

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

SUBDIVISION AGREEMENT

between

West Ridge on the Lake Inc.

- and -

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

Dated _____, 2020

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 _____, 2020 A.D.

BETWEEN:

West Ridge on the Lake Inc.
hereinafter called the “Developer”

- and -

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE
hereinafter called the “Municipality”

WHEREAS the Developer is the registered owner of the land described in Schedule “A” (hereinafter called the “Lands”) 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 Corporation of 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 Plan in Schedule “B” is the Draft Plan of Subdivision.

AND WHEREAS the Municipality and the Developer are desirous of entering into an Agreement pursuant to Section 51(26) of the Planning Act;

AND WHEREAS the Municipality requires the Developer to construct and install certain municipal services as hereinafter provided and herein referred to as the “Works”, as 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 Developer is required to meet all conditions of draft approval of the Plan prior to final approval and registration of the Plan.

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” or “SVCA” 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 which shall be paid by the Developer to the Municipality by way of cash or a letter of credit, as described in Section 8.9 of this Agreement.

“Developer” means, collectively, [West Ridge on the Lake Inc.](#) and its 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 Public Works” means the Director of Public Works 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.

“Municipal Act” refers to the *Municipal Act, 2001*, S.O. 2001, c.25 and any amendments thereto.

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

“Plan” means the plan of subdivision relating to the Land as identified in 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, as amended from time to time.
- (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 any costs associated with said registration shall be the responsibility of the Developer and shall be deducted by the Municipality from the deposit being held by the Municipality.

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

- (a) Have obtained final approval of the Plan from the County and the Plan, or any subsequent plan for any Phase, has been registered.
- (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 the Environment Conservation and Park's Environmental Compliance Approval for the Water Supply and Distribution System (if required), the Sewage Collection System, and the Storm Sewer System and Storm Water Management Works.
- (d) Submit to the Municipal Engineer a completed Form 1 and supporting documentation for approval of the Water Distribution System.
- (e) Provide written confirmation of having obtained the approval for drainage, road crossings, encroachments, etc. of all road authorities including the Municipality, County, Conservation Authority, the Ministry of Transportation of Ontario and any other authority involved.
- (f) Have deeded to the Municipality the lands/blocks/easements listed in Schedule "H".
- (g) 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 its own expense and in good workmanlike manner Municipal Works 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. Further, the Developer agrees to reimburse the Municipality for any inspections completed by municipal staff as part of the Municipal Engineer's inspections of the installation of services.
- (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 (b) 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 and any amounts that remain outstanding shall accrue interest at the rate of 1.25% per annum (compounded annually) until paid in full.

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 the Environment Conservation and Parks, and others as required.
- (e) To provide the contract documentation, contract administration, 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. Digital files of the As Built drawings shall be submitted to the Municipal Engineer and the Municipality prior to the issuance of the Certificate of Final Acceptance. Digital files shall be recorded by GPS using NAD 83 UTM

Zone 17N with an accuracy of 100 mm or less, in the format of ArcGIS 9.2 (or compatible version) with the inclusion of x, y coordinates for all applicable points of reference.

- (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.

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 its 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 three (3) business days written notice to the Municipality's Engineer of its intent to commence work. Should, for any reason, there be a cessation or interruption of construction, the Developer shall provide three (3) business days 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 it 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 drawings and specifications prepared by the Developer's Engineer must be turned over to the Municipality's Engineer for its use should he require same. It is

understood and agreed between the parties hereto that such entry upon the lands shall be as an 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 the Works are completely installed in accordance with the requirements of the Municipality.

Without limiting the obligations of the Developer herein, if the Developer defaults on the performance of any term, covenant or provision of this Agreement, and if such default continues 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 upon the Lands 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 to 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 it 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 a qualified competent contractor or contractors retained by the Developer.

3.10 Utility Costs and Charges

The Developer shall deal directly with all utility companies. The Developer's Engineer shall obtain all approvals and permits and pay all fees and charges directly to the appropriate utility company.

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 Director of Public Works, not later than fourteen (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 Public Works.

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 1.8 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 (10) 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. The cost of disposal as required by this section will be at the expense of the Developer or each subsequent Owner and the Municipality may recover such expense under Section 446 of the *Municipal Act, 2001* in the same manner as taxes or from the deposit required by Section 8.9(h).

3.19 Dust Control

Until the Final Acceptance of all Services to be constructed under this Agreement, the Developer shall use such reasonable method and at all times environmentally acceptable materials 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 Public Works 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.

Further, the Developer hereby agrees that they will be responsible for, or will provide for agreements with subsequent owners, with respect to responsibility, to complete all driveway entrances, for its full width, with a hard surface consisting of asphalt, concrete or concrete unit pavers. This hard surface shall extend to the edge of the municipal road allowance.

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 the Environment, Conservation and Parks

immediately and take all necessary steps and remedial efforts required by the Ministry of the 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, a portion of the Granular "A" for a riding surface, together with the As Built drawings for that work.
- (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, together with As Built drawings for that work.
- (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 Stage 1 and 2, or in Stage 3 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 and/or municipal staff, 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.

The Developer acknowledges that the Municipality will not be required to perform any utility locates until such time as Preliminary Acceptance of the Stage 1 services have been completed and the Developer has provided the As Built drawings required for that portion of the work under this Agreement.

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 final 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, inclement weather and/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 its 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/she 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.

5.2 Road Maintenance

The Developer will be responsible for the maintenance of the roads until a Certificate of Final Acceptance is issued by the Municipality.

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 Public Works. 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 it may have arising therefrom and covenants that it 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 upon the Land at any time or from time to time for the purpose of making emergency repairs to any of the Works on behalf of and at the expense of the Developer. 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 its 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 shall not impact adjacent landowners. 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 shall strive to preserve healthy trees, except for the actual area of roadway construction, the installation of services, or the areas within the building envelope. No additional trees shall be removed without the Municipality's Director of Public Works' written permission. The subdivision may be subject to the Natural Heritage Designation and/or an individual Environmental Impact Study. Where appropriate, special provisions may be included in Schedule "M" of this Agreement.

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.

(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 Professional Engineer who shall be the Developer’s 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;
- any abrupt changes in the proposed finished elevation of these lands;
- swale location and elevations;
- sidewalk;
- service and driveway locations; 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 who shall be the Developer's Engineer, that the grading of these lands generally conforms with the Lot Grading Plan and the Certified Building Lot Site Plan.
- If occupancy occurs between November 1 and May 31 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 (h) is returnable to the Owner subject to this Section and Section 8.9 (h) 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 five hundred 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) 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 upon the said property at any reasonable

time to correct any drainage issues. The cost/expense for any such remedial action completed by the Municipality shall be at the expense of the subsequent Owner and the Municipality may recover the cost of doing such remedial work in accordance with the provisions of Section 446 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 except as provided in Paragraph 1 of Schedule “M”, 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 in the Land Registry Office 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 its 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 easements to the Municipality for the purposes of providing the Municipality with sufficient land to construct said turning circle(s). The temporary turning circle shall be constructed in accordance with Schedule "C" of this Agreement. The Developer and the Municipality acknowledge that the easements shall be released to the owners in the event that the street is connected in the future. Such conveyance and release of the easements shall be completed at no expense to the Municipality. A list of said easements is included in Schedule "H" of this Agreement.

SECTION 8 – ADMINISTRATION

8.1 Voiding Agreement

In the event that the Plan is not registered in the land registry system 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 (“*Planning Act*”) 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 Section 36 of the *Planning Act* 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, 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 Subdivision.

8.5 Insurance

The Developer shall insure against all damages or claims for damage with an Insurance Company satisfactory to the Municipality. 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 five million dollars (\$5,000,000.00) all inclusive, but the Municipality shall have the right to set higher amounts, as its sole discretion. 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 guaranteed maintenance period 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 it may be held responsible.

8.6 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 5, RR#5
Kincardine, ON N2Z 2X6
ATTN: Clerk

8.7 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.

8.8 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.

8.9 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 title 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 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;
- (c) 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;
- (d) 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;
- (e) The signs denoting "*Roads Unassumed by the Municipality*" have been installed at the entrances to the Subdivision;
- (f) All dead trees within the limit of the Plan have been removed;

- (g) All street identification signs required by this Agreement have been installed and are in place;
- (h) 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 the Municipality's Director of Public Works;
- (i) 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;
- (j) Payment to the Municipality 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, as amended from time to time;
- (k) A Certified Building Lot Site Plan has been filed with the Chief Building Official of the Municipality pursuant to Section 6.4 (b);and
- (l) 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 *Building Code Act, 1992*, S.O. 1992, c.23, and any amendments thereto and regulations thereunder with respect to the issuance of Building Permits.

8.10 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 Company.
- (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.

8.11 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.

8.12 Right to Enter into an Agreement

The Developer agrees not to call into question directly or indirectly in any court or administrative proceeding or action, whatsoever in law or in equity, 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 proceeding.

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.

8.13 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.

8.14 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.

8.15 Scheduling, Progress and Completion

The Developer shall commence construction of services within eighteen (18) months of the signing of this Agreement or the depositing of the Plan in the Land Registry Office, 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 (5) 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.

8.16 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 any 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 or the Municipality's Engineer to the Developer or any person acquiring any interest in the land within the Plan.

8.17 Assignment

The Developer shall not assign this Agreement without ten (10) days prior written consent of the Municipality, which consent may not be unreasonably withheld.

8.18 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.

8.19 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.

8.20 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.

Any amendments to this Agreement shall be agreed upon by the parties in writing.

8.21 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.

8.22 Joint and Several

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

8.23 Headings

The headings contained herein are for reference only.

8.24 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 Municipality's Development Charges By-law, as amended from time to time.

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 *Drainage Act*, the *Local Improvement Act* and the *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, or
- (b) An irrevocable Letter of Credit from a chartered bank, issued in form and content satisfactory to the Municipality's Solicitor, 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, 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 Municipality's 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 Municipality 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 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.
- (e) 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, it 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

The Municipality of Kincardine has enacted Bylaw No. _____, which provides that the Clerk may execute a partial release of this Agreement, which partial release shall be in the form attached hereto as Schedule "K" and the issuance of same shall be at the Clerk's sole discretion, acting reasonably.

OR

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 Municipality 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

- 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.

West Ridge on the Lake Inc.

Mr. Angelo Orsi
President
I/We have authority to bind the Corporation

THE CORPORATION OF THE MUNICIPALITY OF
KINCARDINE

Mayor

CAO
We have authority to bind the Corporation

Developer's Address: P.O. Box 2088, Orillia, ON L3V 6R9

Developer's Telephone: 705-326-9000 ,ext. 1
705623-2620 (cell)

Developer's email: aorsi@orsigroup.com

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

<i>PIN</i>	<i>33303 - 0877 LT</i>	<i>Interest/Estate</i>	<i>Fee Simple</i>
<i>Description</i>	<p>PART LOTS 21, 22, 23 AND 24 CONCESSION A KINCARDINE, DESIGNATED AS PARTS 1 TO 51, PLAN 3R10233; SUBJECT TO AN EASEMENT OVER PARTS 4, 8, 9, 10, 11, 12, 24, 31, 32, 44, 45, 46 AND 47, PLAN 3R10233 AS IN R335931; SUBJECT TO AN EASEMENT OVER PARTS 6, 8, 9, 10, 28, 32, 44 AND 47, PLAN 3R10233 AS IN R337820; SUBJECT TO AN EASEMENT OVER PARTS 6, 8, 9, 10, 28, 32, 44 AND 47, PLAN 3R10233 AS IN R302742; SUBJECT TO AN EASEMENT OVER PARTS 6, 8, 9, 10, 28, 32, 44 AND 47, PLAN 3R10233 AS IN R300473; SUBJECT TO AN EASEMENT OVER PARTS 6, 8, 9, 10, 28, 32, 44 AND 47, PLAN 3R10233 AS IN R321388; SUBJECT TO AN EASEMENT OVER PARTS 6, 8, 9, 10, 28, 32, 44 AND 47, PLAN 3R10233 AS IN R306007 PARTIAL RELEASE BY BR140673; SUBJECT TO AN EASEMENT OVER PARTS 21 AND 39, PLAN 3R10233 AS IN R386481 PARTIAL RELEASE BY BR140062; SUBJECT TO AN EASEMENT OVER PARTS 21 AND 39, PLAN 3R10233 AS IN R364356 PARTIAL RELEASE BY BR140063; SUBJECT TO AN EASEMENT OVER PARTS 21 AND 39, PLAN 3R10233 AS IN R389142; SUBJECT TO AN EASEMENT OVER PARTS 20, 21, 22, 39, 42 AND 43, PLAN 3R10233 AS IN R32268 PARTIAL RELEASE BY BY150420; SUBJECT TO AN EASEMENT OVER PARTS 21, 22, 39, 42 AND 43, PLAN 3R10233 AS IN R189837 PARTIAL RELEASE BY BR140061; SUBJECT TO AN EASEMENT OVER PARTS 20, 27, 38 AND 39, PLAN 3R10233 AS IN KN17093; SUBJECT TO AN EASEMENT OVER PARTS 2, 9, 11 AND 13, PLAN 3R10233 AS IN KN15133; SUBJECT TO AN EASEMENT OVER PART 16, PLAN 3R10233 AS IN KN15145; SUBJECT TO AN EASEMENT OVER PARTS 24, 44 AND 45, PLAN 3R10233 AS IN R335925; SUBJECT TO AN EASEMENT OVER PARTS 21, 29, 33, 35, 38, 39, 40, 42 AND 43, PLAN 3R10233 AS IN R400051; SUBJECT TO AN EASEMENT OVER PARTS 6, 24, 25, 28, 31, 32, 36, 37, 44 AND 45, PLAN 3R10233 AS IN R400052; SUBJECT TO AN EASEMENT OVER PARTS 4, 6, 8, 9, 10, 11, 12, 25, 31, 32, 36, 37, 44, 45, 46 AND 47, PLAN 3R10233 AS IN R295263; SUBJECT TO AN EASEMENT OVER PARTS 4, 6, 8, 9, 10, 11, 12, 28, 31, 32, 37, 44, 45, 46, 47, 48, 49 AND 50, PLAN 3R10233 IN FAVOUR OF PART LOT 23, CONCESSION A KINCARDINE, DESIGNATED AS PARTS 8 AND 9, PLAN 3R6567 AND PART LOT 23, CONCESSION A KINCARDINE (AS IN R302742), AS IN BR140043; SUBJECT TO AN EASEMENT OVER PARTS 21, 33, 38, 39, 40, 42 AND 43, PLAN 3R10233 IN FAVOUR OF PART LOT 21, CONCESSION A KINCARDINE (AS IN R189837), AS IN BR140046; SUBJECT TO AN EASEMENT OVER PARTS 21, 33, 38 AND 39, 3R10233 IN FAVOUR OF PART LOT 22, CONCESSION A KINCARDINE (AS IN R364356), AS IN BR140047; SUBJECT TO AN EASEMENT OVER PARTS 21, 33, 38 AND 39, 3R10233 IN FAVOUR OF PART LOT 22, CONCESSION A KINCARDINE (AS IN R389142), AS IN BR140048; SUBJECT TO AN EASEMENT OVER PARTS 4, 6, 8, 9, 10, 11, 12, 25, 31, 32, 37, 44, 45, 46, 47, 48, 49 AND 50, 3R10233 IN FAVOUR OF PART LOT 22, CONCESSION A KINCARDINE, DESIGNATED AS PARTS 1 AND 2, 3R2587 AND PART 2, PLAN 3R5885 AS IN BR140049; SUBJECT TO AN EASEMENT OVER PARTS 4, 6, 8, 9, 10, 11, 12, 28, 31, 32, 37, 44, 45, 46, 47, 48, 49 AND 50, 3R10233 IN FAVOUR OF PART LOTS 23 AND 24, CONCESSION A KINCARDINE, DESIGNATED AS PARTS 7 AND 10, PLAN 3R6567 AS IN BR140050; SUBJECT TO AN EASEMENT OVER PARTS 4, 6, 8, 9, 10, 11, 12, 28, 31, 32, 37, 44, 45, 46, 47, 48, 49 AND 50, 3R10233 IN FAVOUR OF PART LOTS 23 AND 24, CONCESSION A KINCARDINE (AS IN R337820), AS IN BR140051; SUBJECT TO AN EASEMENT OVER PARTS 4, 6, 8, 9, 10, 11, 12, 28, 31, 32, 37, 44, 45, 46, 47, 48, 49 AND 50, 3R10233 IN FAVOUR OF PART LOT 23, CONCESSION A KINCARDINE (AS IN R33473), AS IN BR140052; SUBJECT TO AN EASEMENT OVER PARTS 4, 6, 8, 9, 10, 11, 12, 28, 31, 32, 37, 44, 45, 46, 47, 48, 49 AND 50, 3R10233 IN FAVOUR OF PART LOT 23, CONCESSION A KINCARDINE (AS IN R321388), AS IN BR140053; SUBJECT TO AN EASEMENT OVER PARTS 4, 6, 8, 9, 10, 11, 12, 28, 31, 32, 37, 44, 45, 46, 47, 48, 49 AND 50, 3R10233 IN FAVOUR OF PART LOT 23, CONCESSION A KINCARDINE, DESIGNATED AS PARTS 1 AND 2, PLAN 3R7616 AS IN BR140054; SUBJECT TO AN EASEMENT OVER PARTS 4, 6, 8, 9, 10, 11, 12, 28, 31, 32, 37, 44, 45, 46, 47, 48, 49 AND 50, 3R10233 IN FAVOUR OF PART LOT 23, CONCESSION A KINCARDINE AS IN R33473, EXCEPT PART 2, PLAN 3R7616, AS IN BR140055; SUBJECT TO AN EASEMENT OVER PARTS 21, 33, 38 AND 39, 3R10233 IN FAVOUR OF PART LOT 22, CONCESSION A KINCARDINE (AS IN R386481), AS IN BR140658; SUBJECT TO AN EASEMENT OVER PARTS 21, 33, 38, 39, 40, 42 AND 43, PLAN 3R10233 IN FAVOUR OF PART LOT 21, CONCESSION A, KINCARDINE, AS IN R32268 AS IN BR150419; MUNICIPALITY OF KINCARDINE</p>		

SCHEDULE "B" OF AGREEMENT

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

A Draft Plan of Subdivision prepared by D. Culbert Ltd, (their file PL070939), dated December 5, 2013, as finally revised October 18, 2015. The Draft Plan is on file in the offices of the Municipality of Kincardine.

SCHEDULE "C" OF AGREEMENT

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

MUNICIPAL SERVICING GUIDELINES

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 | X |
| 2. | Storm Water Management Plan, storm sewers and private drain connections | X |
| 3. | Sanitary sewers and building connections to the lot line | X |
| 4. | Water distribution system, fire protection and building connections to the lot line | X |
| 5. | Grading and requirements of a site grading plan | X |
| 6. | Underground electrical distribution system and an electrical service | X |
| 7. | Street lighting | X |
| 8. | Utility obligations – telecommunications, electrical services | X |
| 9. | Sidewalks | X |
| 10. | Topsoil and sod on boulevard from property line to curb | X |
| 11. | Pedestrian walkways | X |
| 12. | Tree Management, Retention, and Replacement Plan | X |
| 13. | Lot house number signs | X |
| 14. | Street name signs | X |
| 15. | Traffic signs, as required | X |

Note: Works Required Denoted by

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 _____ of _____ (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 Recorded 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

The following lands will be conveyed to the Municipality on a phased basis, such that the lands applicable to a specific phase will be conveyed with the development of that phase:

- Stormwater Management – Blocks 215, 217, 219, 223, 230
- Open Space/Parkland – Blocks 221, 222, 224, 229
- Environmental Protection – Blocks 220, 225, 227, 228, 233
- Walkways/Service – Blocks 216, 218, 226, 231, 234

LIST OF EASEMENTS TO BE GRANTED TO THE MUNICIPALITY

For drainage purposes:

- Lots 24-34 rear yards, 36 & 37-side yards, 39-50 rear yards
- Blocks 208 and 209-rear yards
- Lots 84 & 85 -side yards, 86-100 rear yards
- Blocks 210 and 211-rear yards
- Lots 162-189 rear yards

For access to Storm Outlet:

- an easement across private lands at the northerly end of Samona Beach Lane.

The development of this subdivision will be completed in phases. The initial Phase 1 registration will incorporate all of the subdivision roads as well as the lots and blocks applicable to Phase 1. Individual lots and blocks will be created in each of the remaining phases when a new M-Plan is registered. The chart below provides a general reference for recording future Registered M-Plan numbers and the associated new Block numbers in each phase:

Draft Plan Block	Purpose	Anticipated Phase No.	M-Plan no. for That Phase	M Plan Block Number
219	Stormwater Management	1		
220	Environmental Protection	1		
221	Open Space/Parkland	1		
222	Open Space/Parkland	1		
223	Stormwater Management	1		
215	Stormwater Management	2		
216	Walkway/Services	2		
217	Stormwater Management	2		
218	Walkway/Services	2		
224	Open Space/Parkland	4		
226	Walkway/Services	5		
228	Environmental Protection	5		
229	Open Space/Parkland	5		
230	Stormwater Management	5		
231	Walkway/Services	5		
225	Environmental Protection	6		
227	Environmental Protection	6		
233	Environmental Protection	7		
234	Walkway/Services	7		

SCHEDULE "I" OF AGREEMENT

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

THIS NO OCCUPANCY AGREEMENT dated this day of 20 ,

BETWEEN:

[INSERT OWNER]

Hereinafter called "Owner"

and

THE CORPORATION OF THE
MUNICIPALITY OF KINCARDINE

Hereinafter called "The Municipality"

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 Municipality issuing a building permit to the Owner for _____, the Owner covenants and agrees that it will not apply for an occupancy permit until the services referred to in the Subdivision Agreement between the Municipality and _____ dated _____ ("the Agreement") have been installed to the satisfaction of the Municipality;
2. The Municipality hereby acknowledges that it has a deposit from the Developer pursuant to the Agreement in the sum of _____ and will use its best efforts to see to it that the 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 ____.

OWNER

THE CORPORATION OF THE
MUNICIPALITY OF KINCARDINE

Mayor:

CAO

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 _____, 20 ____.

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 Kincardine under a Subdivision 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 Kincardine 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 By-law _____, registered in the said registry office as Instrument No. _____, provided that this Partial Release shall be executed by the CAO and sealed with its seal.

DATED this _____ day of _____, 20____

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

CAO

I have authority to bind the Corporation

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. 41T-2008-02.21 as Schedule B to the Memorandum of Oral Decision and Order of the Ontario Municipal Board, Dated April 6, 2016, OMB Case No. PL07039-O070169.

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. **Conveyances:**
The Developer agrees, that prior to registration of the plan and conveyance of blocks, roadways, trails, service corridors and reserves, it shall, to the satisfaction of the Municipality of Kincardine, insure that said parcels are free of encumbrances, save and except for any utility easements and any amended private access easements or rights-of-way.
2. **External Sanitary Sewers:**
The Municipality acknowledges that the Developer has paid its share of the oversizing of sanitary sewers through the adjacent "Huron Ridge" Subdivision. Further, the Municipality has completed downstream trunk sanitary sewers and a replacement of the Connaught Park pumping station. The Developer acknowledges that it will pay its share of the cost of that infrastructure through Development Charges.
3. **County Road 23:**
The Developer agrees to construct northbound left turn lanes and southbound right turn tapers on Bruce County Road 23 to the satisfaction of the County of Bruce and the Municipality of Kincardine.
4. **Cottage Access:**
The Developer acknowledges that arrangements have been put in place to amend rights-of-way and/or easements for access by the adjacent cottagers to the west. The Developer and his contractors shall insure that access is available to cottagers at all times during the construction of the Works in any of the Phases.
5. **SWM Pond Fencing:**
The Developer agrees that they will install standard 1.5 m. high black chain link fence around the Stormwater Management Facilities to the satisfaction of the Municipality. Gates shall be provided in locations approved by the municipality for access and maintenance of the facilities.
6. **Lot Grading and Drainage:**
The Lot Grading and Drainage Plan shall indicate limitations on basement and cellar construction. The Plan shall indicate which lots are suitable for basements and cellars and which are not. The Developer shall insure that a Notice and Warning Clause is included on all offer of purchase and sale; and that said clauses are registered on title on any lots which are not suitable for basement and cellar installation or construction. Further, the Developer shall insure that the Lot Grading and Drainage plan includes any lines which show setbacks for erosion, flooding, or other restrictions on said lots.
7. **Site Plan Agreements on Medium Density Blocks:**
Site Plan agreements will be required for Blocks 212, 213, 214 and 232. The Developer acknowledges that any subsequent Site Plan Agreement for the development of Blocks 212 and 213 shall provide for enhanced entranceway feature landscaping, as required by the Municipality, through the site plan approval process.
8. **Notice and Warning Clauses:**
The Developer agrees to insert the following in all offers of purchase and sale for residential parcels:
 - **Perched Groundwater:** Purchasers are advised that basement and cellar construction may be restricted or prohibited in areas of perched groundwater.

- Property Monuments: Purchasers are advised that in addition to the property monuments required by the Surveyors Act and other legislation that additional property line delineation markers have been placed on the lot line abutting the road allowance and furthermore that such monuments shall not be removed or altered without the written approval of the Municipality of Kincardine.
- Environmental Protection Zone: Purchasers of residential lots abutting an 'EP' zone are advised that there shall be no site alteration, grading or tree removal within the 'EP' Zone except in accordance with an approved Plan.

9. Archeology:

Should human remains be identified during operations, all work in the vicinity of the discovery will be suspended immediately. Notification will be made to the Ontario Provincial Police, or local police, who will conduct a site investigation and contact the district coroner. Notification must also be made to [MTCS] and the Registrar of Cemeteries, Ministry of Government Services.

Should other cultural heritage values (archaeological or historical materials or features) be identified during operations, all activity in the vicinity of the recovery will be suspended and the Ministry of Culture archaeologist contacted. This condition provides for the potential for deeply buried or enigmatic local site areas not typically identified in evaluations of potential.

10. Canada Post:

The Developer agrees to make satisfactory arrangements for the distribution and delivery of mail in accordance with Canada Post and to the Municipality.

11. Saugeen Valley Conservation Authority (SVCA):

Prior to any grading or construction on the site and prior to Final Approval, the Developer shall submit to the SVCA for their review and approval, as needed, the following Plans:

- Servicing and Stormwater Management
- Environment and Natural Heritage
- Sediment and Erosion Control Plan
- Tree Retention and Compensation Plan
- Dune Management Plan
- Coastal Engineering Report
- Geotechnical Slope Stability analysis

All works shall be completed in accordance with these works. The Developer agrees to notify the SVCA at least 48 hours prior to the initiation of any on-site development.

The Developer agrees to notify purchasers that the SVCA Regulation is applicable to Lots 1, 9-23, 102, 103, 105-107, 119-122, 125, 126, 130, 131, 151-158, 193 and 194.

12. Stormwater Management Facilities:

Stormwater management (SWM) facilities and associated storm sewers are part of the Stage 1 services as defined in Section 4.1 of this agreement. Two facilities are to be constructed. Each will be constructed in the initial Phase associated with their drainage areas. Preliminary Acceptance of these Works will be granted as part of that initial servicing phase for each facility's drainage area. Sections 4.2 and 4.3 are amended for the SWM facilities and they will not receive Final Acceptance until:

- Final Acceptance has been granted for all Stages of all of the Phases of the development that drain to that facility.
- All silt and sediment has been removed from the facility.
- Confirmation by the developer's engineer has been received confirming that the design storage volume has been achieved. Cleaning of the facility may be required.
- Monitoring or other requirements of the Certificate of Authorization (ECA) provided by the Ministry of Environment, Conservation and Parks (MECP) has been completed satisfactorily and filed with the Municipality.
- The ownership of all MECP ECA's have been transferred to the Municipality.

13. Permits and Approvals:

The Developer agrees that no construction or installations of any kind (ie. clearing or servicing of land) involved with this Plan shall be undertaken prior to entering into a site alteration agreement or Subdivision Agreement and obtaining all necessary permits, approvals and/or certificates that need to be issued in conjunction with the development of the Plan of Subdivision, unless approved by the appropriate approval authority in writing.

14. Phasing of Development:

The Developer and the Municipality acknowledge and agree that the future residential blocks within the Registered Plan of Subdivision, attached hereto as Schedule "B", are to be developed in six additional phases, being Phase 2 to 7 inclusive.

The Developer and Municipality agree that the number of phases may be reduced or expanded upon mutual agreement of both parties provided fair and reasonable justification for the change is provided by the Developer.

The lots, and blocks for each future phase shall be created by a new Registered M-Plan for that phase. The provisions of this Agreement shall remain binding on all of the future phases.

Prior to registration and development of a future phase, the Developer shall provide the following to the satisfaction of the Municipality:

- An M-Plan describing the lots, blocks and roads applicable to the phase.
- Reference Plan(s) describing any easement(s) applicable to the phase (i.e. servicing easements, temporary turning circles, etc.).
- Up-dated engineering work cost estimates, if applicable, and associated fees and deposits for the phase.
- The required security shall be posted by the Developer as a pre-condition to the Municipality approving registration of any Phase.

Further to Section 8.3 of the Agreement, the Municipality acknowledges that the Developer has proposed a phasing scheme that is generally described as follows and as shown on the Pearson Engineering Phasing Drawing dated June 24, 2020, Rev. 2:

- Phase 1 – Inverness St. N. extension to Strathmill Drive (northerly junction), Strathmill to West Ridge Boulevard and West Ridge Boulevard to County Road 23 and southerly Stormwater Management (SWM) facility.
- Phase 2 – Strathmill Drive from Inverness St. N. (southerly junction) to West Ridge Boulevard.
- Phase 3 – Oban Street.
- Phase 4 – Strathmill Drive from Inverness St. N. (northerly junction) to Lot 103
- Phase 5 – MacAllan Boulevard and northerly SWM facility
- Phase 6 – Strathmill Drive from Lot 103 to MacAllan Boulevard
- Phase 7 – Springbank Crescent

The Developer Acknowledges that Phases 5 and 6 will be completed concurrently to provide access between the two halves of the development.

15. PSAB:

Prior to Preliminary Acceptance of any Stage of servicing in any Phase, the Developer, in addition to providing as recorded drawings, shall provide, in a spreadsheet format suitable to the Municipality of Kincardine, a detailed inventory or all municipal assets for input into their asset management database.

16. South Drainage Ditch:

The Developer and the Municipality agree that the Developer will construct the new culvert and associated works at the southerly connection to Inverness St. North. In lieu of the Developer completing any remedial work to this southerly drainage ditch beyond the limits of the new construction, the Developer agrees to pay the Municipality a lump

sum payment of \$225,000.00 prior to the issuance of the first building permit in the first phase of the subdivision. The Municipality will deposit these funds in an appropriate reserve fund for future maintenance of this drainage feature.

17. Trails/pedestrian connections:

Developer has made provisions for municipally funded trail on County Road 23. Connections shall be made to existing and proposed municipal trails and parkland as follows:

- Sidewalk on Block 218 and pedestrian bridge over south watercourse to municipal park.
- Sidewalk on Block 216 and connection to existing Queen St. sidewalk.
- Sidewalk on Block 234 and connection to edge of pavement on Wickham Cove.

18. Access to Storm Sewer Outlet:

The Developer agrees to provide by means of an easement, and provision of a gravel access road, satisfactory to the Municipality, to access the proposed storm sewer outlet from the cottage access road to the south of that outfall. Sufficient space shall be cleared to provide for the turning of maintenance vehicles.

19. Holding Zone:

The lands within this subdivision are subject to a Holding (“H”) provision on their zoning. The Developer and the Municipality agree that the removal of the “H” will occur on a phased basis which coincides with each phase of the subdivision development. The “H” provision for Phase 1 may be removed when this Agreement is signed by the Municipality. The developer may apply to the Municipality for the removal of for removal of the “H” provision on any future development phase subject to the following:

- Registration of a plan to create the lots or blocks within that phase, and the
- Posting of securities for the servicing of that phase.

20. Servicing of a Phase 1 Prior to Registration:

- (a) Notwithstanding clause 2.3 (a) of this Agreement which requires registration of the plan prior to the commencement of construction, the Developer has requested that it commence installation of the Works in the summer and fall of 2020 which generally include:
- a. Installing the underground services on the extension of Inverness northerly.
 - b. Construction of the Phase 1 stormwater management facility
 - c. Construction of the storm sewer outfall and the outfall works to Lake Huron

It is the intent that the Plan will be registered in the spring of 2021 and that security would be posted for the full amount of those remaining works as outlined in Sections 9.2 and 9.3 of this Agreement, prior to the commencement of construction of the balance of the Phase 1 Works.

- (b) The Municipality agrees to consent to this partial pre-servicing provided the Developer:
- a. Posts securities for the work. Security shall be posted for 100% of the value of all alterations to the existing municipal watermain and appurtenances within the Phase, plus 20% of the value of all other Works that are part of the preservicing. Security reductions will be considered to the amount of 10% of the cost of these interim Works as outlined in Section 9.3 of this Agreement.
 - b. Has provided proof of liability insurance as required by this Agreement.
 - c. Has received Municipal, Ministry of Environment, Conservation and Parks, and Saugeen Valley Conservation Authority approvals of the design drawings have been received; and the draft of the registered plan has been approved by the Municipality.
- (c) The Developer acknowledges and agrees that such servicing work is done at its sole risk and the Developer agrees to indemnify and save harmless the Municipality with respect to any claim, demand, action, cost, suit or loss by anyone whomsoever which may occur as a result of servicing prior to the registration of a plan of subdivision.