

THIS EASEMENT AGREEMENT dated the xx day of xx, 20xx.

BETWEEN:

THE CORPORATION OF HALDIMAND COUNTY

(Hereinafter, the "County" OR Transferor")

-and-

XPLORNET COMMUNICATIONS INC.

(Hereinafter, "Xplornet" or "Transforee")

WHEREAS the County is the registered owner of the lands legally described as PINS 38224-0119, legally described as XXXXX (the "Easement Lands") which includes the Grand Vista Bridge;

AND WHEREAS Xplornet wishes to acquire an easement over a portion of the Easement Lands, as more particularly detailed herein;

NOW THEREFORE in consideration of payment in the sum of ONE DOLLAR (\$1.00) now paid by each party to the other, and in consideration of the premises, the parties hereto agree as follows:

1. The recitals herein are true and accurate.
2. The County hereby grants to Xplornet, the following easement to erect, maintain, operate, repair, replace, relocate, upgrade, reconstruct and remove at any time and from time to time, telecommunication line or lines and communication line or lines consisting of all necessary equipment and storage units, if applicable, underground cable and associated material and equipment, located underground and/or above ground (all or any of which works are herein call the "Equipment") and as shown on Schedule "A" (the "Easement Lands") and more particularly described in the form attached hereto as Schedule "B" – Easement Schedule.
3. The County agrees to keep the Easement Lands reasonably clear of all substantial physical obstructions so as to permit the exercise and enjoyment of the easement rights granted herein; but does note that there are existing watermains in or around the Easement Lands that cannot be impacted in any manner. However, Xplornet specifically acknowledges that the County shall have no obligation to maintain the Easement Lands, and in particular, shall have no obligation to remove snow, ice, refuse, debris, fallen trees, etc.
4. Xplornet must not disturb the current trail system and if any excavation or grounds are being disturbed, that they be returned to their original state and to the County's approval.
5. Xplornet shall at all times ensure clear access for Emergency Service access during construction, maintenance, operation and repair of the Equipment.
6. Xplornet shall be responsible for proper signage and safeguarding of the public during construction, maintenance, operation and repair of the Equipment.
7. Xplornet shall notify the County when works will be undertaken on the Easement Lands so that the County may provide appropriate notification to the public in the event that a temporary trail closure is required.

8. Xplornet shall not cut or remove any trees, shrubs or vegetation without written permission of the Project Manager, Forestry/designate, Haldimand County of which inspection, review and approvals (as applicable) will not be reasonably withheld and issued in accordance with County Policies and By-laws.
9. Xplornet agrees to construct, operate, maintain and repair the Easements at its own expense and in accordance with the policies and standards applicable to other County lands. Xplornet shall pay for any engineering (including structural engineer for use of the Grand Vista Bridge), locates, surveys or R-Plans required to facilitate the registration of this easement agreement and installation /attachment of fibre and related materials / works.
10. The easement is in perpetuity or until the infrastructure is no longer required and then shall be removed at the expense of Xplornet.
11. Xplornet shall exercise the easement rights granted herein in accordance with all applicable laws, regulations, by-laws of any relevant federal, provincial and/or municipal authority, and shall be responsible for obtaining any required permits, approvals and/or consents from the applicable regulating authorities. The County agrees to cooperate with Xplornet, as required, in obtaining any such permits. Prior to construction and any capital improvements, Xplornet hereby acknowledges that it must obtain the prior written approval of Haldimand.
12. Xplornet covenants and agrees with the County that it will be responsible for any damage or loss caused or suffered by the County as a result of the exercise of the easement rights granted herein. Xplornet agrees to indemnify, defend and save harmless the County from any and all liabilities, damages, costs, causes of action, damages or claims arising out of:
 - a. any breach, violation or non-performance of any covenant, obligation, agreement, term or condition in this easement agreement;
 - b. any damage to property and any injury to any person or persons, including death resulting at any time therefrom, occasioned by an act or omission of Xplornet and those in law for whom it is responsible; and
 - c. such indemnification shall survive the termination of this Easement Agreement. Xplornet shall maintain with regard to its use and occupation public liability and property damage insurance, including personal injury and contractual liability with respect to the easement with coverage to include without limitation all activities and operations conducted by Xplornet and any other person on the demised easement lands for whom Xplornet is in law responsible. Such policy shall be written on a comprehensive basis with a limit of not less than Two Million Dollars (\$2,000,000) for bodily injury to any one or more persons, or property damage. Xplornet agrees to name Haldimand County as an additional insured on the said policy and to furnish to the County with a certificate of insurance each year on the anniversary date of the policy.
13. Any notice required or permitted to be given hereunder shall be in writing and be given by personal service, facsimile or by registered letter, with postage fully prepaid, to the address set forth below:
 - (a) To Haldimand County
53 Thorburn St. S.
Cayuga, ON NOA 1E0
Attention: Manager, Legal & Support Services c/o Property Coordinator
Phone: 905-318-5932
Email: properties@haldimandcounty.on.ca
 - (b) To XPLORNET Communications Inc.
Street Address
City, Prov, Postal Code

Attention: Position Title
Phone: XXX-XXX-XXXX
Email:

Notices to be given under this Easement Agreement shall be in writing and may be delivered personally (with a written acknowledgement of receipt of the notice signed by a recipient representing and/or authorized by the County as the case may be), by registered mail (deemed received on third (3rd) business day after posting), or by email transmission (with confirmation of transmission and deemed delivered on the date transmitted if transmitted before 4:00 p.m. on a business day, otherwise transmission is deemed delivered on the next business day, holidays excluded) with a copy also sent by mail to the names, addresses and contact information listed below.

14. This Easement Agreement may only be amended by an agreement in writing and shall enure to and benefit the parties hereto and their successors and permitted assigns.
15. No condoning, excusing or overlooking by either party of any breach of any of the terms of this agreement shall take effect or be binding upon that party unless the same be expressed in writing by that party. Any waiver so given shall extend only to the particular breach so waived and shall not limit or effect rights with respect to any other past, present or future breach.
16. This Easement Agreement shall be governed by and construed in accordance with the laws of the province of Ontario and the parties hereby submit to the jurisdiction of the courts of the Province of Ontario for all matters arising out of or in connection with this Agreement.
17. This Agreement sets forth the entire understanding of the parties as to the subject matter hereof and merges all prior discussions between them. Neither party shall be bound by any conditions, definitions, warranties or representations with respect to the subject matter of this Agreement other than as expressly provided for herein, or are duly set forth subsequent to the date hereof and in writing signed by an authorized representative of the party to be bound thereby.
18. Time shall in all respects be of the essence with respect to this agreement.
19. Any provision of this Agreement which is or becomes prohibited or unenforceable in any jurisdiction does not invalidate, affect or impair the remaining provisions hereunder.
20. The County shall each have the right to register this Easement Agreement on land titles and each party shall execute all documentation required to effect such registration forthwith upon the request of the other party.
21. This Agreement, when executed by the parties authorized signing officer(s), shall constitute a binding agreement.

IN WITNESS WHEREOF the County has on the ____ day of _____, 20XX affixed its corporate seal attested by the hands of the duly authorized officer(s).

THE CORPORATION OF HALDIMAND COUNTY

Per: _____

Name: Ken Hewitt

Title: Mayor

Per: _____

Name: Evelyn Eichenbaum

Title: Clerk

I/We have the authority to bind the Corporation.

IN WITNESS WHEREOF the XX has on the ____ day of _____, 20XX affixed its corporate seal attested by the hands of the duly authorized officer(s).

XPLORNET COMMUNICATIONS INC.

Per: _____

Name: Insert

Title: Insert

Per: _____

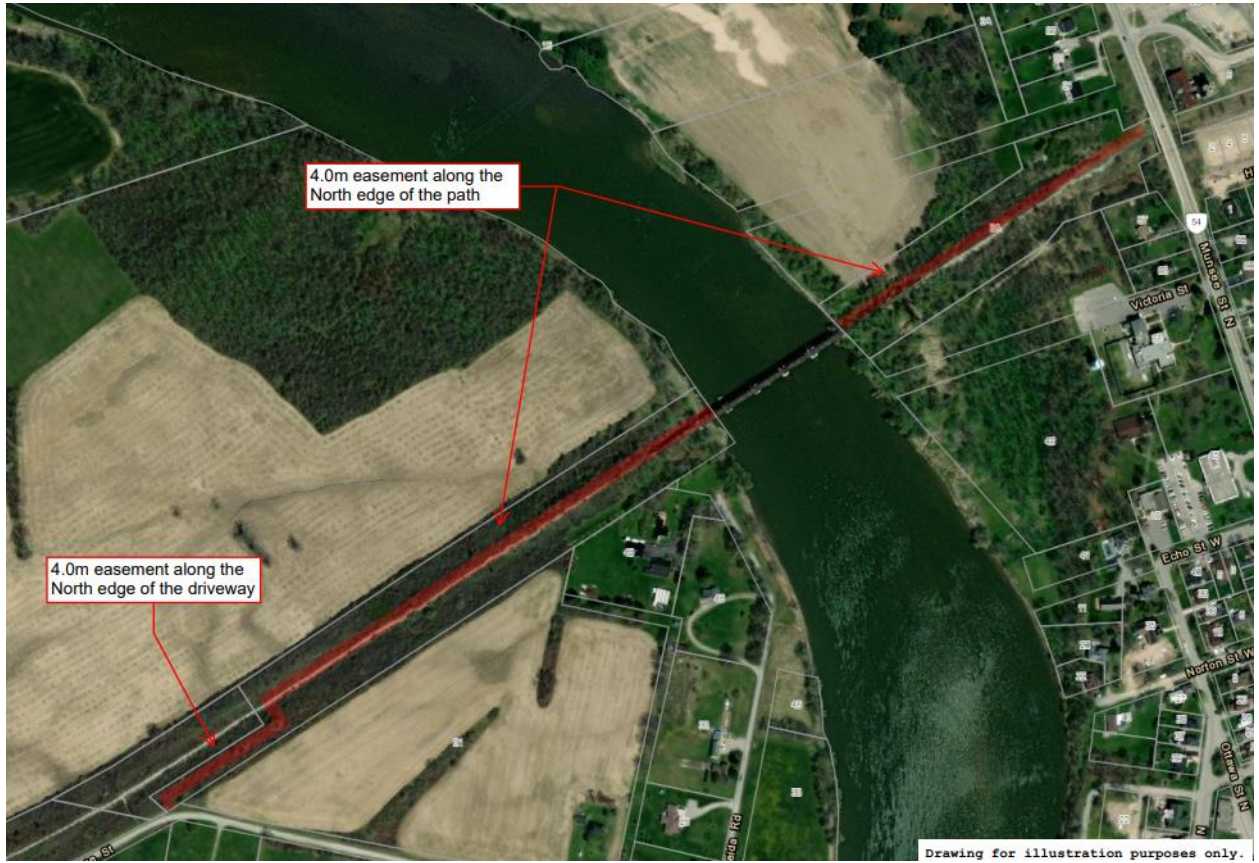
Name: Insert

Title: Insert

I/We have the authority to bind the Corporation.

SCHEDULE "A" – EASEMENT LANDS

Legally described as PINS 38224-0119, legally described XXXXXX.



SCHEDULE "B" - EASEMENT SCHEDULE

1. The Transferor hereby provides a free and unencumbered easement in, over, upon, under and/or through the lands described in the Easement Agreement. This Easement shall include the right of Xplornet, its successors, assigns, servants and agents to use the surface of the Easement Lands for ingress and egress on foot and/or with vehicles, supplies, machinery and equipment at any time and from time to time but only for such purposes necessary or incidental to the exercise and enjoyment of the rights hereby granted with respect to the Works.
2. The Transferee shall have the right, acting reasonably, at any time and from time to time to remove any boulder or rock on or under the Easement Lands that would have the effect of interfering with the exercise and enjoyment of the rights hereby granted with respect to the Works.
3. The Transferee shall have the right to assign or transfer its rights hereunder in whole or in part, subject to written agreement by the County which shall not be unreasonably withheld.
4. Notwithstanding any rule of law or equity, any Works constructed by Xplornet shall be deemed to be the property of Xplornet even though the same may have become annexed or affixed to the Easement Lands.
5. Xplornet shall at its own expense as soon as reasonably possible after the construction of any Works or other exercise of its rights hereunder, remove all surplus sub-soil and debris from the Easement Lands and restore them to their former state so far as is reasonably practicable.
6. Xplornet covenants and agrees as follows:
 - a. be responsible for any damage caused at any time by its agents or employees to the Easement Lands. When practical, Xplornet, after any of its activities, shall restore the Easement Lands appropriately. The subsequent maintenance of the Easement Lands shall be the responsibility of the County; and
 - b. to assume all environmental liabilities related to its use of the Easement Lands including but not limited to any liability for clean-up of any Hazardous Substance on or under the Easement Lands which result from the operations of Xplornet in, on, under, above, over, along, or across the Easement Lands, or any equipment brought in, on, under, above, over, along or across the Easement Lands by Xplornet, its contractors, agents, or employees or by any person with the express or implied consent of Xplornet.
7. The County is not responsible, either directly or indirectly, for any damage to property, including any nuisance effects or injury to any person, howsoever caused, including death, arising from the escape, discharge, spill or release of any Hazardous Substance resulting from Xplornet use of the Easement Lands. The foregoing release shall not extend to any loss, damage, injury or death caused by the gross negligence or wilful misconduct of the County, its employees, agents, contractors or those other persons for whom the County is in law responsible.
8. Except in cases of its gross negligence or wilful misconduct, the County shall not be responsible, either directly or indirectly, for any damage to the Equipment that may occur during its installation, maintenance or removal by Xplornet, not for any losses, claims, charges, damages and expenses whatsoever suffered by Xplornet including claims for loss or revenue or loss of profits on account of actions of the County working in, under, over, along, upon and across its roads, highways and Easement Lands or other property owned by the County.