

SITE PLAN AGREEMENT

This AGREEMENT made this _____ day of _____, 2019.
BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

hereinafter called the "Municipality" of the First Part,

-and-

O'MALLEY HOMES (WATERLOO) INC.

hereinafter called the "Owner"
of the Second Part.

WHEREAS the Owner represents that it is the registered owner of those lands in the Municipality of Kincardine, County of Bruce, described in Schedule "A" attached hereto and forming part of this agreement;

AND WHEREAS the parties hereto agree that the lands affected by this agreement are as set out in Schedule "A" attached hereto;

AND WHEREAS the Municipality has enacted a Site Plan Control Area By-Law pursuant to the provisions of Section 41 of the *Planning Act*, R.S.O., 1990, c.P. 13, as amended.

AND WHEREAS the Municipality has approved the plans and drawings submitted with the Owner's application for site plan approval subject to certain conditions and subject to entering into this agreement;

AND WHEREAS the Owner acknowledges that a financial contribution from the Owner to the Municipality will be required in order to carry out development of the works or matters of concern to the Municipality required to be addressed by this Agreement and its appurtenant Schedules;

AND WHEREAS section 41(10) of the *Planning Act*, R.S.O., 1990, c.P. 13, as amended, permits the registration of this Agreement against the lands to which it applies in order to secure the provision of works, facilities or matters referred to in the *Planning Act* and the construction of the development in accordance with the approved plans and drawings;

AND WHEREAS the covenants, agreements, conditions and understandings herein contained on the part of the Owner and the Party of the Third Part, if any, shall run with the land and shall enure to the benefit of and be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns, as the case may be, and shall be appurtenant to the adjoining highways in the ownership of the Municipality.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the approval of the plans for the development on subject parcel of land by the Municipality and the sum of ONE (\$1.00) DOLLAR, the receipt of which is hereby admitted, the Owner for himself and for all successors in title, HEREBY AGREES with the Municipality as follows:

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PART A – SCHEDULES

1. The following Schedules are attached hereto and form part of this Agreement:
 - 1.1. Schedule 'A' – Description of Land
 - 1.2. Schedule 'B' – List of Approved Site Plan Documents
 - 1.3. Schedule 'C' – Site Development Requirements
 - 1.4. Schedule 'D' – Itemized Estimate of Costs of Construction

PART B – GENERAL PROVISIONS

2. The parties to this agreement hereby agree that the Owner as herein stated is the registered owner of those lands described in Schedule "A" to this agreement and the lands affected by this agreement are as described in Schedule "A" to this agreement, hereinafter called the "subject lands".
3. The Owner hereby releases the Municipality, its servants, agents and contractors from any and all liability in respect of the proper maintenance and operation of the matters and facilities required by this agreement.
4. The Owner consents and authorizes the registration and/or deposit of this of this Agreement and any of its Schedules by the Municipality's Solicitors upon the title to the "subject lands" in the Registry Office for the County of Bruce, which shall be at the sole discretion of the Municipality. The Owner agrees to pay any and all costs associated with the registration and/or depositing of this Agreement or any other documents pertaining to this Agreement.
5. The Owner will at all times indemnify and save harmless the Municipality on a solicitor and client basis from all loss, costs and damages which the Municipality may suffer, be at or be put to, for or by reason of the execution of this agreement. The Party of the Third Part joins herein to consent hereto and to bind its interest in the lands hereto.
6. The clauses of this agreement are independent and severable and the striking down or invalidation of anyone or more of the clauses does not invalidate all or any of the remaining clauses.
7. Nothing in this agreement shall relieve the Owner from complying with all applicable municipal requirements.
8. The Owner hereby grants to the Municipality, its servants, agents and contractors a license to enter the "subject lands" for the purpose of inspection of the works and the "subject lands" or for any other purpose pursuant to the rights of the Municipality under this agreement.
9. Once the Municipality of Kincardine has entered into the site plan agreement with the owner, all subsequent documents binding the Corporation will be executed by the Mayor and CAO.
10. The Owner agrees to obtain and register, at their own sole cost and expense a postponement from each encumbrance with a charge registered against title to the Land (of part thereof) so that notice of this agreement shall be registered in priority to any such charge.

Further, the mortgagor, if any, agrees that in the event of him assigning or transferring the mortgage on the lands, the assignment or transfer shall be subject to the terms hereof in the same manner as if the assignee or transferee had executed this Agreement.
11. If this agreement becomes null and void, the by-law will be repealed and the Mayor and CAO shall be authorized to release the agreement.

PART C - SITE DEVELOPMENT AND MAINTENANCE PROVISIONS

12. The Owner agrees to undertake development on the "subject lands", at its sole expense, in conformity with the site plan as detailed in Schedule "B" attached hereto, which shall hereinafter be referred to as the "approved site plan".
13. The Owner agrees to provide, install or otherwise abide by, at its sole expense, the site development requirements as detailed in Schedule "C" attached hereto.
 - 13.1. In order to guarantee compliance with all conditions contained within this agreement and to ensure completion of the site works, the Owner covenants and agrees to file with the Municipality prior or upon execution of this Agreement, a letter of credit in the amount as provided in Schedule 'D'. This letter of credit shall be based upon the providing security for 100% of all costs associated with any off-site servicing or works, and 50% of all costs to provide the municipality sufficient comfort that all site works, including landscaping and all stormwater management works are completed. After completion of all works and receipt of certifications, the securities may be released except for landscaping. Landscaping security will be held for one growing season. Securities may be reduced as the works are completed. The Municipal Engineer will advise an amount to be retained until the expiration of the warranty period for the works on Municipal property.
 - 13.2. The aforesaid letter of credit shall be in a form approved by the Municipality, and the Owner covenants and agrees that the said letter of credit shall be kept in full force and effect and that it will pay all premiums as the said letter of credit becomes due or until such time as the Municipality returns the letter of credit. The letter of credit or other security will be released by Municipality and returned to the Owner upon completion of the works. Owner hereby acknowledges and agrees that should there be a deficiency in or failure to carry out work or matter require 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 on the letter of credit, the owner may deposit with the Municipality cash or certified cheque in an amount equal to the letter of credit and such deposit shall be held by the Municipality as security in accordance with this agreement, provided that no interest shall be payable on any such deposit.
14.
 - 14.1. Upon completion of the development of the "subject lands" in conformity with the provisions of this agreement, the CAO shall issue a certificate of compliance.
 - 14.2. "Certificate of compliance" shall mean a statement of the Municipality as to the substantial completion of the works, matters and facilities required by this agreement and shall not be deemed to certify compliance with any other municipal requirements, regulations, or by-laws, and the Municipality shall not be stopped from pursuing any or all its rights to enforce the continuing obligations of the Owner under this agreement or to enforce any other of the Municipality's requirements, regulations or by-laws which relate to the subject lands.
15. The Owner hereby acknowledges that failure to complete all required works within the specified time period shall mean a certificate of compliance will not be issued until such work necessary to complete the development is done, and that until such certificate of compliance has been issued, in the event that the prescribed time period has lapsed, the Municipality has the right to refuse issuance of any permit necessary to carry out any additional work on the "subject lands".

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16. All maintenance and repair of facilities and matters required by this agreement shall be done by the Owner from time to time at its sole risk and expense and the Owner agrees the "subject lands" will not impede or prohibit performance of the maintenance provided for in this agreement.
17. The Owner agrees to maintain in good repair and at its sole expense the subject lands" in conformity with the provisions of Schedule "B" (approved site plan) and Schedule "C" (site development requirements), and all other requirements pursuant to this agreement, and all repair or maintenance shall conform with the requirements of this agreement as it applied to the original development.
18. The owner agrees that should it fail to complete any of the Works contemplated by this Agreement, the Municipality is under no obligation whatsoever to complete all or any portion of Works, but the Municipality has the right to complete the Works if it so chooses to. Notwithstanding the foregoing, the owner agrees that the Municipality shall at its sole discretion, have the right to enter onto the Land to take whatever action it deems necessary to safeguard the health and welfare of the residents of the Municipality including, but without limiting the generality of the foregoing, to filling in holes, blocking off access, posting signs and leveling terrain, at the owner's expense. The Owner further agrees to indemnify the Municipality, its agents or servants, from any and all claims that may arise as a result of any actions taken by the Municipality pursuant to the clause.
19. The Owner agrees that all vaults, containers, collection bins and other facilities which may be required for the storage of garbage and other waste material shall be kept within a completely enclosed building or a completely enclosed container in the location as shown on Schedule "B", and further the Owner is responsible for garbage removal.

The Owner agrees that blue boxes on wheels will be used for recycling and placed curbside to be picked up in conjunction with the municipal recycling program. The Owner agrees to use a minimum of four separate recycling bins in order to separate: paper, glass, plastic and cans, and box board. The Owner agrees to flatten and dispose of corrugated cardboard at the designated depo.

20. The Owner agrees that, at its sole expense, all parking areas provided on the "subject lands" shall be reasonably in all circumstances, maintained clear of snow so as not to prohibit or block or in any way restrict access along any driveway, walkway for vehicular and pedestrian traffic or reduce the number of useable parking spaces below the minimum number of spaces required by the Municipality's zoning by-law. The Owner agrees not to store snow on-site such that it blocks visibility adjacent to a street or drainage facilities on-site or where adequate drainage facilities are not provided or where melt water would adversely affect an abutting property.
21. The Owner agrees to maintain at its sole expense and in good repair to the standards acceptable to the Municipality all landscaped open space, private driveways and complementary facilities, and private approach sidewalks which are located on untraveled portions of Municipality-owned road allowances abutting the subject lands.
22. The Owner agrees that all facilities and matters required by this Agreement shall be provided and maintained at its sole risk and expense and to the satisfaction of the Municipality and that in default thereof and in the sole discretion of the Municipality, the Municipality may perform such requirements at the expense of the Owner and such expense may be recovered by the Municipality in like manner as municipal taxes within the meaning of Section 326 of the Municipal Act, R.S.O., 1990, c.M, 45, as amended.
23. The Owner agrees to do the following:

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- 23.1. subject to The Public Transportation and Highway Improvement Act, R.S.O. 1990, facilities, to provide access to and from the lands such as access ramps and curbing and traffic direction signs;
- 23.2. to dedicate to the Municipality, free and clear of all encumbrances, all Easements and lands required by the Municipality for the construction, maintenance and improvement of any existing or newly required watercourses, ditches, land drainage works and sanitary sewage facilities on the land and, on request by the Municipality, to deliver the properly executed documents in a form that can be registered, to the Municipality in order to complete the dedication to the Municipality and to pay all costs incurred by the Municipality in respect to the aforementioned dedications;
- 23.3. to, where required by Municipal resolution, dedicate to the Municipality widening of highways that abut on the land described in Schedule "A" attached hereto, free and clear of all encumbrances.

PART D - DEFINITIONS

24. In this Agreement and the Schedules attached hereto:

- i. "Building Area" shall mean the only area upon which the erection and use of buildings and structures shall be permitted.
- ii. "Land" or "Lands" shall mean the real property, the legal description which is attached hereto as Schedule 'A'.
- iii. "Landscaped Open Space" shall mean the areas of open space comprised of lawn and ornamental shrubs, flowers and trees and may include space occupied by paths, walks, courts, patios but shall not include parking areas, traffic aisles, driveways and ramps.
- iv. "Parking Area" shall mean the areas of open space other than a street to be used for the parking of motor vehicles and access ramps and driveways to areas used for the parking of motor vehicles which shall be clear of buildings and structures except those accessory to the operation of the parking area, and which shall be available and maintained for the parking of motor vehicles including maneuvering aisles and other space necessarily incidental to the parking of vehicles.
- v. "Natural Open Space" shall mean the areas of open space which are to remain in a natural state with a minimum amount of maintenance, but shall not include areas of outside storage, parking areas, traffic aisles, driveways or ramps, or Building Area, Natural Open Space areas shall be subject to the requirements of the Maintenance and Occupancy (Property Standards) By-Law as amended from time to time for the Municipality and shall be kept clear of all weeds and natural growth which is prohibited by other Municipal by-laws. Areas of Natural Open Space may include areas of Landscaped Open Space.

PART E – SIGNATURES

25. The covenants, agreements, stipulations, declarations and provisions contained herein on the part of the Owner shall run with the lands and shall be binding upon the Owner, its successors and assigns and the benefit thereof shall ensure to the Municipality.

SIGNED, SEALED AND DELIVERED)
in the presence of)

**THE CORPORATION OF THE
MUNICIPALITY OF KINCARDINE**

Mayor – Anne Eadie

Chief Administrative Officer –
Sharon Chambers

Witness

President – John O'Malley
O'Malley Homes (Waterloo) Inc.
169 Lexington Court Unit H,
Waterloo, ON N2J 4R3

**I HAVE AUTHORITY TO BIND
THE CORPORATION**

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SCHEDULE "A"

PT LT 4 PL 257 PT 1 3R7732; KINCARDINE
PIN 33310-0054 (LT)

and

PT LT 4 PL 257 PT 2 3R7732; KINCARDINE
PIN 3310-0055 (LT)

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SCHEDULE "B"

The "approved site plan" shall be the plan drawn by the Owner and marked as the "approved site plan", signed by the Municipality's Chief Administrative Officer and signed by the Owner with any changes marked in red and initialed by the Chief Administrative Officer and the Owner. This "approved site plan" shall be filed with the Municipality's Chief Administrative Officer.

A1 Front & Rear Elevations – O'Malley Homes – June 6, 2019
A2 Foundation Plan – O'Malley Homes – June 6, 2019
A3 Main Floor Plan – O'Malley Homes – June 6, 2019
A4 Upper Floor Plan – O'Malley Homes – June 6, 2019
A5 Left & Right Elevations – O'Malley Homes – June 6, 2019
Site Plan – K. Smart Associates Limited - June 6, 2019
Site Services Plan – K. Smart Associates Limited – June 6, 2019
Site Grading Plan – K. Smart Associates Limited – June 6, 2019
Drainage Catchment Area Plan – K. Smart Associates Limited – May 1, 2019
Retaining Wall Layout & Details – K. Smart Associates Limited – June 6, 2019
Servicing Design Brief – 879 Princes Street – K. Smart Associates Limited – May 1, 2019

SCHEDULE "C"

SITE DEVELOPMENT REQUIREMENTS

1. The Owner agrees that the completion date for all work required pursuant to this agreement shall be September 1, 2020 and provide the Municipality with as constructed drawings.
2. The Owner agrees to prepare a grading and drainage plan acceptable to the Municipality and all surface and roof drainage shall be controlled in accordance with the approved plans in a manner satisfactory to the Municipality. Final Grading Certificate completed by a Professional Engineer or a Registered Ontario Land Surveyor, must be submitted.
3. The Owner agrees that any floodlighting of the land shall be installed in such a manner so as to deflect the light away from adjacent streets and properties or so controlled in intensity so as to prevent glare on adjacent streets and properties.
4. The Owner agrees to ensure during development of the "subject lands" that appropriate devices are installed and measures taken to prevent unreasonable erosion of soil from the site by wind or water, and the Owner agrees to abide by any request of the Municipality's Chief Building Official or Engineer in this regard, acting reasonably.
5. The Owner agrees to ensure that all records relating to testing of municipal water mains and sanitary sewers are provided to the Municipality prior to connection to the Municipal system. The Municipality will conduct Bacteriological sampling for the watermain at the owner's expense.
6. The Owner agrees to install temporary fencing or otherwise adequately protect all trees, shrubs and other vegetation which are to be retained, and such fencing shall be located not closer to any trees than the drip line of such trees, and the Owner agrees to abide by the requirements of the Municipality's Director of Public Works in this regard, acting reasonably.
7. The Owner agrees that any internal driveways which are necessary for, and designated as, a fire route shall be so designed so as to carry the weight of the Municipality's fire fighting equipment and as per the Ontario Building Code.
8. The Owner agrees to provide all landscaping as shown on the "approved site plan". All plantings shall be installed to the specifications and requirements as indicated on the "approved site plan".
9. The Owner agrees that the site and building shall be designed so as to provide unobstructed access for wheelchairs to at least one main building entrance from the public sidewalk/street and one parking area by use of sidewalk ramps of proper gradient and surfacing.
10. The Owner agrees to appropriately and properly finish all lands lying between the "subject lands" and any and all abutting streets, which, without limiting the generality of the foregoing shall include the following:
 - i. landscaping of lands lying between the street line and property line not to be used for vehicular or pedestrian entrances with topsoil and sod/seed.
 - ii. installation of driveways of proper width and grade from the street line to the property line with asphalt, concrete or other hard surfacing acceptable to the Municipality's Engineer removal of

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existing driveways which are not to be used with replacement by appropriate landscaping as detailed above.

11. The Owner agrees to obtain a building permit within six (6) months from the date of this agreement. Failure to obtain a building permit within the prescribed time period shall mean this agreement is null and void.
12. The Owner agrees to provide payment for Development Charges in accordance with the current By-law to Establish Development Charges for the Corporation of the Municipality of Kincardine.
13. In accordance with the current Parkland Dedication By-law of the Municipality, Planning Act R.S.O. 1990. Cp.13 land shall be dedicated in the amount of five per cent (5%) of the net land area. The Municipality at its discretion, may accept the payment of money up to the value of the land. The owner agrees to pay \$14,583 in lieu of parkland prior to the approval of the site plan agreement.
14. The Owner agrees that all driveways and parking areas as indicated on the "approved site plan" shall be surfaced with asphalt, cement, or other hard surfacing acceptable to the Municipality's Engineer.
15. As part of its ongoing obligations on the site the owner acknowledges that the storm water basins will require maintenance. The owner agrees to maintain, clean, repair or if needed replace the basins and other storm water management works to ensure the integrity of its operation. The owner further agrees that the Municipality or its agents will have the right to inspect and assess storm water management works and order the owner to comply with its maintenance obligations.
16. As part of its ongoing obligations on the site the owner acknowledges that the fire hydrant will require maintenance. The owner agrees to maintain, repair or if needed replace the hydrant and other appurtenances to ensure the integrity of its operation. The owner further agrees that the Municipality or its agents will have the right to inspect and flush the hydrant in order to comply with its maintenance obligations.
17. The owner agrees to provide the Municipality with "as constructed" drawings for the works that consists of all underground works including water, waste water, storm water prior to the connection to Municipal services.
18. The Municipality's Chief Administrative Officer may agree in writing to minor variations to provisions of this agreement. Please note that all major variations must be approved by Council in the form of a Site Plan amendment to this agreement.

SCHEDULE "D"

ITEMIZED ESTIMATE OF COSTS OF CONSTRUCTION

Off Site Works	100%	
Servicing (Water, Sewer, Stormwater)	\$15,000.00	
On-Site Works		50%
Servicing (Water, Sewer, Stormwater),		
Retaining Wall		\$40,000.00
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	\$40,000.00	\$20,000.00
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Total		\$35,000.00