

ENCROACHMENT AGREEMENT

THIS AGREEMENT made the 24th day of March, 2025.

Between:

THE CORPOPRATION OF THE TOWN OF SAUGEEN SHORES

(the "Town")

-and-

HI-BERRY FARMS INC.

(the "Licensee")

WHEREAS the Licensee is the owner of the lands, described as Pt Lt 58-60 Con Lake Range or Con A Saugeen As in R389745; Saugeen Shores; hereinafter referred to as the "Parcel A" and described in Schedule "A";

WHEREAS the Licensee is the owner of lands, described as Pt Lt 57-59 Con Lake Range or Con A Saugeen as in R105795; Except Parts 1, 2 & 3, 3R388; Saugeen Shores; hereafter referred to as the "Parcel B" and described in Schedule "A". Parcel A and Parcel B are hereinafter referred to as the "Licensee's Lands".

AND WHEREAS the Town owns the former CN Rail lands that is now known as the Saugeen Rail Trail hereafter referred to as the "Rail Trail";

AND WHEREAS a section of the Rail Trail is located between Parcel A and Parcel B;

AND WHEREAS the Licensee is desirous of installing and maintaining an underground conduit across the Rail Trail for the purpose of extending an irrigation water line through the conduit to irrigate Parcel A and Parcel B; the location of which is more particularly described in Schedule 'A';

NOW THEREFORE IN CONSIDERATION of the mutual covenants contained in this Agreement and other good and valuable consideration, the parties agree as follows:

1. DEFINITIONS

- (1) "Encroachment" means underground conduit and irrigation water line that extends through the conduit.

2. AGREEMENT

- (1) The description of the Licensee's Lands to which the Encroachment Agreement applies is set out in Schedule A attached hereto.

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- (2) The Town hereby grants to the Licensee permission (the "Agreement") to place the Encroachment on the Rail Trail adjacent to Parcel A and Parcel B and more particularly described in Schedule A attached hereto.
- (3) The Licensee and the Town hereby agree that this Agreement shall cover the Encroachment described herein and this Agreement shall not provide any implied right on the part of the Licensee to alter, reconstruct or otherwise change the conduit approved and installed by the Town.
- (4) The Town and Licensee hereby agree to the following conditions for the installation of the Encroachment:
- (i) The Licensee shall be responsible for all costs and liability associated with the installation of the Encroachment, including but not limited to the following:
 - a) Retain a contractor, approved by the Town, to install the conduit and remediate the site to a condition satisfactory to the Town.
 - b) Provide adequate notice to the Town and the Saugeen Rail Trail Association prior to undertaking any work on the Rail Trail.
 - c) Provide adequate warning and notice to the users of the Rail Trail advising of the construction and potential dangers during the installation of the conduit.
 - d) If a permanent easement agreement is required for registration on title, the Licensee shall be responsible for all costs associated with the preparation and registration of the permanent easement.
 - (ii) The Licensee agrees to place and maintain the underground irrigation line through the conduit without disrupting or damaging the Rail Trail or Town owned property.

(5) In the event the Encroachment represents a danger or detrimentally impacts:

(i) The safety of persons using the Rail Trail;

(ii) Safety of the public;

(iii) The environment;

The Licensee and the Town acknowledge that the Town shall immediately be notified and the Encroachment shall be repaired or removed at the Licensee's expense. If a mutually agreed upon cure cannot be reached by the Town and the Licensee the Town shall have the right to terminate this Agreement.

(6) Nothing in this Agreement shall be construed as giving to the Licensee anything more than a license on the terms and conditions set out in this Agreement. The Licensee agrees that, in the event that the Encroachment is used by any person other than the Licensee or its affiliates (as defined in the *Business Corporations Act*, R.S.O. 1990, c.B.16, as amended) for any purpose other than directly between the Encroachment and the land, for the sole internal use of the present occupant of the Licensee's Lands, being the Licensee or its affiliates, this Licensee may be terminated immediately by the Town, without compensation to the Licensee, and the Licensee shall, at its sole cost and expense and to the satisfaction of the Town, remove the Encroachment and complete all required remedial work.

3. License Fee

(1) The Licensee agrees to pay the annual License Fee of \$ 303.13 in advance upon execution and on each anniversary of the date of this Agreement and any extensions thereof, which will be calculated and increased annually by the percentage increase of the tax levy established by the Town's tax levy By-Law. In the event this Agreement expires or is terminated during a year for which the Licensee has prepaid, the Town shall prorate the fee, and refund the balance owing to the Licensee.

(2) If, due to the presence of the Encroachment, the Town or any public utility company or system incurs any additional costs in the repair, maintenance or construction of its facilities or services, the Licensee agrees to pay all

such additional costs to the appropriate party, upon fifteen (15) days written notice. The decision of the Town as to the amount of such additional costs, if any, shall be final and binding.

4. Term

- (1) The term of this Agreement shall be a ten (15) year period commencing on April 1st, 2025 and ending on April 1st, 2040.

5. Covenants

The Licensee agrees to comply with the following covenants:

- (1) To maintain the Encroachment, at its sole cost and expense, in a state of good order, condition and repair, to the satisfaction of the Town, acting reasonably. In maintaining, relocating and removing the Encroachment, the Licensee will comply with all of the requirements of the Town.
- (2) To repair, to the satisfactory of the Town and as its sole cost and expense, any damage caused to the Town's land by the construction or maintenance of the Encroachment, and indemnify and save harmless the Town from any and all losses, costs, charges and expenses which may be paid, incurred or sustained by the Town as a result of any such damage.
- (3) Prior to performing any maintenance on the Rail Trail, provide adequate Notice of such work to the Town and representatives of the Saugeen Rail Trail Association.

6. Indemnification

- (1) The Licensee will always indemnify and keep indemnified the Town from and against all actions, suits, claims and demands which may be brought against or made upon the Town and from all losses, costs, charges and expenses which may be incurred, sustained or paid by the Town as a result of the Encroachment or the exercise by the Licensee of the Licence granted by the Town. The Licensee grants to the Town full power and authority to settle any such actions, suits, claims or demands on such terms as the Town may deem advisable. The Licensee covenants and agrees to pay to the Town, on demand, all moneys expended by the Town in pursuance of such settlement, including legal fees and disbursements, provided that the Licensee has given its prior approval in writing (such approval not to be unreasonably withheld) to (a) counsel retained by the Town to defend such claim and (b) any settlement of such claim.

- (2) In the alternative, the Licensee shall, at the request of the Town, defend in the name of and on behalf of the Town, any civil action that may at any time be brought for any claim for which the Licensee may be responsible under this Agreement. The Licensee covenants and agrees not to allege this Agreement as a defence by the Licensee in any action by any person or entity for actual damage suffered by reason of the Licence.
- (3) The Licensee shall release and indemnify the Town with respect to all actions, suits, claims and demands which the Licensee, its agents, employees or officers may have against the Town with respect to any damage or injury caused or allegedly caused to the Encroachment or the Licensee, its agents, employees or officers by any act or omission of the Town, its agents, employees or officers.

7. Insurance

- (1) The Licensee agrees that it shall, at its own expense, at all times, cause to be maintained a policy of comprehensive general liability insurance in all respects, including deductible levels, satisfactory to the Town, with each policy containing \$5,000,000.00 in respect of each occurrence limit of coverage.
- (2) Such comprehensive general liability coverage shall include:
 - (i) The Town as an additional named insured; and
 - (ii) A cross liability/severability of interest clause.
- (3) If the Town, acting reasonably, requires the amount of insurance coverage increased; if it requires the Licensee to obtain other special insurance or if it requires any policy to be extended in respect of this Agreement, then the Licensee shall obtain such extended, increased or special insurance.
- (4) The Licensee further agrees that the coverage provided by the policy or policies specified in this Agreement will not be changed, amended or cancelled by the Licensee until SIXTY (60) days after written notice of such intended change, amendment or cancellation has been personally delivered to the Town and such change or amendment has been approved.

8. Removal or Relocation

- (1) In the event the Town requires that the Encroachment be relocated or removed for any reason, it may give the Licensee notice requesting

removal or relocation of any or all of the Encroachment within a reasonable time frame, as more particularly specified in the notice. The Town covenants and agrees that so long as the Licensee is not in default under this Agreement, it will not give notice to the Licensee to remove the Encroachment during the Notice Period.

- (2) Upon receipt of a notice, the Town may relocate or remove the Encroachment. The Licensee agrees not to make any claim against the Town on account of the relocation or removal, including with respect to any disruption of telecommunication services, and will complete the remedial work to the satisfaction of the Town. If the Licensee neglects, refuses or fails to relocate or remove the Encroachment and complete the remedial work within the time specified in the notice, then the Town may relocate or remove the Encroachment, complete the remedial Work and charge the costs to the Licensee. With respect to any such costs incurred by the Town, the certificate of the Town shall be final and the Town may recover such costs from the Licensee in any court of competent jurisdiction as a debt owing by the Licensee to the Town

9. Lien

All costs, charges and expenses paid or incurred by the Town as set out in this Agreement shall form and constitute a charge or lien on the Licensee's Lands until fully discharged by payment. The Town shall, upon the receipt of a request from a lender of the Licensee, provide confirmation as to the amount of any moneys owed under the lien created pursuant to this Agreement. In addition to any other remedy available to the Town, the Town may recover such costs in a like manner as taxes assessed on the land.

10. Assumption of Obligations

- (1) The Licensee shall not transfer or convey or enter into an agreement of purchase and sale for the Licensee's Lands, or any part of the Licensee's Lands, or enter into any other agreement or lease, which has or could have the effect of granting the use of or right in the Licensee's Lands, or any portion of the Licensee's Lands, directly or by entitlement to renewal for a period of 21 years or more, without first ensuring that any such proposed transferee, grantee, lessee or such other person who would be entitled to the benefits of such agreements or transactions referred to previously, as the case may be, has first entered into an agreement with the Town, in a form satisfactory to the Town Solicitor, containing the same or similar terms and conditions as contained in this agreement.
- (2) In the event that the Licensee transfers or conveys all of its interest in the Licensee's Lands to a new transferee, then upon execution of such an

agreement between the Town and the new transferee, the Licensee shall be released from the terms of this Agreement and shall have no further obligations or liabilities under this Agreement. The Town shall, upon the receipt of a written request from the Licensee, confirm that the Licensee has been released from its obligations under this Agreement.

- (3) Notwithstanding the foregoing paragraph, the Licensee shall continue to be responsible for all of its obligations under this Agreement that may have arisen prior to the date of such release or that may later arise in respect of the period prior to such date.

11. Registration

This Agreement will be registered on title to the Licensee's Lands and the cost of preparation and registration of same shall be paid by the Licensee.

12. Notice

- (1) Any notice required or permitted to be given under this Agreement shall be in writing and shall be served personally, or sent by prepaid registered mail addressed as follows: In the case of the Town: 600 Tomlinson Drive, Box 820, Port Elgin, Ontario N0H 2C0 Attention: Clerk. In the case of the Licensee: Hi-Berry Farm Inc. 5639 Highway 21, RR 2, Port Elgin, Ontario N0H 2C6.
- (2) Any party may from time to time change its address and recipient for service by notice to the other party in the manner previously set out.
- (3) Notices which are served in the manner set out in clause 12(1) shall be deemed sufficiently given for all purposes of this Agreement, in the case of those personally served, on the date of such service, and in the case of registered mail, on the third postal delivery day following the mailing of the notice. Should normal mail service be interrupted by strikes, slowdown or other cause, then the party sending the notice shall use any similar service which has not been so interrupted in order to secure prompt receipt of the notice, request or demand and for the purposes of this Agreement such service shall be deemed to be personal service.

13. General

- (1) All obligations of the Licensee and its affiliates under this Agreement shall be joint and several.
- (2) Subject to clause 10(2) of this Agreement, this Agreement and everything contained in this Agreement shall respectively enure to the benefit of and be binding upon the parties and their respective heirs, executors,

administrators, successors and assigns.

IN WITNESS WHEREOF the parties have set their hands and corporate seals attested by the hands of their respective officers duly authorized in that behalf.

**THE CORPORATION OF THE TOWN OF
SAUGEEN SHORES**

Deputy Mayor- Diane Huber

Clerk- Dawn Mittelholz

We have authority to bind the Corporation

HI-BERRY FARM INC.

Luke Charbonneau, President

I have authority to bind the Corporation

SCHEDULE A

Draft March 14, 2025

Description of the Licensee's Lands to which the Encroachment Agreement applies:

Pt Lt 58-60 Con Lake Range or Con A Saugeen As in R389745; Saugeen Shores; hereinafter referred to as the "Parcel A";

Pt Lt 57-59 Con Lake Range or Con A Saugeen as in R105795; Except Parts 1, 2 & 3, 3R388; Saugeen Shores; hereafter referred to as the "Parcel B".

Parcel A and Parcel B are hereinafter referred to as the "Licensee's Lands"

Description of the Encroachment

The Encroachment shall be located on Part 1, Plan 33R_____