

# The Corporation of the Township of Huron-Kinloss



## BY-LAW

**2022-150**

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### Being a By-Law to Authorize the Signing of an Easement Agreement with Zachary Robert Hoare and Katelyn Ann Duffy

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**WHEREAS** the *Municipal Act S.O. 2001, c 25, Section 5(1)*, as amended, provides that the powers of a municipal corporation are to be exercised by its Council;

**AND WHEREAS** the *Municipal Act S.O. 2001, c 25, Section 5(3)*, as amended, provides that a municipal power, including a municipality's capacity rights, powers and privileges under Section 9; shall be exercised by By-Law;

**AND WHEREAS** the Council for the Corporation of the Township of Huron-Kinloss deems it expedient to enter into an Easement Agreement with Zachary Robert Hoare and Katelyn Ann Duffy under, over and through Parts 1 and 2 on Reference Plan of Survey 3R5769 for the purpose of for the purpose of constructing, installing and maintaining municipal services, including a gas main and related appurtenances;

**NOW THEREFORE** the Council of the Corporation of the Township of Huron-Kinloss enacts as follows:

- 1.0 That the Corporation of the Township of Huron-Kinloss enter into an Easement Agreement with Zachary Robert Hoare and Katelyn Ann Duffy attached as Schedule "A" and forming part of this By-Law.
- 2.0 That the Mayor and Clerk are hereby authorized to sign on behalf of the Council for The Corporation of the Township of Huron-Kinloss, any documents required to authorize the agreement, and to affix the corporate seal of the Township of Huron-Kinloss.
- 3.0 This By-law shall come into full force and effect upon passing.
- 4.0 This By-law may be cited as the "Easement Agreement (Hoare/Duffy) By-Law".

**READ a FIRST and SECOND TIME this 19<sup>th</sup> day of September, 2022**

**READ a THIRD TIME and FINALLY PASSED this 19<sup>th</sup> day of September, 2022**

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Mitch Twolan, Mayor

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Emily Dance, Clerk

**EASEMENT AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2022 (the “**Agreement**”).

**B E T W E E N:**

**ZACHARY ROBERT HOARE** and **KATELYN ANN DUFFY**  
Hereinafter called the "**Grantor**", of the FIRST PART,

-and-

**THE CORPORATION OF THE TOWNSHIP OF HURON-KINLOSS**  
Hereinafter called the "**Grantee**", of the SECOND PART.

**WHEREAS** the Grantor is the owner of the lands described as PT LT 16 CON 8 HURON AS IN R248932; S/T R126968, R290562; HURON-KINLOSS; being PIN 33322-0149 (LT); LRO #3 (the “**Property**”);

**AND WHEREAS** the Grantee desires to secure rights to enter and pass upon, over and through, as well as, occupy a section of the Property for the purpose of constructing, installing, and maintaining municipal services, including a gas main and related appurtenances.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the sum of One (\$1.00 CAD) Canadian Dollar paid by the Grantee to the Grantor and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged together with the premises, covenants and agreements hereinafter contained, the parties hereto agree as follows:

1. The Grantor hereby agrees to convey to the Grantee an exclusive permanent easement under, over and through Parts 1 and 2 on Reference Plan of Survey 3R5769 (“**Easement Lands**”), attached hereto as Schedule “A”, for the purpose of constructing, installing and maintaining municipal services, including a gas main and related appurtenances (“**Easement**”).
2. Without limiting the generality of the foregoing, the Grantor hereby gives the Grantee and its agents permission to enter on the Easement Lands to construct, install, operate, maintain, repair and replace the Grantee’s municipal services within the Easement Lands.
3. The Grantor agrees that the Grantee will register the Easement on title to the Property, and attach as a schedule thereto the terms and condition of the Easement contained in Schedule “B” to this Agreement.
4. Before registration of the Easement on title to the Property, the Grantor agrees to obtain from each chargee of the Property with priority over this Agreement a registered postponement of such chargee's rights to the Grantee's rights under this Agreement.
5. The Easement Lands shall at all times during the term of this Agreement be maintained, repaired and managed by the Grantee at its sole effort and expense in accordance with the standard of care and norms applicable to an operator of municipal services.
6. The Grantee covenants and agrees that, upon completion of any work undertaken in connection with the Easement granted hereunder, the Grantee shall restore the area of lands upon which it has performed work to substantially the same condition as that in which the lands were found prior to the commencement of the work.
7. The Grantee shall at all times during the term of this Agreement occupy and use the Easement Lands in a legal and law abiding manner and shall comply with all applicable laws, by-laws, and regulations.
8. The Grantee shall at all times ensure that it has in effect sufficient insurance coverage, including third party liability coverage, for any of the uses which the Grantee shall make of the Easement Lands in accordance with this Agreement.
9. The Grantee agrees to indemnify and save the Grantor harmless from and against all demands, costs, claims, actions, suits, damages and/or losses suffered or incurred by the Grantor which arise from the Grantee’s negligence or willful misconduct in the Grantee’s use or occupancy of the Easement Lands. The foregoing indemnity shall not extend to circumstances caused by the negligence or willful misconduct of the Grantor or those for whom the Grantor is responsible at law.
10. The Grantor for itself and its successors and assigns, covenants with the Grantee, its successors and assigns, to keep the lands described herein free for itself and clear of any trees, buildings, structures or obstructions, unless specifically agreed to by the Grantee, and to use the lands described herein only in a manner and for purposes not inconsistent with the exercise of the rights created by this indenture. The Grantor shall not deposit on or

remove any fill from the lands described herein and not to do or suffer to be done anything which might injure any of the works of the Grantee thereon or thereunder and, if any works and appurtenances thereon or thereunder sustain damage, loss or injury as a result of the Grantor, its employees, agents or invitees, then the Grantor shall be liable therefor and shall pay to the Grantee all reasonable costs required to repair, and, if repairs are not practical, all costs required to replace any works and appurtenances thereto.

11. Any notice or other communication with respect to this Agreement shall be effectively given if delivered to:

Email for delivery of notices to Grantor: \_\_\_\_\_

Email for delivery of notices to Grantee: mrwalden@huronkinloss.com

All with a concurrent copy to: somelia@millerthomson.com

12. Any amendments to this Agreement shall only be made in writing with the consent of the parties hereto. No waiver of any breach under this Agreement or of any available remedy shall be effective unless stated in writing and signed by the party granting such waiver.
13. The parties hereto confirm and acknowledge that they:
- (a) have been advised that Miller Thomson LLP ("**MT**") is acting on behalf of all parties hereto in connection with this Easement and have consented to MT acting in this capacity;
  - (b) have been advised that in the event of a conflict between the parties hereto which cannot be resolved ("**Material Conflict**"), MT will advise the Grantor thereof, and that it may be necessary for MT to discontinue acting for the Grantor in connection with the Easement; and
  - (c) have been advised and agree that in the event that MT discontinues to act for the Grantor in connection with this transaction due to a Material Conflict, MT shall be permitted to continue to act for the Grantee in connection with the Easement.
14. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and both parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario.
15. This Agreement and Schedule "A" and "B" attached hereto constitute the entire agreement between the parties hereto and supersedes all prior or contemporaneous oral negotiations and discussions of the parties and there are no warranties, representations, or other agreements between the parties except as may be provided and executed in writing.
16. If any provision of this Agreement is held to be invalid, illegal or unenforceable under present or future laws, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon the determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.
17. This Agreement shall enure to the benefit of and be binding upon the parties hereto together with each of their respective successors and permitted assigns.
18. This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall be one and the same instrument. The parties hereto agree that this Agreement may be transmitted by fax or such similar device and that the reproduction of signatures by fax or such similar device will be treated as binding as if original and each party undertakes to provide to the other party hereto a copy of the Agreement bearing original signatures forthwith upon demand.

*[Remainder of page intentionally left blank.]*

DATED at\_\_\_\_\_this\_\_day of\_\_\_\_\_, 2022.

\_\_\_\_\_  
ZACHARY ROBERT HOARE

\_\_\_\_\_  
KATELYN ANN DUFFY

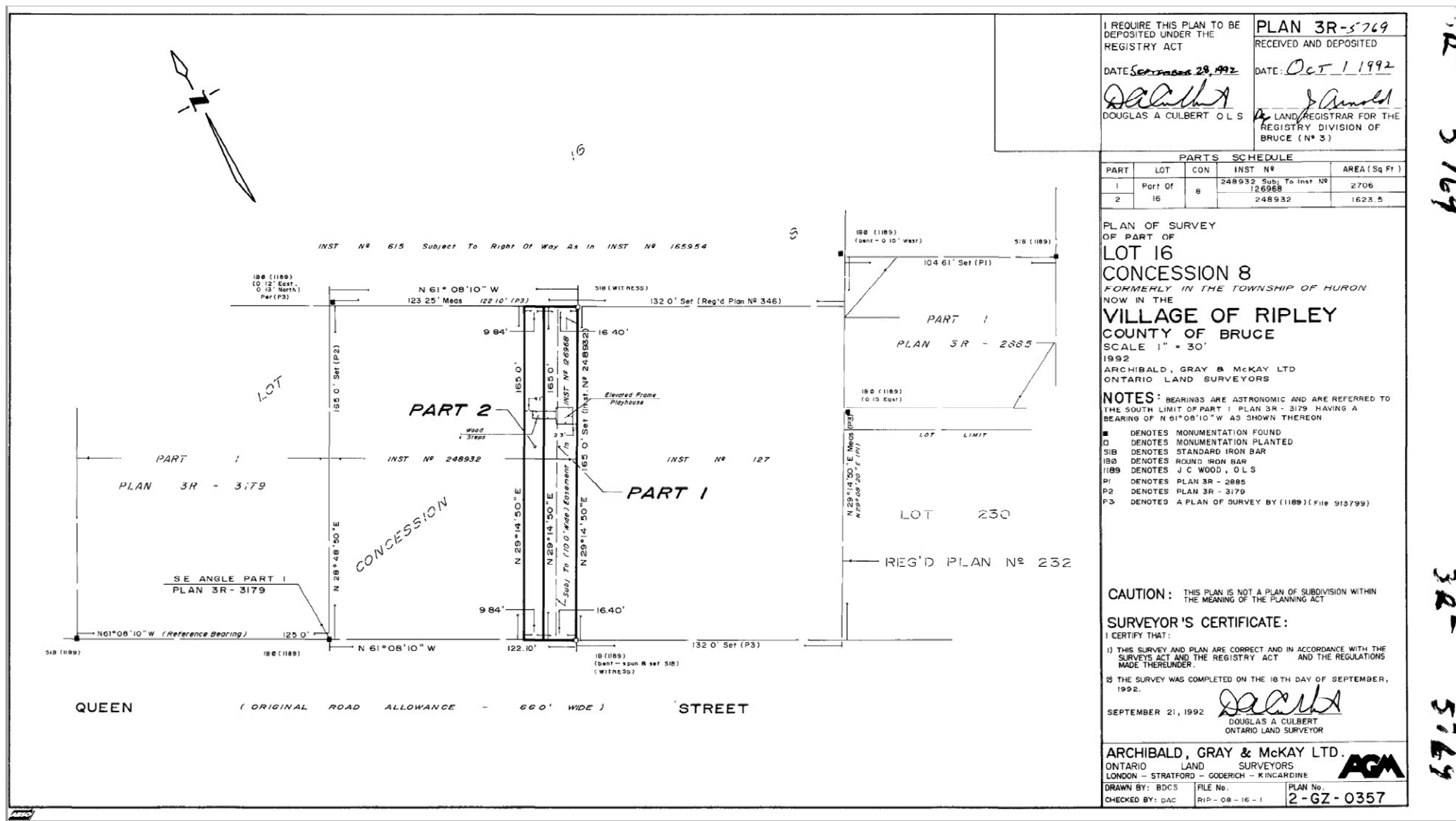
DATED at\_\_\_\_\_this\_\_day of\_\_\_\_\_, 2022.

THE CORPORATION OF THE TOWNSHIP  
OF HURON-KINLOSS

\_\_\_\_\_  
Don Murray  
Deputy Mayor

\_\_\_\_\_  
Emily Dance  
Clerk  
*“We have authority to bind the Corporation”*

## SCHEDULE "A"



## **SCHEDULE "B"**

### **TERMS AND PROVISIONS OF THE EASEMENT**

1. The Grantor grants, conveys and confirms unto the Grantee, its successors and assigns, in perpetuity, the free, uninterrupted and undisturbed right and easement to enter upon the lands herein described at any time for the purposes of constructing, installing and maintaining municipal services, including a gas main and related appurtenances, in, under, over and upon the said lands, and with the further and continuing right to the said Grantee, its successors and assigns, and its servants, agents, and workers to enter upon the said lands at any time to construct, repair, correct, operate, replace and maintain at all time in good condition and repair the said services and for every such purpose the Grantee shall have access to the said lands at all times by its agents, servants, employees and workmen.
2. The Grantee covenants and agrees that, upon completion of any work undertaken hereunder, the Grantee shall restore the area of lands upon which it has performed work to substantially the same condition as that in which the lands were found prior to the commencement of the work.
3. The Grantor covenants with the Grantee to keep the lands herein described free and clear of any trees, buildings (including building projections such as window sills, chimney breasts, cornices, eaves and other architectural features), swimming pools, structures or obstructions as may be necessary for the use, operation, repair, replacement or maintenance of the easement and to use the lands herein described only in a manner and for purposes not inconsistent with the exercise of the rights created by this indenture and, without limiting the generality of the foregoing, only as a field, yard, lawn, garden, flowerbed, roadway, driveway or parking area and the Grantor agrees to not do or suffer to be done anything which might injure any of the works of the Grantee thereon or thereunder. Notwithstanding the foregoing, the Grantee agrees that existing trees, if any, on the easement lands may remain, and a tree shall only be removed by the Grantee in the event it interferes with the Grantee's rights pursuant to this easement. In the event the Grantee is required to remove a tree from the easement lands, it shall replace the tree with one of similar species. Any such replacement tree shall be planted approximately in the same location as the tree that was removed unless this would interfere with the municipal services, in which case the tree shall be planted at another location within the easement lands as mutually agreed upon by the Grantor and Grantee.
4. The Grantee, by the acceptance and registration of the within Easement, agrees to be bound by the terms and provisions contained herein.
5. The burden and benefit of this Agreement shall run with the lands herein described and shall extend to and be binding upon and ensure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**THIS IS AN EASEMENT IN GROSS.**