

**THE CORPORATION**  
**OF THE**  
**TOWN OF NIAGARA-ON-THE-LAKE**  
**BY-LAW NO. 5025-17**

A BY-LAW TO EXECUTE THE AGREEMENT TO TRANSFER  
BETWEEN THE CORPORATION OF THE TOWN OF NIAGARA-ON-  
THE-LAKE AND HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
AS REPRESENTED BY THE MINISTER OF TRANSPORT (Niagara  
District Airport Adjacent Lands)

BE IT ENACTED AS A BY-LAW OF THE CORPORATION OF THE TOWN OF  
NIAGARA-ON-THE-LAKE as follows:

1. THAT the Agreement to Transfer dated the 11<sup>th</sup> day of December, 2017 between The Corporation of the Town of Niagara-on-the-Lake and Her Majesty the Queen in right of Canada as represented by the Minister of Transport be and the same is hereby approved; and,
2. THAT the Lord Mayor and Town Clerk be authorized to affix their hands and the Corporate Seal; and,
3. THAT this by-law shall come into force and take effect immediately upon the passing thereof.

**READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 11TH DAY OF  
DECEMBER, 2017**

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**LORD MAYOR PAT DARTE**

**TOWN CLERK PETER TODD**

## AGREEMENT TO TRANSFER

This Agreement made in duplicate as of the 11th day of December, 2017.

### BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**  
as represented by the Minister of Transport

(“Her Majesty”)

OF THE FIRST PART

### AND:

**THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE**

(the “Municipality”)

OF THE SECOND PART

**WHEREAS** the lands comprising the Niagara District Airport (the “**Airport Lands**”) are owned by the Municipality;

**AND WHEREAS** the Municipality has installed runway approach lighting on lands adjacent to the Airport Lands that are vested in Her Majesty (the “**Adjacent Lands**”), and now requires ownership of the Adjacent Lands in order to meet regulatory requirements regarding runway approach lighting;

**AND WHEREAS** the Adjacent Lands are currently subject to those agricultural leases as identified in Schedule “A” (the “**Leases**”), made between Her Majesty and the tenants identified therein (the “**Tenants**”);

**AND WHEREAS** in consideration of the grant of replacement leases in respect of the Adjacent Lands by the Municipality, the Tenants have agreed to partially surrender their leases to Her Majesty in respect of those portions of their leased premises comprising the Adjacent Lands;

**AND WHEREAS** Her Majesty has agreed to transfer the Adjacent Lands to the Municipality for so long as they may be required for airport purposes.

**NOW THEREFORE** this Agreement witnesses that in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the parties hereto have agreed as follows:

### ARTICLE 1 – DEFINITIONS

**1.01** In this Agreement, unless the context otherwise requires, the following words shall have the following meanings:

(a) “**Agreement**” means this Agreement to Transfer and all schedules hereto, as may be amended from time to time;

(b) “**As-Is**” has the meaning ascribed to it in section 4.4 of this Agreement;

- (c) **"Business Day"** means a day other than Saturday, Sunday or statutory holiday within the Province of Ontario;
- (d) **"Contaminant"** means any substance, howsoever defined in any Environmental Law, which is hazardous to persons, animals or plants and which may affect the air, soil of or the water (including sediment) in, on, over or under the Property including any substance that becomes a Contaminant due to construction, renovation or demolition or due to any other release, spill, leak, emission, discharge, migration, escape, disposal or any similar action of any such substance;
- (e) **"Effective Date"** means the date this Agreement is executed on behalf of Her Majesty;
- (f) **"Environmental Law"** includes, but is not limited to all applicable federal and provincial statutes, municipal and local laws, common law, and deed restrictions, all statutes, by-laws, regulations, codes, licences, permits, orders, directives, guidelines, decisions rendered by any Authority relating to the protection of the environment, natural resources, occupational health and safety or the manufacture, processing, distribution, use, treatment, storage, disposal, packaging, transport, handling, containment, clean-up or other remediation or corrective action of any Hazardous Substance;
- (g) **"Hazardous Substance"** includes but is not limited to any hazardous or toxic chemical, waste, by-product, pollutant, contaminant, compound, product or substance, including without limitation, any Contaminant, asbestos, polychlorinated biphenyls, petroleum and its derivatives, by-products or other hydrocarbons and any other liquid, solid or gaseous material the exposure to, or manufacture, possession, presence, use, generation, storage, the transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling of, which is prohibited, controlled or regulated by any and is defined in or pursuant to any Environmental Law;
- (h) **"Lands"** means those lands and premises described in Schedule "A" to this Agreement;
- (i) **"Minister"** means the Minister of Transport;
- (j) **"Notice"** has the meaning ascribed to it in Subsection 8.02.01 of this Agreement;
- (k) **"Person"** means any individual, company, corporation, partnership, firm, trust, sole proprietorship, government or government agency, authority or entity, however designated or constituted;
- (l) **"Transfer Date"** means the \_\_\_\_\_ day of \_\_\_\_\_, 2017, or such other date as the Parties or their solicitors may agree upon in writing; and
- (m) **"Transfer Price"** has the meaning ascribed to that phrase in Section 2.02.

## 1.02 Number and Gender

Words importing the singular shall include the plural and vice versa and words importing a particular gender shall include all genders. The use of the neuter singular pronoun to refer to Her Majesty is deemed a proper reference. The necessary grammatical changes required to make the provisions of this Agreement apply shall in all instances be assumed as though in each case fully expressed.

## 1.03 Headings

The division of this Agreement into Articles, Sections, Subsections, Paragraphs, and Subparagraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**1.04            Business Day**

If the day on which any act or payment is required to be done or made under this Agreement is a day which is not a Business Day, then such act or payment shall be duly performed or made if done on the next following business day.

**1.05            Schedules**

1.05.01        The following schedules are attached to form an integral part of this Agreement, as fully as if they were set forth herein:

- Schedule “A” – Description of Lands
- Schedule “B” – Instrument of Grant
- Schedule “C” – Easement Agreement
- Schedule “D” – Plan of Survey

1.05.02        Any capitalized words and phrases used in the Schedule annexed hereto will have the same meanings as defined in this Agreement.

1.05.03        In the event of any inconsistency or conflict between either a Schedule or any provision contained therein, and this Agreement or any provision of this Agreement, this Agreement or the provision of this Agreement prevails to the extent of the inconsistency or conflict.

**1.06            Statutes, Regulations and Rules**

Any reference in this Agreement to all or nay part of any statute, regulation or rule shall unless otherwise stated, be a reference to that statute, regulation or rule or the relevant part therefore, as amended, substituted, replaced or re-enacted from time to time.

**1.07            Governing Law**

This Agreement shall be interpreted in accordance with the laws in force in the Province of Ontario, subject always to any paramount or applicable federal laws. Nothing in this Agreement is intended to or shall be construed as limiting, waiving or derogating from any Federal Crown prerogative.

**1.08            Extended Meanings**

1.08.01        Notwithstanding any provision to the contrary, where this Agreement provides that the Municipality shall ‘ensure’ a covenant or obligation of any other Person or shall ensure compliance by any other Person or provides that the Municipality covenants or agrees to a specific matter on behalf of any other Person, the obligation of the Municipality shall be deemed to have been performed if:

- (a) the Municipality shall have obtained from such other Person, a covenant, obligation or agreement in terms which are not less stringent; and

(b) in the event of a breach of such covenant, obligation or agreement by such other Person, the Municipality shall have used diligent efforts to enforce such covenant, obligation or agreement, including the initiation and continuance and prosecution of legal proceedings with due diligence.

1.08.02           The words “hereof”, “herein”, “hereto”, “hereunder”, “therein” and “thereto” and similar expressions used in this Agreement mean and refer to the whole of this Agreement, and not to any particular Article or Section, unless the context indicates otherwise.

1.08.03           In this Agreement, “includes” means “includes without limitation”, “including” means “including, without limitation”, “any” means “any and all”, “Municipality shall not permit” means “Municipality shall not cause, suffer or permit”, “law” means “law”, and “by-law regulation, order, decision and rule”; and “Municipality agrees” or “Municipality acknowledges” means “Municipality expressly acknowledges and agrees”.

**ARTICLE 2 – TRANSFER OF LAND**

**2.01           Transfer**

Subject to the terms and conditions of this Agreement, Her Majesty agrees to transfer to the Municipality, all of Her right, title and interest in those parcels of land described in Schedule “A” to this Agreement.

**2.02           Transfer Price**

Her Majesty agrees to transfer the Lands to the Municipality for the sum of TEN DOLLARS (\$10.00).

**2.03           Public Purpose Transfer**

The Lands are being transferred to the Municipality to be added to existing lands used for the purposes of the Niagara District Airport. The Instrument of Grant will provide for a reversion of the Lands to Her Majesty in the event they are no longer used for airport purposes.

**ARTICLE 3 - CONDITION OF LANDS**

**3.01           “As-Is” Condition**

3.01.01           Her Majesty makes no representation or warranty with respect to the surface or sub-surface conditions of the Lands, or in respect of any other matter or thing whatsoever having to do with the Lands, save and except as expressly set out in this Agreement.

3.01.02           The Purchaser acknowledges that Her Majesty also makes no representation or warranty with respect to any buildings, improvements or structures that may be situate on the Lands, and agrees to accept the Lands and such buildings, improvements or structures in an “as-is” condition as of the Effective Date.

## **ARTICLE 4 – TITLE AND OTHER MATTERS**

### **4.01           Agricultural Leases**

The Municipality acknowledges that Her Majesty's title to the Lands is currently subject to the Leases in favour of the tenants indicated in Schedule "A" to this Agreement (the "Tenants"), and that the term of all of the Leases will expire on March 31, 2023.

### **4.02           Partial Surrenders of Lease**

The area of land leased to each of the Tenants under the Leases includes more than the lands that are described in Schedule "A" hereto. The Tenants have agreed with Her Majesty to partially surrender their Leases in respect of those parcels of land described in Schedule "A", on or before the Closing Date.

### **4.03           Replacement Leases**

4.03.01       The Municipality agrees to enter into new leases with the Tenants in respect to the parcels of land described in Schedule "A" hereto (the "Replacement Leases") for terms expiring on March 31, 2023, such Replacement Leases to be on terms and conditions no less favourable to the Tenants than those provided for in the Leases, on or before the Closing Date.

4.03.02       The Municipality acknowledges and agrees, and the Replacement Leases shall so provide, that no fencing may be installed or erected by the Municipality on the perimeter of the Lands during the growing season.

### **4.04           Easement for Irrigation Purposes**

The Municipality acknowledges and agrees that the Instrument of Grant to be delivered by Her Majesty on closing will be subject to an easement for irrigation purposes in favour of AWC Airport (2017) HoldCo Inc., their successors and assigns over Parts 15, 23 and 25 as shown on the draft reference plan or survey attached hereto as Schedule "D", and set out the Schedule 1 to the Instrument of Grant attached to this Agreement as Schedule "B".

## **ARTICLE 5 – INDEMNITY**

### **5.01           Indemnification**

The Municipality agrees, at all times, to indemnify and save harmless Her Majesty and any of Her officers, servants, employees or agents from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted in any manner based upon, occasioned by or attributable to the execution of this Agreement or any action taken or things done or maintained by virtue hereof, or the exercise in any manner of rights arising hereunder, except for claims for damage resulting in the negligence of any officers, servants, employees or agents of Her Majesty while acting within the scope of their duties or employment.

## **ARTICLE 6 – NO PARTNERSHIP, JOINT VENTURE OR AGENCY**

**6.01****No Partnership, Joint Venture or Agency**

Her Majesty and the Municipality expressly disclaim any intention to create a partnership, joint venture or joint enterprise. It is understood, acknowledged and agreed that nothing contained in this Agreement nor any acts of Her Majesty and the Municipality shall constitute or be deemed to constitute Her Majesty and the Assignee as partners, joint venturers or principal and agent in any way or for any purpose. The Municipality shall not represent or hold itself out to be an agent of Her Majesty. No party hereto shall have any authority to act for or to assume any obligations or responsibility on behalf of the other party hereto.

## **ARTICLE 6 – GENERAL PROVISIONS**

### **6.01 Entire Agreement**

This Agreement sets forth the entire agreement between the parties hereto concerning the subject matter hereof. No representation or warranty expressed, implied or otherwise is made by Her Majesty to the Municipality, nor by the Municipality to Her Majesty except as expressly set out in this Agreement.

### **6.02 Notice**

6.02.01 All notices or other communications necessary for the purposes of this Agreement shall be in writing and shall be delivered by two methods: delivered personally, or by courier or registered mail and also delivered either by facsimile or email, addressed as follows,

(a) in the case of Her Majesty, to:

Transport Canada  
Airport and Marine Programs (AHP)  
Tower C, Place de Ville  
330 Sparks Street  
Ottawa, Ontario  
K1N 0N5

Facsimile: (613) 990-8655

(b) in the case of the Municipality, to:

The Corporation of the Town of Niagara-on-the-Lake  
1593 Four Mile Creek Road  
Niagara-on-the-Lake, Ontario  
L0S 1J0

Facsimile: (905) 468-2959

or such other address or facsimile number or email address or addressed to such other persons as each party may designate in writing to the other party.

6.02.02 Any notice or communication will be considered to have been received on the earlier of:

(a) in the case of facsimile or email, on actual receipt, and

(b) in all other cases, on the date of delivery.

If the postal service is interrupted, or threatened to be interrupted, or is substantially delayed, any notice shall be delivered personally or by courier.

### **6.03 Severability**

If, for any reason, any provision of this Agreement, other than any provision which is of fundamental importance to the arrangement between the parties, is to any extent, held or rendered invalid, void, illegal or unenforceable for any reason whatsoever, then the particular provision shall be deemed to be independent of, and severed from, the remainder of this Agreement and all the other provisions of this Agreement shall nevertheless continue in full force and effect.



**6.04                    Access to Information and Privacy Act**

6.04.01                The Municipality acknowledges that Her Majesty is subject to the *Access to Information Act* (R.S. 1985, c. A-1) and the *Privacy Act* (R.S. 1986, c. P-21) and that information provided to Her Majesty in connection with this Agreement may be subject to the provision of these acts.

**IN WITNESS WHEREOF** the Minister of Transport, on behalf of Her Majesty the Queen in right of Canada has hereunto subscribed his signature and the Municipality has attested to by the hands of its proper officers in that behalf as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**  
as represented by the Minister of Transport

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE**

Per: \_\_\_\_\_  
Name: Pat Darte  
Lord Mayor

Per: \_\_\_\_\_  
Name: Peter Todd  
Town Clerk

SCHEDULE "A"

(Description of Lands)

ALL AND SINGULAR those certain parcels or tracts of land and premises situate, lying and being in the Geographic Township of Grantham, now in the Town of Niagara-on-the-Lake, Regional Municipality of Niagara, and being comprised of those parts of PIN 46359-0004 as are more particularly described below.

Legal Description	Lease No.	Tenant	Irrigation Easements
Part Lot 170 Corporation Plan 5  Parts 11, 12 and 61 Plan 30R-*****	66-1381	Lakeview Harvesters	N/A
Part Lot 5 Concession 6  Part 21 Plan 30R-*****	66-1382	Fred Arthur Stewart	N/A
Part Lot 5 Concession 6  Parts 19, 24, 25 and 26 Plan 30R-*****	66-1482	Abram Wiens and Sons	Part(s) *** Plan 30R-*****
Part Lot 5 Concession 6  Parts 17, 18, 22 and 23 Plan 30R-*****	Lands to be conveyed, but not subject to lease		

SCHEDULE "B"

CANADA

INSTRUMENT OF GRANT

THIS INSTRUMENT HAS THE SAME FORCE AND EFFECT AS IF IT WERE LETTERS PATENT  
(Subsection 5(7), *Federal Real Property and Federal Immovables Act*)

**ELIZABETH THE SECOND**, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories, **QUEEN**, Head of the Commonwealth, Defender of the Faith.

**TO ALL TO WHOM** these Presents shall come, **GREETING:**

**WHEREAS** all of the lands hereinafter described are vested in Us in right of Canada and are under the administration of Our Minister of Transport;

**AND WHEREAS** authority has been given for the grant of the said lands in fee simple to the **TOWN OF NIAGARA-ON-THE-LAKE**, a body corporate under the *Municipal Act* of the Province of Ontario (the "Grantee"), at or for the price or sum of TEN DOLLARS (\$10.00) in Canadian currency, subject to the possibility of reversion;

**NOW THEREFORE** We do by these Presents grant, convey and assure unto the Grantee, its successors and assigns, **ALL AND SINGULAR**, those certain parcels or tracts of land situate, lying and being in the Geographic Township of Grantham, now in the Town of Niagara-on-the-Lake, Regional Municipality of Niagara, and being comprised of those parts of PIN 46359-0004 more particularly described as follows:

FIRSTLY:	SECONDLY:	THIRDLY:	FORTHLY:
Part Lot 170 Corporation Plan 5	Part Lot 5 Concession 6	Part of Road Allowance between Lots 4 & 5 Concession 5	Part of Road Allowance between Concession 5 & 6
Parts 11, 12 and 61 Plan 30R-*****	Parts 13 to 26 inclusive Plan 30R-*****	Parts 5, 27 and 28 Plan 30R-*****	Parts 9 and 10 Plan 30R-*****

**TO HAVE AND TO HOLD** said lands unto the Grantee, its successors and assigns, subject to those rights and easements set out in Schedule 1 attached, for so long as the said lands shall be used for airport purposes;

AND the Grantee, for itself, its successors and assigns, by the acceptance of these Presents, covenants with Us that in the event the estate herein granted is determined, the Grantee will acknowledge such determination and reversion of the lands to Us, and will forthwith surrender possession of the lands to Us.

IN WITNESS WHEREOF these Presents have been signed and countersigned under the *Federal Real Property and Federal Immovables Act* (1991, c.50) of Canada.

DATED as at the date of countersignature this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

SIGNED on behalf of the Minister of	)	
Transport by	)	
	)	
	)	
Name :	)	_____
Title:	)	
	)	

COUNTERSIGNED on behalf of the	)	
Minister of Justice by:	)	
	)	
	)	
Name: _____	)	_____
Title: Legal Counsel	)	
Department of Justice	)	

**SCHEDULE 1**

(Irrigation Easements)

**RESERVING UNTO** Her Majesty, her successors, assigns, and tenants from time-to-time of those lands and premises described as being that part of Lot 5, Concession 6, in the Geographic Township of Grantham, now in the Town of Niagara-on-the Lake, Regional Municipality of Niagara, designated as Parts 15, 23 and 25, Plan 30R-\*\*\*\*, the right and privilege to use those portions of the said Lot 5, Concession 6, designated as Part 15, 23 and 25, Plan 30R-\*\*\*\*, for irrigation purposes.

SCHEDULE "C"

**TRANSFER OF PERMANENT IRRIGATION EASEMENT**

**FROM:** \_\_\_\_\_  
**(the "Transferor")**

**TO:** \_\_\_\_\_  
**(the "Transferee")**

The Transferor is the owner in fee simple of those lands and premises more particularly described as \_\_\_\_\_, in the Town of Niagara-on-the-Lake, in the Regional Municipality of Niagara, and being all of PIN \_\_\_\_\_ (LT) (the "Transferor's Lands").

The Transferee is the owner in fee simple of those lands and premises more particularly described as \_\_\_\_\_, in the Town of Niagara-on-the-Lake, in the Regional Municipality of Niagara, and being all of PIN \_\_\_\_\_ (LT) (the "Dominant Lands").

**1. Grant of Easement**

- 1.1 The Transferor grants, conveys and transfers to the Transferee, its successors and assigns, to be used and enjoyed as appurtenant to all or any part of the Dominant Lands, the non-exclusive right, liberty, privilege and easement (the "Easement") on, over, in, under and/or through that portion of the Transferor's Lands described as Part \_\_, Plan 30R-\_\_\_\_\_, (the "Easement Lands") to survey, lay, install, construct, maintain, inspect, patrol, alter, remove, replace, reconstruct, repair, move, keep, use, and/or operate one pipeline for the purpose of conveying, transporting and pumping irrigation water (the "Pipeline"), together with the right of ingress and egress at any and all times over and upon the Easement Lands for Transferee's servants, agents, employees, those engaged in its business, contractors and subcontractors on foot and/or with vehicles, supplies, machinery and equipment for all purposes necessary or incidental to the exercise and enjoyment of the rights, privileges and easement granted by this Easement.
- 1.2 In this Easement, "irrigation water" means water that consists of no less than 99.9% water and which conforms with the Canadian Council of Ministers of the Environment Protocols for Deriving Water Quality Guidelines for the Protection of Agricultural Water Uses (Irrigation and Livestock Water), as amended from time to time.
- 1.3 The rights, privileges and easement granted by this Easement shall continue in perpetuity or until the Transferee shall execute and deliver a surrender of this Easement or until the Easement is deemed terminated pursuant to the terms of this Easement. The Transferor and Transferee agree that nothing in this Easement shall oblige the Transferee to remove the Pipeline from the Easement Lands as part of the Transferee's obligation to restore the Easement Lands.

**2. Use and Restrictions**

- 2.1 The Transferee shall install and operate the Pipeline in a prudent, careful and diligent fashion, and otherwise shall use and enjoy the Easement Lands in strict accordance with this Easement,

which use shall not derogate from the rights of the Transferor to continue the use of the Easement Lands as such use may be limited by the terms of this Easement.

- 2.2 The Transferor and Transferee acknowledge and agree that any existing irrigation lines located on the Easement Lands or any other part of the Transferor's Lands shall be permitted to remain and to be used so long as they are functioning properly and the maintenance and repair of which do not materially interfere with the Transferor's crops and/or business operations. Notwithstanding the foregoing, in the event a new pipeline is required to be installed by the Transferee, said pipe shall have a maximum diameter of six inches (6") and be buried to a minimum depth of three feet (3').
- 2.3 The Transferee agrees not to impede the use and enjoyment of the Easement Lands by the Transferor, subject to the rights expressly conferred upon the Transferee strictly in accordance with this Easement.
- 2.4 The Transferee covenants and agrees that distribution through the Pipeline of any substance other than irrigation water, including, without limitation, fertilizer, nutrients and Environmental Contamination (as defined in Section 7.2 below), is strictly prohibited.
- 2.5 The Transferee covenants and agrees that the Pipeline shall not be used for any purpose other than the irrigation of crops pursuant to an Agricultural Use (as defined below). For the purposes of this Easement, "**Agricultural Use**" means the growing of tender fruit, grapes, other fruit crops, vegetable crops, nursery crops, greenhouse crops and other horticultural food crops. In the event the Pipeline is used for any purpose other than the irrigation of crops pursuant to the Agricultural Use, then this Easement shall terminate in accordance with Section 9.1 below.
- 2.6 The Transferee covenants and agrees that the benefit of this Easement shall only be for the Dominant Lands.
- 2.7 Subject to Section 5.1, the Transferor covenants to maintain the Easement Lands free of buildings or other structures and the Transferor shall not excavate, drill, install, erect or permit to be excavated, drilled, installed or erected upon, over, in, under and across the Easement Lands, any pit, well, foundation, concrete or asphalt pavement, building or other structure or installation.

### 3. Costs

- 3.1 The Transferee covenants and agrees that all costs related to this Easement shall be at the sole expense of the Transferee.
- 3.2 The Transferee shall make to the Transferor due compensation for any damages to the Easement Lands or any other part of the Transferor's Lands resulting from the exercise of any of the rights granted by this Easement, and if the compensation is not agreed upon by the Transferee and the Transferor, it shall be determined pursuant to the dispute resolution sections of this Easement.
- 3.3 The Transferee shall indemnify the Transferor from and against all liabilities, damages, costs, claims, suits and actions which are directly attributable to the exercise of the rights granted by this Easement, except to the extent of those resulting from the negligence or wilful misconduct of the Transferor or where the Transferee has exercised the requisite care pursuant to the terms of this Easement.
- 3.4 In the event that the Transferee fails to comply with any requirements set out in this Easement within a reasonable time of the receipt of notice in writing from the Transferor setting forth the failure complained of, the Transferee shall compensate the Transferor (or the person or persons entitled to such compensation) for any damage, if any, necessarily resulting from such failure and the reasonable costs if any, incurred in the recovery of those damages.

### 4. Construction, Maintenance and Repair of Pipeline

- 4.1 The parties agree that any installation or construction work, maintenance, repair and or any other work being undertaken by the Transferee with respect to the Pipeline (collectively or individually, the "**Work**") shall be completed in a good, safe and workmanlike manner and shall be the sole responsibility of the Transferee at its sole cost and expense.

- 4.2 The Transferee shall be responsible for repairing any deficiency in the Pipeline so as to ensure that there is no adverse impact upon the Transferor, the Transferor's Lands and the Transferor's use of the Easement Lands arising from any such deficiency.
- 4.3 Except in the case of an emergency, the Transferee shall secure the written consent of the Transferor prior to undertaking any Work.
- 4.4 Upon the completion of any Work, the Transferee shall restore the Easement Lands, and if necessary, any other part of the Transferor's Lands affected by the Work, save and except for any crops that were required to be removed as part of the Work, to a similar condition as they were prior to the commencement of the Work.
- 4.5 In the event the Transferee fails to complete any remediation work as required under Sections 4.2 or 4.4, to the reasonable satisfaction of the Transferor, or fails to commence said remediation work within five (5) days of being directed, the Transferor may, but is not obligated to, complete such remediation work, and the Transferee shall reimburse the Transferor for all costs and expenses and shall pay the same to the Transferor immediately upon demand.

## 5. Transferor's Rights and Transferee's Non-Interference

- 5.1 Notwithstanding anything else contained in this Easement, the Transferor and Transferee acknowledge and agree that the Transferor shall retain, reserve and continue to enjoy the use of the Easement Lands for any and all purposes that do not interfere with or prevent the use by the Transferee of the Easement, including:
  - (a) the right to plant grapes and tender fruit within the Easement Lands provided that such plantings do not interfere with the operation of the Pipeline and the Transferor acknowledges that any crops so planted within the Easement Lands may be adversely affected by any Work required to be undertaken by the Transferee; and
  - (b) the right to grade and use the surface of the Easement Lands for the purpose of a dirt or gravel laneway for use by the Transferor, its servants, agents, employees, those engaged in its business, contractors and subcontractors on foot and/or with vehicles, supplies, machinery and equipment.
- 5.2 The Transferee covenants and agrees that in exercising its right of entry to perform any Work, it shall use reasonable efforts not to:
  - (a) cause damage to any crops planted within the Easement Lands or located on the Transferor's Lands; or
  - (b) unnecessarily interfere with the business operations of the Transferor.

## 6. Compliance with the Law

- 6.1 The Transferee, at its sole cost and expense, shall comply in all respects with all laws and shall secure and maintain in effect all federal, provincial, and local governmental permits and licences required for the construction, installation, operation, maintenance, repair, reinstallation, replacement or removal of the Pipeline, including without limitation, any required zoning, building, health, or environmental permits or licences. The Transferee shall indemnify the Transferor for the payment of all costs for the permits and licences and any fees, fines or penalties that might be levied as a result of the failure of the Transferee to procure or comply with such permits and licences, as well as any remedial costs to secure any violation by the Transferee to the permits and licences relating to the Pipeline.

## 7. Condition of Easement

- 7.1 The Transferee accepts the interest in the Easement Lands which is created under this Easement on an 'as is/where is' basis and waives all rights and recourses of action of any kind and nature whatsoever which it may have, either now or in the future, against the Transferor with respect to any defects in the Easement Lands. The Transferor makes no representation or warranty with respect to the condition or suitability of the Easement Lands for use in accordance with this Easement, or in respect of the condition, composition or use of the Easement Lands.



- 7.2 The Transferee shall immediately, at its sole cost and risk, carry out all measures the Transferor, acting reasonably, may consider appropriate to keep the Easement Lands free and clear of all environmental contaminants, hazardous substances and/or residue (“**Environmental Contamination**”) resulting from and/or in connection with the Transferee’s occupation or use of the Pipeline and/or Easement Lands. The Transferee shall be solely responsible for the cost of all work carried out to correct any Environmental Contamination which occurs within the Easement Lands, or which occurs on other lands, whether adjacent to the Easement Lands or not, resulting from and/or in connection with the Transferee’s occupation or use of the pipeline and/or Easement Lands.
- 7.3 The Transferee shall notify the Transferor promptly once the Transferee becomes aware of or has reason to believe that any Environmental Contamination is present within the Pipeline or upon the Easement Lands or on any other lands or is at risk of escaping from the Pipeline and/or Easement Lands. The Transferee shall be liable, at its sole cost and expense, to remediate any Environmental Contamination caused by the Transferee’s negligence or by those for whom the Transferee is in law responsible.
- 7.4 The responsibility of the Transferee with respect to the environmental obligations contained in this Easement shall continue to be enforceable by the Transferor, notwithstanding the termination of this Easement.

## 8. Abandonment

- 8.1 If at any time the Transferee elects to permanently discontinue the use of the Pipeline, the Transferee shall give the Transferor at least thirty (30) days’ prior written notice of such discontinuance.
- 8.2 The Transferee agrees that, in the event that the Transferor, acting reasonably, believes that an abandonment of the use of the Pipeline may have occurred which continues for a period of five (5) consecutive farming seasons, then the Transferor may deliver written notice of such belief to the Transferee. In the event that the Transferee does not, within thirty (30) days of the delivery of such notice, deliver a written response stating that it has not abandoned the use of the Pipeline and the Easement, the Easement shall terminate upon expiration of such period of thirty (30) days. For greater clarity, delivery of a written response by the Transferee stating that it has not abandoned the use of the Pipeline and Easement is deemed to be evidence that same have not been abandoned and no further action on the part of the Transferee shall be required.
- 8.3 Upon the abandonment of the Pipeline, the Transferee agrees to restore the Easement Lands to a similar condition as they were prior to the granting of this Easement, normal wear and tear excepted, and the Transferee agrees to cooperate fully in registering a transfer, release and abandonment of this Easement on title to the Transferor’s Lands and the Transferee irrevocably appoints the Transferor as the Transferee’s attorney to execute any documents required by the Transferor to give effect to the provisions of this paragraph.

## 9. Early Termination

- 9.1 Notwithstanding any other provision of this Easement, in the event that the Transferee fails to comply with any of the obligations, covenants, terms and conditions of this Easement, the Transferor shall have the right to terminate this Easement in whole or in part on notification to the Transferee in accordance with the following. The Transferor shall give to the Transferee written notice pursuant to Article 15 setting out the details of such breach and the Transferor’s intent to cancel this Easement in whole or in part. At the expiration of thirty (30) days from the date of receipt of such notice, if the Transferee has failed to rectify the breach or to commence rectification of such breach in a reasonable and diligent manner, the Transferor may cancel this Easement in whole or in part effective at least thirty (30) days following a further written notice to the Transferee and the Transferee agrees to cooperate fully in registering a transfer, release and abandonment of this Easement on title to the Transferor’s Lands and the Transferee irrevocably appoints the Transferor as the Transferee’s attorney to execute any documents required by the Transferor to give effect to the provisions of this paragraph.

#### 10. No Entitlement to Lien

- 10.1 In the event that the Transferor's Lands become subject to any construction lien as a result of any action or inaction of the Transferee, the Transferee shall promptly cause such lien or encumbrance to be discharged and released from title to the Transferor's Lands, without costs to the Transferor, and the Transferee shall indemnify the Transferor from and against any and all costs and expenses incurred in discharging and releasing such lien or encumbrance.
- 10.2 Nothing in this Easement shall preclude the Transferee from contesting any lien or action taken to enforce a lien. The Transferor shall in good faith use reasonable efforts to co-operate with and assist the Transferee in contesting such lien or action without any cost to the Transferor.

#### 11. Insurance

- 11.1 The Transferee will procure and maintain throughout the term of this Easement, commercial general liability insurance with insurance companies acceptable to the Transferor, protecting both the Transferor and the Transferee against liability for bodily injury and death and for damage to or destruction of property by the Transferee, as well as environmental liability, with liability coverage in an amount of not less than Five Million Dollars (\$5,000,000) per occurrence, or such higher limits as the Transferor may reasonably require from time to time.
- 11.2 Upon the written request of the Transferor, the Transferee shall provide to the Transferor evidence of such insurance having been obtained and maintained in the form of a certificate of insurance, and such insurance shall not be subject to cancellation and/or alteration except after at least ninety (90) days' prior written notice to the Transferor.

#### 12. Indemnity and Release

- 12.1 The Transferee shall indemnify and save harmless the Transferor, its employees, officers, directors, agents and/or others for whom it may be responsible for at law, from and against all actions, causes of action, proceedings, claims and demands ("**Liability**") for any direct or indirect losses, costs, damages or expenses suffered or incurred by the Transferor, save and except for Liability attributable to the negligent or wilful misconduct of the Transferor, its employees, officers, directors, agents and/or others for whom it may be responsible for at law, by reason of any damage to property or injury, including injury resulting in death, to persons, including the employees, officers, agents, licensees or invitees of the Transferor or Transferee caused by, resulting from or attributable to the existence, construction, operation, maintenance, relocation, modification or removal of the Pipeline, and, save and except as otherwise set out in this Easement, the Transferee shall assume all risk for any damage to the property of the Transferor or injury, including injury resulting in death, to all persons exercising the rights, privileges and easement granted by this Easement.

#### 13. Realty and Other Taxes

- 13.1 The Transferor acknowledges that it shall pay for and be responsible for any property taxes assessed against the Transferor's Lands, including the Easement Lands.

#### 14. Planning Act

- 14.1 The parties agree that if the subdivision control provisions of the *Planning Act*, R.S. O. 1990, c.P.13, as amended, are applicable to this Easement, any provision of this Easement or any right or interest reserved, granted or conveyed by the Easement, then any such applicable requirements shall be complied with by the Transferee, diligently and in good faith, at the sole cost of the Transferee. Notwithstanding the foregoing, the parties acknowledge that Her Majesty the Queen in Right of Canada is not subject to the subdivision and part-lot control provisions of said legislation.

#### 15. Notice

- 15.1 Any notice, request, invoice or demand to or upon the respective parties to this Easement shall be in writing and shall be validly communicated by the delivery of such notice, request, invoice or demand to its addressee either personally, by courier, registered mail, facsimile, or other electronic means, including e-mail, to the address mentioned below:

To Transferor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

To Transferee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

- 15.2 Any such notice shall be sent in order to ensure prompt receipt of such notice by the other party.
- 15.3 Any such notice sent shall be deemed to have been received by the party to whom it is sent at the time of its delivery if personally delivered, or on the date of such receipt if sent by courier or by registered mail or on the business day of transmittal of such notice if sent by facsimile or other electronic means, including e-mail; provided, however, that in the event normal mail service, courier service, facsimile or other electronic means, including e-mail, shall be interrupted by a cause beyond the control of the parties to this Easement, then the party sending the notice shall utilize any other of the said services which has not been so interrupted. Each party shall provide written notice to the other of any change of address or contact information for the purposes of this Easement.

16. Legal Jurisdiction

- 16.1 This Easement and the rights and obligations of the parties are subject to all applicable present and future laws, rules and regulations and orders of any legislative body or duly constituted authority now or hereafter having jurisdiction. The parties agree that the laws of the Province of Ontario and the laws of Canada applicable in Ontario will govern this Easement and the parties exclusively attorn to the courts of Ontario.

17. Waiver

- 17.1 A waiver or non-enforcement by either party of any one term or any one or more defaults by the other party shall not operate as a waiver of any future requirements or defaults, whether of like or different character.

18. Dispute Resolution

- 18.1 **Negotiations:** Each party will attempt in good faith to resolve any dispute between or among them arising out of or relating to or in connection with this Easement, including, without limitation, the interpretation, breach, termination or validity of this Easement or any dispute

that is provided by the terms of this Easement to be settled pursuant to this dispute resolution process (each, a “**Dispute**”) promptly by negotiations between representatives of the relevant parties who have authority to settle the Dispute, as follows:

- (a) the “disputing” party (the “**Claimant**” or a “**party**”) will give the other party (the “**Respondent**” or a “**party**”) written notice of the Dispute in question with reasonable particulars of the basis of the Dispute and the Claimant’s position and the name and title of the individual who will primarily represent the Claimant at the negotiation;
- (b) within seven (7) business days after receipt of such notice, the Respondent shall submit to the Claimant a written response. Such notice and response shall include the Respondent’s position in respect of the Dispute and the name and title of the individual who will primarily represent the Respondent at the negotiation; and
- (c) the representatives shall meet at a mutually acceptable time and place within seven (7) business days of the date of the Claimant’s receipt of the Respondent’s notice and as often after that as they reasonably deem necessary to exchange relevant information and to attempt to resolve the Dispute. Prior to such meeting the representatives shall discuss and determine if their legal advisors will attend such meeting.

18.2 **Mediation:** If a Dispute has not been resolved within thirty (30) days of the receipt by the Respondent of the Claimant’s notice referred to above (the “**Mediation Date**”), the Dispute shall be submitted to mediation in accordance with the following procedure:

- (a) the Claimant and the Respondent shall have five (5) business days from the Mediation Date to agree upon a mutually acceptable independent person (the “**Mediator**”);
- (b) if no Mediator has been selected within such time, the Claimant and the Respondent agree to jointly request that ADR Chambers Canada (including any successor) supply, within five (5) business days, a list of potential Mediators from its roster with qualifications as specified by the Claimant and the Respondent in the joint request. Within five (5) business days of their receipt of the list, the Claimant and the Respondent shall independently rank the proposed candidates, shall simultaneously exchange rankings, and shall select as the Mediator the individual receiving the highest combined ranking who is available to serve. If either party does not rank the proposed candidates and provide a copy of the ranking to the other party, the party who does rank the proposed candidates and does provide a copy of the ranking to the other party will be entitled to select the Mediator from among the proposed candidates;
- (c) if ADR Chambers Canada or a successor does not exist, then the Mediator will be selected with the assistance of ADR Institute of Canada (including any successor);
- (d) in consultation with the Mediator, the Claimant and the Respondent shall promptly designate a mutually convenient time and place in the city in which the Easement Lands are situate (or in such other location as the Claimant and the Respondent shall agree to) for the mediation (and unless circumstances reasonably require otherwise, such time shall not be later than ten (10) business days after the selection of the Mediator);
- (e) at least three (3) business days prior to the first scheduled session of the mediation, each party shall deliver to the Mediator and to the other party a concise written summary of its views on the facts and issues in the Dispute;
- (f) in the mediation, each party shall be represented by a legal practitioner. In addition, each party may bring such additional persons as needed to respond to questions, contribute information and participate in the mediation;
- (g) the Claimant and the Respondent will attempt to resolve the Dispute with the assistance of the Mediator. The Mediator is authorized to conduct both joint meetings and separate private discussions with the Claimant and the Respondent;
- (h) the fees of the Mediator shall be shared equally by the Claimant and the Respondent and each party shall pay for the costs of its own legal representation;
- (i) all meetings and hearings will be held in private unless the parties otherwise agree and no stenographic, visual or audio records shall be made; and

- (j) the Mediator shall be disqualified as a witness, consultant, expert or legal advisor for either party with respect to the Dispute and any related matters. The parties agree that they will not at any time, whether before, during or after mediation, call the Mediator, or anyone assisting the Mediator in connection with the Dispute, as a witness in any judicial, legal, administrative or arbitration proceeding concerning the Dispute and, to the extent that the parties may have legal rights to call any such person as such a witness, the parties agree that they will waive such rights.

18.3 **Arbitration:** If a Dispute has not been settled within thirty (30) days of the Mediation Date, the Dispute shall be finally settled by arbitration before a single arbitrator in accordance with the *Arbitration Act, 1991*, S.O. 1991, c.17, or such successor legislation (the “**Act**”), as follows:

- (a) the Claimant shall give written notice to the Respondent proposing the name of the person it wishes to be the single arbitrator. If it fails to do so after five (5) business days notice from the Respondent, then the Respondent shall give written notice to the Claimant proposing the name of the person it wishes to be the single arbitrator;
- (b) within ten (10) business days following the notice in (i) above proposing the arbitrator, the party receiving the notice shall give notice to the other advising whether it accepts the arbitrator proposed. If notice is not given within the ten (10) business day period, the arbitrator proposed shall be deemed accepted. In the event that the parties cannot agree on a single arbitrator within the ten (10) business day period, the arbitrator shall be selected in accordance with the Act;
- (c) within ten (10) business days following the naming of the arbitrator, the Claimant shall provide to the Respondent a statement of claim setting out, in sufficient detail, the facts and matters of law on which it relies and the relief it claims;
- (d) within ten (10) business days following receipt of the statement of claim, the Respondent shall provide to the Claimant a statement of defence stating, in sufficient detail, which of the facts and matters of law in the statement of claim it admits or denies, on what grounds, and on what other facts and matters of law it relies;
- (e) within ten (10) business days following receipt of the statement of defence, the Claimant may send the Respondent a statement of reply;
- (f) all statements of claim, defence and reply shall be accompanied by copies of all essential documents on which the party concerned relies which have not previously been submitted by any party;
- (g) after submission of all the statements, the arbitrator will provide directions for the further conduct of the arbitration;
- (h) meetings with and hearings of the arbitrator shall take place in the city in which the Easement Lands are situate, or in such other location as the Claimant and the Respondent shall agree to. Subject to the foregoing, the arbitrator may, at any time, fix the date, time and place of meetings and hearings in the arbitration, and will give all the parties adequate notice of same. Subject to any adjournments which the arbitrator allows, the hearing will be continued on successive business days until concluded;
- (i) all meetings and hearings will be held in private unless the parties otherwise agree;
- (j) each party shall be represented at any meetings or hearings by a legal practitioner;
- (k) the arbitrator will make its decision in writing and, unless both parties otherwise agree, its reasons will be set out in the decision;
- (l) the arbitrator will send its decision to the parties as soon as practicable after the conclusion of the hearing;
- (m) the decision of the arbitrator shall be final and binding on the parties and shall not be subject to any appeal or review procedure, provided that the arbitrator has followed the rules and procedures set out in this Easement in good faith and has proceeded in accordance with the principles of natural justice;

- (n) the arbitrator shall have jurisdiction to:
  - (i) determine any question of law arising in the arbitration;
  - (ii) determine any question as to his or her own jurisdiction;
  - (iii) determine any question of good faith, dishonesty or fraud arising in the dispute;
  - (iv) order any party to furnish such further details of the party's case, in fact or in law, as he or she may require;
  - (v) proceed with the arbitration notwithstanding the failure or refusal of any party to comply with these rules and procedures or with the arbitrator's orders or directions, or to attend any meeting or hearing, but only after providing that party with written notice of its intention to do so;
  - (vi) receive and take into account such written or oral evidence as the arbitrator determines relevant, whether or not strictly admissible in law; and
  - (vii) order the parties to produce to the arbitrator and to each other for inspection, and to supply copies of, any document or classes of documents in their possession or power which the arbitrator determines to be relevant.
- (o) by submitting to arbitration, the parties shall be taken to have conferred on the arbitrator the above jurisdiction and powers, to be exercised by the arbitrator so far as the relevant law allows and in his or her absolute and unfettered discretion, if the arbitrator shall judge it to be expedient for the purpose of ensuring the just, expeditious, economical and final determination of the dispute;
- (p) the fees of the arbitrator shall be shared equally by the Claimant and the Respondent and each party shall pay for the costs of its own legal representation
- (q) the arbitrator shall have such further jurisdiction and powers as may be granted to arbitrators by the laws of the province in which the Easement Lands are situate; and
- (r) notwithstanding the parties' intention that the arbitrator be able to act free of court proceedings as set forth in this Easement, the parties consent to the decision of the arbitrator being entered in any court having jurisdiction for the purposes of enforcement. In addition, any party may apply to an appropriate court for relief, and it is expressly agreed that the making of any such application or the granting of such relief by a court shall not be deemed to be in derogation of the parties' intention that the dispute be the subject of final and binding arbitration as set forth in this Easement.

**18.4 Exclusive Procedure for Settling Disputes:** The procedures specified in this Article 18 are the only procedures for the resolution of any Dispute. If any party attempts to have issues resolved in court that should properly be resolved pursuant to this Article, the parties agree that this Article can be used to stay any such proceedings. However, before or during the time that the Claimant and the Respondent follow the procedures specified in this Article above, either party may make application to the appropriate court for a preliminary injunction or other preliminary judicial relief if such party reasonably believes that such a step is necessary to avoid irreparable damage or harm. Even if either party takes such action, both parties will continue to participate in good faith in the procedures specified in this Article above.

## **19. Entire Easement**

**19.1** This Easement shall constitute the entire agreement between the parties with respect to the subject matter of this Easement and supersedes any prior oral or written agreement. There is no representation, warranty, collateral agreement or condition, whether direct or collateral, or express or implied, which induced any party to this Easement to enter into this Easement on which reliance is placed by any such party. This Easement shall be read with all changes of gender or number required by the context.

## **20. Time of Essence**

**20.1** Time shall be deemed to be of the essence with respect to all time limits mentioned in this Easement.

21. Severability

- 21.1 If any provision of this Easement, or the application thereof to any circumstances, shall be held to be invalid or unenforceable, then the remaining provisions or the application of such provisions to other circumstances, shall not be affected by such invalidity or unenforceability and the remaining provisions shall be valid and enforceable to the fullest extent permitted by law.

22. Successor Rights

- 22.1 The burden and benefit of this Easement shall run with the Transferor's Lands and Dominant Lands respectively, and shall be binding upon and enure to the benefit of the Transferor and the Transferee, their respective successors and assigns.

