

SCHEDULE "B"

Encroachment Agreement for a Liquid Manure Pipeline

THIS ENCROACHMENT AGREEMENT is made this ____ day of _____, 2023.

Between: County of Oxford
(Hereinafter referred to as the "County")

– and –

Compass Dairy Farms Limited
(Hereinafter referred to as the "Owner")

WHEREAS:

- (a) The Owner represents that they are the registered owner of Part Lot 22-23, Concession 5 (the "Owner's Property") in the Township of South-West Oxford (Former Township of Dereham), in the County of Oxford, known municipally as 183465 Daniel Road, which abuts the Culloden Line road allowance (the "County Lands").
- (b) A liquid manure pipeline has been constructed or is located on the Owner's Property which encroaches 30 metres onto the County Lands as shown on the attached sketch (the "Encroachment").
- (c) The Owner has applied to the County that they be allowed to maintain and use the Encroachment for an indefinite period.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the terms and conditions herein and the sum of One (\$1.00) Dollar now paid by the Owner to the County, the receipt and sufficiency of which is hereby acknowledged, the Owner/Owners and the County covenant and agree as follows:

1. The County and the Owner acknowledge and agree that the Encroachment shall be permitted on the County Lands subject to the terms and conditions herein.
2. The Owner acknowledges that no representation has been made by the County of any authority to grant the privilege to use and maintain the Encroachment and such use and maintenance by the Owner shall at all times be at the Owner's risk.
3. The Owner and the County covenant and agree as follows:
 - (a) The Owner shall apply to the County and obtain an approved "Road Occupancy & Excavation Permit" prior to commencing any work on the County Lands, shall install the manure pipe crossing and appurtenances at the location and elevations specified as per the engineered design drawings and specifications and shall comply with all conditions in the approved permit.
 - (b) The Owner shall make no alteration to the County Lands, including without limitation the removal of trees or grade changes, and shall not install any facilities, equipment or other infrastructure, not specifically included in the approved permit, on the County Lands without the County's written permission;
 - (c) The Owner shall be responsible for obtaining permits and/or approvals, required by any other government authority of competent jurisdiction, all as amended from time to time, including but not limited to Environmental Compliance Approval issued by the Ministry of Environment, Conservation, and Parks
 - (d) The Owner shall extend the crossing pipe to 15 metres beyond the County road allowance property lines or such greater distance as may reasonably be required by the County Public Works Director or any other governmental authority.
 - (e) The Owner is to provide satisfactory evidence to the County that the pipeline has been designed by a Professional Engineer licensed to practice in Ontario and that

the said pipeline has sufficient capacity to accommodate 1.5 times the peak operating pressure and to confirm all requirements of government authorities of competent jurisdiction all as amended from time to time.

- (f) The Owner agrees to construct a 400 millimetre high berm along the County road allowance property lines for 50 metres each side of the road crossing. The County may waive this condition where the County is of the opinion, in its sole and absolute discretion that the slope of the land beyond the property line is sufficient to prevent manure from flowing onto any portion of the County Lands.
- (g) The Owner shall obtain and maintain insurance in accordance with the following:
 - (i) Comprehensive general liability insurance, in a form satisfactory to the County of Oxford, in an amount not less than Five Million Dollars(\$5,000,000.00) inclusive per occurrence for bodily injury, death and damage to property, including loss of use thereof, in the joint names of the Owner or Owners and the County of Oxford;
 - (ii) Environmental Liability Policy in an amount of not less than Five Million Dollars (\$5,000,000.00) per occurrence, against claims for bodily injury, including sickness, disease, shock, mental anguish, mental injury as well as injury to or physical damage to tangible property including loss of use of tangible property, or the prevention, control, repair, cleanup or restoration of environmental impairment of lands, the atmosphere or any water course or body of water on a sudden and accidental basis and gradual release.
 - (iii) To ensure that the above mentioned insurance is not cancelled, amended or permitted to lapse, the policy shall contain an endorsement to provide all named insured's with thirty (30) days prior notice of changes or the cancellation of the policy; and
 - (iv) A Certificate of Insurance evidencing the above insurance coverage shall be provided to the County prior to the County signing the Agreement and thereafter promptly on the insurance annual renewal date;

Subject to Section 3 (j) herein, if the Encroachment of the manure pipeline is rebuilt altered or removed in any way for any reason, the Owner shall remove the Encroachment from the County Lands and restore the County Lands to the requirements of the County.

- (h) If the Encroachment is moved, altered or changed in any manner during the lifetime of this Agreement, the Owner shall apply for a new Encroachment Agreement if the Encroachment will remain on County lands after such movement, alteration or change;
- (i) The Owner of the property to which an Encroachment is appurtenant shall at all times maintain and keep the Encroachment and adjacent surface in proper repair at the Owner's expense, in a proper and safe condition for the traffic thereon, and to County standards. If the Encroachment is not kept in good repair, upon written notice from the County, the Owner of the premises to which the Encroachment is appurtenant shall repair the Encroachment and the adjacent surface at their own expense and to the County's specifications. If the notice is not complied with within ten (10) days from the date that the notice is sent, the County may renew or repair the highway at the expense of the Owner, add the cost to the tax roll and collect same in like manner as municipal taxes;
- (j) If at any time the County decides to renew, repair or maintain the surface of the highway upon which an Encroachment is located, the Owner of the property to which the Encroachment is appurtenant shall, upon written notice from the County, renew, repair or maintain the surface of the highway adjacent to the Encroachment at the Owner's expense and to the County's specifications. If the notice is not complied with within ten (10) days from the date that the notice is sent, the County may renew or repair the County Lands at the expense of the Owner, add the cost to the tax roll and collect same in like manner as municipal taxes;
- (k) Upon removal of the Encroachment from the County Lands, the Owner shall maintain and restore the County Lands to the condition that the County Lands were

in prior to the date of the Encroachment or in compliance with the standards of the County at the Owner's sole expense. In the event such restoration is not made, the County may complete such restoration work at the expense of the Owner and recover the expense by any legal means available including the addition of the cost to the tax roll. The County shall have the rights to collect such expenses in like manner as municipal taxes; and

- (l) The Owner shall comply with all federal, provincial and municipal laws, rules, regulations and by-laws without limitation.
4. The Owner will at all times indemnify and save harmless the County from and against all loss, liability, claims, demands, damages, costs and expenses, including reasonable legal fees and disbursements, which the County may suffer, be put to or incur for or by reason of or on account of the existence of the Encroachment or the entering into of this Agreement or the maintenance of the Encroachment or any other matter or thing relating to the Encroachment.
5. In addition to the Application Fee, the Owner shall remit to the County an annual encroachment fee as determined by County Council from time to time. Failure to remit the Encroachment Fee referred to in this Agreement shall constitute default under this Agreement. Upon termination of this Agreement, no portion of the said Encroachment Fee shall be refunded to the Owner regardless of the date of termination.
6. If the Owner defaults in performing any of their obligations under this Agreement, the County shall give written notice to the Owner of such default giving the Owner ten (10) days to remedy the default, failing which the County may terminate this Agreement. Any waiver by the County of any breach by the Owner or any provisions of this Agreement shall be without prejudice to the exercise by the County of all or any of its rights or remedies in respect of any continuance or repetition of such breach.
7. The County or Owner may terminate this Agreement on sixty (60) days written notice for any reason.
8. The Owner and the County hereby agree that this Encroachment Agreement shall cover the Encroachment described in any Application submitted by the Owner and this Encroachment Agreement shall not grant any permission to erect any new part of any new building and shall not provide any implied right on the part of the Owner to alter, reconstruct or otherwise change the Encroachment approved by the County in the Encroachment Application.
9. This Encroachment Agreement shall not be assigned by the Owner to any third party without the prior written consent of the County, which consent may be unreasonably withheld. For clarity, in the event that the Owner sells their property to which the Encroachment is appurtenant, the Owner shall instruct the purchaser of the said property to submit a new Encroachment Application to the County for the County's review and approval.
10. In the event that the Encroachment represents a danger or detrimentally impacts: (i) the safety of persons using the County Lands; (ii) traffic flow; (iii) safety of the public (iv) encroaches on the rights of others to use the road allowance; (v) the environment or (vi) interferes with future road improvements, the Owner and the County acknowledge that the County shall have a right to terminate this Agreement. Such termination of this Agreement shall be by written notice to the Owner, except in the case of an emergency. In the case of an emergency, the Encroachment Agreement may be terminated forthwith by the County.
11. In the event that this Agreement is terminated, the Owner shall remove the Encroachment on the date of termination. If the Owner fails to remove the Encroachment on the date of termination, the County shall provide the Owner with a notice requiring the Owner to remove the Encroachment within ten (10) days. If the Owner fails to remove the Encroachment within the ten (10) day period, the County shall have the right to remove the Encroachment at the expense of the Owner and add the cost of removal to the tax roll and shall also have the right to collect such costs in like manner as municipal taxes. In the case of an emergency, the County shall have the right to remove the Encroachment forthwith on the date of termination of the Agreement at the expense of the Owner and such costs shall be added to the tax roll and collected in like manner as municipal taxes.
12. Any notice required to be given to the County or the Owner/Owners under this Agreement shall be sufficiently given if delivered or mailed postage prepaid to the addresses below.

Such notice shall be deemed to have been received on the date of its delivery or in the case of mailing, three (3) business days after it was delivered to the post office.

County Address

County of Oxford
21 Reeve Street, PO Box 1614
Woodstock, ON
N4S 7Y3

Owner Address

Compass Dairy Farms Ltd.
183465 Daniel Road
Mount Elgin, ON
N0J 1N0

13. This Agreement shall ensure to the benefit of, and be binding upon the parties and their respective heirs, administrators, estate trustees, successors and (where permitted) assigns.
14. The Owner and the County hereby agree that this Agreement shall be registered on title to the Owner's Property at the Owner's expense. The Owner and the County shall take such further deeds, actions and execute such further documents that may be necessary to affect such registration.

WITNESS my hand and seal at _____, Ontario, this _____ day of _____, 2023.

COMPASS DAIRY FARMS LTD.

_____) _____
Witness Name Bernardus De Beer

IN WITNESS WHEREOF the County of Oxford has hereunto caused to be affixed its Corporate Seal attested by the hands of its proper signing officers pursuant to the authority contained in By-Law # 6513-2023 of the Council of the County of Oxford, passed the 8th of March, 2023.

COUNTY OF OXFORD

Benjamin Addley
Interim Chief Administrative Officer

David Simpson
Director of Public Works