CE637171 (herein "the Transfer of Easement") over part of the Lands described as PT LOT 148, CON 3 SANDWICH EAST, Town of Tecumseh, County of Essex, Ontario designated as Parts 3 and 4 on Plan 12R-25969 (herein "the Easement Lands");

AND WHEREAS the Town and Owner have agreed to amend the Transfer of Easement in the manner and subject to the terms hereinafter set out so as to amend the Term of the easement and otherwise correct typographical errors within the schedule attached to the Transfer of Easement;

WITNESSETH that in consideration of these presents, and other good and valuable consideration, the Parties hereto mutually covenant, promise and agree as follows:

ARTICLE I
AMENDMENT TO EASEMENT

1.1 REPLACEMENT OF SCHEDULE TO TRANSFER OF EASEMENT

The "Easement Schedule" attached to the Transfer of Easement is hereby deleted and replaced with the Easement Schedule attached hereto as Schedule B. Save and except for this amendment, the Transfer of Easement remains in full force and effect and binding on the parties in accordance with its terms.

ARTICLE 2
THE TOWN AGREES

2.1 THE TOWN COMMITMENTS

In consideration of the amendment of the terms of the Transfer of Easement as set out in Article 1.1 the Town covenants and agrees to:

- a) Pay to the Owner the additional sum of \$7,208.47 being the balance owing in respect of the "Compensation Amount" as such term is defined in Schedule B attached together with the original sum of \$3,976.60 called for in the Transfer of Easement;
- b) Pay to the Owner the sum of \$791.00 (inclusive of H.S.T.) in respect of the legal costs of the Owner's solicitor in having reviewed and provided legal advice to the Owner respecting the Transfer of Easement and this amending agreement;

- c) To observe and perform all covenants of the Town as Transferee under the Transfer of Easement;

ARTICLE 3 ***MISCELLANEOUS***

3.1 COMMUNICATION

Subject to the express provisions of this Agreement, all communications provided for or permitted hereunder shall be in writing, personally delivered to an officer of the addressee or sent by registered and receipted mail, charges prepaid, or by facsimile transmission or other means of recorded telecommunication, charges prepaid, to the applicable address set forth below or to such other address as either party hereto may from time to time designate to the other in such manner.

Communications sent to the Municipality shall be addressed to:

917 Lesperance Road, Tecumseh, Ontario N8N 1W9

Communications sent to the Owner shall be addressed to:

23b-25 Amy Croft Drive, Windsor, ON N9K 1C7

Any communication so personally delivered shall be deemed to have been validly and effectively given on the date of such delivery. Communications so sent by registered and receipted mail shall be deemed to have been validly and effectively given on the Business Day next following the day on which it is received, as evidenced by the postal receipt. Communications so sent by facsimile transmission or other means of recorded telecommunication shall be deemed to have been validly and effectively given on the Business Day next following the day on which it is sent. Any party may from time to time change his or its address for service on written notice to the others.

“**Business Day**” means any day, other than a Saturday, Sunday or any other day on which the principal chartered banks located in the Town are not open for business during normal banking hours

3.2 TIME OF ESSENCE

Time shall be of the essence of this Agreement and of every part thereof.

3.3 WAIVER

No waiver by any part of a breach of any of the covenants, conditions and provisions herein contained shall be effective or binding upon such party unless the same shall be expressed in writing and any waiver so expressed shall not limit or affect such party's rights with respect to any other future breach.

3.4 FURTHER ASSURANCES

Each of the Parties covenants and agrees that he, his heirs, executors, administrators and assigns will sign such further agreements, assurances, waivers and documents, attend such meetings, enact such by-laws or pass such resolutions and exercise such votes and influence, do and perform or cause to be done and performed such further and other acts and things as may be necessary or desirable from time to time in order to give full effect to this Agreement and every part thereof.

3.5 HEADINGS

The headings of the Articles of this Agreement are inserted for convenience only and do not constitute part of this Agreement.

3.6 SUCCESSORS AND ASSIGNS

The covenants hereunder shall run with the land and this Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

3.7 GENDER

All words and personal pronouns relating thereto shall be read and construed as the number and gender of the party or parties referred to in each case require and the verb shall be construed as agreeing with the required word and pronoun.

3.8 SEVERABILITY

If any covenant or provision contained herein is determined to be in whole or in part, invalid or unenforceable by reason of any rule of law or public policy, such invalidity or unenforceability shall not affect the validity or enforceability of any other covenant or provision contained herein and, in the case of partial invalidity or unenforceability of a covenant or provision, such partial invalidity or unenforceability shall not affect the validity or enforceability of the remainder of such covenant or provision, and such invalid or unenforceable covenant or provision or portion thereof, as the case may be, shall be severable from the remainder of this Agreement.

3.9 ENTIRE AGREEMENT

This Agreement expresses the final agreement among the parties hereto with respect to all matters herein and no representations, inducements, promises or agreements or otherwise among the parties not embodied herein shall be of any force and effect. This Agreement shall not be altered, amended or qualified except by a memorandum in writing, signed by all the parties hereto, and any alteration, amendment or qualification thereof shall be null and void and shall not be binding upon any such party unless made and recorded as aforesaid.

3.10 EXECUTION IN COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and all of which together shall constitute one and the same instrument.

3.11 JURISDICTION

This Agreement and all other agreements, security and documents to be delivered in connection with this agreement shall be governed by and construed in accordance with the applicable laws of the Province of Ontario and of Canada.

3.12 ASSIGNMENT

Subject to the terms of this agreement, this agreement is not assignable by either party without the consent of the other Party, acting reasonably.

3.13 TRUE COPY

All of the parties hereto acknowledge having received a true copy of this document.

3.14 SCHEDULES

Those Schedules marked as Schedules "B" and "C" have been signed by the parties and are on file with the Municipality. A reduced copy of those schedules are annexed hereto.

3.15 CONTRA PROFERENTEM RULE NOT APPLICABLE

It is agreed and acknowledged that both parties, directly or through their agents, principals, representatives and/or solicitors, have participated in the preparation and/or negotiation of the

provisions of this agreement.

Should any provision of this agreement require judicial interpretation, mediation or arbitration, it is agreed that the court, mediator or arbitrator interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against one party or so as to disadvantage any party on the basis that such party and/or its solicitor or agent:

- a. *Prepared this agreement or any part of it; or*
- b. *Seeks to rely on this agreement or any part of it."*

3.15 INDEPENDENT LEGAL ADVICE

To the extent that the solicitors of Wolf Hooker Professional Corporation has been involved in the preparation of this agreement, such solicitors act solely as solicitors for the Town and with regard to the interests of the Town and not for any other party to this agreement. It is strongly recommended that all other parties to this agreement obtain independent legal advice prior to signing this agreement. Each such party acknowledges:

- 1) having obtained independent legal advice from his, her, or its' own solicitor with respect to the terms of this Agreement prior to its execution or having otherwise been given a reasonable opportunity to obtain such advice and declined to so;
- 2) that he *or* she *or* it understands the terms, and his *or* her rights and obligations, under this Agreement.

IN WITNESS WHEREOF the Parties hereto have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED }

in the presence of }

THE CORPORATION OF THE TOWN OF TECUMSEH

Per: _____
Gary McNamara – MAYOR

Laura Moy - CLERK

2041235 ONTARIO LTD.

Per: _____
Michael Valente

Per: _____
Steven Valente

We have authority to bind the Corporation

SCHEDULE "A"

THE LANDS

PIN: 75240-0074

PT LT 148 CON 3 SANDWICH EAST PTS 1 & 2 12R1772 EXCEPT PTS 1 TO 16 12R-12127; TECUMSEH; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 3 & 4 12R25969 UNTIL 2019/11/21 AS IN CE637161

SCHEDULE "B"

EASEMENT SCHEDULE

This easement is an easement in gross

Schedule: The Transferors hereby grant to the Corporation of the Town of Tecumseh (hereinafter "Transferee"), its servants, agents and assigns, a free unencumbered and uninterrupted easement on, in, over, under, across, along and through the lands being

PT LOT 148, CON 3 SANDWICH EAST, Town of Tecumseh, County of Essex, Ontario designated as Parts 3 and 4 on Plan 12R-25969;

(hereinafter termed the "Subject Lands" or "Easement Lands" as an easement in gross for the purposes of installing, maintaining, replacing, altering, cleaning, repairing and providing a walking path for pedestrian use, along with associated landscaping, for ingress and egress by the general public at its sole cost and expense. The rights afforded to the general public shall be subject to such regulations and limits as determined by the Transferee from time to time.

The easement shall be effective for a period of ten years from the date of its registration on title (herein "the ten year term") unless extended by an amending agreement executed by the parties and registered on title to the Easement Lands. Provided that the Transferee may at any time elect to terminate and surrender the easement in advance of end of the ten year term. Provided further that the easement shall automatically terminate in advance of the ten year term upon the Transferor and Transferee executing and registering on title a development agreement providing for the development of the lands of the Transferee legally described as PT LT 148 CON 3 SANDWICH EAST PTS 1 & 2 12R1772 EXCEPT PTS 1 TO 16 12R-12127; TECUMSEH, Town of Tecumseh, County of Essex, Ontario being PIN 75240-0074.

Upon termination of the Easement, the Transferee shall electronically delete the easement from title to the Subject Lands, the path will be removed (including, without limitation, pavements and crushed stone) and lands restored (so far as practical) to their original condition at the sole cost and expense of the Transferee.

The Transferee, its servants, agents and assigns, shall have free and unobstructed entry and access to the subject lands at all times for any and all persons, vehicles, supplies, equipment and things necessary for or incidental to the purposes of this easement provided that the right of ingress, egress and access to the general public shall remain pedestrian only.

The Transferor reserves unto itself, its servants, agents and assigns the right for any and all persons, vehicles and equipment to travel across Part 3 on Plan 12R-25969 to maintain access to and from its lands south of the easement lands from and to the lands north of the easement lands.

Compensation for crop loss/damage

The Transferee has paid to the Transferor the sum of \$3,976.60 for the original five (5) year term plus \$7,208.47 for the subsequent five year term for a total of \$11,185.07 ("the Compensation Amount") on account of the loss of opportunity to farm the easement lands during the entire ten year term of the easement and/or for the loss of and/or damage to crop on the easement lands at the time of construction of the works. Should the easement be terminated earlier in accordance with the provisions of the easement, any Compensation Amount paid as of the date of termination shall be fully earned and no further Compensation Amount shall be payable thereafter.

1. **Insurance**

The Transferee shall, prior to starting work on the Easement Lands, provide and thereafter maintain in full force and effect with the Transferee's insurance carrier and produce to the Transferor a certificate from the carrier, Public liability insurance covering bodily injury, death, personal injury and damage to property with commercially reasonable coverages not less than \$3,000,000.00 per occurrence and naming the Transferor as an additional insured, which shall remain in effect during the Term of the Easement.

Indemnity

- (a) The Transferee by accepting this easement agrees to and shall indemnify and hold harmless the Transferor against all actions, suits, claims, demands and expenses (including, without limitation, the legal fees and disbursements of the Transferor on a solicitor and client basis) made or suffered by any person or persons, in respect of loss, injury, damage or obligation to compensate, arising out of or in connection with or as a result of:
- (i) the negligence or willful misconduct of the Transferee;
 - (ii) any breach by the Transferee of the terms and conditions of this easement;
or
 - (iii) the works installed on the Easement Lands and the use thereof by the public,
 - (iv) the exercise by the Transferee of any or all the rights and privileges granted by this easement (excepting damage caused to the property of the Transferor by his own act or that of his servants, agents or contractors)

This indemnity shall include any action or claim against the Transferor that may arise by virtue of the benefit of present or future provisions of statute, regulation, by-law, ordinance or common-law made by the Province of Ontario, Dominion of Canada, municipality, or other applicable governmental body or court of competent jurisdiction provided that the Transferee shall not be liable under this Section to the extent to which such loss, damage or injury is caused or contributed to by the negligence or default of the Transferor, its servants or agents. For greater certainty, the Transferee shall not be liable to the Transferor for the actions of the Transferor, its agents, employees, or representatives who enter upon the Easement Lands.

- (b) All undischarged obligations under this Section shall survive the expiration or termination of this easement.

Cost of Improvements and Maintenance

The improvements placed on the Easement Lands shall be installed and maintained by the Transferee at its sole expense.

Obstructions

The Transferor shall not intentionally place buildings or any other structures or obstructions of any kind, including any trees, bushes, fences and other such items and things, and in the event any such item or thing is placed on any of the Subject Lands by the Transferor, the owner or owners of the Subject Lands at that time shall be liable for the costs incurred by the Transferee, its servants, agents or assigns, in the removal of such items.

Restoration

In the event the Transferee performs any works or services on the Subject Lands, the Transferee covenants, at its sole cost and expense, to fill in all excavations and to restore the surface of the Subject Lands to the same grade level and the same condition as prior to the commencement of any construction or of any other subsequent works performed on the Subject Lands.

Ownership of works

Notwithstanding any rule of law or equity, and even though the works and materials for the municipal and other public services may become affixed to or annexed to the Subject Lands, the title to such works and materials shall nevertheless remain in the Transferee.

Release

The Transferees, in the event that it grants a release of this easement, shall restore the Easement Lands as contemplated above.

Successors and Assigns

This Transfer of Easement, including the rights, privileges and benefits herein contained shall extend to, be binding upon, and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.