

THE CORPORATION OF THE TOWN OF ERIN

By-law Number 16-38

Being a By-law to amend the Site Plan Control
By-law 01-32 to include the
Site Plan Control Agreement as Appendix A

WHEREAS, pursuant to Section 41 of the Planning Act as amended, the Council of a Municipality having approved an Official Plan which designates the whole of the Town of Erin as an area subject to site plan control,

AND WHEREAS, Site Plan Approval is conditionally approved by Council as noted in Resolution 10-282 as amended,

1. Therefore Council amends 01-32 by including Appendix A, the Site Plan Control Agreement, last revision 06/15/2016, as attached, to this by-law, to be used for all Site Plan Control Agreement required by the municipality.
2. This by-law repeals by-law 11-36
3. That this By-law will come into force and take effect upon final passage thereof.

Passed in open Council on June 21, 2016.



Mayor



Clerk

Appendix A

TOWN OF ERIN

SITE PLAN CONTROL AGREEMENT

TABLE OF CONTENTS

1.	PREAMBLE	2
2.	DEFINITIONS	2
3.	AFFECTED LANDS	3
4.	ATTACHED SCHEDULES	3
5.	ADMINISTRATION	3
	a. REGISTRATION OF AGREEMENT	3
	b. VOIDING AGREEMENT	3
	c. RELEASE	3
	d. SUCCESSORS IN TITLE	3
	e. ASSIGNMENT	3
	f. AGREEMENT BINDING	3
	g. MORTGAGEES	3
	h. AGENCY APPROVAL	4
	i. NOTICES	4
	j. ADJACENT LANDS	4
	k. INSPECTION OF FACILITIES	4
	l. ENFORCEMENT	4
	m. SEVERANCE OF ULTRA VIRES TERMS	4
	n. ESTOPPEL AGAINST OWNER	4
	o. EFFECTIVE DATE	5
6.	SECURITIES	5
	a. LETTER OF CREDIT	5
	b. LIEN ON LANDS	5
	c. OWNER ' S EXPENSE	5
	d. DEVELOPMENT CHARGES	5
	e. TAXES OWING	6
	f. TOWN ' S ADMINISTRATIVE EXPENSES	6
	g. STATUTORY DECLARATIONS OF ACCOUNTS PAID	6
7.	LIABILITY AND INSURANCE	6
	a. OWNER ' S LIABILITIES	6
	b. LIABILITY RELEASE	6
8.	OWNER ' S OBLIGATION PRIOR TO CONSTRUCTION	7
	a. OBLIGATION PRIOR TO CONSTRUCTION OF SERVICES AND WORKS	7
	b. RESPONSIBILITIES OF THE OWNER ' S CONSULTING ENGINEER	7
9.	SERVICES, WORKS AND UTILITIES TO BE CONSTRUCTED	7
	a. CONSTRUCTION BY OWNER	7
	b. NOTIFICATION OF COMMENCEMENT	8
	c. CONSTRUCTION AND PROGRESS OF SERVICES AND WORKS	8
	d. PRELIMINARY APPROVAL OF SERVICES AND WORKS	8
	e. OPERATION, REPAIR AND MAINTENANCE OF SERVICES AND WORKS	8
	f. FINAL APPROVAL OF SERVICES AND WORKS	8
	g. USE OF SERVICES AND WORKS BY THE TOWN	9
	h. SURVEYOR ' S CERTIFICATE	9
10.	DRAINAGE AND GRADING CONTROL	9
	a. GRADING CONTROL	9
	b. DUST CONTROL	9
	c. CONSTRUCTION REFUSE	10
	d. CONSTRUCTION REQUIREMENTS	10
11.	BUILDINGS, USE AND OCCUPANCY	10
	a. REQUIREMENTS FOR BUILDING PERMITS	10
	b. REQUIREMENTS FOR USE AND OCCUPANCY	11
	SCHEDULE A DESCRIPTION OF THE LANDS	14
	SCHEDULE B THE APPROVED SITE PLAN	15
	SCHEDULE C SERVICES AND WORKS AND UTILITIES TO BE CONSTRUCTED	16
	SCHEDULE D ESTIMATED COSTS OF SERVICES AND WORKS	17
	SCHEDULE E MONIES PAYABLE TO THE TOWN	18
	SCHEDULE F LIST OF APPROVED PLANS AND DRAWINGS (OWMS Subdivision & Marshall Development only)	19

**TOWN OF ERIN
SITE PLAN CONTROL AGREEMENT**

1. PREAMBLE

THIS AGREEMENT, made in quadruplicate on the _____ day of _____, 2016.

B E T W E E N:

THE CORPORATION OF THE TOWN OF ERIN
Hereinafter called the "Town" of the First Part

- and -

Hereinafter called the "Owner" of the Second Part

- and -

NOTE: ALL EXISTING ENCUMBRANCES MUST EXECUTE THIS AGREEMENT

Hereinafter called the "Mortgagee of the Third Part

WHEREAS the Owner represents and warrants that they are the registered owners of the lands described in Schedule A hereto, (hereinafter called the Lands), subject to a mortgage in favour of the Parties of the Third Part;

AND WHEREAS the Town has enacted a Site Plan Control By-law, Town of Erin By-Law No. 01-32 pursuant to the provisions of Section 41 of the Planning Act, R.S.O. 1990, Chapter P.13, which is still in full force and effect;

AND WHEREAS each and every term, covenant and condition contained herein in this Agreement is binding upon the Owner and when registered on title is binding upon the successors in title;

AND WHEREAS the Owner has applied to the Town to construct _____ gross floor area, in accordance with the site plan described in the attached Schedule B ("Approved Site Plan"), Schedules C, D, E and F, of which the "Approved Site Plan" drawing is available at the Town of Erin Municipal Office for viewing;

AND WHEREAS the Council of the Town is of the opinion that it is in the best interest of the Town and its inhabitants to approve the aforementioned development proposal upon the Owner agreeing to observe the terms, covenants and conditions set forth in this Agreement;

AND WHEREAS s.41(7)(c) of the Planning Act permits the Town to enter into a site plan agreement as a condition to the approval of plans and drawings;

NOW THEREFORE, THIS AGREEMENT WITNESSETH that in consideration of the Town approving the Site Plan for the development of the Lands and compliance with the conditions in the Site Plan Control By-law and the sum of One Dollar (\$1.00) (the receipt whereof is hereby acknowledged) the Owner, for itself and for all successors in title, hereby agrees with the Town as follows:

2. DEFINITIONS

Various works and terms used in the Agreement shall be defined and understood as follows:

1. Owner - includes the current and any subsequent owner of an interest in the subject Lands or any part thereof.
2. Owner's Engineer - means a Consulting Engineer registered with the Professional Engineers of Ontario, retained by the Owner to carry out the obligations of this Agreement. Any obligations imposed on the Owner's Engineer by this Agreement are obligations of the Owner which are to be discharged by the Owner's Engineer.
3. Town's Engineer - means a Consulting Engineer registered with the Professional Engineers of Ontario, retained by the Town to grant the engineering approvals required by this Agreement. Any engineering approvals granted by the Town Engineer under this Agreement shall be deemed to be approvals granted by the Town.

4. Services and Works- means and includes those services and works which are considered Municipal Services and Site Services shown on or referred to in any one or more of the plans and drawings and schedules to this Agreement. Municipal Services include those services located within the Municipal right-of-way on a block or easement registered in favour of the Town. Site Services are the balance of the services located within the boundary of the property that are not considered Municipal Services.

5. Plans and Drawings—means the plans and drawings referred to in the Schedules to this Agreement, and approved by the Town, copies of which have been filed with the Town and initialed by the Parties hereto and such additional plans and drawings as may be subsequently approved by the Town including plans and drawings which revise or replace any one or more of the plans and drawings forming part of this Agreement.

3. **AFFECTED LANDS**

a. The Lands to which this Agreement shall apply are described on Schedule A to this Agreement and are on file at the Town of Erin Municipal Office, 5684 Wellington Rd. 24, R.R.#2 Hillsburgh, ON N0B 1Z0.

4. **ATTACHED SCHEDULES**

- a. The following Schedules are attached to and form part of this Agreement.
- i. Schedule A Description of the Lands.
 - ii. Schedule B The Approved Site Plan.
 - iii. Schedule C A List of the Services and Works and Utilities to be Constructed.
 - iv. Schedule D The Estimated Costs of Services and Works to be Constructed.
 - v. Schedule E Monies Payable to the Town.
 - vi. Schedule F List of Approved Plans and Drawings. (if applicable)

5. **ADMINISTRATION**

a. **REGISTRATION OF AGREEMENT**

- i. This Agreement shall be registered by the Town against the Lands and shall be enforceable against the Owner and, subject to the provisions of the Registry Act and the Land Titles Act, against any and all subsequent owners of the land or any part thereof.

b. **VOIDING AGREEMENT**

- i. If the services and works covered by this Agreement are not completed within two (2) years from the date of execution of this Agreement, the Town may, at its option, declare this Agreement null and void and shall be permitted to register against the Lands notice that it considers the Agreement null and void because of its breach by the Owner.

c. **RELEASE**

- i. The Town may, from time to time, when satisfied that part or all of the requirements of this Agreement have been fully and finally complied with, grant a partial or full release, as the case may be, from part or all of the requirements of this Agreement and such release, if granted, shall be registered by the Town against the subject lands.

d. **SUCCESSORS IN TITLE**

- i. The Owner hereby constitutes any successor in title with full authority to enter into any agreement or agreements with the Town to amend this Agreement from time to time.

e. **ASSIGNMENT**

- i. The Owner shall not assign this Agreement without the consent of the Town and such consent shall not be unreasonably withheld.

f. **AGREEMENT BINDING**

- i. This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns and successors in title.

g. **MORTGAGEES**

- i. The Party(ies) of the Third Part join herein to consent hereto and to bind their interest in the subject lands and agree to be bound by the terms of this Agreement.

h. AGENCY APPROVAL

- i. Upon the request of the Town, the Owner shall provide to the Town written confirmation of approval of the Site Plan by any other agencies and utility companies.

i. NOTICES

- i. Any notice required or permitted to be given hereunder shall be in writing and may be served either personally or by mailing such notice by registered mail, postage prepaid, as follows:

To the Town at: The Corporation of the Town of Erin
 c/o Ms. Kathryn Ironmonger, Town Manager
 5684 Trafalgar Rd, Hillsburgh, Ontario, N0B 1Z0

To the Owner at:

To the Mortgagee(s) at:

j. ADJACENT LANDS

- i. The Owner shall be responsible for the cost of all work on or adjacent to the Lands which are required under the terms of this Agreement and/or indicated on the approved plans and drawings including, without limiting the generality of the foregoing, the cost of all works required for drainage of surface water and roof water, connections to the watermain and water service pipe, construction of driveway approaches, including curbing, relocation of existing utilities where necessary, all of which shall be done and performed and all material for the said work shall be supplied to the satisfaction of the Town.

k. INSPECTION OF FACILITIES

- i. The Owner hereby grants to the Town, its servants, agents and contractors a license to enter upon the Lands for the purposes of inspection of the works and facilities, and to perform such work as may be required as a result of a default by the Owner, at the Owner's expense.

l. ENFORCEMENT

- i. The Town may enforce the provisions of this Agreement and may perform any of the Owner's obligations on their behalf at their expense in the case of default by the Owner, and the Owner shall reimburse the Town for such expenses forthwith upon being invoiced therefor. Any amount remaining unpaid may be deducted from the security lodged pursuant to this Agreement or may be collected as by action or taxes pursuant to Section 427 of the Municipal Act, 2001, S.O. 2001, Chapter c.25, as amended.

m. SEVERANCE OF ULTRA VIRES TERMS

- i. If any term of this Agreement shall be found to be Ultra Vires of the Town, or otherwise unlawful, such term shall conclusively be deemed to be severable and the remainder of this Agreement, mutatis mutandis, shall be and remain in full force and effect.

n. ESTOPPEL AGAINST OWNER

- i. The Owner shall not call into question directly or indirectly in any proceedings whatsoever in law or in equity or before any administrative tribunal the right of the Town to enter into this Agreement and to enforce each and every term of it and this Agreement may be pleaded as an estoppel against the Owner in any such proceedings. Notwithstanding the foregoing, if at any time during the currency of the Agreement it is found by any Court of competent jurisdiction, any administrative tribunal or Ministry of Government that this Agreement or any part thereof is void insofar as the Town is empowered to enter into this Agreement then no obligation, liability or duty of any nature or kind whatsoever whether in law or in equity shall be imposed upon the Town to carry out any part of this Agreement found to be void.

o. EFFECTIVE DATE

- i. This Agreement shall be in effect from the above date unless rescinded or amended by agreement between the Owner and the Town.

6. SECURITIES

a. LETTER OF CREDIT

- i. As required by this Agreement and not less than ten (10) days prior to commencement of construction, the Owner shall lodge with the Town a standby irrevocable Letter of Credit, in a form satisfactory to the Town, in the amount of 100% off site and 50% on site of the estimated cost of the services and works to be constructed based upon the estimated cost set forth in Schedule D annexed to this Agreement, as approved by the Town. The Owner shall provide to the Town a tender summary for services and works to be constructed in accordance with this Agreement. In the event such costs of construction vary in excess of 5% from those as estimated in Schedule D, the amount of the Letter of Credit shall be adjusted accordingly.

- ii. This Letter of Credit shall be security to ensure that the works and services to be provided in accordance with this Agreement will be installed and completed in accordance with the provisions of Schedule C of this Agreement. The Letter of Credit shall specify that it cannot be cancelled or allowed to lapse unless prior notice by registered mail, has been received thirty (30) days in advance, by the Town, of any cancellation date or date of lapse. Any lapse or cancellation of the Letter of Credit shall be deemed to be a breach of this Agreement by the Owner and the Town shall have the right to draw down the Letter of Credit to a nil balance prior to its lapse or cancellation date. (The amount to be drawn down shall be sufficient to provide securities for the services and works outlined in Schedule C, and as estimated in Schedule D, as adjusted.)

iii. Municipal Services

As work is completed, inspected and approved by the Town, the security may be reduced, if so approved by the Town, provided there are no registered liens or outstanding claims against the subject lands, as confirmed by the Town's Solicitors, to an amount equal to 100% of the estimated cost of the work remaining to be completed, based on the adjusted amounts as set out above, including any approved extra works not specifically itemized in Schedule D, plus 25% of the cost of the works completed, as estimated by the Owner's Engineer. In no case will the security required under this Section be reduced to less than 25% of the value of works remaining until the granting of final approval by the Town as provided in Sections 9.d and 9. f.

Site Services

As work is completed, inspected and approved by the Town, the security may be reduced, if so approved by the Town provided there are no registered liens or outstanding claims against the subject lands, as confirmed by the Town's solicitors, to an amount equal to 50% of the estimated cost of the work remaining to be completed, based on the adjusted amounts as set out above, including any approved extra works not specifically itemized in Schedule D.

b. LIEN ON LANDS

- i. The Owner agrees that the costs, charges and expenses for which they are responsible shall form a charge and lien upon the Lands until such time as they are paid and in addition to any other remedies available to it, the Town may recover such amounts by action or as taxes pursuant to Section 427 of the Municipal Act, 2001, S.O. 2001, Chapter c.25, as amended.

c. OWNER'S EXPENSE

- i. Every provision of this Agreement by which the Owner is obligated in any way shall be deemed to include the words "at the expense of the Owner" unless specifically stated otherwise.

d. DEVELOPMENT CHARGES

- i. The Owner agrees unconditionally to pay to the Town without protest or qualification development charge(s) (herein called the "Development Charge") which will be calculated in accordance with the requirements of Town of Erin By-law 2004-39.

- ii. The Development Charge(s) shall be payable upon the execution of this Agreement, under authority of s. 27 of the Development Charges Act, 1997, S.O. 1997, Chapter c. 27.
 - iii. The Owner agrees that building permits will not be issued for any buildings or structures to be erected on the Lands until the Development Charge has been paid.
- e. TAXES OWING
- i. Before the execution of this Agreement, the Owner shall pay all taxes owing on the Lands, and shall deposit with the Town all outstanding payments in respect of any local improvement charges.
- f. TOWN'S ADMINISTRATIVE EXPENSES
- i. The Owner agrees to pay to the Town the reasonable administrative expenses of the Town in connection with the development of the Lands which, without limiting the generality of the foregoing, shall include all the expenses of the Town heretofore and hereafter incurred for legal, engineering, surveying, planning and inspection services, extra council meetings, if any, and clerk's and other employees' extra time, if any, and for this purpose shall pay such costs from time to time upon demand.
- g. STATUTORY DECLARATIONS OF ACCOUNTS PAID
- i. The Owner agrees that upon applying for a reduction or discharge of securities, they shall supply the Town with a Statutory Declaration that all accounts for services and works and materials for such services and works have been paid, except the normal guarantee holdbacks, and that there are no claims for liens or otherwise in connection with such services and works done or materials supplied for or on behalf of the Owner in connection with this Agreement.

7. LIABILITY AND INSURANCE

- a. OWNER'S LIABILITIES
- i. The Owner covenants to indemnify and save harmless the Town against all legal liability for losses, damages, claims, actions, demands, suits and costs arising directly or indirectly from anything done or omitted to be done by the Owner or any servant, contractor or agent of the Owner, in connection with the Lands, whether or not in performance of this Agreement.
 - ii. For the purposes aforesaid, the Owner shall purchase a contract of liability insurance and shall deposit a certified copy of same with the Town Clerk which policy shall contain terms and be in a form satisfactory to the Town, in any event, shall not be less than \$2,000,000.00 all inclusive for public liability and property damage including any environmental damage or impacts, including spills. Such contract of insurance shall contain cross-liability clauses naming the Town and the Town's Engineer as additional co-insured, and the premium for this contract shall be prepaid for at least one (1) year. The issuance of such contract shall not be construed as relieving the Owner from responsibility for other or larger claims for which it may be held responsible.
 - iii. The policy shall specify that it cannot be altered, cancelled or allowed to lapse unless prior notice, by registered mail, has been received thirty (30) days in advance, by the Town and the Town's Engineer of any proposed alteration, cancellation date, or date of lapse. A lapse of this policy prior to release of this Agreement by the Town shall be deemed to be a breach of this Agreement by the Owner.
 - iv. The insurance policy may contain an exclusion for blasting and if it does and blasting is found necessary, no blasting shall be done until a blasting insurance endorsement is added.
 - v. If the policy contains a deductible clause, the Owner must post an additional cash deposit with the Town in the amount of the deductible. The Owner also hereby agrees that the Town and the Town's Engineer may appoint an independent adjuster to investigate claims, less than the deductible amount and may pay such claims as are deemed valid by the adjuster out of this deposit. The Owner shall be responsible for all adjustments, service costs and shall maintain the deposit throughout the term of this Agreement in the full amount of the deductible.
- b. LIABILITY RELEASE
- i. It is understood and agreed that the Town will make an effort with the available Town personnel to do inspections to strive for completion of the work in

accordance with the approved plans, but the Owner and its successors and assigns hereby release the Town, its servants, agents and contractors, from any responsibility, or liability arising directly, or indirectly out of any of the Town's obligations in relation to this Agreement.

- ii. The Owner for itself and all successors in title hereby releases the Town, its servants, agents and contractors from any and all liability in respect of the proper maintenance and operation of the services and works and matters referred to and provided for in this Agreement.

8. OWNER'S OBLIGATION(S) PRIOR TO CONSTRUCTION

a. OBLIGATION(S) PRIOR TO CONSTRUCTION OF SERVICES AND WORKS

- i. Deposited with the Town a Letter of Credit as required by Section 6 of this Agreement.
- ii. This Agreement has been executed, and the Owner has provided evidence to the Town that all relevant commenting agencies have been provided with a copy of this Agreement and are satisfied with its terms.
- iii. Deposited with the Town a \$5,000.00 deposit as an advance against the Owner's liability for the Town's administrative costs as set out in Section 6(f) of this Agreement.
- iv. Paid in full all outstanding taxes, including drainage, local improvement and special rates and charges.
- v. Deposited with the Town evidence that it has approvals with Hydro One, Bell Canada, the gas utility company and cable television and any other suppliers of utilities which the Town deems necessary to properly develop the Lands.
- vi. Paid a drainage levy in the amount of \$1,100.00 per acre (OWMS Subdivision only), pursuant to the OWMS Subdivision Agreement.
- vii. Paid all charges in accordance with the Development Charges By-law.
- viii. Obtained any approvals required by law.
- ix. Erected snow fences or other siltation and erosion control measures to the satisfaction of the Town. The silt fences and erosion control measures shall be erected prior to initiating any grading or construction on the Lands, and shall remain in place and in good repair during all phases of grading and construction.

b. RESPONSIBILITIES OF THE OWNER'S CONSULTING ENGINEER

- i. The Owner shall engage a Consulting Engineer registered with the Professional Engineers of Ontario and or an Ontario Land Surveyor to:
 - 1. Prepare the designs.
 - 2. Prepare and furnish all required drawings and specifications.
 - 3. Obtain all necessary approvals.
 - 4. Provide general administration and field layout and full-time supervision of construction.
 - 5. Provide final "record drawings" of all services, works, utilities and construction.
 - 6. Provide coordination and scheduling to comply with the timing provisions of this Agreement and the requirements of the Town for all the works specified in this Agreement.
 - 7. Verify on completion that the works have been constructed in accordance with the approved plans and specifications.
 - 8. Where the Owner is the applicant for a building permit, to satisfy the Town that the requirements of Section 11(a) have been complied with.
- ii. The Owner shall, forthwith upon demand, provide the Town with such number as the Town deems necessary of the designs, drawings and records prepared and maintained pursuant to this Agreement.

9. SERVICES, WORKS AND UTILITIES TO BE CONSTRUCTED

a. CONSTRUCTION BY OWNER

- i. The Owner shall construct the services and works set forth in Schedule C of this Agreement, at its expense and under the supervision of the Owner's Engineer in accordance with the terms of this Agreement and shall ensure that the utilities referred to in Section 8.a.v. of this Agreement are installed in accordance with the approval of such utilities and approved by the Town. If at any time, and from time to time during the development of the lands, the Town determines that additional services or utilities are necessary to provide adequately any of the services or utilities required pursuant

to this Agreement, the Owner shall construct such additional services or utilities at its expense upon receiving written notice from the Town.

b. NOTIFICATION OF COMMENCEMENT

- i. The Owner shall not commence construction of any of the services or works or utilities until it has provided seven (7) days prior written notice to the Town of its intention to commence such construction.
- ii. The services, works and utilities shall be constructed expeditiously and continuously and all construction shall be completed within two (2) years from the date of execution of this Agreement unless extended by the Town. If, for any reason, there is a cessation or interruption of construction, the Owner shall so notify the Town and provide seven (7) days prior written notification to the Town before the construction is resumed.

c. CONSTRUCTION AND PROGRESS OF SERVICES AND WORKS

- i. The Owner shall construct all services and works set forth in Schedule C and all utilities referred to in Section 8.a.v. in accordance with the Schedule of Progress and Completion which is to be provided to and approved by the Town prior to commencement of construction and shall carry out all other terms of this Agreement. If the Owner fails to do so or, having commenced to do so, fails or neglects to proceed with reasonable speed or in the manner required by the Town, the Town may, upon giving seven (7) days notice to the Owner of its intention to do so, enter upon the Lands and proceed to construct or complete the construction of such services or works or utilities including the repair or reconstruction of faulty work and carry out such other terms of this Agreement at the Owner's expense and pay such expense by deducting it from the security lodged by the Owner and any balance unpaid shall be a lien upon the Lands and shall be paid by the Owner forthwith upon demand and may be collected by action or as municipal taxes pursuant to Section 427 of the Municipal Act, 2001, as amended, supra.
- ii. It is understood and agreed between the Parties that any such entry by the Town shall be as agent for the Owner and shall not be deemed for any purpose whatsoever as acceptance or assumption of the said services or works or utilities by the Town or a waiver of any breach of this Agreement and the Town, in addition to all remedies it may have, may refuse to issue building permits or reduce letters of credit until the construction of such services or works or utilities are completed or such other breach of this Agreement is remedied.

d. PRELIMINARY APPROVAL OF MUNICIPAL SERVICES AND WORKS

- i. When the Owner has constructed the municipal services, works and utilities outlined in this Agreement, the Town, within two weeks after being so notified shall inspect such services and works and shall deliver to the Owner a list of any deficiencies to be corrected which deficiencies shall be corrected as soon thereafter as is practicable (provided that the Owner shall not be responsible for any damage caused by the Town or its servants, employees and contractors). When such deficiencies have been corrected and if the Owner has fulfilled all other terms of this Agreement to that date, the Town shall grant preliminary approval, upon application of the Owner, and shall reduce the Letter of Credit accordingly and the Maintenance Period shall commence.
- ii. Notwithstanding the foregoing, the Town shall not be required to make any inspections or perform any tests between November 1st and May 1st of the following year and shall not be required to approve the installation of any services or works based on tests performed in such period.

e. OPERATION, REPAIR AND MAINTENANCE OF MUNICIPAL SERVICES AND WORKS

- i. The Owner shall be responsible for the operation, repair and maintenance of all municipal services and works to be constructed under this Agreement for (1) one year and thereafter until the Town has granted final approval. If during this period the Owner fails to carry out necessary work within twenty-four (24) hours after receiving a request from the Town, the Town may, without further notice, undertake such work and the cost thereof may be deducted from any securities remaining or shall be paid by the Owner forthwith upon demand, which costs shall include all administrative, legal and other expenses incurred by the Town in carrying out such work. Any amount that remains owing shall form a lien on the lands and may be collected by action or as municipal taxes pursuant to Section 427 of the Municipal Act, 2001, supra.

- f. **FINAL APPROVAL OF MUNICIPAL SERVICES AND WORKS**
 - i. Upon the completion of the balance of the municipal services and works required in accordance with this Agreement and prior to the expiration of the (1) year maintenance period, the Owner shall make a written request to the Town for a final inspection. Such request shall be accompanied by a certificate from the Owner's Engineer verifying that the services and works have been constructed in accordance with the approved plans and specifications, together with the final record drawings required under Section 8.b.i.(5) of this Agreement, and a certificate from an Ontario Land Surveyor as required under Section 9.h. The Town shall make such inspection within two (2) weeks of the Town receiving such request and the Owner shall repair any deficiencies listed by the Town as soon as it is practical thereafter and upon all repairs being completed, and if the Owner has complied with all other terms of this Agreement, the Town shall grant final approval of such services and works, and thereupon the ownership of such services shall vest in the Town and thereafter the Town shall bear the costs of all expenses therewith. Where required to carry out the intent of this paragraph, the Owner shall deliver conveyances and transfers at no expense to the Town in a form acceptable to the Town's solicitor.
 - ii. Notwithstanding the foregoing, the Town shall not be required to make any inspections or perform any tests between November 1st and May 1st of the following year and shall not be required to grant final approval of the installation of any services or works based on tests performed in such period.

- g. **USE OF SERVICES AND WORKS BY THE TOWN**
 - i. The Owner agrees that:
 - 1. The services and works may be used prior to final approval by the Town or other persons authorized by the Town for the purpose for which such services were designed.
 - 2. The employees or agents of the Town may enter onto the Lands at any time or from time to time for the purpose of making emergency repairs to any of the services at the expense of the Owner
 - 3. The exercise of the powers contained in clauses (1) and (2) of this Section shall not be an acceptance of the services and works by the Town or an assumption by the Town of any liability in connection therewith or a release of the Owner from any of its obligations under this Agreement.

- h. **SURVEYOR'S CERTIFICATE**
 - i. Prior to final approval of the services and works to be constructed under this Agreement, the Owner shall supply a certificate from an Ontario Land Surveyor that it has found or replaced all the standard iron bars to within 2.5 cm of the finished grade at the location of the standard iron bar marking the boundaries of the property and easements or right-of-ways within the property.

10. DRAINAGE AND GRADING CONTROL

- a. **GRADING CONTROL**
 - i. The Site Plan which references the grading information (*OWMS Subdivision and Marshall Development*), as described in Schedule F, applies to the Lands to provide for the proper drainage thereof and of all adjacent lands which drain through the Lands.
 - ii. The Owner shall not alter the grading without the consent of the Town, and hereby grants to the Town a right of entry in perpetuity for the purpose of inspecting and altering the grading. The Owner agrees to impose as a condition of the sale of the Lands or any portion of the Lands, and include in the conveyance thereof, a restrictive covenant that the purchaser, his heirs, executors, administrators, successors and assigns will not alter the approved lot grading without the consent of the Town and a right of re-entry in perpetuity that will allow at all reasonable times the Owner or the Town to enter on such lands for the purpose of checking such grades, levels and elevations and, where necessary altering such grades, levels and elevations at the Owner's expense.
 - iii. The Owner shall not permit the installation of any underground lawn irrigation systems within the leaching bed area, or in any area that may detrimentally affect the operation and effectiveness of the leaching bed. No structures, including accessory buildings and no landscaping (other than grass) shall be located within the leaching bed area.

- b. **DUST CONTROL**

- i. The Owner shall use such method to prevent any dust problem as the Town shall deem necessary and for this purpose, the Town may notify the Owner in writing from time to time of the requirements of the Town.

- c. **CONSTRUCTION REFUSE**
 - i. The Owner agrees to regularly dispose of all construction refuse and debris in an orderly and sanitary fashion. If the Owner fails to remove and dispose of construction refuse and debris to the satisfaction of the Town, the Town may give written notice to the Owner. If the Owner fails to dispose of the refuse and debris within forty-eight (48) hours after having received a written request from the Town to do so, the Town may, without further notice, undertake such removal and disposition and the cost thereof shall be paid by the Owner forthwith upon demand, which costs shall include all expenses incurred by the Town in carrying out such removal and disposal. Any amount that remains owing shall form a lien on the Lands and may be collected by action or as municipal taxes pursuant to Section 427 of the Municipal Act, 2001, supra.

- d. **CONSTRUCTION REQUIREMENTS**
 - i. During the construction and installation of the services and works and during the construction of any building or structure on any part of the Lands, and the installation of any utility, the Owner shall observe, or cause to be observed the following provisions, and shall deliver a copy of this part of the Agreement to every contractor who may perform any of the foregoing work.
 - ii. During road and drainage system construction, vehicular traffic must be kept off the sewage system areas to prevent soil compaction. No building materials or soil should be stock piled in sewage system envelopes.
 - iii. All public roads which are to be used for access to the Lands during the development of the Lands and during any construction of buildings on the Lands shall be kept in good and usable condition, and, if damaged, shall be repaired immediately to the satisfaction of the Town Engineer at the cost of the Owner.
 - iv. All vehicles and trucks making deliveries to or taking materials from the Lands or working on the Lands shall be adequately covered and reasonably loaded so as not to scatter refuse, rubbish or debris on any road whether within the Lands or not.
 - v. All construction garbage shall be collected and disposed of in an orderly manner at an approved waste disposal site. Under no circumstances shall garbage or rubbish of any kind be disposed of by burning on the Lands without necessary approvals of the Ministry of Environment and Energy and the consent of the Town.
 - vi. The Owner will neither dump nor permit to be dumped, any fill or debris on Town lands, nor remove or permit to be removed, any fill from any Town lands, other than that actually required to be removed for the construction of services in the Lands, without the written consent of the Town Engineer.
 - vii. No blasting shall be carried out without the written consent of the Town having first been obtained.
 - viii. The Owner shall keep the Lands free and clear of all noxious weeds or weed seeds to the satisfaction of the Town or local Weed Inspector, if any, and the Owner agrees that if it is ordered by either the Town or local Weed Inspector, it will immediately take steps to cut or spray any noxious weeds or weed seeds.
 - ix. At any time, the Town Engineer may make qualitative or quantitative tests of any materials which have been or are proposed to be used in the construction of the services and the costs of such tests shall be paid by the Owner within ten (10) days of the account being rendered by the Town.
 - x. The Owner agrees that no building equipment, including contractor's equipment, vehicles or materials which are to be used in the construction of any building or the services shall be parked or deposited at any time on any public road in the Town.
 - xi. The Owner shall maintain access to all building sites at all times to the satisfaction of the Fire Chief for fire department equipment.

11. BUILDINGS, USE AND OCCUPANCY

- a. **REQUIREMENTS FOR BUILDING PERMITS**
 - i. The acceptance by the Town of any services constructed pursuant to this Agreement shall not be construed as consent to issue building permits for the construction of buildings within the Lands and no building permits shall be issued unless:
 - 1. There has been compliance with all of the provisions of this Agreement to the date of such application.

2. The application complies with the terms and conditions of this Agreement and all applicable laws and includes the Site Plan attached as Schedule B.
3. The Site Plan attached as Schedule B has been certified by the Owner's Engineer or by a Registered Professional Engineer, or Ontario Land Surveyor (where a subsequent owner is the applicant) to be in compliance with the Site Grading Plan as described in Schedule F hereto, and has been submitted to the Town and has been approved by the Town's Engineer. The Site Plan shall clearly define all existing and proposed lot elevations, foundation elevations, sewage disposal system, driveway, walkout and swale, grades, well location, slopes, terracing and retaining walls, and any other information relative to the grading of the Lands.
4. The Letter of Credit as outlined in Section 6.a. includes an amount for grading and drainage. These securities will be retained until the Town has issued a Certificate of Compliance and Occupancy, the Town is satisfied that all grading and drainage has been completed in accordance with the approved Site Plan and the Town has inspected the water service and shut-off and has confirmed that it is operational, is set to final grade and is satisfied with the water meter and meter reading device installation. This will require the submission of an as constructed Site Plan prepared by the Owner's Engineer or other authorized representative of the Owner who prepared the Site Plan and confirmation from the Town's Engineer that the grading of the Lands has been completed in accordance with the Site Plan and the Grading Control Plan. It may also require confirmation from the current registered owner of the Lands that there are no drainage or grading problems on the Lands.
 - a. Where the grading is not completed in accordance with the Site Plan within 30 days of written demand from the Town to the Owner, the Town may, in its absolute discretion complete the lot grading and pay any expense incurred as a result of the default by deducting any such amount from the security. Any amount that remains owing shall form a lien on the lands and may be collected by action or as municipal taxes pursuant to Section 427 of the Municipal Act, 2001, supra, 1990, Chap. M.45, as amended.
5. The applicant has complied with the Town's requirements regarding the installation of a driveway culvert and an entrance as follows. The applicant for a building permit shall complete an application for an entrance and culvert permit and pay to the Town the Town's current entrance fee. The Town will provide the applicant with a list of approved contractors whom the applicant may use to install the entrance culvert. The applicant shall provide the Town with the name of the contractor selected to complete the works and the date the entrance is to be constructed. The applicant shall not proceed with the entrance culvert installation or use a contractor without the prior approval of the Town Public Works Superintendent. The size and location of the entrance culvert must be approved by the Town prior to the issuance of any building permits. On completion of the installation, the Town shall inspect the entrance and notify the applicant of any deficiencies that require correction. If there are no deficiencies, the Town will approve the installation.
6. The Owner further agrees that the construction of the building will not proceed past the foundation stage until it has delivered to the Chief Building Official "as constructed drawings" prepared by a Registered Professional Engineer and or Ontario Land Surveyor showing the foundation wall elevation and the location of the foundation, and the Town's Engineer has confirmed that the foundation wall elevation complies with the levels shown on the approved plot plan and that the Chief Building Official has confirmed that the location of the foundation complies with the zoning by-law.
7. All utilities for the Lands have been approved by the supplier of such utility.

b. REQUIREMENTS FOR USE AND OCCUPANCY

- i. No building or any part thereof erected on any of the Lands shall be occupied

until the Town has issued a Certificate of Compliance and Occupancy for a finished building, the final grading of the lands has been completed in accordance with the Site Plan and Site Grading Plan, the requirements of the Town's building by-laws have been met, all municipal services have been completed, all utilities have been completed and approved and the water, hydro and sewage services are functioning.

- ii. Occupancy may be permitted in the winter months provided the Town has issued a Certificate of Compliance and Occupancy for a finished or unfinished building (as the case may be) and that all utilities have been completed and approved and the water, hydro and sewage services are functioning. Any grading and entrance culverts not completed and approved by the Town prior to occupancy must be completed by June 1st in the following year.
- iii. The Owner shall grade the Lands in accordance with the detailed Site Plan as approved.
- iv. Anyone occupying any building or part thereof in contravention of this Section accepts all risk and liability for doing so and accepts all responsibility for complying with this Agreement
- v. It is understood and agreed between the Parties that any such entry by the Town shall be as agent for the Owner and shall not be deemed for any purpose whatsoever as acceptance or assumption of the said services or utilities by the Town or a waiver of any breach of this Agreement and the Town, in addition to all remedies it may have, may refuse to issue building permits until the construction of such services and works or utilities are completed or such other breach of this Agreement is remedied.

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their respective hands and seals.

THE CORPORATION OF THE TOWN OF ERIN

Per: _____
Allan Ails, MAYOR (c/s)

Per: _____
Kathryn Ironmonger, TOWN MANAGER

THE OWNER

_____)
_____)
Witness _____) per: _____, Director, (c/s)
_____) (I have the authority to bind the corporation)
(Please print) _____)

_____)
_____) Company Name
per: _____, Director
(I have the authority to bind the corporation)

THE MORTGAGEE

_____) (Signature)
_____) _____ (Please Print) (c/s)
Witness _____) (I have the authority to bind the corporation)
_____) _____

(Please print) _____) (Signature)
_____) _____ (Please Print)
_____) (I have the authority to bind the corporation)

SCHEDULE A

DESCRIPTION OF THE LANDS

ALL AND SINGULAR that certain parcel or tract of land and premises situate lying and being in the
Town of Erin, in the County of Wellington and being composed of

SCHEDULE B
THE APPROVED SITE PLAN

SCHEDULE C

SERVICES AND WORKS AND UTILITIES TO BE CONSTRUCTED (IN ACCORDANCE WITH THE CURRENT TOWN OF ERIN MUNICIPAL SERVICING STANDARDS)

(as detailed on the Site Plan)

1. **On-site (Private Services)** and works to be constructed: (sample only)
 - a. Grading and surface drainage
 - b. Lighting
 - c. Berms and landscaping
 - d. Underground water service pipe
 - e. Roof water drainage
 - f. Curbed and asphalted parking and loading areas
 - g. Private on-site sewage disposal

2. **Off-site (Municipal Services)** and works to be constructed: (sample only)
 - a. Curbed and asphalted entrance
 - b. Ditching and sodding of ditch
 - c. Connection to watermain

3. Utilities to be provided: (sample only)
 - a. Electrical connection as approved by Hydro One
 - b. Telephone
 - c. Natural Gas

SCHEDULE D

ESTIMATED COSTS OF SERVICES AND WORKS (sample only)

SERVICES AND WORKS TO BE PROVIDED	ESTIMATED COST
1. On-site services and works to be constructed: (sample only)	
a. Lot grading and surface drainage	\$
b. Lighting	\$
c. Berms and landscaping	\$
d. Underground water service pipe	\$
e. Roof water drainage	\$
f. Curbed and asphalted parking and loading areas	\$
g. Private on-site sewage disposal	\$
TOTAL ESTIMATED COST OF ON-SITE WORK	\$
50% OF TOTAL ESTIMATED COST OF ON-SITE WORK	\$
2. Off-site Municipal services and works to be constructed: (sample only)	
a. Curbed and asphalted entrance	\$
b. Ditching and sodding of ditch	\$
c. Connection to watermain	\$
TOTAL ESTIMATED COST OF OFF-SITE WORK	\$
100% OF TOTAL ESTIMATED COST OF OFF-SITE WORK	\$
3. Utilities to be provided: (Sample only)	
a. Telephone	not applicable
b. Natural Gas	not applicable
4. Engineering Costs:	\$
TOTAL ESTIMATED COST OF WORKS	\$
TOTAL ESTIMATED COSTS OF SECURITIES REQUIRED (sum - total of 1 and 2)	\$

SCHEDULE E

MONIES PAYABLE TO THE TOWN

ITEM	AMOUNT
In accordance with Section 6(f), the Owner agrees to pay the Town the costs of the Town=s administrative expenses in connection with this Agreement, including without limiting the generality of the foregoing, such expenses as legal, engineering, surveying, planning and inspection expenses. As required by Section 8(a)iii, the Owner shall deposit \$5,000.00 with the Town to secure the Town' s costs <i>(\$1,000.00 deposit applies to amendments to existing agreements)</i>	\$5,000.00 or \$1,000.00 (amendments only)
Site Plan Application Fee <i>(Application fee to amend existing agreements \$500.00)</i>	\$2,000.00 or \$500.00 (amendments only)
Entrance permit fee in accordance with Section 11(a)i(5).	
The drainage levy of \$1,100.00 per acre pursuant to Section 8(a)vi of the Agreement. (acres x \$1,100/acre) <i>(OWMS Subdivision only)</i>	
Any monies due and payable pursuant to the Town Development Charges By-law	\$
Building Permit Fee	
Septic Permit Fee	\$500.00
Water Meter (\$405.39 if applicable)	To be determined
County Development Charge	
Any other monies payable	N/A

SCHEDULE F

LIST OF APPROVED PLANS AND DRAWINGS (OWMS subdivision and Marshall Development)

Erin Industrial Park Site Servicing and Grading Plan, dated March 2001, prepared by Triton Engineering Services Limited.

Marshall Development Overall Site Grading and Drainage Plan, Drawing 1 of 6, prepared by R.E. Clipsham Limited, dated May 4, 1989, last revised April, 1990, Revision No. 3.

Town of Erin Municipal Servicing Standards, dated March 2001.