

TEMPORARY USE AGREEMENT

THIS AGREEMENT made this 4th day of July, 2023.

BETWEEN:

BURNBRAE PROCESSCO HOLDINGS 19 INC.

Hereinafter called the "Owner"

OF THE FIRST PART

-and-

THE CORPORATION OF THE MUNICIPALITY OF STRATHROY-CARADOC

Hereinafter called the "Municipality"

OF THE SECOND PART

WHEREAS the Owner warrants that they are the Owner of PART LOT 6, 34PL244 AS IN MW83982 SAVE & EXCEPT PART 1, PLAN 33R-15929; TOWNSHIP OF STRATHROY-CARADOC, municipally known as 311 Ellor Street, Strathroy, Ontario being PIN number 09609-0206 in the attached Schedule "A" (the "Lands").

AND WHEREAS the Owner is desirous of using the land as temporary overflow parking (the "overflow parking") for the existing industrial use located at 311 Ellor Street (the "existing plant") while options are explored for a new location for the existing plant.

AND WHEREAS parking areas for industrial use are not permitted in a residential zone by Strathroy-Caradoc Zoning By-law 43-08 and therefore requires a Temporary Use By-law to be passed under Section 39 of the *Planning Act*, R.S.O. 1990, as amended;

AND WHEREAS the Owner applied for, and was granted by Council, a Temporary Zoning By-law Amendment (By-law No. 38-23) in order to permit a parking area on the subject lands for a temporary period of time being a period of **twenty four (24) months** commencing from the date of **July 4th 2023** and ending on **July 4th, 2025**;

AND WHEREAS the Municipality deems it expedient and advisable to enter into an agreement with the Owner regarding the temporary use of the Lands, which will be implemented by By-law and is enforceable pursuant to section 442 of the *Municipal Act, 2001*, as amended;

NOW THEREFORE WITNESSETH THAT in consideration of the mutual covenants hereinafter expressed and other good and valuable consideration, the parties hereto covenant and agree as follows:

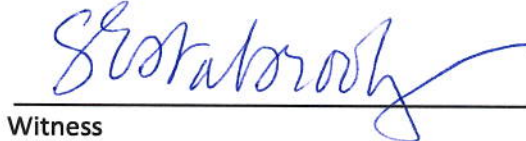
1. The above recitals are true and are hereby incorporated into this Temporary Use Agreement (the "Agreement") by reference.
2. The Owner is the registered Owner of the Lands;
3. This Agreement shall be registered against the title to the Lands, at the expense of the Owner, and shall take priority over any subsequent registrations against the title to the Lands;
4. That this Agreement enures to the benefit of and is binding upon the Parties and their respective heirs, executors, administrators, estate trustees, trustees, personal or legal representatives for property, successors and assigns;

5. The Owner agrees that a maximum of 40 passenger vehicles and/or 6 transport trucks shall be permitted in the overflow parking and that no refrigeration units shall be permitted to be parked or stored within the overflow parking.
6. Upon execution of this agreement, the overflow parking shall only be permitted on the Lands for a period of two years commencing on **June 4th 2023** and ending on **June 4th, 2025** as permitted by By-law 38-23. This time period may be extended for an additional term provided the temporary zoning of the property has been extended as per Section 39 of the *Planning Act, RSO, 1990*, as amended.
7. Prior to the lapsing of By-law 38-23, the overflow parking shall be removed from the Lands to the satisfaction of the Municipality and that the lands are in compliance with the Municipality's Comprehensive Zoning By-law. The Municipality's Chief Building Official shall be requested by the Owner during this time to inspect the Lands and verify that the overflow parking no longer exists.
8. The Owner agrees that notwithstanding any other provisions of this Agreement, the Parties hereto agree with each other that none of the provisions of this Agreement, (including a provision stating the Parties' intentions) is intended to operate, nor shall have the effect of operating, in any way to fetter either the Council of the Municipality which authorized the execution of this Agreement or any of its successor councils in the exercise of any of Council's discretionary powers, duties or authorities. The Owner hereby acknowledges that it will not obtain any advantageous planning or other consideration or treatment by virtue of it having entered into this Agreement or by virtue of the existence of this Agreement;
9. The Owner agrees that in order to guarantee compliance with all the conditions contained herein, the Owner covenants and agrees to file with the Municipality upon execution of the Agreement, cash or a letter of credit in the amount of Ten Thousand Dollars (\$10,000.00) (the "Security"). The Security shall be in a form approved by the Municipality, and the Owner covenants and agrees that the Security shall be kept in full force and effect and that it will pay all premiums as the Security becomes due or until such time as the Municipality returns the Security. Without limiting sections 10 and 11, the Municipality may draw on the Security at its discretion to enforce any condition or default pursuant to this Agreement including but not limited to administrative, legal or other indirect costs associated with the preparation, review and enforcement of this agreement. The Municipality shall return the Security to the Owner for cancellation upon the satisfaction by the Owner of his obligations under section 6 herein.
10. The Owner agrees and acknowledges that should there be a deficiency in or failure to carry out any work or matter required by any clause of this Agreement, and the Owner fails to comply, within thirty (30) days written notice, with a direction to carry out such work or matter, the Municipality may draw upon the Security to the extent necessary and enter onto the subject lands and complete all outstanding works or matters, and pay all costs and expenses incurred thereby from the proceeds so drawn. Further, in the event that the work required by section 7 herein has not been completed by the end of the temporary use term set out in By-law 38-23 and no such temporary use is extended beyond the term identified in By-law 38-23, the Municipality may draw on the Security to recoup its reasonable costs, including administrative and legal costs, of enforcing/prosecuting a Zoning by-law violation.
11. The Owner agree to pay the Municipality the cost of the Municipality's solicitor for all costs involved in the review and registration of this Agreement on behalf of the Municipality, and in this regard make payment to the Municipality within 30-days of receiving an invoice from the Municipality. The Owner agrees that this Agreement or a notice thereof may be registered by the Municipality on title to the Lands, and the Owner hereby agrees to execute any document reasonably required to permit such registration within ten (10) days of the Municipality's request. Upon expiry or termination of this Agreement, the Municipality may discharge or otherwise vacate or cause to be discharged or vacated this Agreement or its notice of this Agreement registered on title to the Lands.

12. The Owner covenants and agrees with the Municipality on behalf of itself, its successors and assignees, to indemnify and save harmless the Municipality, its servants and agents from and against any and all actions, suits, claims and demands whatsoever, which may arise either directly or indirectly by reason of any work performed. The Owner further covenants and agrees to release and forever discharge the Municipality from and against all claims, demands, causes of action, of every nature and type whatsoever that may arise either as a result of the failure of the Municipality to carry out any of its obligations under this Agreement, or as a result of the Municipality performing any municipal work on the Lands or the adjacent properties which may damage or interfere with the work of the Owner, provided that such default, failure or neglect was not caused as a result of negligence on the part of the Municipality, its servants or agents;
13. The Owner agrees that in the event they do not perform the work contemplated or fulfil the conditions contemplated and set out in Section 7 of this Agreement, they hereby acknowledge that such failure shall be a violation of By-law 38-23 with respect to the Lands, subject to the result of any formal appeal filed by the Owner with respect to a decision by Council made on a *Planning Act* section 39(3) application.
14. The Owner agrees and acknowledges that the Municipality will commence legal action against the Owner if the Owner fails to comply with the terms of this Agreement.
15. No amendment, discharge, modification, restatement, supplement, termination nor waiver of this Agreement or any section of this Agreement is binding unless it is in writing and executed by the Parties to be bound. No waiver or, failure to exercise, or delay in exercising, any section of this Agreement constitutes a waiver of any other section (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.
16. This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which will be an original, and each of which may be delivered by facsimile, email or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.
17. Each section of this Agreement is distinct and severable. If any section of this Agreement, in whole or in part, is or becomes illegal, invalid, void, voidable or unenforceable in any jurisdiction by any court of competent jurisdiction, the illegality, invalidity or unenforceability of that section, in whole or in part, will not affect:
 - a. The legality, validity or enforceability of the remaining sections of this Agreement, in whole or in part; or
 - b. The legality, validity or enforceability of that section, in whole or in part, in any other jurisdiction.
18. The Parties warrant that this Agreement is voluntary, that none of the Parties are under any legal disability and that each party has had an opportunity to seek the advice of independent legal counsel with respect to this Agreement.
19. This Agreement is governed by and is to be construed and interpreted in accordance with the laws of the Province of Ontario and the law of Canada applicable in the Province of Ontario.

IN WITNESS WHEREOF BURNBRAE PROCESSCO HOLDINGS 19 INC.
has hereunto affixed signature.

BURNBRAE PROCESSCO HOLDINGS 19 INC.



Witness

IN WITNESS WHEREOF THE CORPORATION OF THE MUNICIPALITY OF STRATHROY-CARADOC
has hereunto affixed its corporate seal attested by the hands of its duly authorized officers.

THE CORPORATION OF THE MUNICIPALITY
OF STRATHROY-CARADOC

Colin Grantham, Mayor

CAO

Authorized by By-law No. 39-23
Passed on 4th day of July, 2023

SCHEDULE "A"

PART LOT 6, 34PL244 AS IN MW83982 SAVE & EXCEPT PART 1, PLAN 33R-15929; TOWNSHIP OF STRATHROY-CARADOC, being PIN 09609-0206

Municipally known as 311 Ellor Street, Strathroy, Ontario