Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement local

ISSUE DATE: May 12, 2021 **CASE NO(S).:** PL200502

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	5005559 Ontario Inc.
Subject:	Application amend Zoning By-law No. 2005-005 - Refusal of Application by Municipality of Middlesex Centre
Existing Zoning:	Agricultural
Proposed Zoning:	Surplus Residence
Purpose:	To recognize existing residential use and prohibit livestock
Property Address/Description:	14378 Ilderton Road and 22740 Richmond Street
Municipality:	Municipality of Middlesex Centre
Municipality File No.:	ZBA-29-19
LPAT Case No.:	PL200502
LPAT File No.:	PL200502
LPAT Case Name:	5005559 Ontario Inc. v. Middlesex Centre (Mun.)

PROCEEDING COMMENCED UNDER subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	5005559 Ontario Inc.
Subject:	Consent
Property Address/Description:	14378 Ilderton Road and 22740 Richmond Street
Municipality:	Municipality of Middlesex Centre
Municipality File No.:	B-32-19
LPAT Case No.:	PL200502
LPAT File No.:	PL200503

Heard: April 30, 2021 by video hearing

APPEARANCES:

Parties	**Counsel**
5005559 Ontario Inc. ("Appellant")	Paul Brooks
Municipality of Middlesex Centre ("Middlesex Centre")	Wayne Meagher

MEMORANDUM OF ORAL DECISION DELIVERED BY T. PREVEDEL ON APRIL 30, 2021 AND ORDER OF THE TRIBUNAL

[1] This was a settlement hearing conducted in respect to an appeal filed by the Appellant against Middlesex Centre's refusal of an application to amend the Zoning By-law and refusal of an application for consent ("Consent").

[2] The Appellant is the registered owner of farm real estate legally described as Part South Lot ½ Lot 16; Concession 11 as described in LT303567 in the Middlesex Centre. The municipal addresses are 14378 Ilderton Road and 22740 Richmond Street, Middlesex Centre, hereafter referred to as the "subject property".

[3] The Appellant filed the Consent with Middlesex Centre under s. 53(19) of the *Planning Act* to sever a residence surplus as a result of farm consolidation. The proposed to be severed lot will have a frontage of 70.5 metres along Ilderton Road and an area of 0.667 hectares. The proposed to be retained farm holding will have a lot frontage of 372.39 metres along Richmond Street and a total area of 14.3 hectares.

[4] The Appellant also filed a concurrent Zoning By-law Amendment ("ZBA"). The ZBA would permit the use of the severed lands for residential purposes and the use of

the retained lands as a surplus residential lot to be consolidated with the adjacent farming operation.

[5] The Appellant and the Municipal staff negotiated a settlement of this matter, which was endorsed by the Chief Administrative Officer, who has delegated authority to bind the Corporation, on April 16, 2021.

[6] Harry Froussios, a qualified land use planner, provided expert evidence in support of the proposed ZBA and Consent, and the Settlement reached between Middlesex Centre and the Appellant. Mr. Froussios is a senior associate planner with the planning consulting firm, Zelinka Priamo Ltd. He has over 27 years of experience as a professional planner and has been qualified as an expert witness on a regular basis by the OMB and the Tribunal.

THE SETTLEMENT PROPOSAL

[7] Upon appeal of the original applications, 5005559 Ontario Inc. and the Municipality have been engaged in discussions to resolve the matters before the Tribunal.

[8] 5005559 Ontario Inc., 1966971 Ontario Inc., and McClary Holdings Inc. endorsed a Crop-Share Agreement effective January 1, 2021 demonstrating how the two owners and the farm operator will act together to allow farm consolidation to occur to operate a viable farming operation.

[9] The Crop-Share Agreement includes the following:

a. references the overall consolidation farming operation;
b. has a 5-year term with a 5-year renewal option;

c. confirms that the employees/workers/farmers of the consolidated farm operation move between farm properties;
d. establishes how the expenses, revenues, and farm operational risks (including weather) are shared by Landowner 1, Landowner 2, Farmer, and the entirety of the consolidated farm operation;
e. establishes how performance of the farm operation and the farm volume oneach of the Retained Farm Holding and Medway Farm Property impact the consolidated farming operation in its entirety; and
f. confirms the continued farming of the Retained Farm Holding in the event ofdissolution of Landowner 1 or Landowner 2.

[10] 5005559 Ontario Inc. and the Municipality have agreed to Minutes of Settlement based on the Crop-Share Agreement. The Minutes of Settlement are attached as Attachment 1.

[11] The Municipality has prepared consent conditions for the Consent Application, based on the revised consent sketch, which are acceptable to 5005559 Ontario Inc. A copy of the consent conditions is attached as Attachment 2.

[12] The Municipality has prepared a draft Zoning Order ("Draft ZBA") that would rezone the severed (surplus residence) lands from Agricultural (A1) Zone to Surplus Residence (SR) Zone; and the retained lands from Agricultural (A1) Zone to Agricultural – No Residences Exception (A3-X) Zone once the conditions of consent have been met. A copy of the Draft ZBA is attached as Attachment 3.

PLANNING EVIDENCE

[13] Mr. Froussios provided the Tribunal with a thorough written affidavit and gave oral testimony on the proposed settlement and how the proposed ZBA and Consent: (i) has regard for matters of principal interest as set out in the *Planning Act,* specifically

s. 51(24), s. 53(12) and s. 34(11); (ii) is consistent with the Provincial Policy Statement ("PPS"); (iii) conforms to the County of Middlesex Official Plan ("County OP") and (iv) conforms to the Middlesex Centre Official Plan ("MCOP").

[14] The PPS defines "residence surplus to a farming operation" as "an existing habitable farm residence that is rendered surplus as a result of farm consolidation."

[15] Mr. Froussios opined that farm consolidation, in this instance, has been demonstrated through the provisions of the cost share agreement between the two landowners and McClary Holdings Inc., the farm operator.

[16] The Planning Justification Report prepared by Mr. Froussios in support of the application, as well as his written affidavit and oral testimony, clearly demonstrates that the proposed severance preserves lands in agricultural production and strengthens an established farm operation.

[17] Mr. Froussios proffered that, notwithstanding the deficient size of the retained farm parcel, the Zoning By-law recognizes the lot area on the day the residential use ceases to exist through the severance of a surplus lot; the proposed remnant parcel is to be added to an existing nearby farm operation to enhance the operation's overall economic viability (satisfies condition 3.3.2 of the County OP). The proposed severed and retained lots have existing access to Ilderton Road and Richmond Street, which are open and maintained on a year-round basis; the creation of the lots will not create any issues with respect to traffic, access or servicing; the proposed consent is in conformity with the County OP and the MCOP, the size of the severed and retained lots are appropriate for the existing uses and adequate services are available; conditions are attached to the consent, to the satisfaction of the Municipality and 5005559 Ontario Inc.; compliance with Minimum Distance Separation is maintained (satisfies Condition 4.5.3.2). The residence surplus to the farm operation was constructed in 1979; no additional residential uses will be permitted on the remnant lands, as per the Draft ZBA

(satisfies Condition 4.5.3.4.a). There are no active sand, gravel, or open pit operations within 300 metres of the proposed severance (satisfies Condition 4.5.3.4.e).

[18] With respect to the MCOP, Mr. Froussios provided evidence with respect to Section 10.3.1 in that a plan of subdivision is not necessary in this instance (satisfies 10.3.1.a); the proposed area of the severed lot is sufficient to accommodate a private on-site septic system. Mr. Froussios stated that, to his knowledge, the septic system on the retained lands is functioning adequately (satisfies 10.3.1.b); access to the severed lands is from Ilderton Road, and access to the retained lands is from Richmond Street. Both roads are maintained year-round and can accommodate farm and other traffic (satisfies 10.3.1.c); the subject lands have an adequate potable water supply that has served the residences since they were constructed (satisfies 10.3.1.d); the existing septic systems have functioned adequately. Site conditions are suitable for the long-term provision of on-site sewage services as required by the PPS, the County OP, and the MCOP (satisfies 10.3.1.e) and 10.3.1.f does not apply in this instance.

PARTICIPANT STATEMENT

[19] A Participant Statement regarding the Applications was provided by Sheila and Keith Wilson (the “Wilsons”), owners of the lands known municipally as 14424 Ilderton Road, to LPAT on March 19, 2021, as follows:

> i) over 30 years we have created significant woodlands and a sugar bush on our property. The approval of this application would denigrate our reforestation efforts with the potential of commercial/and or residential development on the rezoned property.
>
> ii) we do not believe the proposal conforms to the Middlesex County Official Plan and the Municipality of Middlesex Centre Official Plan.
>
> iii) we are skeptical about the integrity of this proposal submitted by numbered companies, represented by planning consultants and lawyers, and believe the submission is not a bona fide application.

Clarification with respect to item iii) was provided by Mr. Wilson during the Case Management Conference, noting that their concern is that the retained property would not be farmed.

[20] In response to item i) in the Participant Statement, Mr. Froussios provided evidence in his affidavit that there are no natural heritage features on the proposed surplus lot. The woodland on the proposed remnant is designated Significant Woodland and is adjacent to the proposed surplus lot. No new development is permitted or proposed in the regulated area, as per the draft ZBA. As such, there are no anticipated impacts on the woodlands located at 14424 Ilderton Road.

[21] In response to item ii) above, Mr. Froussios demonstrated through his affidavit that the ZBA and Consent are in conformity with the County OP and the MCOP. The Wilsons did not provide any specific reasoning or evidence from a qualified land use planning consultant to support their statement relating to non-conformity of the applications with the official plans.

[22] In response to item iii) above, Mr. Froussios opined that the Revised Applications are "*bona fide* applications" that have been prepared, submitted, and processed in accordance with the legislative requirements of the *Planning Act*.

[23] He proffered that the Revised Applications represent a combined venture between 2 landowners and an experienced area farm operator to ensure that a viable farm consolidation has taken place and the retained lands will be farmed in accordance with the PPS and applicable Official Plan policies as demonstrated in the Cost-Share Agreement. Neither the PPS or the applicable Official Plans prevent any company, individual, or group of individuals with no experience in farming from owning farmland or making the necessary arrangements to ensure farms are operated in an effective and viable manner.

[24] The Tribunal, having considered the uncontroverted testimony of Mr. Froussios and the materials filed in support of the appeal and the Settlement Proposal, finds that the proposed ZBA and Consent as described in the Settlement Proposal is acceptable in principle.

ORDER

[25] The Tribunal orders that the appeal is allowed in part and the Municipality is directed to amend the Middlesex Centre Comprehensive Zoning By-Law No. 2005-005 as per the Zoning Order attached as Attachment 3. The municipal clerk may assign such number to the by-law as he or she determines appropriate for the orderly record keeping purposes of Middlesex Centre.

[26] The Tribunal orders that the appeals under s. 53(19) of the *Planning Act* are allowed and the provisional consent is to be given subject to the Consent Conditions attached as Attachment 2.

"T. Prevedel"

T. PREVEDEL
MEMBER

LOCAL PLANNING APPEAL TRIBUNAL

Commission des affaires municipals de l'Ontario

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended.

Applicant/Appellant:	5005559 Ontario Inc.
Subject:	Application to approve a severance as a result of farm consolidation and dependent applications to amend Zoning By-law No. 2005-005 with respect to the severed and retained parcels
Existing Zoning:	Agricultural (A1)
Proposed Zoning:	Severed Parcel: Surplus Residence (SR) Retained Parcel: Agricultural – No Residences (A3-4) zone
Purpose:	To permit a severance as a result of farm consolidation; To recognize a new residential use on the severed parcel; To re-zone the severed parcel to SR; To re-zone the retained parcel to Agricultural – No Residences (A3-4) zone
Property Address:	14378 Ilderton Road and 22740 Richmond Street
Municipality:	Municipality of Middlesex Centre
Municipality File No.:	ZBA-29-19 and Consent Application B-32-19
LPAT Case Numbers:	PL200502 and PL200503
LPAT File Numbers:	PL200502 and PL200503
LPAT Case Name:	*5005559 Ontario Inc. v. Middlesex-Centre (Municipality)*

MINUTES OF SETTLEMENT

WHEREAS:

A. The Appellant, **5005559 ONTARIO INC.** (hereinafter, **"Landowner 1"**), is the registered owner of farm real estate legally described as Part South Lot ½ Lot 16, Concession 11 as in LT303567, formerly in the Township of Middlesex Centre/London Township, now in the Municipality of Middlesex Centre, County of Middlesex, being PIN 08143-0028 and municipally known as 14378 Ilderton Road and 22740 Richmond Street, Middlesex Centre (hereafter referred to as the **"Subject Property"**);

B. The Subject Property is a 14.97 hectare (37 acre), in size with an approximately 372.39 m (1,221.75 ft.) exterior lot line on Richmond Street (Provincial Hwy #4) and an approximately 311.7 m (1022.64 ft.) front lot line on Ilderton Road (County Road #16);

C. Landowner 1 commenced pre-consultation discussions with the **MUNICIPALITY OF MIDDLESEX CENTRE** (hereinafter, the **"Municipality"**) concerning a potential severance, Landowner 1 initially advising retained planner of the Municipality, K. Henderson, that it desired to sever a portion of the Subject Lands around the single detached dwelling fronting Ilderton Road from the remainder of the Subject Property without reference to farm consolidation;

D. After discussing *Planning Act*, R.S.O. 1990, c.P.13 (hereinafter, the ***"Planning Act"***) and prime agricultural land planning concerns during continued pre-consultation with planners retained by the Municipality, K. Henderson, A. Heddle, and T. Williams, Landowner 1 modified its severance request to a severance as a result of farm consolidation request relative to a smaller portion of the Subject Lands that did not impact established woodlands;

E. **1966971 ONTARIO INC.** (hereinafter, **"Landowner 2"**) is an affiliated corporation with Landowner 1 and is the registered owner of farm real estate legally described as Part Lot 8, Concession 7 as in LT200960, formerly in the Township of Middlesex Centre/London Township, now in the Municipality of Middlesex Centre, County of Middlesex, being PIN 08146-0018 and municipally known as 15374 Medway Road, Arva, Ontario (hereinafter referred to as the **"Medway Farm Property"**);

F. The Subject Property and the Medway Farm Property are collectively referred to herein as the **"Farm Properties"**;

G. Landowner 1 and Landowner 2 warrant that Landowner 1, Landowner 2, and **McCLARY HOLDINGS INC**. (hereinafter referred to as the **"Farmer"**), function together in the operation of a consolidated farm operation of the Farm Properties, as described in a Crop-Share Agreement endorsed by Landowner 1, Landowner 2, and the Farmer effective January 1, 2021;

H. The Subject Lands are surrounded by agricultural land uses, with the dominant form of agriculture being cash cropping, and is designated 'Agriculture' by the Middlesex Centre Official Plan. The entirety of the Subject Lands consist of prime agricultural areas, as defined by the Provincial Policy Statement 2020 (hereinafter, the **"PPS"**), and prior to the zoning by-law amendments approved in these Minutes of Settlement, is zoned 'Agricultural' (A1) by Municipality's Zoning By-law No. 2005-005, as amended or replaced (hereinafter, the **"ZBL"**);

I. In Consent Application B-32-19, the Appellant sought to sever from the Subject Lands, a residence surplus as a result of farm consolidation with a frontage of approximately 70.5 metres (230 feet) along Ilderton Road and an area of 0.667 hectares (1.64 acres) (the **"Proposed to be Severed Lot"**). The proposed to be retained farm holding was proposed to be 14.3 hectares (35.3 acres) with a lot frontage of 372.39 metres (1,221.75 feet) along Richmond Street (the **"Proposed to be Retained Farm Holding"**);

J. In Zoning By-Law Amendment Application #29-19, the Appellant requested zoning by-law amendments to the Proposed to be Severed Lot and Proposed to be Retained Farm Holding, dependent upon the approval of the proposed prime agricultural land severance, for the Proposed to be Severed Lot to be zoned SR as a new residential parcel and for the Retained Farm Holding to be re-zoned A3;

K. The Proposed to be Severed Lot contains a single detached dwelling constructed in 1979, which is serviced by private septic system and well, and includes an in-ground pool,

wooden pool house, metal shed, and a chicken coop. The Proposed to be Retained Farm Holding contains a legacy single detached dwelling;

L. Consent Application B-32-19 and Zoning By-law Amendment Application #29-19 shall hereafter collectively be referred to as the **"Applications"**;

M. The *Planning Act* establishes criteria that must be measured when considering applications for consent to sever. Section 3 of the *Planning Act* requires that approval authorities grant decisions that are consistent with the PPS and are in conformity with applicable Official Plans;

N. Subsection 2.3 of the PPS speaks to prime agricultural areas. Specifically, section 2.3.1 states that prime agricultural areas shall be protected for long-term use for agriculture. The PPS intends to protect agricultural lands and prohibits severances within prime agricultural areas except for very certain circumstances, therefore demonstrating the importance of protecting agricultural lands and ensuring their long-term viability;

O. Subsection 2.3.4.1(c) of the PPS focuses on land adjustments and directs that "[l]ot creation in prime agricultural areas is discouraged and may only be permitted for a residence surplus to a farming operation as a result of farm consolidation, provided the new lot is limited to a minimum size needed to accommodate the use and appropriate sewage and water services, and new residential dwellings are prohibited on the remnant parcel of farmland." Subsection 2.3.4.3 of the PPS confirms that "[t]he creation of new residential lots in prime agricultural areas shall not be permitted, except in accordance with policy 2.3.4.1 c)";

P. The objectives of the PPS are to preserve and maintain prime agricultural areas as much as possible for existing and future farm use, maximize the amount of prime agricultural land to be included in the non-residential parcel in any severance as a result of farm consolidation, to reduce fragmentation of farm lands, and to minimize the scale of the residential use in any severance as a result of farm consolidation;

Q. At the time of Municipal Council's decision on the Applications, Council was <u>not</u> satisfied that a consolidated farm operation first existed to cause the residence on the Subject Lands fronting Ilderton Road to become surplus as a result. Correspondingly, the Applications were denied;

R. Resolution discussions occurred between the Parties concerning the Applications, resulting in an Amended Application set out below. The Parties agree that the Amended Application is acceptable, addresses the concerns of Participants in this Hearing, and fully and finally resolves all outstanding issues with respect to this Appeal between the Parties;

S. The Parties have requested that the LPAT approve this resolution at a Settlement Hearing;

NOW THEREFORE these Minutes of Settlement confirm the agreement of the undersigned Parties, as follows:

1. The Parties agree that the above recitals are true and correct in all material aspects and form a part of these Minutes of Settlement.

2. The Appellant hereby amends its Application to include:

    a. a Crop-Sharing Agreement entered into by Landowner 1, Landowner 2, and the Farmer, as defined herein, effective January 1, 2021 (hereinafter, the **"Crop-Sharing Agreement"**), which is appended hereto as ***APPENDIX "A"***, forms a part of these Minutes of Settlement, and is relevant to farm consolidation;
    b. the Draft Severance Conditions which are appended hereto as ***APPENDIX "B"*** and form a part of these Minutes of Settlement; and
    c. the Draft Zoning Order, which is appended hereto as ***APPENDIX "C"*** and forms a part of these Minutes of Settlement.

3. The Crop-Share Agreement, *inter alia*:

    a. references the overall consolidation farming operation;
    b. has a 5-year term with a 5-year renewal option;
    c. confirms that the employees/workers/farmers of the consolidated farm operation move between farm properties;
    d. establishes how the expenses, revenues, and farm operational risks (including weather) are shared by Landowner 1, Landowner 2, Farmer, and the entirety of the consolidated farm operation;
    e. establishes how performance of the farm operation and the farm volume on each of the Retained Farm Holding and Medway Farm Property impact the consolidated farming operation in its entirety; and
    f. confirms the continued farming of the Retained Farm Holding in the event of dissolution of Landowner 1 or Landowner 2.

4. Landowner 1 and Landowner 2 covenant and warrants that they shall function together with the Farmer in the operation of a consolidated farm operation of the Farm Properties, as set out in the Crop-Share Agreement.

5. Landowner 1 covenants to fulfill the conditions set out in the Draft Severance Conditions set out in *APPENDIX "B"*.

6. Without limiting provision 5 above, Landowner 1 covenants to remove the chicken coup from the Severed Parcel.

7. The Zoning By-law Order (*APPENDIX "C"*) shall re-zone the Proposed to be Severed Parcel as Surplus Residence (SR).

8. The Parties are in agreement that the Applications, as amended, limit the Proposed to be Severed Parcel to the minimum size needed to accommodate the use and appropriate sewage and water services.

9. The Zoning By-law Order (*APPENDIX "C"*) shall re-zone the Proposed to be Retained Parcel as Agricultural – No Residences (A3-4) zone, prohibiting additional dwellings that do not exist as of April 16, 2021 on the Retained Parcel of farmland.

10. The Parties acknowledge that a legacy single detached residential dwelling on the Proposed to be Retained Lands is not a permitted use in an Agricultural – No Residences (A3-4) zone under Zoning By-law No. 2005-005 and the re-zoning of the Subject Lands renders it a legal non-conforming use. The Landowner covenants not to expand or intensify the legal non-conforming use in any manner and covenants not to take any action that would prevent or harm the long-term viability of farming on the Proposed to be Retained Farm Property. Landowner 1 warrants and covenants to cause the above noted covenant to be registered on title to the Proposed to be Severed Parcel as restrictive covenant, at its expense.

11. The terms and obligations set forth in these Minutes of Settlement enure to and shall be binding on the Parties, their respective heirs, beneficiaries, affiliates, successors and permitted assigns.

12. Any amendment to or waiver of any provision of these Minutes of Settlement must be in writing and signed by all Parties.

13. These Minutes of Settlement constitute the entire agreement between all of the undersigned Parties with respect to any and all appeals relating to the Application and superseded all prior agreements, negotiations, and undertakings with respect thereto. These Minutes of Settlement resolve all issues in the Appeal.

14. Landowner 1 covenants to register these Minutes of Settlement on title to the Subject Lands, both on the severed and retained parcels, at its expense. The Parties confirm that the covenants contained in these Minutes of Settlement survive the endorsement of the Minutes and are to run with the Subject Lands.

15. The Parties agree that provisions two through fourteen (2-14) of these Minutes of Settlement are made in furtherance of the objectives of the PPS to preserve and maintain prime agricultural areas as much as possible for existing and future farm use, maximize the amount of prime agricultural land to be included in the non-residential parcel in any severance as a result of farm consolidation, to reduce fragmentation of farm lands, and to minimize the scale of the residential use in any severance as a result of farm consolidation.

16. These Minutes of Settlement may be signed electronically and in counterparts and may be delivered by facsimile or by e-mail in PDF format and such delivery shall constitute a duly executed original.

17. The Parties acknowledge and agree that these Minutes of Settlement may be executed by the Chief Administrative Officer for the Municipality and Director for Landowner 1 and Landowner 2, Jimmy Lee, and that such execution is binding upon the Parties.

18. None of the undersigned parties will seek or support any order of costs by the Tribunal against any of the undersigned Parties in these proceedings.

19. These Minutes of Settlement shall be governed by and construed in accordance with the laws of Ontario.

[ONE (1) ENDORSEMENT PAGE FOLLOWS]

IN WITNESS WHEREOF the Parties hereto have executed the Minutes of Settlement.

Dated this 16th day of April, 2021

MUNICIPALITY OF MIDDLESEX CENTRE

Address for Service:
10227 Ilderton Road, RR #2
Ilderton, ON N0M 2A0

Per: _____

Chief Administrative Officer,
Michael Di Lullo
"I have delegated authority from Council to bind the Corporation"

5005559 ONTARIO INC.

Address for Service:
14378 Ilderton Road,
Ilderton, ON N0M 2A0

Per: _____

Director, Jimmy Lee
"I have the authority to bind the Corporation"

1966971 ONTARIO INC.

Address for Service:
15374 Medway Road,
Arva, ON N0M 1C0

Per: _____

Director, Jimmy Lee
"I have the authority to bind the Corporation

CROP-SHARE AGREEMENT

This Agreement made effective as of the 1st day of January 2021.

BETWEEN:

5005559 ONTARIO INC.
(hereinafter referred as "Landowner 1")

of the first part

AND

1966971 ONTARIO INC.
(hereinafter referred as "Landowner 2")

of the second part

AND

McCLARY HOLDINGS INC.
(hereinafter referred as "Farmer")

of the third part

WHEREAS Landowner 1 is the registered owner of farm real estate legally described as Part South Lot ½ Lot 16, Concession 11 as in LT303567, formerly in the Township of Middlesex Centre/London Township, now in the Municipality of Middlesex Centre, County of Middlesex, being PIN 08143-0028 and municipally known as 14378 Ilderton Road, Ilderton, Ontario. Landowner 2 is the registered owner of farm real estate legally described as Part Lot 8, Concession 7 as in LT200960, formerly in the Township of Middlesex Centre/London Township, now in the Municipality of Middlesex Centre, County of Middlesex, being PIN 08146-0018 and municipally known as 15374 Medway Road, Arva, Ontario. The foregoing lands are hereinafter referred to as Farm Property and are referred to collectively as the "Farm Properties";

AND WHEREAS Landowner 1 and Landowner 2 (sometimes collectively referred to herein as the "Landowner") are affiliated corporations that function, together with the Farmer, in the operation of a consolidated farm operation on the Farm Properties, as described in this Crop-Share Agreement (hereinafter referred to as the "Consolidated Farm Operation");

AND WHEREAS the Landowner and the Farmer have agreed to enter into a crop-share arrangement (this "Crop-Share Arrangement"), which sets out the terms upon which the Landowner and Farmer shall operate together as the Consolidated Farm Operation;

AND WHEREAS the Landowner represents and warrants that Landowner 1 purchased Part South Lot ½ Lot 16, Concession 11 as in LT303567, formerly in the Township of Middlesex Centre/London Township, now in the Municipality of Middlesex Centre, County of Middlesex, being PIN 08143-0028 and municipally known as 14378 Ilderton Road, Ilderton, Ontario on August 9, 2019 for the purpose and with the intent of operating the Consolidated Farm Operation together on the Farm Properties, as set out in this Crop-Share Agreement.

NOW THEREFORE, the Parties agree as follows:

1. **Incorporation of Recitals**

The above recitals are true and are hereby incorporated into this Crop-Share Agreement by reference.

2. **Term**

The Term of this Crop-Share Agreement shall be for five (5) years, being January 1, 2021 to December 31, 2026 (the "Term"). In addition to the Term, the parties to this Crop-Share Agreement may, at their election and in writing, extend the Term of this Agreement for an additional five (5) years, through December 31, 2031 ("Extended Term").

3. **Obligations of Landowner**

The Landowner will:

(a) make the Farm Property available to the Farmer as farmland to cultivate and grow the crops during the Term any Extended Term as the Consolidated Farm Operation;

(b) jointly with the Farmer, agree on selecting the crop to plant no later than one month before planting;

(c) pay all real property taxes, insurance and capital improvements (drainage, etc.) for the Farm Property.

4. **Farmer's Obligations**

The Farmer will:

(a) provide to the Landowner an annual crop plan for the approval of the Landowner, such approval not to be unreasonably withheld, one month before planting (the "Crop Plan");

(b) pay all input costs needed to farm the Farm Property and grow the crop;

(c) provide an accounting to the Landowner no later than January 31, 2021 and share the annual farm revenue with the Landowner as defined in paragraph 7;

(d) farm the Farm Property on behalf of the Consolidated Farm Operation and cultivate and grow the crop as a prudent farmer would do;

(e) ensure that its employees, workers, farmers or cultivators move between each Farm Property making up the Farm Properties being farmed by the Consolidated Farm Operation;

(f) provide all farming expertise, management and timely decision making in accordance with the parties' Crop Plan;

(g) carry sufficient liability insurance with respect to his farming of the Farm Property and will hold the Landowner harmless from any and all liabilities incurred with respect to the farming on the Farm Property; and

(h) at the end of this Crop-Share Agreement leave the Farm Property in a weed free, plowed and fertilized condition.

5. **Crop Insurance:**

Each party may, in its sole discretion, maintain crop insurance on the crops with respect to the Consolidated Farm Operation to be grown on the Farm Properties naming itself as an insured. Nothing herein creates any obligation for one party to insure the other under any crop insurance policy.

6. **Other conditions:**

The conditions attached hereto as Schedule A form part of this Agreement and are binding upon the parties hereto.

7. **Sharing of Farm Revenue and Expenses:**

The farm revenue and expenses associated with the Crop Plan shall be shared between the Landowner and the Farmer on the following basis:

(a) Farmer: Responsible for 66.7% of all farm expenses and enttiled to 66.7% of all farm revenue.

(b) Landowner: Landowner 1 and Landowner 2 are responsible for 33.3% of all farm expenses on a joint and several basis and are entitled to 33.3% of all farm revenue.

The Farmer shall pay all farm expenses related to the Crop Plan in advance. The farm revenue and farm expenses shall be determined no later than January 31st each year during the Term and any Extended Term (and January 31st in the year immediately preceding the last year of the Term or any Extended Term), and all payments owing between the parties shall be made no later than fifteen (15) days thereafter.

For greater certainty, "farm revenue" means all the revenue received on the sale of the crops grown on the Farm Property or proceeds paid on any crop insurance policy, net of all transportation and drying charges, and "farm expenses" means all expenses associated with preparing the soil, planting the crops, managing and spraying the crops, and harvesting the crops on the Farm Property, but shall not include property taxes or capital improvements to the Farm Property.

Landowner 1 and Landowner 2 shall allocate the farm expenses and farm revenue amongst themselves based on the expenses incurred and revenue generated by the Consolidated Farm Operation.

8. **Further Assurances**

Each of the Landowner and Farmer will from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

9. **Time of the Essence**

Time is of the essence of this Agreement.

10. **Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective heirs, executors, administrators, other legal representatives, successors and permitted assigns of the parties hereto. The Parties acknowledge and direct that this Agreement be electronically registered on title of both of the Farm Properties. In addition, the Parties acknowledge and agree that this Agreement be discharged from title of both Farm Properties following the expiry of the Term or any Extended Term of this Agreement.

11. **Entire Agreement**

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto, including the lease agreement dated November 1, 2019 and crop share agreements dated January 1, 2020.

12. **Amendments and Waivers**

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by both of the parties hereto. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

13. **Assignment**

This Agreement may not be assigned by the Farmer without the written consent of both Landowner 1 and Landowner 2, but may be assigned by Landowner 1 and Landowner 2 on the condition that the assignee is caused by Landowner 1 and Landowner 2 in any assignment to be legally bound as to continue to operate as a consolidated farm operation with the Farmer or the Farmer's successor for the remaining Term or any Extended Term of this Agreement.

14. **Notices**

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and will be given by personal delivery or by electronic means of communication addressed to the recipient at the re:

To the Landowner: 890 Bluegrass Drive, London, ON N6G 2M9, c/o Geun Chul Lee

To the Farmer: 14037 Medway Road, Arva, ON N0M 1C0, c/o Luke McClary

or to such other street address, individual or electronic communication number or address as may be designated by notice given by either party to the other. Any demand, notice or

other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day.

15. **Governing Law**

This Agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

16. **Attornment**

For the purpose of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. The Landowner and the Farmer each attorns to the jurisdiction of the courts of the Province of Ontario.

17. **Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

18. **Dissolution**

The Landowner warrants that in the event of the dissolution of either Landowner 1 or Landowner 2, the Landowner which did not dissolve shall continue to operate the Farm Properties with the Farmer as a consolidated farm operation for the remaining Term and any Extended Term of this Agreement

[SIGNATURE PAGE ON NEXT PAGE]

IN WITNESS WHEREOF the parties have executed this Agreement.

McCLARY HOLDINGS INC.

Per: _____

Name: Luke McClary
Title: Vice President
I have authority to bind the corporation.

1966971 ONTARIO INC.

Per: _____

Name: Jimmy Lee
Title: Director
I have authority to bind the corporation.

5005559 ONTARIO INC.

Per: _____

Name: Jimmy Lee
Title: Director
I have authority to bind the corporation.

SCHEDULE "A"

1. GENERAL FARM PROPERTY CONDITIONS.

The Farm Property shall only be used for agricultural activities. The Landowner shall at all reasonable times be entitled to inspect the Farm Property. The Farmer shall:

a. not cut down timber or any live trees of any kind whatsoever on the Farm Property

b. not remove sand, gravel, top soil or minerals from the Farm Property;

c. not commit or permit others to commit waste or create or cause a nuisance or to do any other act or thing that could disturb the quiet enjoyment of the Landowner or the occupants of adjacent or surrounding property to the Farm Property;

d. not burn crop residue of any kind on the Farm Property without the prior written consent of the Landowner, provided such consent may not be unreasonably withheld;

e. not allow manure to be placed or laid against any building on the Farm Property and permit, give, create or suffer any lien, mortgage or other encumbrance of any kind to attach to the Farm Property or the Landowner's share of the crops thereon without first obtaining the written consent of the Landowner, provided such consent may be arbitrarily withheld by the Landowner;

f. take all steps are as necessary to control soil erosion as completely as is practical and to provide Landowner with information as to the steps being taken in regard to soil erosion, forthwith upon request;

g. farm the Farm Property so as not to cause damage to the outlets of all subsurface drains and all water courses and open ditches on the Farm Property so that they are kept open and free from obstruction and in good running order at all times and to take all steps not to impoverish, depreciate or injure the soil, terraces, open ditches, inlets and outlets of tile drains, water courses and ditches, including grass waterways, at all times during the Term all at the sole expense of the Farmer. Any damage caused by the Farmer is to be repaired at the sole expense of the Farmer;

h. cut or spray the weeds along the fences and to carry out and perform all acts required to be done under any act or by regulation or by-laws or as required by the Landowner acting reasonably with respect to weed and insect control and specifically to use all reasonable diligence to prevent weeds from going to seed;

i. not use or employ atrazine or any substitute therefore on or near the Farm Property, without the express prior written consent of the Landowner, which consent may be arbitrarily withheld by the Landowner;

j. supply the Landowner with copies of any applications for any permit for the use of chemicals, herbicides, pesticides, or insecticides, together with any supporting documentation relating to such application.

k. inform the Landowner of any notice of non-compliance or oral complaint which the Farmer may receive with respect to any permit and of any charge or prosecution under any environmental laws and to provide to the Landowner with a copy of any correspondence between the Farmer and a government entity related to any order, permit, charge or prosecution under any environmental laws.

l. not use, generate, manufacture, refine, treat, transport, store, handle, dispose, deposit, transfer, produce or process any hazardous substances, except with the express prior written consent of the Landowner, which consent may be arbitrarily withheld. In the event that the Landowner provides its consent to the storage of such hazardous substances upon the Farm Property, to properly label the drums, containers or storage vessels containing such hazardous substances so as to comply with all Workplace Hazardous Materials Information System laws.

m. comply with all environmental laws and regulations and to obtain and maintain in full force and effect all environmental permits which are required for the farming of the Farm Property.

n. provide the Landowner with written notice immediately upon becoming aware of any release of any hazardous substances and to provide proof to the Landowner that the Farmer has notified the appropriate governmental authority of such release.

o. in the event of a release of hazardous substances on the Farm Property by the Farmer, and in addition to all costs and expenses incurred by the Landowner in connection with the remedial work, the Farmer shall be liable for and shall indemnify and save each of the Landowner, its shareholders, directors, officers, employees, agents and representatives harmless of and from any and all claims or losses suffered by, imposed upon or asserted against the Landowner, its shareholders, directors, officers, employees, agents and representatives, as a result of a release of hazardous substances upon the Farm Property.

p. indemnify and save each of the Landowner, and its shareholders, directors, officers, employees, agents and representatives harmless of and from any Claim or loss suffered by, imposed upon or asserted against the Landowner, its shareholders, directors, officers, employees, agents and representatives as a result of, in respect of, connected with or arising out of, under or pursuant to:

(1) any failure by the Farmer to perform and fulfil any covenant of the Farmer under this Crop-Sharing Agreement;
(2) any Claims or losses initiated by a governmental authority concerning any hazardous substances used by the Farmer on the Farm Property;
(3) any conduct, action or inaction of the Farmer giving rise to any claim or loss against the Landowner.

2. ACCEPTANCE OF FARM PROPERTY

The Farmer hereby accepts the Farm Property on an "as is, where is" basis and further acknowledges that the Landowner makes and has made no representation or warranty of any kind whatsoever regarding the Farm Property, including but not limited to the suitability of the soils of the Farm Property for any specific crop.

CONSENT CONDITIONS

APPLICATION B-32/19

Middlesex Centre Consent Application B-32/19 is approved by the Local Planning Appeal Tribunal at a Hearing, dated April 30, 2021, subject to the Owner first meeting the following conditions:

1. That the owner demonstrate that the Crop-Sharing Agreement between 5005559 ONTARIO INC. and 1966971 ONTARIO INC. (landowners) and McCLARY HOLDINGS INC. (farmer) effective January 1, 2021, which demonstrates the operation of a consolidated farm operation on the 14378 Ilderton Road/ 22740 Richmond Street and 15374 Medway Road farm properties, is registered on title of the Subject Lands (both the to be severed and retained portions) and the Medway Road farm property, as required by that Agreement.

2. That the Owner removes the chicken coup from the Severed Parcel.

3. That the Certificate of Consent under Section 53(42) of the *Planning Act* shall be given within one year of the date of the notice of the decision. The request for the Certificate of Consent shall be accompanied by a written submission that details how each of the conditions of severance has been fulfilled.

4. That the fee for the Certificate of Consent be paid in accordance with the Municipality's Fees and Charges By-law.

5. That a draft reference plan be prepared by an Ontario Land Surveyor for the purposes of facilitating the transaction of the consent and that this plan be approved by the Municipality prior to it being deposited with the Land Registry Office.

6. That the Owners' solicitor provide a Transfer in Preparation to the Municipality, together with a deposited reference plan and a Schedule describing the land to be transferred, for the purposes of the issuance of a Certificate of Consent.

7. That the Owners' solicitor submit an undertaking in a form satisfactory to the Municipality to register an electronic transfer of title consistent with the Consent decision.

8. That, if necessary, a revised assessment schedule in accordance with the *Drainage Act*, as amended, be commissioned and paid for by the Owner.

9. That the Severed Parcel be re-zoned as Surplus Residence (SR).

10. That the Retained Parcel be re-zoned as Agricultural – No Residences (A3-4) zone, prohibiting additional residential dwellings on the Retained Farm Holding that do not exist as of April 19, 2021, be in full force and effect.

11. That the Owner of the Retained Farm Holding register on title to the Retained Farm Holding at its expense, a restrictive covenant not to expand or intensify the legacy legal non-conforming single detached residential dwelling in any manner and to not take any action that would prevent or harm the long-term viability of farming on the Retained Farm Holding.

12. That the Owner register the Minutes of Settlement as between and the Municipality on title to the Subject Lands, both on the severed and retained parcels, at its expense.

13. That the Owner enter into a severance agreement with the Municipality in order to provide notice of these conditions and advise future owners of the Severed Parcel and the Retained Farm Property of normal farm practices occurring in the area as outlined in the *Farming and Food Production Protection Act, 1998*, as amended or replaced. This agreement shall be registered prior to issuing the certificate of consent. The following requirement shall be included in the severance agreement:

"The Owner shall include in any Agreement of Purchase and Sale of the severed lot a warning specifically notifying future owners that normal farm practices, as outlined in the *Farming and Food Production Protection Act, 1998*, as amended or replaced, are engaged in and occur in the area of the property and shall require the purchaser, as a condition of any aforementioned Agreement of Purchase and Sale, to acknowledge and accept that normal farm practices, as outlined in the *Farming and Food Production Protection Act, 1998*, as amended or replaced, are engaged in and occur in the area of the property."

14. That any outstanding property taxes for the Severed Parcel and Retained Farm Property be paid in full.

15. That the Owner confirm the location of the septic system and well on the Severed Parcel to the satisfaction of the Municipality, and that a contingency area is available, all of the above shall be adequately located on the residential parcel.

16. That the residence on the residential Severed Parcel is deemed habitable by the Chief Building Official.

17. That the Owner confirm that the location of the septic system and well on the Severed Parcel to the satisfaction of the Municipality, that a contingency area is available, and that all of the above shall be adequately located on the Severed Parcel.

18. That the Owner be required to install separate hydro meters to each of the residences on the Severed Parcel and the Retained Farm Property to the satisfaction of the Municipality and Hydro One.

19. That the Owner be required to dedicate lands up to 18 metres from the centerline of County Road 16 (Ilderton Road) along the Severed Parcel and Retained Farm Property to the satisfaction of the upper-tier municipality Corporation of the County of Middlesex for the purposes of road widening, if the right of way is not already to that width.

20. That the Owner be required to dedicate any road widenings along Richmond Street (Provincial Highway #4), if such are required by the Province of Ontario.

Reasons

- The proposal is consistent with the Provincial Policy Statement;
- The proposal conforms to the County of Middlesex Official Plan;
- The proposal is consistent with the Middlesex Centre Official Plan; and
- Subject to the conditions, the proposal would comply with the Middlesex Centre Comprehensive Zoning By-law.

Municipality of Middlesex Centre
By-Law 2021-XXX

ZONING ORDER

Being a by-law to amend the Middlesex Centre Comprehensive Zoning By-law Number 2005-005 with respect to Part South Lot ½ Lot 16, Concession 11 as in LT303567, formerly in the Township of Middlesex Centre/London Township, now in the Municipality of Middlesex Centre, County of Middlesex, being PIN 08143-0028 and municipally known as 14378 Ilderton Road and 22740 Richmond Street, Middlesex Centre.

WHEREAS Municipal Council and the Local Planning Appeal Tribunal has deemed it advisable and appropriate to amend the Middlesex Centre Comprehensive Zoning By-law 2005-005;

AND WHEREAS this By-law is in conformity with the Middlesex Centre Official Plan;

THEREFORE the Council of the Municipality of Middlesex Centre enacts as follows:

1. That Zoning Map Schedule 'A', Key Map 38 to the Middlesex Centre Comprehensive Zoning By-law 2005-005 is hereby amended by changing from the Agricultural (A1) zone to the Surplus Residence (SR) zone, that land drawn in heavy solid lines and identified as Surplus Residence (SR) on pg. 2 of this By-law, being Part South Lot ½ Lot 16, Concession 11 as in LT303567, designated as Part 1 as in Plan 33R-XXXX; formerly in the Township of Middlesex Centre/London Township, now in the Municipality of Middlesex Centre, County of Middlesex, municipally known as 14378 Ilderton Road.

2. That Zoning Map Schedule 'A', Key Map 38 to the Middlesex Centre Comprehensive Zoning By-law 2005-005 is hereby amended by changing from the Agricultural (A1) to Agricultural – No Residences (A3-4) zone, that land drawn in heavy solid lines and identified as Agricultural – No Residences (A3-4) on pg. 2 of this By-law, being Part South Lot ½ Lot 16, Concession 11 as in LT303567, designated as Part 2 as in Plan 33R-XXXX; formerly in the Township of Middlesex Centre/London Township, now in the Municipality of Middlesex Centre, County of Middlesex, being PIN 08143-0028 and municipally known as 22740 Richmond Street, Middlesex Centre.