

## JOINT USE AND MAINTENANCE AGREEMENT

THIS AGREEMENT MADE as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

BETWEEN:

### CONSEIL SCOLAIRE DE DISTRICT CATHOLIQUE FRANCO-NORD (“CSCFN”)

as current owner of the lands described in Schedule A

AND:

### THE CORPORATION OF THE MUNICIPALITY OF EAST FERRIS (the “Municipality”)

as current owner of the lands described in Schedule B

### WHEREAS

- A. CSCFN purchased the lands described in Schedule A attached hereto (the “**CSCFN Lands**”) from the Municipality on August 6, 2014;
- B. CSCFN is the registered owner of the CSCFN Lands upon which a school building (the “**School**”), a fire hydrant (the “**Fire Hydrant**”), a hydrant water line (the “**CSCFN Hydrant Water Line**”), sanitary sewer force mains (the “**Sanitary Sewer Force Mains**”), storm sewer infrastructure (the “**Storm Sewer Infrastructure**”), septic field beds (the “**Septic Field Beds**”), a parking lot (the “**School Parking Lot**”) and play structures (the “**Play Structures**”) are located;
- C. The Municipality is the registered owner of the lands described in Schedule B attached hereto (the “**Municipality Lands**”) upon which a library building (the “**Library**”), an arena building (the “**Arena**”), a tennis court (the “**Tennis Court**”), a community hall (the “**Community Hall**”), a parking lot (the “**Arena Parking Lot**”) and a retention pond (the “**Retention Pond**”) are located;
- D. CSCFN will be granted certain easements over certain parts of the Municipality Lands;
- E. The Municipality will be granted certain easements over certain parts of the CSCFN Lands;
- F. The parties are entering into this Agreement in order to provide for the mutual use, maintenance, cost sharing and other matters relating to certain infrastructure as well as to regulate and govern the use and enjoyment of the various easements over and/or benefitting parts of the CSCFN Lands and the Municipality Lands, respectively;

**NOW THEREFORE** in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration and the sum of TEN (\$10.00) DOLLARS of lawful money of Canada now paid by each of the parties hereto to the other (the receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby covenant and agree, to and with each other, as follows:

## 1. RECITALS

The parties hereto hereby confirm the veracity of the foregoing recitals, and agree with same, both in substance and in fact.

## 2. DEFINITIONS

In addition to any other words, terms or phrases specifically defined elsewhere in this Agreement, the terms or phrases set out below shall have the meanings respectively ascribed to them as follows:

**"Agreement"** means this agreement and all written amendments hereto and all schedules referred to herein;

**"Arena"** is defined in Recitals above;

**"Arena Parking Lot"** is defined in Recitals above;

**"Business Day"** means any day excluding a Saturday, Sunday or statutory holiday in the Province of Ontario;

**"Costs"** means hard and soft costs.

**"CSCFN Hydrant Water Line"** is defined in Recitals above;

**"CSCFN Lands"** is defined in Recitals above;

**"Dispute"** is defined in Section 10;

**"Easements"** means collectively the easements, rights of way and rights in the nature of easements and rights-of-way over, under or through the CSCFN Lands and the Municipality Lands, respectively, as may be further described by a registered transfer of easement, from time to time, including, without limitation, servicing and maintenance and repair easements, support easements, vehicular and pedestrian access easements (as appropriate, acting reasonably) and any other easements, rights of way and rights in the nature of an easement existing or hereafter created or reasonably required between any one or both of the CSCFN Lands and the Municipality Lands and/or the owners of the lands, and the term **"Easement"** may mean any particular portion of the Easements as dictated by the context in which said term is used;

**"Fire Hydrant"** is defined in Recitals above;

**"Force Mains Easement"** is defined in Section 4.3;

**"Library"** is defined in Recitals above;

**"Loss"** means any loss, liability, damage, cost, expense, charge, fine, penalty or assessment including the costs and expenses of any action, suit, proceeding, demand, assessment, judgment, settlement or compromise and all interest, fines, penalties and reasonable professional fees, including legal fees and disbursements excluding loss of profits or revenue (whether as direct or indirect damages) and punitive, exemplary, indirect, special and consequential damages, but including all costs incurred by the indemnified party in enforcing this Agreement.

**"Municipality Hydrant Water Line Easement"** is defined in Section 4.5;

**"Municipality Lands"** is defined in Recitals above;

**"Owner"** or **"Owners"** means the owners from time to time of the CSCFN Lands and the Municipality Lands, or any part thereof, as the case may be, and shall include all future owners of the freehold interests that

comprise the CSCFN Lands (the “**CSCFN Owner**”) and all future owners of the freehold interests that comprise the Municipality Lands (the “**Municipality Owner**”), as the case may be;

“**Parking Lot Access Easement**” is defined in Section 4.6;

“**Parking Lot Easement**” is defined in Section 4.7;

“**Parties**” means CSCFN and the Municipality, collectively, and “**Party**” means any one of them;

“**Payee**” is defined in Section 6.2;

“**Payor**” is defined in Section 6.2;

“**Representatives**” means the advisors, agents, consultants, directors, officers, management, employees, councillors, subcontractors, and other representatives of a Party;

“**Retention Pond**” is defined in Recitals above;

“**Sanitary Sewer Force Mains**” is defined in Recitals above;

“**School**” is defined in Recitals above;

“**School Parking Lot**” is defined in Recitals above;

“**Septic Field Beds**” is defined in Recitals above;

“**Septic Field Easement**” is defined in Section 4.4;

“**Site**” means the CSCFN Lands and the Municipality Lands, collectively, and all of the buildings, structures, improvements and installations intended to be constructed thereon and contained (or to be contained) within the lands owned by the respective parties;

“**Site Plan**” means the common site plan for the Site attached as Schedule C.

“**Storm Sewer Easement**” is defined in Section 4.1;

“**Storm Sewer Infrastructure**” is defined in Recitals above;

“**Storm Water Drain Easement**” is defined in Section 4.2;

“**Transferee**” is defined in Section 12.2;

“**Transferor**” is defined in Section 12.2;

“**Village Road**” is defined in Section 4.1; and

“**Work**” is defined in Section 5.13.

### **3. SCHEDULES**

The following Schedules are attached to and form part of this Agreement:

Schedule A – Legal Description of the CSCFN Lands

Schedule B – Legal Description of the Municipality Lands

Schedule C – Site Plan

Schedule D – Assumption Agreement

#### 4. EASEMENTS

- 4.1 **Storm Sewer Easement.** CSCFN hereby grants to the Municipality and its successors and assigns in perpetuity a non-exclusive easement measuring five (5) meters in width, located in the area approximately shown in the Site Plan in purple, subject to the terms of this Agreement, to lay, construct, operate, maintain, inspect, alter, repair, replace, and reconstruct the headwalls and storm water sewer pipe which runs from the Municipality Lands, across the CSCFN Lands and along Village Road in Astorville (“**Village Road**”), to the Municipality Lands, and other works appurtenant thereto in, over, along, across, upon and under the relevant portion of the CSCFN Lands (the “**Storm Sewer Easement**”). The benefit of the Storm Sewer Easement shall run with the Municipality Lands and the burden thereof shall run with the CSCFN Lands.
- 4.2 **Storm Water Drain Easement.** CSCFN hereby grants to the Municipality and its successors and assigns in perpetuity a non-exclusive easement measuring three (3) meters in width, located in the area approximately shown in the Site Plan in blue, subject to the terms of this Agreement, to lay, construct, operate, maintain, inspect, alter, repair, replace, and reconstruct Storm Sewer Infrastructure including but not limited to storm sewer pipe, catch basins and manholes for the School Parking Lot and the Arena Parking Lot in, over, along, across, upon and under the relevant portion of the CSCFN Lands (the “**Storm Water Drain Easement**”). The benefit of the Storm Water Drain Easement shall run with the Municipality Lands and the burden thereof shall run with the CSCFN Lands.
- 4.3 **Force Mains Easement.** CSCFN hereby grants to the Municipality and its successors and assigns in perpetuity a non-exclusive easement measuring three (3) meters in width, located in the area approximately shown in the Site Plan in yellow, subject to the terms of this Agreement, to lay, construct, operate, maintain, inspect, alter, repair, replace, and reconstruct the Sanitary Sewer Force Mains from the Municipality Lands, across the CSCFN Lands and along Village Road, to the Septic Field Beds, and other works appurtenant thereto in, over, along, across, upon and under the relevant portion of the CSCFN Lands (the “**Force Mains Easement**”). The benefit of the Force Mains Easement shall run with the Municipality Lands and the burden thereof shall run with the CSCFN Lands.
- 4.4 **Septic Field Easement.** CSCFN hereby grants to the Municipality and its successors and assigns in perpetuity a non-exclusive easement measuring the entire surface of the field bed, plus one and one half (1.5) meters on each of the sides of the field bed, located in the area approximately shown in the Site Plan in red, subject to the terms of this Agreement, to lay, construct, operate, maintain, inspect, alter, repair, replace, and reconstruct septic fields on the CSCFN Lands and other works appurtenant thereto in, over, along, across, upon and under the relevant portion of the CSCFN Lands (the “**Septic Field Easement**”). The benefit of the Septic Field Easement shall run with the Municipality Lands and the burden thereof shall run with the CSCFN Lands.
- 4.5 **Municipality Hydrant Water Line Easement.** The Municipality hereby grants to CSCFN and its successors and assigns in perpetuity a non-exclusive easement measuring five (5) meters in width, located in the area approximately shown in the Site Plan in green, subject to the terms of this Agreement, to lay, construct, operate, maintain, inspect, alter, repair, replace, and reconstruct a water line from the CSCFN Lands to the Retention Pond and other works appurtenant thereto in, over, along, across, upon and under the relevant portion of the Municipality Lands (the “**Municipality Hydrant Water Line Easement**”). The benefit of the Municipality Hydrant Water Line Easement shall run with the CSCFN Lands and the burden thereof shall run with the Municipality Lands.

- 4.6 **Parking Lot Access Easement.** Each of the Parties hereby grant to the other Party and their respective successors and assigns in perpetuity a non-exclusive easement located in the area approximately shown in the Site Plan in orange, subject to the terms of this Agreement, over, along, across and upon the CSCFN Lands and the Municipality Lands, as applicable, for purposes of vehicular and pedestrian access to and egress from the CSCFN Lands and the Municipality Lands, as applicable, (the "**Parking Lot Access Easement**") to Village Road, for all those having business at CSCFN Lands or the Municipality Lands. The benefit of the Parking Lot Access Easement shall run with the CSCFN Lands and the Municipality Lands, as applicable, and the burden thereof shall run with the CSCFN Lands and the Municipality Lands, as applicable.
- 4.7 **Parking Lot Easement.** CSCFN and the Municipality hereby grant to the other Party and their respective successors and assigns in perpetuity a non-exclusive easement located over the School Parking Lot and the Arena Parking Lot, respectively, for purposes of providing parking to those having business at the CSCFN Lands or Municipality Lands, as the case may be (the "**Parking Lot Easement**"). CSCFN may make use of the Arena Parking Lot for certain special events from time to time. Notwithstanding anything herein to the contrary, the Municipality recognizes that the School Parking Lot serves school operations and as such, the Municipality shall limit its use of the parking lot during school hours and for special school events, as determined by CSCFN, given the limited space for staff, parents, etc. outside of school hours, however, where there is no issue as to space, the CSCFN is glad to offer the Municipality full use of The benefit of the Parking Lot Easement shall run with the CSCFN Lands and the Municipality Lands, as applicable, and the burden thereof shall run with the CSCFN Lands and the Municipality Lands, as applicable.
- 4.8 **General Provision re: Easements.** Each of the Parties agrees to use the areas over which an easement has been granted to the other Party only in a manner and for purposes not inconsistent with the exercise of the rights created by the said easement, and at all times, except for certain limited periods during which access to an easement is required to be temporarily blocked for ordinary matters such as maintenance or construction work or large deliveries, to keep the easement free and clear of any and all material obstructions.

## 5. **OPERATION, MAINTENANCE, REPAIR AND REPLACEMENT OF CERTAIN INFRASTRUCTURE**

- 5.1 **Arena Force Main and Septic Tank.** The Municipality shall be solely responsible for all Costs related to the maintenance, repair and replacement of the force main and the septic tank which serves the Arena, and shall perform such work as needed.
- 5.2 **School Force Main and Septic Tank.** CSCFN shall be solely responsible for all Costs related to the maintenance, repair and replacement of the force main and the septic tank which serves the School, and shall perform such work as needed.
- 5.3 **Storm Sewer and Headwalls.**
- (A) The Municipality shall be solely responsible for all Costs related to the routine maintenance, repair and replacement of the storm sewer pipe and headwalls which are located along Village Road on the front portion of the CSCFN Lands.
- (B) CSCFN and the Municipality shall share the Costs related to the replacement of the storm water drain and catch basins located on the School Parking Lot as follows: (i) 65% CSCFN and; (ii) 35% the Municipality, which work shall be performed as needed and lead by CSCFN, with each Party collaborating and cooperating with the other to ensure the work progresses efficiently and in a timely manner.
- 5.4 **Fire Hydrant.** CSCFN shall be solely responsible for all Costs related to, and performance of, the testing, annually or otherwise, of Fire Hydrant, in respect of which the Municipality shall provide, at

no charge, a fire truck as needed for such testing. Further, CSCFN shall be solely responsible for adding rip-rap or such similar materials to protect the pond inlet, if and when required. The Municipality shall notify CSCFN without delay of any issues that arise with respect to the foot valve located in the Retention Pond. The Municipality shall be solely responsible for all Costs related to the winterization of the Fire Hydrant, and performance of such winterization. CSCFN and the Municipality shall share the Costs related to the repair and replacement of the Fire Hydrant and related piping leading to the Retention Pond as follows: (i) 50% CSCFN; and (ii) 50% the Municipality.

- 5.5 **Retention Pond.** The Municipality hereby covenants and agrees to refrain from draining, or in any way voluntarily diminishing the water levels of, the Retention Pond, such that the volume of water in the Retention Pond would be insufficient to supply the Fire Hydrant or would otherwise result in the reduction of the flow of water from Fire Hydrant below the specified design flow level. For greater certainty, it is acknowledged that the Municipality shall not be responsible to augment water levels in the Retention Pond should such levels be lowered by natural processes.
- 5.6 **Parking Lot Resurfacing.** CSCFN and the Municipality shall share the Costs related to the repair, maintenance and replacement of the School Parking Lot including, but not limited to, the resurfacing of the School Parking Lot as follows: (i) 65% CSCFN; and (ii) 35% the Municipality, which work shall be performed as needed by either party as they may determine from time to time. CSCFN and the Municipality shall share the Costs related to the repair, maintenance and replacement of the Arena Parking Lot including, but not limited to, the resurfacing of the Arena Parking Lot as follows: (i) 35% CSCFN; and (ii) 65% the Municipality, which work shall be performed as needed by either party as they may determine from time to time.
- 5.7 **Parking Lot Curbs.** Each of the Parties shall be responsible for all Costs related to the replacement of all curbs and sidewalks located in their respective parking lots and shall perform such work as needed, unless the curbs and sidewalks are damaged during snow removal, in which case the Party who has caused the damage shall be responsible for rectifying such damage.
- 5.8 **Parking Lot Lighting.** CSCFN and the Municipality shall share the Costs related to the repair, maintenance and replacement of, and operation of (including all electricity Costs), all light standards, light posts and their respective concrete base, located in both the School Parking Lot and the Arena Parking Lot as follows: (i) 50% CSCFN; and (ii) 50% the Municipality. Any repair, maintenance or replacement work shall be performed by either party as they may determine from time to time.
- 5.9 **Parking Lot Snow Removal.** Each of the Parties agree that they shall be responsible for ensuring their respective parking lots are free of ice and snow, subject to the last sentence of this paragraph. In addition, the Municipality shall at its cost, clear snow and ice from School Parking Lot when the Municipality makes use of the School Parking Lot (in keeping with its rights in this Agreement) outside of regular school hours. The Municipality acknowledges and agrees that CSCFN shall not be obligated to clear snow or ice from the School Parking lot once School staff has arrived on days when school is in session and never on non-school days (ex. Weekends). Further, the Municipality shall have the right, at its cost, to clear ice and snow from the School Parking Lot should the Municipality determine, acting reasonably, that the same is prudent.
- 5.10 **Parking Lot Sweeping.** The Municipality shall be solely responsible for all Costs related to the mechanical sweeping of both the School Parking Lot and the Arena Parking Lot, and shall perform such work at a minimum of once per year, from March through May.
- 5.11 **Play Structures.** CSCFN shall be solely responsible for all Costs related to the maintenance, repair and replacement, as CSCFN deems appropriate, in its sole and absolute discretion, of the Play Structures, and performance of such work. Prior to the removal of the Play Structures for any reason, CSCFN shall notify the Municipality of its intention to remove the Play Structures and the

Municipality shall have the right to remove and reinstall such Play Structures on the Municipality's Lands, at its Costs.

- 5.12 **Evaluation of Maintenance, Repair and Replacement Needs.** With respect to each of the obligations imposed in this Article 5 and any other maintenance, repair and replacement or similar obligation of the Parties arising between them, each of the Parties shall, in evaluating the need for maintenance, repair and/or replacement of any facility, act as a reasonable and prudent owner would, with a view of preventing damage and deterioration and ensuring uninterrupted, continued efficient operation of the applicable facility. The Parties further acknowledge that they will collaborate to facilitate the evaluation of the need for maintenance, repair and/or replacement of any facility referred to in this Article 5 or otherwise.
- 5.13 **Conduct of Work.** Any operation, inspection, maintenance, repair and/or replacement of any installations, structures, improvements and/or services related to either of the CSCFN Lands or the Municipality Lands, respectively and as applicable, including any repair and restoration after damage (hereinafter collectively referred to as the "**Work**") shall be completed such that all portions of the CSCFN Lands or the Municipality Lands, as applicable, are maintained in a good and workmanlike manner so as to at all times kept them in a safe, good and functional condition to standards of comparable developments in the vicinity, and in compliance with all applicable requirements of any governmental authorities.
- 5.14 **Restoration to Original Condition.** In the event any soil or structures or other improvements are physically altered or damaged in the course of carrying out the Work, then such alteration or damage shall be forthwith, restored and/or repaired (as the case may be) to substantially the same condition as existed prior to such physical alteration or damage having occurred or arisen by the party engaging in the Work. The parties shall cooperate and acting reasonably and in good faith in assessing the restored and/or repaired condition, as aforementioned, and the party responsible for such restoration or repair shall take such reasonable steps as may be reasonably requested by the other party with respect to such restoration or repair such that the owner of the applicable lands is satisfied with the final condition, acting reasonably.
- 5.15 **Notification Requirements.** CSCFN shall notify the Municipality on or before October 31<sup>st</sup> of the year immediately preceding the year in which CSCFN intends on conducting any of the following Work: (i) the replacement of the Storm Sewer Infrastructure serving the school and arena parking lots; (ii) the replacement of the Fire Hydrant and/or related piping; (iii) the resurfacing of the School Parking Lot; or any Work that is reasonably expected to limit or prevent access to either the School Parking Lot or the Arena Parking Lot for a period of 24 consecutive hours or more (collectively, "**Major Work**"). Both parties shall keep each other apprised of any Work (outside of routine, day-to-day maintenance such as, for example, snow clearing) that is reasonably expected to disrupt normal operations of the applicable lands or require that safety precautions be implement on any easement lands and provide as much advanced notice to the other Party prior to commencing such Work. The Municipality acknowledges and agrees that any Major Work to be performed on the CSCFN Lands will, absent an urgent need, be performed during July and August of any applicable year to coincide with the School's student summer vacation. Both Parties agree that, to the extent any Work is to occur on the other Party's lands, the Party undertaking the Work shall implement such safety and security measures and installations, at its cost, as the other Party may reasonably request in order to ensure the safety and protection of persons accessing the said lands.

## 6. PAYMENT

- 6.1 **Invoicing.** To the extent any Costs are incurred by a Party which requires a contribution from the other Party, the Party requesting payment shall issue an invoice for the other Party's share enclosing copies of paid invoices.

- 6.2 **Payment.** Payment of amounts owed by a Party (the “**Payor**”) to the other Party (the “**Payee**”) will be made 30 days after the invoice is rendered. If there is a dispute as to the amount payable by the Payor to the Payee, the Payor will, within 30 days of receipt of the Payee’s invoice, notify the Payee in writing that it disputes the Payee’s invoice. The Payor will be deemed to have finally accepted the Payee’s invoice unless it delivers its dispute notice to the Payee within the applicable time period. Despite the submission of a dispute notice by the Payor, the Payor will pay to the Payee, in accordance with the terms of this Agreement, all amounts that are not in dispute. The Parties will negotiate in good faith to resolve any invoice dispute. If within 30 days of receipt of a dispute notice the Parties are unable to resolve the invoice dispute, the invoice dispute will be submitted to arbitration in accordance with Article 10.

## 7. USE OF FACILITIES

- 7.1 **Library.** The Municipality grants to CSCFN the right to make use of the Library (located as shown on the Site Plan) and its services, from time to time, free of charge, in accordance with any policies or procedures imposed by the East Ferris Public Library Board. The Parties acknowledge that CSCFN’s current use of the library is approximately one hour session per week per group, for a total of approximately 260 CSCFN students visiting the Library per week. The Parties further acknowledge that they will continue to collaborate to accommodate reasonable increases or decreases in the use of the Library by CSCFN.
- 7.2 **Arena.** The Municipality grants to CSCFN the right to make use of the Arena, from time to time, at preferred rates in accordance with the Municipality’s Fees and Charges By-law and in accordance with any policies or procedures imposed by the Municipality. The parties agree that the intent of this shared use of facilities is to accommodate increased use of the arena by CSCFN. free of charge. The Parties acknowledge that CSCFN’s current use of the arena is approximately 36 per year. The Parties further acknowledge that they will continue to collaborate to accommodate reasonable increases or decreases in the use of the Arena by CSCFN.
- 7.3 **Tennis Court.** The Municipality grants to CSCFN the right to make use of the Tennis Court (located as shown on the Site Plan), from time to time, in accordance with any policies or procedures imposed by the Municipality. free of charge. The Parties acknowledge that CSCFN does not currently make use of the Tennis Court and that the Parties will continue to collaborate to accommodate reasonable increases in the use of the Tennis Court by CSCFN.
- 7.4 **School.** The Municipality may make use of the School’s gymnasium, class rooms, an outdoor facilities , from time to time, free of charge in accordance with CSCFN’s policies and procedures on community use of the School.
- 7.5 **Play Structures.** CSCFN grants to the residents of East Ferris the right to make use of the Play Structures after the School and the daycare’s hours of operation, during such periods of time where the Play Structures are open for access, as determined by CSCFN in its sole and absolute discretion.

## 8. INSURANCE AND RISK

- 8.1 **Insurance.** Each party shall maintain its own commercial general liability insurance in an amount of not less than five million dollars (\$5,000,000.00) on a per occurrence basis. Each party shall deliver a certificate of such policy to the other party at any time or times upon request. Each party (the “**Releasing Party**”) hereby releases the other party (the “**Released Party**”) from any and all Loss whatsoever arising as a result of occurrences required under this Agreement to be or otherwise insured against by the Releasing Party (except to the extent caused by the negligence of the Released Party or those for whom it is in law responsible), without taking into account any deductible or coinsurance provisions or clauses in the Releasing Party’s insurance policy or policies. Each party’s commercial general liability insurance policy shall name the other Party and

its mortgagees as additional insured and shall contain cross-liability endorsements and severability of interest clauses.

Each party acting responsibly shall have the right for a period of sixty (60) days following the end of each five (5) year period during the term of this Agreement, to give Notice to the other party requiring the amount of the coverage of the said liability insurance to be increased. The amount of such increase shall be an amount commensurate with the then current standard of liability insurance coverage with respect similar operations.

- 8.2 **Risk.** The Parties and their Representatives willingly assume any and all risks associated with any use of the other Party's Land, and the Parties acknowledge and agree that they are responsible for ensuring that such risks are known by their respective Representatives and invitees.

## 9. MUTUAL INDEMNITIES

- 9.1 **Indemnification by CSCFN.** CSCFN agrees to defend, indemnify and save harmless the Municipality, its agents or employees, from and against any claims against the Municipality or Loss sustained or incurred by the Municipality, its agent or employees, which arises or results directly from:

9.1.1 any breach of this Agreement;

9.1.2 any occurrence in or upon the Municipality's Lands during the exercise of the rights granted to CSCFN by the Municipality or those for whom it is at law responsible on the Municipality's Lands resulting in loss of life, personal injury and/or damage to property; or

9.1.3 any negligent or wilful act or omission of CSCFN or its Representatives during the performance of any Work on the Municipality's Lands or any access to the Municipality's Lands pursuant to the rights herein granted.

- 9.2 **Indemnification by Municipality.** The Municipality agrees to defend, indemnify and save harmless CSCFN, its agents or employees, from and against any claims against CSCFN or Loss sustained or incurred by the CSCFN, its agent or employees, which arises or results directly from:

9.2.1 any breach of this Agreement;

9.2.2 any occurrence in or upon CSCFN's Lands during the exercise of the rights granted to the Municipality by CSCFN or those for whom it is at law responsible on CSCFN's Lands resulting in loss of life, personal injury and/or damage to property;

9.2.3 any negligent or wilful act or omission of the Municipality or its Representatives during the performance of any Work on CSCFN's Lands or any access to CSCFN's Lands pursuant to the rights herein granted; or

9.2.4 any occurrence in or upon the School Parking Lot after the hours of operation of the School or daycare, including any Claim or Loss sustained or incurred by CSCFN in respect of the School Parking Lot not being free of ice and snow when the Municipality makes use of the School Parking Lot after hours in keeping with Section 5.9.

- 9.3 **Continuing Obligation.** The indemnities in this Article 9 are continuing and irrevocable and the obligations of a Party under this Agreement will not be released, discharged, impaired or affected by:

- 9.3.1 any extensions of time or variations of obligations which the Party may grant or permit in respect of the observance or performance of any of the obligations of the Party;
- 9.3.2 any forbearance, waiver by, or neglect or failure of the Party to enforce any of the terms in respect of this Agreement; or
- 9.3.3 any amendment to this Agreement.

## 10. DISPUTE RESOLUTION

The Parties shall attempt to resolve all disputes, disagreements, controversies, questions or claims arising out of or relating to this Agreement (each a "**Dispute**") through good faith negotiations in the first instance. If any Dispute cannot be resolved amicably within thirty (30) business days of the Dispute arising, any party to the Dispute may submit the Dispute to arbitration to be determined by a sole arbitrator under the *Arbitration Act*, 1991 (Ontario). The arbitration shall be private and confidential and take place in North Bay, Ontario and conducted by a sole arbitrator appointed by mutual agreement of the Parties or by a judge of the Superior Court of Justice of Ontario on the application of any Party on notice to all the other Parties. The costs of such proceedings shall be shared by the Parties, unless otherwise determined by the arbitrator. Any Party may appeal a decision, award or determination of the arbitrator to a court of competent jurisdiction in the Province of Ontario.

## 11. NOTICES

11.1 All notices required or desired to be given to any of the parties in connection with this Agreement, or arising from this Agreement, shall be effective if transmitted by e-mail or functionally equivalent electronic means of transmission or upon personal delivery or, if mailed, shall be deemed to be delivered four (4) days after the date of mailing if mailed by prepaid first class post addressed to the party at the following address or such other address as shall be provided from time to time. Any notice transmitted by e-mail or other functionally equivalent electronic means of transmission will be deemed to have been given or made and received on the day on which it was transmitted, but if the notice is transmitted on a day which is not a Business Day or after 5:00 p.m. (local time of the recipient), the notice will be deemed to have been received on the next Business Day.

(a) to CSCFN:  
c/o Conseil Scolaire de District Catholique Franco-Nord  
681-C Chippewa Street West  
North Bay, Ontario P1B 6G8  
Attention: Superintendent of Business.  
(T): 705-472-1701  
(F): 705-474-3824

(b) to the Municipality:  
Municipality of East Ferris  
25 Taillefer Road  
Corbeil, ON  
P0H 1K0  
Attention: **Chief Administrative Officer**  
(T): 705-752-2740

(F): 705-752-2452

- 11.2 Any party hereto may, from time to time, by written notice to the other parties, delivered in accordance with the foregoing provisions, change the address to which its notices are to be delivered.

## **12. REGISTRATION OF THIS AGREEMENT AND TRANSFER OF LANDS.**

- 12.1 **Registration of this Agreement.** The Parties shall, within 30 days of execution, register this Agreement against the title of the Site. The Parties further consent to the registration of this Agreement against the CSCFN Lands and the Municipality Lands, respectively, and hereby acknowledge, confirm and agree that this Agreement shall be deemed and construed to run with the title to the CSCFN Lands and the Municipality Lands, respectively.

- 12.2 **Sale or Transfer of Lands.** Prior to the sale or transfer of the whole or any part of the either the CSCFN Lands or the Municipality Lands to any third party (the “**Transferee**”), the Party transferring the whole or any part of the lands (the “**Transferor**”) shall cause such Transferee to deliver an agreement in writing in the form attached hereto as Schedule D to the other Party, whereby the Transferee agrees to comply with and be bound by all the terms of this Agreement in the place of the Transferor as if the Transferee had been an original signatory to this Agreement.

- 12.3 **Registered Easements.** The Parties may elect, at any time, to cause one or more reference plans to be produced and registered on title with respect to any or all of the easements granted herein, for the purposes of conveying easements and registering transfer easements on title to the CSCFN Lands and Municipality Lands, as applicable. Either party may elect upon 30 days notice to the other that it wishes to proceed as aforementioned. The party so electing shall engage an Ontario Land Surveyor to produce the necessary reference plans, drafts of which will be circulated to both parties for review and approval, acting reasonably; once approved, the reference plan shall be registered on the applicable title. Further, the electing party shall engage legal counsel to prepare transfer easement conveyance documents for the applicable easements, which shall be circulated for review and approval, acting reasonably. Within 30 days after the later of registration of the aforementioned reference plan and approval of the transfer easement conveyance documents, the parties shall execute and register the same. Each Party shall be responsible for its own legal costs, save and except that the cost of the surveyor shall be shared. The consideration for any such conveyance of easement shall be \$1.

## **13. CONSTRUCTION LIENS**

Each of the Parties hereto covenants and agrees to pay all invoices for contractors as and when due and take all such steps as may be required to avoid any construction liens being registered on title. Should a construction lien be registered on title to the other Party’s lands as a result of a Party’s activities on such lands, the Party having conducted the activity leading to such construction lien shall forthwith make any required payment or filing of any security, so as to forthwith remove any construction lien claimed in respect of a supply of materials and/or the provision of services contracted for by it which encumbers another Party’s lands, by no later than thirty (30) days after the receipt of a written request to do so delivered by or on behalf of the other Party failing which the other Party may make the payment or post the security required to remove such construction lien from title, and thereafter seek reimbursement for all monies expended and costs incurred in doing so from the defaulting Party.

## **14. SUCCESSORS AND ASSIGNS**

- 14.1 This Agreement shall enure to the benefit of, and be correspondingly binding upon, the parties hereto and their respective successors and assigns.

14.2 Notwithstanding anything provided in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that:

- (a) any reference to CSCFN in this Agreement, where the context pertains to the use or enjoyment of an easement or some other right, benefit or interest, shall be deemed to include CSCFN Owner's authorized agents, representatives, employees, students, tenants, daycare clients, parents and guardians of students and daycare clients, visitors, contractors and/or subcontractors, subject always to the restrictions on such use set out in this Agreement; and
- (b) any reference to the Municipality in this Agreement, where the context pertains to the use or enjoyment of an easement or some other right, benefit or interest, shall specifically include the Municipality and its tenants and duly authorized agents, representatives, employees, council members, contractors, subcontractors and/or members of the public.

## 15. FURTHER ASSURANCES

The parties agree to sign such further and other papers, cause such meetings to be held and resolutions passed, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and to register this Agreement or notice thereof against the title to the Site.

## 16. MISCELLANEOUS PROVISIONS

- 16.1 This Agreement is subject to compliance with the subdivision and part-lot control provisions of the *Planning Act*, R.S.O. 1990, as amended. To the extent required, the Municipality agrees to cause the applicable committee of adjustments to provide all necessary consents under the Planning Act as may be required to give effect to this Agreement and all easements granted herein. Until such time as any such consent is required, the term of all easements herein shall be 21 years less one day. The Municipality shall take all such steps required, at its cost, to obtain all required consents within 20 years after the date of this Agreement.
- 16.2 The headings used throughout the body of this Agreement form no part hereof but shall be deemed to be inserted for convenience of reference only.
- 16.3 This Agreement shall be read and construed with all changes in gender and/or number as may be required by the context.
- 16.4 If any clause or section of this Agreement shall be determined by a court of competent jurisdiction to be illegal or unenforceable, then such clause or section shall be considered separate and severable from the rest of this Agreement, and the remaining provisions hereof shall remain in full force and effect, and shall continue to be binding upon the parties, hereto as though the said illegal or unenforceable clause or section had never been included.
- 16.5 This Agreement may be executed in one or more counterparts, each of which when so executed shall constitute an original, and each of which may be delivered by facsimile, e-mail or other functionally equivalent electronic means of transmission and those counterparts will together constitute one and the same agreement.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**

Each of the Parties has executed and delivered this Agreement as of the date noted at the beginning of this Agreement.

**CONSEIL SCOLAIRE DE DISTRICT  
CATHOLIQUE FRANCO-NORD**

Per: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the Corporation

Per: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the Corporation

**THE CORPORATION OF THE MUNICIPALITY OF  
EAST FERRIS**

Per:

Name:

Title:

I/We have authority to bind the Corporation

Per: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the Corporation

**SCHEDULE A  
LEGAL DESCRIPTION OF CSCFN LANDS**

DRAFT

**SCHEDULE B  
LEGAL DESCRIPTION OF MUNICIPALITY LANDS**

DRAFT

**SCHEDULE C  
SITE PLAN**

DRAFT

**SCHEDULE D  
ASSUMPTION OF JOINT USE AND MAINTENANCE AGREEMENT**

TO: CSCFN or Municipality

Re: Assumption of Joint Use and Maintenance Agreement dated \_\_\_\_\_ 2023 in respect of the lands municipally known as \_\_\_\_\_ (the "Agreement")

The undersigned, [*transferee*], for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) hereby covenants with [*owner of the CSCFN Lands or Municipality Lands*], and its respective successors and assigns, that the undersigned shall observe and perform all of the obligations of [*owner of the CSCFN Lands or Municipality Lands*] under the Agreement, [notice of which has been registered in the Land Registry Office for the Land Titles Division of Nipissing (No. 36) as Instrument No. \_\_\_\_\_] fully and to the same extent as though the undersigned was originally named as a party to and had executed and delivered the Agreement. Further, the undersigned acknowledges and agrees that its [*CSCFN Lands or Municipality Lands*] are subject to the rights and easements granted in the Agreement.

Capitalized terms used herein but not defined shall have the meaning ascribed thereto in the Agreement.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**[TRANSFEEE]**

Per: \_\_\_\_\_

Name:

Title:

Per:

Name:

Title:

I/We have authority to bind the Corporation