

SITE ACCESS AND CONSTRUCTION AGREEMENT

This **AGREEMENT** made in triplicate this ___ day of _____, 2019,

BETWEEN

The Corporation of Loyalist Township
(hereinafter referred to as the Township)

of the first part

AND

(herein referred to as the “Owner”)

of the second part

WHEREAS Loyalist Township owns and maintains roads on Amherst Island, including the South Shore Road;

AND WHEREAS the South Shore Road suffered damage in 2018, resulting in the loss of portions of the shore of Lake Ontario adjacent to the travelled portion of the South Shore Road;

AND WHEREAS the Township has a legal obligation under the *Municipal Act* to maintain its roads in a condition that is reasonable in the circumstances to allow the public to safely use its roads;

AND WHEREAS the Township and the Owner agree that the work proposed in this Agreement is necessary to ensure the safety of the South Shore Road;

AND WHEREAS it is necessary for the Township to enter onto the lands adjacent to the South Shore Road, particularly along the shore of Lake Ontario, to undertake the necessary remedial work on the South Shore Road;

AND WHEREAS the Township and the Owner agree that it is not necessary to resolve any disagreement, if any, as to the ownership of the lands adjacent to the South Shore Road along the shore of Lake Ontario at present and agree to enter into this Agreement without prejudice to the right of either party to dispute the ownership of any portion of the shore of Lake Ontario in the future, both parties agreeing that this Agreement shall not be argued by either party as a bar to any such claim in the future;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein contained, the parties hereto agree one with the other as follows:

1. This Agreement sets forth the terms and conditions to allow the Township full and unfettered access to the South Shore Road, the lands along the shore of Lake Ontario adjacent to the South Shore Road and any lands of the Owner necessary to undertake the work contemplated by this Agreement. The lands subject to this Access and Construction Agreement are more particularly described in Schedule “A” attached to and forming part of this agreement (the “Lands”).
2. This agreement shall be effective as of the date it is executed by all parties and shall terminate upon the completion of the Work to the satisfaction of the Township.
3. To the extent that the Owner has any legal title, right or interest in the Lands, the Owner

hereby grants to the Township access to the Lands for the sole purpose of performing the Work as described in Schedule “B” of this Agreement (the “Work”). Access is granted to the Township on the following conditions, which are hereby accepted by the Township:

- a) The Township shall comply with all applicable provisions of law, including, without limitation, federal and provincial laws and any municipal by-laws relating to the Lands;
 - b) The Township shall repair all damage caused by the Township and its agents to any lands owned by the Owner;
 - c) The Lands shall be returned to a condition that is safe and in accordance with any approvals obtained for the Work, to the satisfaction of the Township; and
 - d) The Township shall preserve and maintain any shore well used by the Owner which is located on the Lands, and shall ensure that the shore well is in the same condition upon completion of the Work as the shore well was in prior to commencing the Work. For this purpose, the Owner hereby authorizes the Township to undertake such tests on the shore well as are necessary to establish the condition and functioning of the shore well prior to commencing any of the work, the results of which tests, if performed, will be provided to the Owner.
4. The Owner hereby agrees that the Township shall not be liable for the condition of the Lands upon completion of the Works, nor for any future condition of the Lands and any use made of the Lands by the Owner or its guests or invitees in the future shall be at the Owner’s sole risk and responsibility.
 5. The Owner further acknowledges and agrees that it has no right, title or interest in the South Shore Road and therefore has no entitlement to have the Road restored to a specific standard. The Township shall remain solely responsible for the condition of the South Shore Road.
 6. No amendment of this Agreement shall be effective, unless in writing and signed by both parties.
 7. No implied terms or obligations of any kind, by, or on behalf of, the Township shall arise from anything in this Agreement and the express covenants and agreements herein contained and made by the parties are the only covenants and agreements upon which any rights against the Township are to be founded.
 8. The Township shall indemnify the Owner from and against all claims, losses, damages, costs, expenses, actions and other proceedings, made, sustained, brought, prosecuted, threatened to be brought or prosecuted, in any manner based upon, occasioned by or attributable to any injury to or death of a person or damage to or loss of property arising from any act or omission on the part of the Township or its agents related to the Work undertaken on the Lands pursuant to this Agreement.
 9. In the event that either party of this Agreement desires to change or modify any of the terms and/or conditions of this Agreement, then the party so desiring shall serve notice in writing to this effect upon the other party, either personally or by registered mail, and obtain certification of receipt of said notice.
 10. This Agreement enures to the benefit of and binds the parties and their respective heirs, successors and assigns.
 11. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had all signed the same document. All counterparts shall be construed together and shall constitute one and the same original agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as attested by the signatures of their officers duly authorized for such purposes.

Owner

per _____ DATE

per _____ DATE

The Corporation of Loyalist Township

per _____ DATE
Richard Breese, Mayor

per _____ DATE
Steven Silver, Acting Chief Administrative Officer

SCHEDULE "A"
THE LANDS

SCHEDULE "B"
THE WORK