

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

SUBDIVISION AGREEMENT

between

Insert Owner Name

- and -

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

Dated _____, **2023**

The Corporation of the Municipality of Kincardine

1475 Concession 5, RR5
Kincardine, ON N2Z 2X6

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THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE
SUBDIVISION AGREEMENT

THIS AGREEMENT made in triplicate on the _____ day of _____, 2023
A.D.

BETWEEN:

Insert Owner Name
hereinafter called the "Developer"

- and -

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE
hereinafter called the "Municipality" of the SECOND PART

WHEREAS the Developer is the owner of the Land described in Schedule "A" to this Subdivision Agreement (hereinafter called the "Agreement") and proposes to subdivide it for the purpose of selling, conveying, or leasing it in lots, by reference to a Registered Plan of Subdivision.

AND WHEREAS the Developer declares that it is the registered owner of the lands and has applied to the County of Bruce (hereinafter called the "County"), for approval of a Plan of Subdivision (hereinafter called the "Plan"), which is annexed hereto as Schedule "B" to this Agreement.

AND WHEREAS the Municipality has been authorized by the County to require the Developer to agree to construct and install certain municipal services as hereinafter provided and herein referred to as the "Works" set out in Schedule "D" and to make financial arrangements with the Municipality for the installation and construction of required services before final approval of the Plan by the County.

AND WHEREAS the Developer is required to dedicate for public purposes certain portions of the Lands or make a cash payment to the Municipality in lieu of dedicating such land.

AND WHEREAS the word "Developer" where used in this Agreement includes an individual, an Association, a Partnership, or a Corporation and wherever the singular is used herein, it shall be construed as including the plural.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of other good and valuable consideration and the sum of One Dollar (\$1.00) of lawful money of Canada, now paid by each of the parties hereto to each of the other parties hereto, (the receipt whereof is hereby acknowledged), the parties hereto hereby covenant, promise and agree with each other as follows:

SECTION 1 INTERPRETATION

1.1 Definitions

The terms defined in this Section 1.1 shall have the following meanings unless the context expressly or by necessary implication otherwise requires:

“Agreement” means this Agreement titled “Subdivision Agreement”.

“Business Day” means any day that is not a Saturday, Sunday or statutory holiday in the Province of Ontario.

“Certificate of Final Acceptance” means the certificate issued by the Municipality after satisfaction of the conditions identified in Section 4.3.

“Certificate of Inspection Re: Readiness for Occupancy” means the certificate issued by the Municipality after satisfaction of the conditions identified in Section 8.10.

“Certificate of Preliminary Acceptance” means the certificate issued by the Municipality after satisfaction of the conditions identified in Section 4.2.

“Chief Building Official” or “CBO” means the Director of Building and Planning or the Chief Building Official, or designate for the Municipality of Kincardine

“Conservation Authority” means the Saugeen Valley Conservation Authority and its successors and assigns.

“County” means the Corporation of the County of Bruce and its successors and assigns.

“Damage/Lot Grading Deposit” means the amount of \$2,500.00 per lot or block shall be paid by the Developer to the Municipality by way of cash or letter of credit as described in Section 8.9 of this Agreement.

“Developer” means, collectively, **Insert Owner Name** and their respective successors and assigns.

“Developer” where used in this Agreement includes an individual, an Association, a Partnership, or a Corporation and wherever the singular is used herein, it shall be construed as including the plural.

“Director of Infrastructure And Development” means the Director of Infrastructure And Development or designate for the Municipality of Kincardine.

“Land and/or Lands” means the real property which is the subject of the Plan, the legal description of which is attached as Schedule “A”.

“Municipality” means the Corporation of the Municipality of Kincardine, and its successors and assigns.

“Owner” means the Owner of a lot or block and may include the “Developer”.

“Plan” means the plan of subdivision relating to the Land, a draft copy of which is attached as Schedule “B”.

“Works” means the Works and services described in Schedule “D”.

1.2 List of Schedules

The following schedules are attached to and form part of this Agreement:

Schedule "A" -- Description of Lands Being Subdivided

Schedule "B" -- Plan of Subdivision

Schedule "C" -- Municipal Servicing Guidelines

Schedule "D" -- Checklist of Works to be Constructed

Schedule "E" -- Itemized Estimate of Costs of Construction of Each Part of the Works

Schedule "F" -- List of Lots Unsuitable for Building Purposes

Schedule "G" -- Owner's Final Grading Certificate

Schedule "H" -- List of Lands for Municipal Purposes and Easements to be Granted to the Municipality

Schedule "I" -- No Occupancy Agreement

Schedule "J" -- Application for Reduction of Security

Schedule "K" -- Form of Partial Release

Schedule "L" -- Conditions of Draft Approval

Schedule "M" -- Special Provisions

SECTION 2 ORDER OF PROCEDURE

2.1 Upon application to the Municipality for the preparation of an Agreement the Developer shall:

- (a) Pay to the Municipality the fee required by the Municipality's Tariff of Fees By-law.
- (b) Pay to the Municipality the sum of twenty thousand (\$20,000.00) dollars as a deposit in respect of the Municipality's legal and engineering costs referred to in Section 3.2 (a) herein.
- (c) Submit a General Plan outlining the services to be installed.

2.2 Prior to Registering the Agreement the Developer shall:

- (a) Deposit with the Municipality Securities and Insurance as outlined in the Agreement.
- (b) Pay in full any outstanding taxes or drainage, local improvement charges and charges under the Municipal Act including outstanding sewer rates and/or water rates.
- (c) Mutually agree with the Municipality on the parcel of land to be deeded to the Municipality for parkland or the amount of cash to be given to the Municipality in lieu of Parkland.
- (d) Pay the amount in lieu of parkland to the Municipality or deposit the Transfers/Deeds of Land for the parkland with the Municipality.
- (e) Provide proof of postponement of any encumbrances on the lands.
- (f) Deposit with the Municipality's Solicitor, copies of this Agreement executed by the Developer, to be executed by the Municipality and

retained by the Municipality's Solicitor for registration as hereinafter provided.

- (g) Deliver to the Municipality's Solicitor written authorization to register this Agreement or Notice of this Agreement both before and after registration of the Plan, and a cheque in respect of the cost of the said registrations where upon the Municipality's Solicitor shall register this Agreement.

2.3 Prior to starting construction on the Services, the Developer shall:

- (a) Have obtained final approval of the Plan from the County and have obtained Registration of the Plan.
- (b) Have submitted and obtained the written approval of the Municipality's Engineer for the following all to be done in accordance with the Municipal Servicing Standards of the Municipality:
- The Drainage Area Plans;
 - The Lot Grading Plan;
 - The Service Layout Plan for underground electrical services, telephone, gas, etc.;
 - Final approved drawings for all Works required in Schedule "D" to this Agreement.
- (c) Submit to the Municipality the Ministry of Environment, Conservation and Parks' Environmental Compliance Approval for the Water Supply and Distribution System, the Sewage Collection System, and the Storm Sewer System and Storm Water Management Works (if required).
- (d) Submit to the Municipal Engineer a completed Form 1 and supporting documentation for approval of the Water Distribution System.
- (e) Submit to the Municipal Engineer a completed Form SS1 and supporting documentation for approval of the Sewage Collection System, and where needed a completed Form SS2 with supporting documentation.
- (f) Submit the Municipal Engineer a completed Form SW1 and supporting documentation for application of the Stormwater Management System, and where needed a completed Form SW2 with supporting documentation.
- (g) Provide written confirmation of having obtained the approval for drainage, road crossings, encroachment, etc. of all road authorities including the Municipality, County, Conservation Authority, the Ministry of Transportation of Ontario and any other authority involved.
- (h) Have deeded to the Municipality the lands/blocks/easements listed in Schedule "H".
- (i) Arrange for and participate in a pre-construction meeting that includes the developer, the developer's engineer, the general contractor, municipal representatives, and the municipal engineer. The meeting is to be chaired by the developer's engineer. The municipality can be expected to include discussion on testing requirements for various component of the Works and upon the requirements of this agreement.

2.4 Prior to the issuance of building permits the Developer shall:

- (a) Have complied with all requirements of Section 8.9 of this Agreement.

2.5 Prior to any person occupying any building, the Developer shall:

- (a) Have complied with all the requirements of Section 8.10 of this Agreement.

SECTION 3 INSTALLATION OF SERVICES

3.1 General

Upon approval of the Plan by the County, the Developer shall design, construct and install at his own expense and in good workmanlike manner Municipal services to the servicing standards of the Municipality as set out in Schedule "C" to this Agreement.

3.2 Municipality's Legal and Engineering Costs

- (a) The Developer agrees to pay the Municipality's cost of the Municipal Solicitor and of the Municipality's Engineer's invoices for the checking of plans and specifications and for supervision and inspection on behalf of the Municipality.
- (b) The Developer shall be invoiced regularly by the Municipality for all costs incurred by the Municipality with respect to this Agreement pursuant to Section 3.2 (a).
- (c) The Developer shall reimburse the Municipality for all costs incurred by the Municipality as referred to in Section 3.2 (a) herein, within thirty (30) days of each billing, failing which the Municipality and its agents shall cease all work with respect to the review of the Subdivision.
- (d) The deposit referred to in Section 2.1 (a) of this Agreement shall be retained by the Municipality as a float against any unpaid bills and such deposit (or the balance thereof, if any) shall be returned to the Developer at Final Acceptance of the Subdivision by the Municipality and the Municipality being satisfied, in its discretion, that all costs in Section 3.2 (a) herein and any contingencies with respect to the Subdivision have been paid in full.
- (e) The Developer shall pay to the Municipality, on thirty (30) days written notice from the Municipality, such amount as is necessary to maintain the deposit referred to in Section 2.1 (a) at the sum of twenty thousand (\$20,000.00) dollars, failing which the Municipality and its agents shall cease all work with respect to the review of the Subdivision.

3.3 Developer's Engineer

The Developer shall employ engineers holding a certificate of authorization from Professional Engineers Ontario and approved by the Municipality:

- (a) To prepare designs;
- (b) To prepare and furnish all required drawings;
- (c) To prepare the necessary contract(s);
- (d) To obtain the necessary approvals in conjunction with the Municipality, the County Health Unit and the Ministry of Environment, Conservation and Parks, and others as required.
- (e) To provide the field layout, the contract documentation and the full time supervision of construction.
- (f) To maintain all records of construction and upon completion, to advise the Municipality's Engineer of all construction changes and to prepare final "as built" drawings. Paper prints and digital versions of the "as built" drawings shall be submitted to the Municipality prior to the issuance of the Certificate of Final Acceptance.
- (g) To act as the representative of the Developer in all matters pertaining to the construction.

- (h) To provide co-ordination and scheduling to comply with the timing provisions of this Agreement and the requirements of the Municipality's Engineer, for all Works specified in this Agreement.
- (i) To provide certification that the installation of services was in conformance to said plans and specifications, such certification to be in a form acceptable to the Municipality's Solicitor and the Municipality's Engineer.
- (j) To take such other actions as may be required by the Municipality, acting reasonably, for the completion of the subdivision in accordance with this Agreement and good engineering practices.
- (k) The Developer shall notify the Municipality immediately if they change the Professional Engineer employed by the Developer for the development of the Lands.

3.4 Works to be Installed

The Works to be installed are set out in Schedule "D" to this Agreement. This schedule is to set out the Works in general terms only and shall not be construed as covering all items in detail. If at any time and from time to time during the development, the Municipality's Engineer is of the opinion that additional Works are necessary to provide adequately any of the public services required by the Plan, the Developer shall, at his expense, construct, install or perform such additional Works at the request of the Municipality's Engineer.

3.5 Approval of Plans

The detailed plans and specifications of all services must be submitted by the Developer to the Municipality's Engineer for endorsement of approval and such endorsement of approval shall in no way absolve the Developer or its consulting Engineers of responsibility for errors in or omissions from such plans and specifications.

3.6 Notification of Commencement

The Developer shall not commence the construction of any of the Works until the plan has been registered and the Developer has provided 72 hours written notice to the Municipality's Engineer of his intent to commence work. Should, for any reason, there be a cessation or interruption of construction, the Developer shall provide 72 hours written notification to the Municipality's Engineer before work is resumed.

3.7 Progress of Works

The Developer shall install all Works in a timely manner, in accordance with the requirements of Schedule "C" and this Agreement. If he fails to do so, having commenced to install the aforesaid Works, fails or neglects to proceed with reasonable speed, or in the event that the aforesaid Works are not being installed in the manner required by the Municipality, then upon the Municipality giving seven (7) days written notice by prepaid registered mail to the Developer, the Municipality may, without further notice, enter upon the said lands and proceed to supply all materials and to do all the necessary Works in connection with the installation of the said Works, including the repair or reconstruction of faulty work and the replacement of materials not in accordance with the specifications, and to charge the cost thereof together with an engineering fee of ten percent (10%) of the cost of such materials and Works to the Developer who shall forthwith pay the same upon demand. If the Developer fails to pay the Municipality within thirty (30) days of date on the bill, the money owing may be deducted from the cash deposit, letters of credit, or other securities. It is understood in the event that the Municipality must enter upon said lands and have Works completed or repaired due to situations as outlined above any or all original mylars and specifications prepared by the Developer's Engineer must be

turned over to the Municipality's Engineer for his use should he require same. It is understood and agreed between the parties hereto that such entry upon the lands shall be as agent for the Developer and shall not be deemed for any purpose whatsoever, as an acceptance or assumption of the said Works by the Municipality. The Municipality, in addition to all other remedies may refuse to issue building permits until such Works are completely installed in accordance with the requirements of the Municipality.

Without limiting the obligations of the Developer herein, if the Developer shall default on the performance of any term, covenant or provision of this Agreement and if such default shall continue for ten (10) days after the Developer receives written notice of such default by the Municipality (or such shorter time as may be required in the cases of an emergency or other urgent matters or as otherwise provided for herein), the Municipality may perform that obligation on the Developer's behalf and may enter onto the lands constituting the Plan for this purpose. If the Municipality is compelled or elects to incur any expense in connection with its performance of the Developer's obligations (including any engineering or legal fees incurred in connection with such actions), any reasonable costs so incurred by the Municipality, together with all interest thereon and any damages incurred, shall be payable by the Developer and shall be collectible by the Municipality in like manner as municipal taxes. The Developer also acknowledges and agrees that the Municipality has the right to draw down any Letters of Credit, cash or other security for the purpose of collecting any such expenses incurred by the Municipality.

3.8 Scheduling of Works

Prior to the start of construction and prior to the issuance of building permits, the Developer shall supply for the approval of the Municipality's Engineer a Schedule of Works setting out the order in which he considers the various sections of the Works within the Plan will be built. The Municipality's Engineer may amend this schedule and the Developer must construct, install or perform the work as the Municipality's Engineer from time to time may direct.

3.9 Contractor

The said services shall be installed by an experienced, competent contractor or contractors retained by the Developer.

3.10 Utility Costs and Charges

The Developer shall deal directly with all Utility companies. He or his Consulting Engineer, shall obtain all approvals and permits and pay all fees and charges directly to the appropriate Utility.

3.11 Access Roads

All access roads must be maintained by the Developer in good repair acceptable to the Municipality's Engineer during the time of construction. This shall include the removal of mud tracked from the Subdivision as well as dust control. No roadway outside the limits of the proposed Subdivision may be closed without the written consent of the Municipality. To obtain such consent, the Developer shall advise the Municipal Clerk, not later than 14 days prior to the proposed closure, of the date, time and duration they wish to close a roadway. All costs for advertising the closure and signage shall be borne by the Developer. The Municipality reserves the right to limit or prohibit the use of any existing access road by the Developer.

3.12 Movement of Fill

The Developer covenants and agrees that it shall not dump nor permit to be dumped any fill or debris on, nor shall it remove or permit to be removed any fill, topsoil, trees or shrubs from any public lands, other than roads, without the

written consent of the Municipality's Engineer. The Developer further agrees that no topsoil shall be removed from the lots and/or blocks except for construction purposes within the development and then such topsoil shall be stockpiled during grading operations and as each building is completed, the topsoil so stockpiled shall be replaced on the ground around each building to comply with the Municipal standards, and the replacing of such topsoil shall include all surfaces not covered by buildings, driveways or pavement within the development. Excess topsoil may be removed from the site with the approval of the Municipality's Director of Infrastructure And Development.

3.13 Damage to Existing Plant

The Developer shall repair any damage caused to any existing road, road allowance or existing structure or plant located on the road allowance as a result of the development and shall pay for any costs involved in relocation of existing service such as hydrants, telephone poles, hydro poles, pad mount transformers, cubicles and pedestals, etc., which may be necessary because of the development.

3.14 Signs

Signs at least 1.2 m x 1.2 m shall be erected by the Developer in an approved location at each entrance to the Subdivision. The signs shall read as follows:

"Roads Not Assumed by Municipality - Use at Your Own Risk".

These signs shall be installed prior to the start of construction and be removed after all the roads have received a Certificate of Final Acceptance.

3.15 Testing

The Municipality's Engineer may have any qualitative or quantitative tests made of any materials which have been or are proposed to be used in the construction of any of the Works required by this Agreement, or may require television camera or soil tests to be carried out, and the cost of such tests shall be paid by the Developer within ten days of the account being rendered by the Municipality. Nothing herein shall relieve the Developer of its responsibility to carry out any tests required by good engineering practice.

3.16 Erosion and Silting Control

The Developer must take all necessary precautions to prevent erosion and sedimentation of sewers, ditches, culverts, slopes, etc., both within the Development and downstream during construction and completion of servicing. Failing adequate precautions being taken, the Developer will be responsible for correcting any damages and paying all maintenance costs resulting therefrom.

3.17 Emergency Access

The Developer shall at all times during construction and development of the Works maintain emergency access to the land to the satisfaction of the Municipality's Engineer.

3.18 Construction Refuse and Weeds

The Developer, and each subsequent Owner of Lots or Blocks within the Plan, shall regularly dispose of all construction refuse, debris or weeds whether it be from site servicing or house building or any other source related to the development of the site, in an orderly and sanitary fashion. If the Developer or subsequent Owner of the Lots or Blocks within the Plan fails to remove and dispose of construction refuse, debris or weeds to the satisfaction of the

Municipality's By-law Officer, the Municipality may give written notice to the Developer or lot Owner. If the Developer or each subsequent Owner of Lots or Blocks within the Plan fails to dispose of the refuse, debris or weeds within forty-eight (48) hours after receiving a written request from the Municipality to do so, the Municipality may, without further notice, undertake such removal and disposition and the cost thereof shall be paid by the Developer or each subsequent Owner of the Lots or Blocks within the Plan forthwith upon demand, which costs shall include all expenses incurred by the Municipality in carrying out such removal and disposition. The burning of construction refuse, debris of weeds, whether it be from site servicing or house building or any other source related to the development of the site on any lands within the Plan is prohibited.

3.19 Dust Control

Until the Final Acceptance of all Services to be constructed under this Agreement, the Developer shall use such reasonable method to prevent any dust problem to traffic or home occupants as the Municipality shall deem necessary and for this purpose the Municipality's Director of Infrastructure And Development shall notify the Developer in writing from time to time of the requirements of the Municipality.

3.20 Street Names

The Developer shall name all streets within the Land forming part of the Plan with names approved by the Municipality.

3.21 Municipal Street Numbers

- (a) All Lot, Block or building numbers for use within the Plan shall be allocated by the Chief Building Official. To obtain such allocation, the Developer shall furnish the Chief Building Official with a copy of the Plan as registered upon which the Chief Building Official will designate the proper numbers for each Lot, Block or building.
- (b) The Developer shall display by means of a legible sign at least 300 mm x 300 mm to be erected on each Lot or Block within the Plan, the Lot or Block number as shown on the Plan and the street number and Lot or Block number for each Lot or Block prior to the issuance of a Building Permit for that Lot or Block which sign shall remain until such time as the building on such Lot or Block is occupied in accordance with the provisions of this Agreement.
- (c) Each Owner shall cause the street number so provided to be placed and maintained in a conspicuous position in the front of the property upon occupancy.
- (d) All costs related to Lot, Block or building numbering shall be the responsibility of the Developer.

3.22 Blasting

The Developer agrees that no blasting will be undertaken without the written consent of the Municipal Engineer.

3.23 Driveways

The Developer hereby agrees that the driveways for all lots will be in a location and have a width and design as may be approved by the Municipality. Without in any way limiting the discretion of the Municipality, the location of the driveways may be further limited by special provision in Schedule "M" of this Agreement. Further, all driveways for all lots in the plan should be located in a manner that will minimize the amount of snow that will accumulate in the lot's driveway. The location of driveways is particularly important with respect to all corner lots

located in the plan, as these driveways entrances must be located as far as possible from the street corner to minimize the amount of snow that will block these driveways during the Municipality's efforts to remove snow.

3.24 Contaminants

In the event the Developer discovers any waste, contaminants, pollutants, hazardous substances or any other similar substances that may be detrimental to the environment during the development of the lands constituting the Plan, the Developer hereby agrees to notify the Municipality and the Ministry of Environment, Conservation and Parks immediately and take all necessary steps and remedial efforts required by the Ministry of Environment, Conservation and Parks and the Municipality to remove such waste, contaminants, pollutants, hazardous substances or other substances that could be detrimental to the environment. In taking such action, the Developer shall fulfill all legislative requirements for the remediation and clean-up of lands constituting the Plan and shall comply with all legislative requirements regulating the removal, transportation and disposal of such waste, contaminants, pollutants, hazardous substances or any other similar substances from the said lands.

SECTION 4 ACCEPTANCE OF WORKS

4.1 Stages of Construction and Services

The Municipality will grant Preliminary or Final Acceptance of servicing based upon three (3) stages of construction; and when the development is phased, within the whole of each phase as approved by the Municipality. Stages of construction are as follows:

- (a) Stage 1 - consists of all underground Works including storm sewers and storm water management facilities, sanitary sewers, watermains and the completion of Granular "B" road base and a portion of the Granular "A" for a riding surface.
- (b) Stage 2 - services shall include the balance of the road Works including granular, curbs and gutter, base asphalt, grading of boulevard areas, sidewalks, installation of street and traffic signs, conduits, piping and facilities for the completion of electrical servicing, street lighting and other utilities such as gas, telephone and Cable T.V.
- (c) Stage 3 - services including the final coat of asphalt, topsoil and sodding, trees, fencing and any other requirements of this agreement.

4.2 Inspection and Acceptance of the Works

When all of the services in any stage of servicing as identified above have been completed and the Municipality's Engineer has been given written certification by the Developer's Engineer that such services have been constructed in each stage in accordance with the approved plans and specifications in this Agreement and upon satisfactory inspection by the Municipality's Engineer, the Municipality's Engineer will recommend that the Municipality grant a Certificate of Preliminary Acceptance. This Certificate may include a list of minor deficiencies which the Developer must repair. The services shall then be subject to a guaranteed maintenance period as described in Section 5.1. Preliminary Acceptance will not be granted prior to registration of the Plan for the development or phase.

4.3 Final Acceptance of the Works

On receipt of a written request from the Developer for final inspection and final acceptance following completion of the guaranteed maintenance period outlined

in Section 5.1, the Municipality's Engineer will complete an inspection and if there are no deficiencies, will recommend to the Municipality that the Certificate of Final Acceptance be issued. This Certificate will be issued provided that the Developer has paid all accounts to the Municipality and the Municipality is:

- Satisfied the applicable services have been completely installed;
- Satisfied all repairs or maintenance work on the applicable services have been completed.

and the Municipality has:

- Approved the formal certification of final completion from the Developer's Engineer certifying that all Works and services have been installed;
- Received as-built drawings as detailed elsewhere in this Agreement.

4.4 Acceptance During Winter Months

The Municipality will not be required to provide Certificates of Preliminary or Final Acceptance during the winter months or any other time of year when inspection of the Works and services is impractical due to snow cover or other adverse conditions.

4.5 Use of Works by Municipality

The Developer agrees that:

- (a) The Works may be used prior to acceptance by the Municipality, or other authorized persons for the purposes for which such Works were designed.
- (b) Such use shall not be deemed an acceptance of the Works by the Municipality.
- (c) Such use shall not in any way relieve the Developer of his obligations in respect of the construction and maintenance of the Works so used.

4.6 Replacement of Survey Bars

Prior to the final acceptance by the Municipality, the Developer shall deliver to the Municipal Clerk a statement from an Ontario Land Surveyor approved by the Municipality that after the completion of the work, he has found or replaced all survey monuments and iron bars as shown on the registered plan.

4.7 Ownership of Services

Upon the issuance to the Developer of the Certificate of Final Acceptance, the ownership of the services described shall vest in the Municipality and the Developer shall have no claim or rights thereto except those occurring as an owner of the lands abutting the streets where such services are installed.

Notwithstanding the above, the Developer and Municipality agree that on connection of water distribution systems, the Municipality will then become the operator of said systems. This shall not relieve the Developer of any maintenance responsibilities under this Agreement. Any costs associated with the repair and maintenance of the water infrastructure during the warranty period as outlined in Section 5.2 of this Agreement shall be borne by the Developer.

SECTION 5 MAINTENANCE OF WORKS

5.1 Maintenance of Works

The Developer will be responsible for the repair and maintenance of all services including hydro costs for street lights, until a Certificate of Final Acceptance is issued for the Stage 2 services by the Municipality. This maintenance period shall extend for two (2) years from the date of the Certificate of Preliminary Acceptance for each Stage of the Works. During this maintenance period, a 10% security holdback shall be retained by the Municipality in accordance with the provisions of Clause 9.3 (e) of this agreement. If during this period, the Developer fails to carry out maintenance work within seventy-two (72) hours after receipt of the request from the Municipality, then the Municipality's Engineer or Director of Public Works may, without further notice, undertake such maintenance work and the total costs of such work, including engineering fees, shall be borne by the Developer. If the Developer fails to pay the Municipality within thirty (30) days of the date of billing then the money owing may be deducted from the deposited securities. Towards the end of the Maintenance Period, the Developer shall make written request to the Municipality for a final inspection to be made in respect to the issuance of the Certificate of Final Acceptance.

Notwithstanding the provisions above, operational responsibility for the water distribution system shall be transferred to the Municipality once the distribution system is commissioned. All costs associated with repair and maintenance of the water distribution system during the maintenance period shall be charged back to the Developer and the Developer shall pay all such amounts to the Municipality forthwith upon receiving the associated invoices.

5.2 Road Maintenance

The Developer will be responsible for the maintenance of the roads until final acceptance.

Summer maintenance shall include grading, dust control and general clean-up of the site. Winter road maintenance shall include all plowing, sanding and salting to assure proper vehicular access within the Subdivision.

In the event that proper maintenance or snow removal is not provided by the Developer, the Municipality, through its servants, contractors or agents may provide maintenance and/or remove snow without notice to the Developer. Such work will be carried out at times deemed to be an emergency by the Municipality's Director of Infrastructure And Development. All costs of such work shall be paid by the Developer within thirty (30) days of date of billing or otherwise may be deducted from the deposited securities. The Developer further agrees that any work done by the Municipality pursuant to this contract before the roads are accepted by the Municipality shall not be deemed in any way, to be an acceptance by the Municipality of the roads in the said Subdivision upon which such work is done. The Developer acknowledges that the Municipality, in providing maintenance or during snow removal, may damage or interfere with the Works of the Developer and cause damage to such Works and the Developer hereby waives all claims against the Municipality that he might have arising therefrom and covenants that he will make no claim against the Municipality for such interference or damage. Representation may be made requesting that the Municipality consider entering into a separate Agreement with the Developer to undertake the winter road maintenance within the Subdivision.

5.3 Emergency Repairs

Employees or agents of the Municipality may enter onto the Land at any time or from time to time for the purpose of making emergency repairs to any of the Works. Such entry and repairing shall not be deemed an acceptance of any of

the Works by the Municipality or an assumption by the Municipality of any liability in connection therewith or a release of the Developer from any of his obligations under this Agreement.

SECTION 6 DRAINAGE AND LANDSCAPE DESIGN

6.1 Drainage

All Lots and Blocks within the Plan and all lands abutting the Plan shall be graded to drain in accordance with the Drainage Plan as approved by the Municipality's Engineer. It is understood and agreed by the parties hereto that the drainage of surface waters on the Lots and Blocks in the Plan, are the sole responsibility of the Developer and subsequent purchasers, and the Developer is to provide and maintain adequate drainage of such surface waters. Satisfactory drainage outlets shall be provided. Drainage outlets shall be constructed from the limits of the Subdivision to a sufficient outlet in accordance with the approved engineering drawings.

6.2 Preservation of Trees

The Developer must preserve all healthy trees within the limits of the Subdivision. Except for the actual area of roadway construction and installation of services, no trees whether on the road allowance, or on the parkland, or on the individual lots, shall be removed without the Municipality's written permission.

6.3 Lots Unsuitable for Building

Any lot which will require special attention in order to be serviced will be listed in Schedule "F" of this Agreement. Prior to the issuance of a building permit for any lot listed in Schedule "F", the Developer's Engineer must submit a letter to the Municipality's Engineer outlining the measures to be taken to correct the problems on the lots. This proposal must be approved prior to applying for a building permit.

6.4 Lot Grading

All Lands shown within the Plan shall be graded in general conformity with the Lot Grading Plan, including fill and excavation as required for the full width and length of the grades and levels, and to the specifications, requirements and satisfaction of the Municipality's Engineer; provided that for residential lots and blocks, grading must be brought within zero decimal five (0.5) metres of the final grade and such further residential development may complete the grading. All work done by the Developer must be of such a nature as to ensure that the integrity and intent of the overall grading plan is functional until the Lands are fully developed.

(a) Obligation to Grade According to Lot Grading Plan

The Lands shall not be graded except in general conformity with the grades and elevations shown on the Accepted Grading Plan. The Plan shall bear the signature and seal of an Ontario Professional Engineer holding a Certificate of Authorization from Professional Engineers Ontario or who is employed by a partnership or corporation holding such Certificate of Authorization to offer professional engineering services to the public (hereinafter called a "Professional Engineer") or a Registered Ontario Land Surveyor who certifies thereon that the Plan generally conforms with the Lot Grading Plan attached to the Agreement or filed with the Municipality's Engineer.

(b) Certified Building Lot Site Plan

Subject to Section 8.9 herein, no building shall be constructed on a Lot or Block within the Plan until a Building Lot Site Plan certified by a Registered Ontario Land Surveyor or Professional Engineer has been filed with and approved by the Chief Building Official of the Municipality. The Building Lot Site Plan shall show:

- the proposed finished elevation of these lands at each corner of the lot or block;
- the proposed finished elevation of these lands at the front and rear of the building;
- the proposed finished elevations of the underside of the footings and the proposed finished height of the foundation of the building;
- the proposed finished elevation of any retaining walls, the proposed elevation of any walk-out onto these lands from the basement of the building, and the proposed finished height of the foundation of the building;
- the proposed finished elevation and slope of any driveway and the proposed location of any swale or rear yard catch basin;
- the location of eavestrough downspouts; no downspouts will be allowed to discharge in a sideyard between residences;
- swale location and elevations;
- sidewalk;
- service and driveway locations;
- any abrupt changes in the proposed finished elevation of these lands; and
- the Lot and Registered Plan number, the municipal address for the subject Lot or Block and the proposed location of the building thereon in relation to the Lot or Block boundaries.

The Developer hereby agrees that the existing property line grades abutting developed lands are not to be altered or disturbed, except as approved otherwise by the Municipality's Engineer.

The Developer shall complete such other actions as may be required by the Municipality, acting reasonably, to ensure that the subdivision is developed in accordance with the terms of this Agreement and good engineering practices.

(c) Owner's Final Grading Certificate

- No newly constructed building shall be occupied or used unless there is filed, prior to occupancy, with the Municipality's Chief Building Official, an Owner's Final Grading Certificate in the form attached as Schedule "G" bearing the signature and seal of a Professional Engineer or Registered Ontario Land Surveyor that the actual finished elevation and grading of these lands generally conform with the Lot Grading Plan and the Certified Building Lot Site Plan.
- If occupancy occurs between November 1 and May 31 next and an Owner's Final Grading Certificate is not filed prior to occupancy with the Municipality's Chief Building Official, then the Owner shall provide the Municipality's Chief Building Official with a written undertaking to file the said Owner's Final Grading Certificate with the Municipality's Chief Building Official by the following June 1.
- If and when the Owner's Final Grading Certificate is accepted by the Municipality's Chief Building Official that the Lands generally conform with the Lot Grading Plan and the Certified Building Lot Site Plan, the Damage/Lot Grading Deposit referred to in Section

8.9 (g) is returnable to the Owner subject to this Section and Section 8.9 (g) of this Agreement.

- The Owner agrees that, should drainage rectification become necessary in the absolute discretion of the Municipality, and the Owner fails to make such rectification when so instructed by the Municipality, the Municipality may, at its option, undertake the correction of such drainage and all costs over and above the two thousand dollar (\$2,500.00) deposit shall be charged back to the Owner and shall include a management fee of 15% of the cost of labour and material shall be a charge against the Lot or Block for which regrading was carried out and shall be payable forthwith. The Owner agrees that neither it nor its successors or assigns will alter the grading or change the elevation or contour of the Land except in accordance with drainage plans approved by the Municipality. In addition to any other remedy, the cost for such rectification if completed by the Municipality will be at the expense of the subsequent owner and the Municipality may recover such expense under Section 446 of the *Municipal Act, 2001* in the same manner as taxes.

(d) Obligation to Maintain Grading

After the building or Block is graded in accordance with the Lot Grading Plan and the Certified Building Lot Site Plan, no change shall be made to the actual finished elevation and grading of the building Lot or Block in any way that results in a material alteration of drainage on or across the building Lot or Block or adjacent lands from that shown on the Lot Grading Plan for the adjacent lands or the Owner's Final Grading Certificate for the building Lot or Block.

(e) Prevention of Surface Water Flow

The Developer and each subsequent owner shall not block, impede, obstruct or prevent the flow of surface water as provided for in the Drainage Plan, the Lot Grading Plan or the Certified Building Lot Site Plan over any Lot or Block by the construction, erection or placement thereon of any damming device, building, structure or other means.

(f) Erosion Control

The Developer shall construct silt fences or other facilities as required during construction to control overland flows from this Subdivision to ensure that mud, silt, construction debris, etc. does not adversely affect abutting properties, all to the specifications of the Municipality's Engineer.

6.5 Maintenance of Lot Grading

The facilities and Works required by Section 6 shall be provided and maintained by the Developer or subsequent owner of each lot from time to time at such party's sole risk and expense.

Should, for any reason, the Developer or subsequent Owner fail to maintain the lot grading, they acknowledge that the Municipality, or in the case of a subsequent Owner, the Municipality or the Developer may enter onto said property to correct any drainage issues. The cost for any such correction completed by the Municipality will be at the expense of the subsequent Owner and the Municipality may recover such expense under Section 427 of the *Municipal Act* in the same manner as taxes.

SECTION 7 LANDS TO BE CONVEYED

7.1 Lands for Municipal Purposes

The Developer shall convey in fee simple a good title free from encumbrances to the Municipality, lands for municipal purposes other than roads, which shall be mutually agreed upon by the Owner and the Municipality, or to make a cash payment in lieu thereof as stipulated by the Municipality and also to convey to the Municipality in fee simple, the 0.3 metre reserves and other lands required by the Municipality. The deeds for the said lands are to be approved by the Municipality's Solicitor and thereafter forthwith registered and deposited with the Municipal Clerk. The cost for preparation and registration of the said deeds shall be paid by the Developer. A list of lands for municipal purposes to be conveyed to the Municipality shall be set out in Schedule "H" of this Agreement.

7.2 Easements

The Developer agrees to grant at his expense all such easements and right-of-ways as may be required for the installation and supply of services to the Subdivision. A list of easements and right-of-ways to be granted to the Municipality shall be set out in Schedule "H" of this Agreement.

7.3 Turning Circles

The Municipality may require the installation of temporary turning circles. Where such are required, the Developer shall convey the appropriate blocks to the Municipality for the purposes of providing the Municipality with sufficient land to construct said turning circle(s). The block(s) conveyed to the Municipality shall only constitute that portion of land required by the Municipality for the actual roadway of the turning circle. The temporary turning circle shall be constructed in accordance with Schedule "C" of this Agreement. The Developer and the Municipality acknowledge that the block(s) conveyed to the Municipality for turning circles shall be reconveyed to the owners in the event that the street is connected in the future. Such conveyance and reconveyance of the block(s) shall be completed at no expense to the Municipality. A list of said blocks is included in Schedule "H" of this Agreement.

SECTION 8 ADMINISTRATION

8.1 Voiding Agreement

In the event that the Plan is not registered within one year from the date of the signing of this Agreement, the Municipality may at its option declare this Agreement to be null and void. All costs incurred shall be deducted from the deposit paid by the Developer to the Municipality pursuant to this Agreement or any other agreement between the Developer and the Municipality referred to herein.

8.2 Developer's Expense

Every provision of this Agreement by which the Developer is obligated in any way shall be deemed to include the words "at the expense of the Developer" and "as approved or accepted by the Municipality", unless specifically stated otherwise.

8.3 Phasing

- (a) The Municipality may instruct the Developer to construct the Works in particular phases suitable to it and the Developer must comply. If the Municipality does not so instruct the Developer, before commencement of

any of the Works, he may request the Municipality's permission to divide the area into convenient phases.

- (b) If the construction of the Works is to be phased, then in lieu of furnishing securities as required by Section 9 of this Agreement for the whole of the Works the Developer may furnish the required securities for that part of the Works to be constructed in each phase(s).
- (c) The Land upon which the Works is to be constructed in a future phase shall be made subject to a specific Holding Zoning ("H") provision by means of a by-law to be passed by the Municipality under Section 36(1) of the Planning Act, R. S. O. 1990 c. P. 13 at the Developer's expense.
- (d) Prior to the commencement of the construction of the Works within the Land made subject to a Holding Zoning ("H") provision and after the deposit with the Municipality of the securities as set out elsewhere in this Agreement for such Land along with a written request from the Developer, the Municipality shall at the Developer's expense pass a by-law under the said Section 36 to remove the Holding Zoning ("H") provision.
- (e) Before proceeding with an additional phase, the Developer shall obtain the written approval of the Municipality and no Works shall be permitted to be installed and no building permits issued until this approval has been given in writing by the Municipality.
- (f) Subject to Section 8.15 herein, commencement of construction within subsequent phases of this subdivision, or other subdivisions of the Developer herein within the Municipality of Kincardine, may not proceed.

8.4 Developer's Liabilities

Until the Municipality has issued the Certificate of Final Acceptance for the Works, the Developer hereby indemnifies and saves harmless the Municipality against all actions, causes of action, suits, claims and demands whatsoever which may arise either directly or indirectly by reason of the Developer undertaking the Plan.

8.5 Insurance

The Developer shall insure against all damages or claims for damage in an Insurance Company satisfactory to the Municipal Clerk. Such policy or policies shall be issued in the joint names of the Developer, the Municipality and the Municipality's Engineer and the form and content shall be subject to the approval of the Municipality. The minimum limits of such policies shall be \$5,000,000 all inclusive, but the Municipality shall have the right to set higher amounts. The said insurance policy shall include a provision that requires the insurance company to provide the Municipality with thirty (30) days' notice of termination of such policy. The policy shall be in effect for the period of this Agreement including the period guaranteed maintenance pursuant to Section 5 of this Agreement. The issuance of such a policy of insurance shall not be construed as relieving the Developer from responsibility for other or larger claims, if any, for which he may be held responsible.

8.6 Environmental Impairment Liability Insurance

The Owner shall purchase an Environmental Policy to cover injury to or physical damage to tangible property including loss of use of tangible property, or the prevention, control, repair, cleanup or restoration of environmental impairment of lands, the atmosphere or any water course or body of water on a sudden and accidental basis and on a gradual release. The policy shall include bodily injury, including sickness, disease, shock, mental anguish, and mental injury. The policy is to be renewed for 3 years after Stage 3 Final Acceptance and a Certificate

of Insurance evidencing renewal shall be filed with the Municipality. If the policy is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the Municipality. The Municipality has the right to request that an Extended Reporting Endorsement be purchased by the Owner at the Owner's sole expense.

8.7 Legal Notice to Developer and Municipality

Any notice required to be given hereunder may be given by fax, personal service delivered directly to the Developer or the Developer's engineer or by registered mail addressed to the Developer at its principal place of business, as identified in this Agreement or as provided by the Developer from time to time or as shown on the last revised assessment roll in the possession of the Municipality's Clerk, and shall be effective as of the date delivered or sent via fax or shall be effective, in the case of registered mail, the 5th day after the date the Notice was deposited in the Post Office.

Any notice required to be given to the Municipality hereunder shall be given to the Municipality by registered mail to:

Municipality of Kincardine
1475 Concession, RR#5
Kincardine, ON N2Z 2X6
ATTN: Clerk

8.8 Registration

The Developer consents and authorizes the registration of this Agreement by the Municipality's Solicitor on title to the Lands both before and after the registration of the Plan in the Land Registry Office, which said registration is at the sole discretion of the Municipality and all costs of registration shall be paid for by the Developer.

The Developer hereby agrees that until the Municipality has registered this Agreement upon title to the Lands, no lots or blocks in the plan shall be conveyed.

8.9 Mortgages/Encumbrances

The Developer covenants and agrees to obtain and register, at its sole cost and expense, a postponement from each encumbrancer with a charge registered against title to the Land (or part thereof) so that notice of this Agreement shall be registered in priority to any such charge.

Further, the mortgagee, 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.

8.10 Requirements for Building Permits

The approval of the Plan by the Municipality or the acceptance by the Municipality of the Works shall not be deemed to give any assurance that Municipal building permits, when applied for will be issued in respect of the Lots or Blocks shown on the Plan. Notwithstanding the foregoing, the Developer agrees that it, or anyone claiming titled from it or under its authority, shall not apply for any building permits for Lots or Blocks within the Plan until all requirements hereinafter set out have been carried out to the satisfaction of the Municipality. It is agreed that a copy of this Section 8.9 shall be delivered by the Developer to each and every Purchaser of Land within the Plan and to each and every Builder obtaining a Building Permit for any Lot or Block or part of a Lot or Block within the Plan and the Developer shall extract a covenant similar to this

covenant from all such Purchasers and Builders. The Municipality shall have the right to refuse any such application until:

- (a) Preliminary Acceptance has been granted for Stage 1 servicing for that phase of the Subdivision.
- (b) The Developer has provided written confirmation that lands/blocks/easement listed in Schedule "H" have been conveyed to the Municipality.
- (c) The Developer has provided sufficient documentation to the Municipality's Engineer confirming that electrical distribution and street lighting and the remaining underground services, telephone, cable t.v., and gas are being scheduled for installation; and will be completed within six (6) weeks of the date of issuance of the building permit.
- (d) Approval of the Municipality has been obtained for the construction of any buildings to be erected on Lots or Blocks that may be listed in Schedule "F" hereto.
- (e) A certificate has been given by the Municipality's Chief Building Official that the building location is in compliance with the zoning by-law of the Municipality.
- (f) The signs denoting "Unassumed Roads" have been installed at the entrances to the Subdivision.
- (g) All dead trees within the limit of the Plan have been removed.
- (h) All street identification signs required by this Agreement have been installed and are in place.
- (i) Payment to the Municipality by cash or letter of credit in the amount of \$2,500.00 as a Works Damage/Lot Grading Compliance Deposit (herein "Damage/Lot Grading Deposit") per Lot or Block in the Plan of which the sum of \$100.00 is non-refundable. The balance of the Damage/Lot Grading Deposit shall be refundable in whole or in part after the building has been constructed and occupied, an Owner's Final Grading Certificate has been filed with and accepted by the Municipality's Chief Building Official and the required service connections have been made and all damages to the Works which form the subject matter of this Agreement resulting from house building and/or landscaping activities on the subject Lot or Block have been repaired to the satisfaction of the Municipality's Chief Building Official and Municipality's Director of Public Works.
- (j) With respect to repair of damage to the Works, in the event that the Owner fails to repair the damage to the Works when so instructed by the Municipality's Chief Building Official or the Municipality's Director of Public Works, the Municipality may, at its option, undertake the repair of such damage and all costs over and above the \$2,500.00 deposit shall be charged back to the Owner and shall include a management fee of 15% of the cost of labour and material, shall be a charge against the Lot or Block for which repairs were carried out and shall be payable forthwith.
- (k) Payment to the Municipality by cash in the amount of the current applicable Development Charge(s) per Lot or Block in the Plan under the Development Charges By-law of the Municipality.
- (l) A Certified Building Lot Site Plan has been filed with the Chief Building Official of the Municipality pursuant to Section 6.4 (b).
- (m) The Developer agrees that the preceding requirements in this Section 8.9 are in addition to and not in substitution of the requirements of the Ontario Building Code Act as amended and regulations thereunder with respect to the issuance of Building Permits.

8.11 Requirements for Occupancy

Subject to Section 8.11 herein, no building erected on the Lots or Blocks within the Plan shall be occupied until a Certificate of Inspection re: Readiness for Occupancy has been issued by the Municipality's Chief Building Official and the said Certificate shall not be issued until:

- (a) Preliminary Acceptance has been granted for Stage 2 servicing for the phase of the Subdivision including the Lot or Block.
- (b) The roadway from the entrance of the Subdivision to and including the lot or block of which the building is a part, has received the base course asphalt.
- (c) The electrical distribution plant including street lights have been installed and approved by the Utility.
- (d) The traffic and street signs have been installed and approved by the Municipality's Engineer.
- (e) Subject to Section 6.4 (c), the final grading of the Lot or Block is in conformity with the overall grading plan or such variances therefrom as have been approved by the Municipality's Chief Building Official pursuant to Section 6.4 (c).
- (f) The telephone lines, cable T.V. and gas mains have been installed and approved by the Municipality's Engineer.
- (g) The Developer agrees that the preceding requirements in this Section are in addition to and not in substitution of the requirements of the *Building Code Act, 1992*, S.O. 1992, c.23, and any amendments thereto and regulations thereunder with respect to certificates for occupancy.

8.12 Special Building Permits / Model Homes

Pursuant to Section 8.9 building permits are not obtainable until certain services are installed and approved by the Municipality's Engineer. The Municipality agrees that if the Developer or a builder wishes to obtain a building permit prior to the installation of services, as set out in Section 8.9, a permit may be issued provided the Developer or Builder has executed a No-Occupancy Agreement (Schedule "I") and the Municipality may require a deposit or Letter of Credit as a guarantee of no-occupancy. In the event that the Developer fails to meet all the requirements set out in Section 8.10 for any building permit that is issued pursuant to the Developer's delivery of a No-Occupancy Agreement, the Developer hereby acknowledges that the deposit shall be immediately forfeited to the Municipality. Such failure to meet the Section 8.10 obligations shall constitute a breach of this Agreement and the Municipality may immediately draw down any security held under this Agreement to complete any work required or fulfill any other requirements of Section 8.10 for any model home that was built pursuant to this Section 8.11.

8.13 Right to Enter into an Agreement

The Developer agrees not to call into question directly or indirectly in any proceedings whatsoever in law or in equity any administrative tribunal, the right to the Municipality to enter into this Agreement and to enforce each and every term, covenant and condition herein contained and this Agreement may be pleaded as an estoppel against the Developer in any such proceedings.

The Developer acknowledges that the Municipality is entering into this Agreement and approving the Plan on the express representation of the Developer that it and its successors and assigns shall observe and perform all the provisions of this Agreement and that the Municipality is of the opinion that the Plan would not be in the public interest if the Developer, its successors and assigns, the owner or owners from time to time of the land within the Plan were

not obligated to observe and perform all the provisions hereof except to the extent the Municipality may lawfully change them.

8.14 Successors and Assigns

The covenants, agreement, conditions, and undertakings herein contained on the part of the Developer shall run with the land and shall be binding upon it and upon its successors and assigns as owners and occupiers of the said lands from time to time.

8.15 Notification to Purchaser

The Developer shall in every Agreement of Purchase and Sale or Offer to Purchase pertaining to any Lot or Block within the Plan notify each purchaser of all of the payments to be made by the purchaser to the Municipality pursuant to this Agreement and all of the provisions of this Agreement which shall continue in force after the completion of the sale. Further, the Developer shall furnish a list of those services included in the purchase, specifying those installed and those to be installed at no additional cost.

8.16 Scheduling, Progress and Completion

The Developer shall commence construction of services within twenty-four (24) months of the signing of this Agreement or the registration of the Plan whichever is earlier. Within eighteen (18) months of the date of commencement of the servicing of any phase, the Developer shall complete the installation of the Stage 1 and Stage 2 services. In any phase, the top coat of asphalt shall be completed within twenty-four (24) months of preliminary acceptance of Stage 2 of the services; unless written consent altering this condition is received from the Municipal Engineer. Failure to adhere to the above schedule may result in the Municipality completing the Works in accordance with Section 3.7 of this Agreement. If the development is phased, the date for commencement of construction on the balance of the phases may be delayed for up to five years. Failure to commence construction within the time schedule above may result in the Municipality declaring this Agreement to be null and void, and the Municipality may deem the property not to be a Plan of Subdivision.

8.17 No Municipal Liability

This Agreement and the provisions herein do not give the Developer or any person acquiring any interest in the land within the Plan (each hereinafter in this clause called "such person"), any rights against the Municipality or the Municipality's Engineer with respect to the failure of any such person to perform any obligations under this Agreement or the failure of the Municipality to force such person to perform any obligations under this Agreement or any negligence of any such person in the performance of the said obligations.

The only duty and responsibility of the Municipality's Engineer arising out of this Agreement is to the Municipality and this Agreement. Any work or services done or performed by the Municipality's Engineer under this Agreement do not in any way create any liability on the part of the Municipality's Engineer to the Developer or any person acquiring any interest in the land within the Plan.

8.18 Assignment

The Developer shall not assign this Agreement without the prior written consent of the Municipality, which consent may not be unreasonably withheld.

8.19 Conflict

In the event of any conflict between or among the plans and specifications relating to the construction of the Works, the Municipality's Engineer shall decide which provisions shall prevail.

8.20 Severability

If any term, covenant or provision of this Agreement shall be found or declared by a Court of competent jurisdiction to be invalid, unenforceable or ultra vires, such term, covenant or provision shall be conclusively deemed to be severable from all other terms, covenants and provisions of this Agreement and the remainder of this Agreement shall be and remain in full force and effect.

8.21 Amendment

Without in any way limiting the rights of the Municipality, the Developer agrees that the Municipality may, with the consent of the then registered owner of any land within the Plan, amend this Agreement insofar as it specifically affects such land or any part thereof.

8.22 Further Assurances

The Developer agrees that it shall and will, on the request of the Municipality, make, do, execute or cause to be made, done or executed all such further and other deeds, acts, things and assurances to ensure the full implementation of this Agreement and to satisfy the intention of the parties as set out in this Agreement.

8.23 Joint and Several

All terms, covenants, provisions and obligations of the Developer in this Agreement shall be joint and several.

8.24 Headings

The headings contained herein are for reference only.

8.25 Enurement

This Agreement shall be binding upon and enure to the benefit of the parties hereto and its respective heirs, executors, administrators, successors and assigns.

SECTION 9 FINANCIAL PROVISIONS

9.1 Development Charges, Drainage and Local Improvement Charges

Development Charges shall be paid in accordance with the current Development Charges By-law of the Municipality.

The Developer agrees to pay for all arrears of taxes outstanding against the property herein described before the approval of the said Plan is obtained. The Developer further undertakes and agrees to pay all taxes levied on the said lands on the basis and in accordance with assessment and collector's roll entries until such time as the lands herein being subdivided have been assessed and entered on the Collector's Roll according to the Registered Plan.

Before the Plan is approved the Developer agrees to commute and pay all charges made with respect to the Drainage Act, the Local Improvement Act, and the Municipal Act, including but not limited to charges or rates outstanding in respect of the Lands under any sewer rate and/or water rate by-law which are assessed against the property on the Plan. Before the Plan is approved the Developer agrees to commute and pay the Municipality's share of any charges

made under the said Drainage Act, the said Local Improvement Act and the said Municipal Act presently servicing this property and assessed against it.

9.2 Securities

Prior to registering this Agreement, the Developer shall deposit with the Municipality to cover the faithful performance of the contract for the installation of the services and the payment of all obligations and contingencies arising thereunder the following securities:

- (a) Cash in the amount of One Hundred Percent (100%) of the estimated cost of all of the Works as set out in Schedule "E" and as approved by the Municipality's Engineer and Municipal Council, or
- (b) An irrevocable Letter of Credit from a chartered bank, issued in form and content satisfactory to the Municipality's Director of Corporate Services (in compliance with Policy No. FIN.05), in the amount of One Hundred Percent (100%) of the estimated cost of all Works as set out in Schedule "E" and as approved by the Municipality's Engineer or
- (c) Some combination of cash and Letter of Credit, totaling 100% of the Schedule "E" estimate.
- (d) Prior to depositing the securities, the Developer's Engineer shall submit an estimate of the cost of the Works to the Municipality's Engineer for approval. When the cost estimate has been approved it will be set out in Schedule "E" of this Agreement and will become the basis for the limits of these securities.
- (e) All Letters of Credit shall be for a minimum guaranteed period of one (1) year or such longer time as the Municipality may decide. All Letters of Credit referred to in this Section shall contain the following clause:

"It is a condition of the Letter of Credit that it shall be deemed to be automatically extended without amendment from year to year from the present or any future expiration date thereof, unless at least thirty (30) days prior to the present or any future expiration date, we notify you in writing by registered mail that we elect not to consider this Letter of Credit to be renewable for any additional period."

- (f) Unless each and every Letter of Credit is renewed as noted above, the Municipality shall have the absolute right to refuse to issue building permits and to prohibit occupancy of homes, whether partially or fully completed, from the said date thirty (30) days prior to the expiration of that Letter of Credit.
- (g) The amount for securities shall be submitted by the Engineer for the Developer to the Municipal Engineer for review. The agreed upon security amount shall be inserted in Schedule "E" to this Agreement.

The Municipality reserves the right, at any time, to review the amount of security deposited in light of the value of the work remaining to be completed for any current or subsequent phases of the project and to require an adjustment in the securities, such adjustment to be based upon any anticipated changes to site conditions or construction costs.

9.3 Reduction of Securities

An application for the reduction of the security on deposit with the Municipality pursuant to Section 9.2 herein may be made no earlier than thirty (30) days after the commencement of construction of the Works and every thirty (30) clear days thereafter.

- (a) To obtain a reduction in security the Developer shall file with the Municipality's Engineer a written application in accordance with Schedule "J" attached hereto.
- (b) The application shall include written confirmation from the Developer's Engineer:
 - describing the Works constructed as at the date of the application and a calculation of the cost thereof.
 - confirming that the Works have been installed by the Developer with full time supervision of the Developer's Engineer and in accordance with the requirements of this Agreement and schedules hereto.
 - describing the Works remaining to be completed as at the date of the application and a calculation of the estimated cost thereof.
- (c) The value of the reduction shall be determined by the Municipality's Engineer who shall give a certificate to the Municipal Clerk and the Developer confirming the amount of the reduction of the security and the amount of the security remaining on deposit with the Municipality.
- (d) The value of the reduction shall be based upon the one hundred percent (100%) of the value of the Works remaining to be completed by the Developer plus ten percent (10%) of the value of the Works completed to the date of the application. Should Final Acceptance be granted for any Stage or Stages of the works, then the reduction shall be based upon one hundred percent (100%) of the value of the Works remaining to be completed by the Developer plus ten percent (10%) of the value of the Works for those Stages of construction that have not received Final Acceptance to the date of the application
- (e) As a minimum security, subject to any outstanding deficiencies or contingencies, the Municipality throughout the maintenance period shall hold as security the greater of ten percent (10%) of the estimate of the cost of the Works as set out in Schedule "E" or twenty thousand dollars (\$20,000.00).

9.4 Statutory Declaration of Accounts Paid

The Developer agrees that upon applying for a discharge of securities or for a Certificate of Preliminary Acceptance for the services, he shall supply the Municipality with a Statutory Declaration that all accounts for work and materials for said services have been paid except normal guarantee holdbacks and that there are no claims for liens or otherwise in connection with such work done or materials supplied for or on behalf of the Developer in connection with the Subdivision.

9.5 The Construction Act, R.S.O. 1990 c. C.30

The Developer agrees that it will hold back in its payments to any Contractor who may construct the services, such sums as are provided in accordance with the Construction Act, R.S.O. 1990, c. C.30, and will otherwise indemnify and save harmless the Municipality against any claims, actions or demands for construction liens or otherwise in connection with the Works and all costs in connection therewith, and on the demands of the Municipality's Solicitor will forthwith take such steps to immediately discharge all liens upon the services.

Notwithstanding anything to the contrary contained in this Agreement, the Developer hereby agrees that the filing of any liens pursuant to the said Construction Act, with respect to the land described in Schedule "A" attached hereto, shall constitute a default by the Developer of the terms of this Agreement and shall entitle the Municipality to draw on any or all of the security referred to in Section 9.2 of this Agreement and to utilize said draw to make payment into Court of the holdback together with costs.

9.6 Partial Release

Council for the Municipality may by resolution or bylaw authorize a partial release of obligations on the owners of a lot, at Council's sole discretion. Said partial release shall be in the form attached hereto as Schedule "K".

The completion and registration of such partial release shall constitute a full and final release of the obligations of the Developer, with the exception of lot grading requirements included in Section 6 of this Agreement, as established hereunder with respect to the Lot named therein.

Notwithstanding the foregoing, the Clerk shall not be required to execute a partial release until the various services have been completed in accordance with the terms of this Agreement and the plans and specifications provided for herein.

SECTION 10 SPECIAL PROVISIONS – see Schedule "M"

- 10.1 The Developer and the Municipality agree that the provisions set forth in the attached Schedule "M" form an integral part of this Agreement.

SECTION 11 FINALIZATION OF AGREEMENT

- 11.1 The Developer and Mortgagee(s), if any, hereby authorize the Municipality to add to Schedule "A" to this Agreement and to all deeds, easements and other documents delivered by the Developer to the Municipality to fulfil the terms of this Agreement, the number of the Plan once registered.

SECTION 12 SIGNATURES

IN WITNESS WHEREOF the parties hereto have affixed their hands and seals attested to by the hands of the proper officer duly authorized on its behalf.

(Insert Owner Name
(
(
(Title:
(I/We have authority to bind the Corporation
(
(THE CORPORATION OF THE MUNICIPALITY
(OF KINCARDINE
(
(
(Mayor
(
(
(Clerk
(We have authority to bind the Corporation

Developer's Address: Insert Address

Developer's Telephone: Insert phone

Developer's Email: Insert email

SCHEDULE "A" OF AGREEMENT

Note: It is understood and agreed that this Schedule forms part of the Municipality's Agreement.

DESCRIPTION OF LANDS BEING SUBDIVIDED

Insert Description

Property Identifier Numbers (PIN):

Insert Pin

SCHEDULE "B" OF AGREEMENT

Note: It is understood and agreed that this Schedule forms part of the Municipality's Agreement.

PLAN OF SUBDIVISION

attached

OR

A Draft Plan of Subdivision of _____, completed by _____ as filed with The Corporation of the County of _____ as part of an application for a Plan of Subdivision is available in the offices of the Municipality of _____ for review.

SCHEDULE "C" OF AGREEMENT

Note: It is understood and agreed that this Schedule forms part of the Municipality's Agreement.

MUNICIPAL SERVICING STANDARDS

The Municipal Servicing Guidelines published by the Municipality dated September 15, 2017, shall provide the basis of designing municipal services with the Development. The Municipality reserves the right, should those Servicing Guidelines be amended within three years of the date of registration of the first phase of any Development to require the Developer to alter its designs to satisfy those new Guidelines.

SCHEDULE "D" OF AGREEMENT

Note: It is understood and agreed that this Schedule forms part of the Municipality's Agreement.

CHECKLIST OF WORKS TO BE CONSTRUCTED

- | | | |
|-----|---|-------------------------------------|
| 1. | Roads complete with asphalt paving and curb and gutter | <input checked="" type="checkbox"/> |
| 2. | Storm Water Management Plan, storm sewers and private drain connections | <input checked="" type="checkbox"/> |
| 3. | Sanitary sewers and building connections to the lot line | <input checked="" type="checkbox"/> |
| 4. | Water distribution system, fire protection and building connections to the lot line | <input checked="" type="checkbox"/> |
| 5. | Grading and requirements of a site grading plan | <input checked="" type="checkbox"/> |
| 6. | Underground electrical distribution system and an electrical service | <input checked="" type="checkbox"/> |
| 7. | Street lighting | <input checked="" type="checkbox"/> |
| 8. | Utility obligations – telecommunications, electrical distribution | <input checked="" type="checkbox"/> |
| 9. | Sidewalks | <input checked="" type="checkbox"/> |
| 10. | Topsoil and sod on boulevard from property line to curb | <input checked="" type="checkbox"/> |
| 11. | Pedestrian walkways | <input checked="" type="checkbox"/> |
| 12. | Vegetation retention/Tree planting plan | <input checked="" type="checkbox"/> |
| 13. | Lot house number signs | <input checked="" type="checkbox"/> |
| 14. | Street name signs | <input checked="" type="checkbox"/> |
| 15. | Traffic signs, as required | <input checked="" type="checkbox"/> |

Note: Works Required Denoted by

SCHEDULE "E" OF AGREEMENT

Note: It is understood and agreed that this Schedule forms part of the Municipality's Agreement.

**ITEMIZED ESTIMATE OF COSTS OF CONSTRUCTION
OF EACH PART OF THE WORKS**

SCHEDULE "F" OF THE AGREEMENT

Note: It is understood and agreed that this Schedule forms part of the Municipality's Agreement.

LIST OF LOTS UNSUITABLE FOR BUILDING PURPOSES – CLAUSE 6.3

None

SCHEDULE "G" OF THE AGREEMENT

Note: It is understood and agreed that this Schedule forms part of the Municipality's Agreement.

OWNER'S FINAL GRADING CERTIFICATE

The undersigned hereby certifies to the Corporation of the Municipality of Kincardine (the "Municipality") that the foundations of the buildings and structures and any openings in any such foundation walls constructed on the following property:

STREET NO.

STREET

MUNICIPALITY

LOT/BLOCK

REGISTERED PLAN NO.

Have been constructed, at or above the elevations illustrated on the overall Certified Building Lot Site Plan (as approved by or on behalf of the Municipality) referred to in the Agreement registered against the title to the above property as shown on the as-built grading survey attached.

The undersigned further certifies to the Municipality that a field survey has been completed by the undersigned and that:

1. The final grading of the above referred to property has been completed in substantial compliance with the Certified Building Lot Site Plan referred to in the Agreement.
2. The grade elevation of all lot boundaries and corners including the front lot corners of the property are in substantial compliance with the Certified Building Lot Site Plan; and
3. The above lot has been graded to provide positive drainage in the front, rear and sideyard and that there is no area of the property which is subject to ponding of water; and
4. That in all cases, the final grading conforms to the intent of the grading plan.

This certificate is given and delivered to the Municipality in full knowledge that the Municipality relies on this certification in providing a release of the applicable Agreement affecting this property.

DATED at _____, Ontario this _____ day of _____, 20____.

Signature of OLS/Professional Engineer

NOTE: Copies of this Owner's Final Grading Certificate are available at the Municipality's Building Department.

SCHEDULE "H" OF AGREEMENT

Note: It is understood and agreed that this Schedule forms part of the Municipality's Agreement.

LANDS FOR MUNICIPAL PURPOSES TO BE CONVEYED TO THE MUNICIPALITY

LIST OF EASEMENTS TO BE GRANTED TO THE MUNICIPALITY

SCHEDULE "I" OF AGREEMENT

Note: It is understood and agreed that this Schedule forms part of the Municipality's Agreement.

NO OCCUPANCY AGREEMENT

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of other good and valuable consideration and the sum of One (\$1.00) Dollar of lawful money of Canada, the Parties hereto mutually covenant and agree as follows:

- 1. In consideration of the Corporation of the Municipality of Kincardine issuing a building permit to the Owner for

_____, the Owner covenants and agrees that it will not apply for an occupancy permit until the above referred to services have been installed to the satisfaction of the Municipality;

- 2. The Municipality hereby acknowledges that it has a cash deposit from the Developer in the sum of _____ and will use its best efforts to see to it that the above referred to services are completed by _____.

THIS AGREEMENT shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

SIGNED, SEALED AND DELIVERED

This day of , 20 ____.

(
 (
 (
 (DEVELOPER (NAME OF DEVELOPER)
 (
 (THE CORPORATION OF THE
 (MUNICIPALITY OF KINCARDINE
 (
 (
 (Mayor
 (
 (
 (Clerk
 (We have authority to bind the Corporation.

SCHEDULE "J" OF AGREEMENT

Note: It is understood and agreed that this Schedule forms part of the Municipality's Agreement.

APPLICATION FOR REDUCTION OF SECURITY

To: (Name of Municipality's Engineer), Engineer, _____ of _____

Developer: (Name of Developer)

Agreement: (Date of Agreement)

Property: (Legal Description of Property)

Application No. (Specify number of application)

The undersigned, (Name of Developer's Engineer) being the Developer's Engineer, hereby confirms that the Works constructed as at the date of this Application have been installed by the Developer under the full time supervision of the Developer's Engineer and in accordance with the requirements of the Agreement between the Developer and the Municipality.

The Works installed to the date hereof and the calculation of the cost thereof are detailed in the schedule attached hereto.

Further, the undersigned Developer's Engineer hereby confirms that the Works remaining to be constructed as at the date of this Application and the calculation of the estimated cost thereof are also detailed in the schedule attached hereto.

This Application is given and delivered to the Municipality's Engineer with full knowledge that the Municipality's Engineer and the Municipality will rely upon the information contained herein in granting a reduction of the security held by the Municipality pursuant to Section 9.2 of the said Agreement affecting the above property.

DATED at _____, Ontario this _____ day of _____, 201____.

Signature of Developer's Engineer

Name of Developer's Engineer

SCHEDULE "K" OF AGREEMENT

Note: It is understood and agreed that this Schedule forms part of the Municipality's Agreement.

FORM OF PARTIAL RELEASE:

PARTIAL RELEASE

IN FAVOUR OF:

Herein called the "Owner"

WHEREAS the Owner entered into certain obligations in favour of the Corporation of the Municipality of Kinross under an Agreement registered against the lands hereinafter described as Instrument No. _____.

AND WHEREAS the Owner has satisfied and fulfilled all of those obligations.

NOW THEREFORE the Corporation of the Municipality of Kinross releases the Owner from the obligations contained in the said Agreement, with the exception of the lot grading provisions in Section 6.5 in said Instrument No. _____, as amended, and certifies that all other provisions of that Agreement, as amended, are no longer binding with respect to the said lands. The lands released hereby are:

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the _____ of _____ (_____), County of _____ and being composed of Lot _____ Registered Plan _____, the _____ of _____ has, by Bylaw _____, registered in the said registry office as Instrument No. _____, provided that this Partial Release shall be executed by the Clerk and sealed with its seal.

DATED this _____ day of _____, 20____

Clerk

SCHEDULE "L" OF AGREEMENT

Note: It is understood and agreed that this Schedule forms part of the Municipality's Agreement.

CONDITIONS OF DRAFT APPROVAL

The Conditions of Draft Approval for File No. _____ for the Corporation of the County of _____ as attached hereto.

OR

The Conditions of Draft Approval for File No. _____, dated _____ for the Corporation of the County of _____ are available at the Municipal office for review.

SCHEDULE "M" OF AGREEMENT

Note: It is understood and agreed that this Schedule forms part of the Municipality's Agreement.

SPECIAL PROVISIONS

The following special provisions apply to this Agreement:

- 1. Parkland**
Fill in.