

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE



BY-LAW

NO. 2023 -

**Being a By-law to Authorize the Signing of an Indemnification Agreement
with The Lindston Group Inc.**

Whereas Section 8 (1) and 9 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provide that the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues and has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act; and

Whereas the Council of The Corporation of the Municipality of Kincardine deems it advisable to enter into an Indemnification Agreement with The Lindston Group Inc. regarding the development at 2 Golf Links Road, Kincardine Ontario;

Now Therefore be it Resolved that the Council of The Corporation of the Municipality of Kincardine **Enacts** as follows:

1. That The Corporation of the Municipality of Kincardine enter into an Indemnification Agreement with The Lindston Group Inc. regarding the development at 2 Golf Links Road, Kincardine Ontario, more particularly set out in Schedule "A", in consideration of rents, covenants and obligations.
2. That the Mayor and Clerk be authorized to sign and execute, on behalf of The Corporation of the Municipality of Kincardine, an Indemnification Agreement with The Lindston Group Inc. attached to this By-law as Schedule "A", and to affix the corporate seal as required.
3. That this By-law shall come into full force and effect upon its final passage.
4. That this By-law may be cited as the "The Lindston Group Inc. Indemnification Agreement By-law".

Read a First, Second and Third Time and Finally Passed this 11th day of October, 2023.

Mayor

Clerk

INDEMNIFICATION AGREEMENT

THIS AGREEMENT made as of this ___ day of _____, 2023

BETWEEN:

**The Lindston Group Inc.
(hereinafter referred to as "Lindston")**

- and -

**The Corporation of the Municipality of Kincardine
(hereinafter referred to as "Municipality")**

WHEREAS:

- (a) Lindston is undertaking a development at 2 Golf Links Road, Kincardine, Ontario (the "Lands");
- (b) Lindston is required to post security for the completion of its obligations under the Subdivision Agreement relating to the said development;
- (c) Lindston's lender has requested that Lindston and the Municipality sign a Letter of Direction and Acknowledgement substantially in the form set out in Schedule "A";

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of closing of the transaction in the Purchase and Sale Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties hereto agree as follows:

ARTICLE 1 **DEFINITIONS**

1.1 Definitions

Unless the context requires otherwise and except as otherwise expressly provided herein, capitalized terms used herein shall have the meanings ascribed to them in the Share Purchase Agreement and, in addition,

"Agreement" means this indemnity agreement between the parties.

"Damages" means any losses, liabilities, damages, expenses, claims arising from the Municipality's signature of the Letter of Direction and Acknowledgement.

"Indemnified Person" means the Municipality and its successors and assigns.

"Indemnifying Person" means Lindston and its successors and assigns.

"Letter of Direction and Acknowledgement" means the document attached hereto as Schedule "A".

ARTICLE 2 **INDEMNIFICATION**

2.1 Indemnification by the Indemnifying Person

The Indemnifying Person covenants and agrees to indemnify and save harmless the Indemnified Person of and from, and will pay for any Damages suffered by or imposed upon or asserted against an Indemnified Person in connection with the Indemnified Person's execution of the Letter of Direction and Acknowledgement and any actions taken by the Indemnified Person thereunder.

2.2 Payment of Costs and Expenses

The Indemnifying Person shall pay all expenses, including all fees and expenses of counsel, accountants and other advisors and any other costs that may be incurred by an Indemnified Person in taking actions or seeking advice directly or indirectly related to the Letter of Direction and Acknowledgement.

2.3 Successors, etc.

The obligations of the Indemnifying Person under this Article 2 shall be in addition to any liability which the Indemnifying Person may otherwise have, shall be binding upon the Indemnifying Person, their successors and permitted assigns, and shall enure to the benefit of the Indemnified Person and its respective successors and assigns. The Indemnifying Person may not assign this Agreement in whole or in part without the prior written consent of the Indemnified Person and any attempt to do so shall be void.

2.4 No Limitations

For greater certainty, it is acknowledged that there is no monetary limitation on the indemnification obligations of the Indemnifying Person hereunder. It is also acknowledged that there is no time limitation on the making of a claim for indemnification hereunder, or on the indemnification obligations of the Indemnifying Person, except to the extent, if any, provided for by applicable law.

ARTICLE 3 **GENERAL**

3.1 Notices

Any demand, notice or other communication to be given in connection with this agreement shall be given in writing and shall be given by personal delivery or by transmittal by email addressed to the recipient at the last known address of the recipient.

3.2 Termination

This Agreement shall terminate and be of no further effect at the later of such time as the parties hereto have satisfied all of their respective obligations hereunder or such time as there is no basis for any claim for indemnity payments pursuant to Article 2.

3.3 Time

Time shall be of the essence of this Agreement.

3.4 Entire Agreement

This Agreement contains the entire agreement of the parties hereto as to the matters herein set forth and supersedes and replaces the prior understandings or arrangements pertaining thereto.

3.5 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

3.6 Counterparts

This Agreement may be executed in counterparts and by electronic and facsimile transmission.

3.7 Independent Legal Advice

Each party hereto acknowledges and agrees having had the opportunity to consult with independent legal advice in respect of this Agreement and their obligations herein or have waived their right to do so.

SIGNATURE PAGE ON NEXT PAGE

IN WITNESS WHEREOF the parties have executed this Agreement.

THE LINDSTON GROUP INC.

Per: Keith Battler, Duly Authorized Officer
I have authority to bind the Corporation.

**THE CORPORATION OF THE
MUNICIPALITY OF KINCARDINE**

Per:
I have authority to bind the Corporation.