

THIS ROAD SERVICE AGREEMENT MADE EFFECTIVE THE 1ST DAY OF JANUARY 2017.

BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI MILLS

Hereinafter called the “Municipality”

AND:

**MICHAEL PATRICK GALLAGHER
AND THE OTHER SIGNATORIES**

Hereinafter collectively called the “Owners”

IN CONSIDERATION of the mutual promises, covenants, agreements and understandings hereinafter expressed the Municipality and the Owners covenant and agree as follows:

1. DEFINITIONS AND SCHEDULES

- 1.1. Definitions: In this Agreement unless there is something in the context inconsistent therewith:
 - 1.1.1. “Agreement” means this Agreement including the Schedules hereto attached;
 - 1.1.2. “Arbitration Act” means the Arbitration Act, 1991, S.O. 1991;
 - 1.1.3. “Dispute” means any dispute between the Parties arising from this Agreement, including but not limited to disputes relating to the interpretation, breach or enforceability of this Agreement;
 - 1.1.4. “Effective Date” means January 1, 2017.
 - 1.1.5. “Municipal Act” means the Municipal Act 2001, S.O. 2001, c.25;
 - 1.1.6. “Owners” means the Owners of the lands abutting the Private Road as of the Effective Date as set out in Schedule “C” hereto;
 - 1.1.7. “Party” and “Parties” means the Municipality and each of the Owners;
 - 1.1.8. “Private Road” means the lands more particularly described in Schedule “A” hereto;
 - 1.1.9. “Term” means the term of this Agreement as set out in Clause 6 hereof;
 - 1.1.10. “Unavoidable Delay” means a delay in the performance of an act or compliance with a covenant caused by fire, strike, lock-out, inability to procure material restrictive, laws or governmental regulations or other cause of any kind beyond the reasonable control of the party obliged to perform or comply, excepting a delay caused by lack of funds or other financial reason;

1.1.11. "Works" means the works, matters and things to be performed by the Municipality on the Private Road pursuant to this Agreement as more particularly described in Clause 3 and Schedule "B" hereto;

1.2. Schedules: The Schedules to this document are part of this Agreement and consist of:

Schedule "A" – Legal Description of the Private Road;

Schedule "B" - Description of the Works; and

Schedule "C" - List of Owners.

2. **RECITALS**

2.1. Each of the Owners is an Owner of lands abutting the Private Road and each of whom use and enjoy the Private Road.

2.2. Each of the Owners covenants and warrants for themselves, their executors and successors including successors in title that each has the legal authority to use the Private Road as and for vehicle and pedestrian passage and to authorize the Municipality to undertake the Works as more particularly described in this Agreement.

2.3. Each of the Owners has asked the Municipality to undertake and perform the Works on the Private Road and the Municipality has agreed to undertake and perform the Works during the Term, subject to the terms and conditions of the within Agreement.

3. **WORKS**

3.1. The Owners covenant and agree that for the purposes of this Agreement, the Works shall consist of the works, matters and things more particularly described in Schedule "B" hereto.

4. **PAYMENT TO THE MUNICIPALITY FOR THE WORKS**

4.1. The Owners covenant and agree jointly and severally to pay to the Municipality for the performance of the Works as follows:

4.1.1. For the first year of the Term, the sum of One Thousand Four Hundred and Sixty-Five Dollars (\$1,465.00) plus HST payable on or before November 30, 2016.

4.1.2. For the second year of the Term and for each of the third, fourth and fifth years of the Term that amount equal to the previous year's payment plus the percentage increase in amount the Construction Consumer Price Index for Ottawa for such previous year to be payable on or before November 30th of the calendar years 2017, 2018, 2019 and 2020.

4.1.3. By way of example, if the Construction Price Index for Ottawa for the year 2016 shall have increased five (5) percent, then the payment to be made to the Municipality by the Association for the second year of the Term shall be $(\$1,465.00 \times 5\% = \$73.25 + \$1,465.00 = \$1,538.25)$ One thousand Five Hundred and Thirty-Eight Dollars and Twenty-Five cents (\$1,538.25) plus HST.

5. **NOT A HIGHWAY**

- 5.1. The Owners expressly acknowledge and agree that the Private Road is not a common and public highway and nothing arising out of this Agreement, including but not limited to the Works and the performance of the Works by the Municipality will result in the assumption by the Municipality of any liability whatsoever for the Private Road.

6. **TERM**

- 6.1. The Term of this Agreement shall be five (5) years commencing on the Effective Date and terminating at midnight on the day before the fifth anniversary of the Effective Date, unless terminated earlier pursuant to the provisions of this Agreement.
- 6.2. Notwithstanding Clause 6.1 above, either Party may terminate this Agreement upon giving Ninety (90) days' notice to the other Party in accordance with the notice provisions of Clause 10 hereof.
- 6.3. The Owners acknowledge and agree that the Municipality may terminate this Agreement without notice if the Owners are in default of the Owners' payment obligations under Clause 4 of this Agreement.

7. **INSURANCE**

- 7.1. The Owners shall provide to the Municipality before commencement of the Works and shall keep in force during the Term, a comprehensive policy of public liability and property damage insurance (the "Policy") acceptable to the Municipality, providing insurance in the amount of not less than two million (\$2,000,000.00) dollars per occurrence exclusive of interest and costs against loss or damage resulting from bodily injury to, or death of one or more persons and loss or damage to property, with a property damage deductible of not more than one thousand (\$1,000.00) dollars.
- 7.2. The Policy shall name the Municipality as a named insured thereunder and the policy shall provide coverage against all claims for all damage or injury including death to any person or persons, for damage to any property of the Municipality or any other public or private property resulting from or arising out of any act or mission on the part of the Association or any contractors, members, servants or agents of the Association.
- 7.3. The Policy shall include completed operations coverage and shall be maintained in force during the Term.
- 7.4. The Owners shall forward to the Municipality prior to commencing the Works a certificate of liability insurance signed by an authorized employee of the insurance company providing the insurance.

8. **INDEMNITY**

- 8.1. The Owners hereby for themselves their executors and successors including successors in title jointly and severally covenant and agree to indemnify and save harmless the Municipality and the Municipality's employees, servants, agents, successors and assigns from all actions, causes of action, suits, claims and demands which may arise directly or indirectly by reason of the use of the Public Road by the Owners and such Owners' invitees during the Term.

9. **DISPUTE**

- 9.1. In the event of a Dispute between the Parties, with respect to the interpretation of this Agreement or their obligations thereunder, the Parties shall make good faith efforts to resolve the Dispute by negotiation.
- 9.2. In the event the negotiations do not lead to a resolution of the Dispute, the Dispute shall be determined by the provisions of the Arbitration Act by a sole arbitrator agreed upon by the Parties, or failing agreement appointed by a judge of the Ontario superior Court of Justice at Ottawa upon the application of either of the Parties.

10. **NOTICE**

- 10.1. Any demand or notice to be given pursuant to the Agreement shall be properly made and given if made in writing and either delivered to the party for whom it is intended to the address as set out below or sent by prepaid registered mail addressed to such Party as follows:

where the Owners are the intended recipient:

3131 Old Perth Rd.
P.O. Box 400
Almonte, ON
K0A 1A0

Attention: Chief Administrative Officer

where the Owners are the intended recipient:

126 Davison Crescent
Pakenham, ON
K0A 2X0

Attention: Michael Patrick Gallagher

or such other addresses as the Parties may from time to time notify in writing, and any demand or notice so made or given shall be deemed to have been properly made or given and received on the day on which it shall have been so delivered or, if mailed, then, in the absence of any interruption in postal service affecting the delivery or handling thereof, on the day following five business days following the date of mailing.

11. **FURTHER ASSURANCES**

- 11.1. Each Party shall execute and deliver such further documents and do such other things as reasonably may be required from time to time to give effect to this Agreement.

12. **WAIVER**

- 12.1. The failure of any Party to this Agreement to enforce any provision or any rights in respect thereof or to insist upon strict compliance or adherence to any term of this Agreement shall not be considered a waiver of such provision, right, term, covenant or obligation or in any way affect the validity of this Agreement or deprive the applicable Party of the right to insist upon strict compliance or adherence to that provision, right term, covenant or obligation.
- 12.2. The exercise of any right under this Agreement shall not preclude or prejudice any Party from exercising any other right it may have under this

Agreement, irrespective of any previous action or proceeding taken by it hereunder.

- 12.3. Any waiver by any Party of the performance of any provision, right term, covenant or obligation in this Agreement shall be effective only if it is in writing and notice is provided in accordance with Clause hereof.

13. **SEVERABILITY**

- 13.1. If any provision of this Agreement is illegal or unenforceable, such provision shall be deemed to be severable from the remaining provisions of this Agreement and shall not invalidate or render unenforceable the remainder of this Agreement.

14. **AMENDMENTS, MODIFICATION BY WRITTEN AGREEMENT**

- 14.1. No amendment, supplement, waiver or consent provided for by the provisions of this Agreement shall be effective unless in writing and signed by the Party against whom enforcement of the amendment, supplement, waiver or consent is sought.

15. **TIME OF ESSENCE**

- 15.1. Time shall be of the essence of this Agreement.

16. **UNAVOIDABLE DELAY**

- 16.1. If there is an Unavoidable Delay in the performance of an act or compliance with a covenant or condition, performance or compliance during the period of Unavoidable Delay shall be excused and the period for the performance of compliance shall be extended for a period equal to the period of the Unavoidable Delay.

17. **GOVERNING LAW**

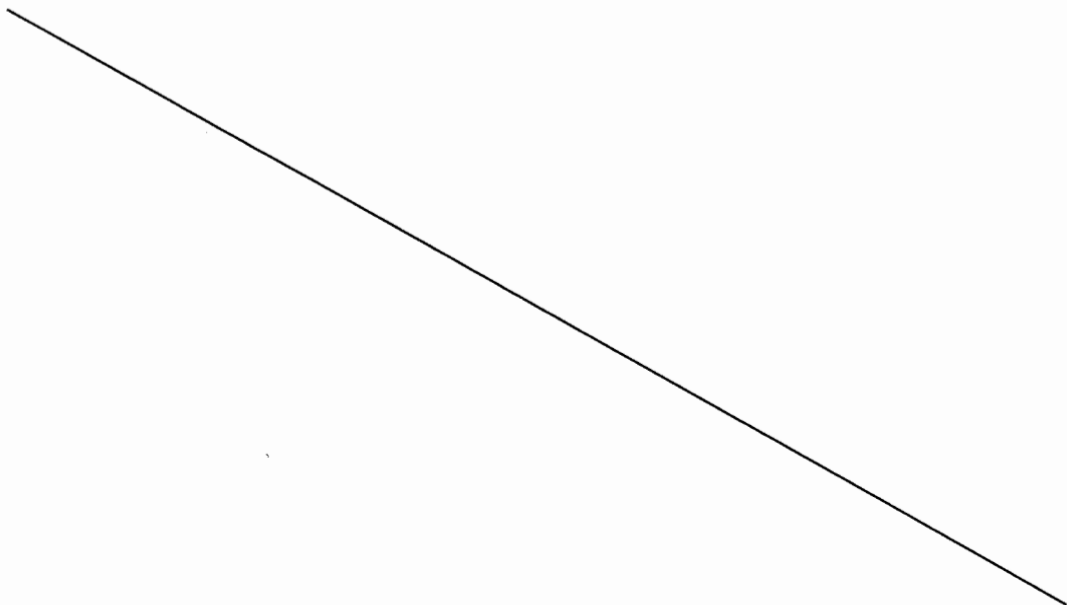
- 17.1 This Agreement shall be construed under the laws of the Province of Ontario.

18. **SUCCESSORS AND ASSIGNS**

- 18.1. This Agreement shall bind and benefit the Parties hereto and their respective successors and assigns.

19. **CAPTIONS**

- 19.1. The captions and headings of this Agreement are for convenience and reference only and shall not affect the interpretation of this Agreement.



INTERPRETATION

19.2. In this Agreement, unless the context requires otherwise, words imputing the singular include the plural, any reference to the Municipality includes the servants, employees, agents and invitees of the Municipality and all others over whom the Municipality might reasonably be expected to exercise control; any reference to the Association includes the servants, employees, agents, officers and invitees of the Association and all others over whom the Association might reasonably be expected to exercise control; person includes any individual, firm or corporation; hereof, herein, hereunder and similar expressions used in any Clause relate to the whole of this Agreement and not that clause only.

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement.

Dated at Almonte, Ontario this 15th November 88 ~~August~~, 2017.

THE CORPORATION OF THE MUNICIPALITY OF
MISSISSIPPI MILLS

Per: [Signature]
Name: Shaun McLaughlin
Title: Mayor

Per: [Signature]
Name: Shawna Stone
Title: Clerk

We have authority to bind the Municipality

Dated at Almonte, Ontario, this _____ day of August, 2017.

Witness

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]
Michael Patrick Gallagher

[Signature]
Barbara Olive Button

[Signature]
Nicole Lee Visser

[Signature]
Christopher Visser

[Signature]
Catherine Lee Gallagher

[Signature]
Marilyn Jean Crabbe

[Signature]
Krista Lynn Burgess

[Signature]
Monica Michelle Burgess

CZ Gallagher

MM

MM

CZ Gallagher

MP Gallagher

CZ Gallagher

MM

McCrack

McCrack

MM

MM

McCrack

Star

McCrack

McCrack

Gordon Robert Burgess
Gordon Robert Burgess

Carol Jean Farmer
Carol Jean Farmer

Gregory Jon Galoska
Gregory Jon Galoska

Sean Murphy
Sean Murphy

Carol Maida Bode
Carol Maida Bode

Victor Rodney George Bode
Victor Rodney George Bode

Amanda Divet
Amanda Divet

Max Divet
Max Divet

Brian Matthew Kerr
Brian Matthew Kerr

Paul Rask
Paul Rask

Craig Begbie
Craig Begbie

Julie Begbie
Julie Begbie

Kelly Anne Cullen
Kelly Anne Cullen

Thomas Cavanagh Construction Ltd.
Thomas Cavanagh Construction Ltd.

Per: Jeff Cavanagh

Name: President

Title: President

I have authority to bind the Corporation

Diane Elizabeth Murray
Diane Elizabeth Murray

Robert John Flegg
Robert John Flegg

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Joanne Clifford

Beverley Ann Smith

David Hunter Smith

Susan Elizabeth McKay-Caillier

Kevin Eldridge Caillier

Melisa Joyce Boyce

Gerald Hamilton Boyce

Penelope Ann King

James Robert King

SCHEDULE "A"
LEGAL DESCRIPTION OF THE PRIVATE ROAD

Pt Lt 13 and 14, Con 9 Pakenham Pt 44
26RD6; S/T RN27563 save and except Parts 1 and 2 Plan
27R-9016, Town of Mississippi Mills

Being Part of PIN 05076-0161 (LT)

SCHEDULE "B"
DESCRIPTION OF THE WORKS

- B.1. Grading of the Private Road as required up to three (3) times per year (excluding materials); and
- B.2. Snow plowing, ice removal with grader and salting and sanding during the winter months in accordance with the schedule of said services for Municipally owned roads.