

THE CORPORATION OF THE TOWN OF ERIN



**By-Law # 22-27**

**Being a By-law to adopt a template Subdivision Agreement.**

**Whereas** Subsection 51(16) of the Planning Act authorizes an owner of land or the owner's agent duly authorized in writing to apply to the approval authority for approval of a plan of subdivision of the land or part of it;

**And Whereas** the approval authority for plans of subdivision within the Town of Erin is the County of Wellington;

**And Whereas** Subsection 51(25) of the Planning Act authorizes that the approval authority may impose such conditions to the approval of a plan of subdivision as in the opinion of the approval authority are reasonable, having regard to the nature of the development proposed for the subdivision;

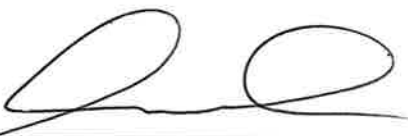
**And Whereas** Subsection 51(26) of the Planning Act authorizes that a municipality or approval authority, or both, may enter into Subdivision Agreements imposed as a condition to the approval of a plan of subdivision;

**And Whereas** the County of Wellington, as approval authority, will typically require as a condition of approval of a plan of subdivision within the geographic Town of Erin that an applicant enter into a Subdivision Agreement with the Town of Erin;

**Now therefore the Council of the Corporation of the Town of Erin Enacts as Follows:**

1. That the form and terms of the Agreement attached to this By-law as Schedule "A" are hereby adopted as the Town's standard form of Subdivision Agreement.
2. That the Town's standard form of Subdivision Agreement is to be used for all development applications regulated by the Planning Act where the requirement to enter into a Subdivision Agreement is a condition of development approval.
3. This by-law shall take effect upon the final passage thereof.

**Passed in Open Council on May 26, 2022.**

  
\_\_\_\_\_  
Mayor, Allan Allis

  
\_\_\_\_\_  
Clerk, Lisa Campion

**TOWN OF ERIN**

**SUBDIVISION AGREEMENT**

**Dated the \_\_\_ day of \_\_\_\_\_, 20\_\_**

# SUBDIVISION AGREEMENT

THE CORPORATION OF THE TOWN OF ERIN

“Town”

- and -

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“Developer”

Town of Erin  
5684 Trafalgar Road  
Hillsburgh, ON N0B 1Z0

Tel: 519-855-4407

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- A: Legal Description of the Lands
- B: Approved Reduced Copy of the Proposed M-Plan
- C: Scheduling of Phases
- D: Description of Approved Plans and Specifications
- E: Cost Estimate of Works and Securities
- F: Additional Conditions
- G: Additional Costs
- H: Conveyances, Easements and Further Agreements
- I: Restricted Blocks
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- K: Parkland Works
- L: Acknowledgement by Developer and Developer's Consulting Engineer
- M: Warnings and Notices
- N: Solicitor's Certificate of Title
- O: Surveyor's Certificate

## SUBDIVISION AGREEMENT

B E T W E E N:

**THE CORPORATION OF THE TOWN OF ERIN**

("Town")

- and -

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("Developer")

**WHEREAS:**

- A. The Developer warrants and represents that it is the owner of the lands legally described in Schedule "A" (hereinafter referred to as the "Lands").
- B. The Developer has applied to the appropriate governmental authorities and agencies for approval of a plan of subdivision with respect to the Lands pursuant to Section 51 of the Planning Act, a copy of the said plan of subdivision being attached hereto as Schedule "B" (hereinafter referred to as the "Plan");
- C. The Developer warrants and represents that there are no encumbrances of the Lands, save and except any registered municipal agreements and registered agreements with publicly regulated utilities, any minor easements for the supply of domestic utility or telephone services to the Lands or adjacent properties, any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, or other services.
- D. Prior to Final Approval and registration of the Plan, the Town requires that the Developer enter into this Agreement, as a condition to the approval of the Plan, to address certain matters and conditions with respect to the Lands and the development of the Lands.
- E. This Agreement is entered into pursuant to subsection 51(26) of the Planning Act.
- F. This Agreement is intended to be registered against the Lands pursuant to subsection 51(26) of the Planning Act and the Town is entitled to enforce the provisions of this Agreement against the Developer and all subsequent owners of the land.

**IN CONSIDERATION** of the mutual covenants contained in this Agreement, and for other good and valuable consideration (receipt whereof is hereby acknowledged) the parties hereto covenant and agree with each other as follows:

## **PART 1 – INTERPRETATION**

### **1.1 Definitions**

In this Agreement, unless there is something in the subject matter or context to the contrary, the following words have the meanings set out below:

“Aboveground Works”

means all Services except for Underground Works;

“Additional Works”

means any Works or Special Works not specifically referred to in this Agreement, the schedules hereto or in the Plans and Specifications;

“Assumption” means assumption by by-law of services by the Town for the purposes of section 44 of the Municipal Act;

“Builder”

includes any Person constructing and/or selling dwelling units on Lots or part Lots within the Plan, including the Developer;

“Building Code Act”

means the *Building Code Act, 1992*, S.O. 1992, c.23;

“Certificate of Maintenance and Final Acceptance” shall mean the certificate described in Subsection 12.1.1 hereof;

“Certificate of Completion and Acceptance of Aboveground Works” shall the certificate described in Subsection 8.32.2 hereof;

“Certificate of Completion and Acceptance of Underground Works” shall the certificate described in Subsection 8.31.3 hereof;

“Chief Building Official”

means the Chief Building Official of the Town or his or her designate;

“construct”

means build, erect, install, complete and maintain;

“constructed” means constructed, installed, completed and maintained;

“construction” means construction, installation, completion and maintenance;

“Construction Act”

means the *Construction Act*, R.S.O. 1990, c. C.30;

“Council”

means the council of the Town;

“County”

means The Corporation of the County of Wellington;

“Developer”

includes the successors, assigns, heirs, executors, administrators, or other legal representative of the Developer of whom the context may apply according to law and includes an individual, an association, a partnership and a corporation;

“Developer’s Consulting Engineer”

means a competent professional engineer or firm of engineers employed by the Developer and approved by the Town Engineer, skilled and experienced in municipal work and land development



projects and registered with the Association of Professional Engineers of Ontario, possessing a current certificate of authorization to practice professional engineering as required by the *Professional Engineers Act*, R.S.O. 1990, c. P.28;

“Development Charges Act”

means the *Development Charges Act, 1997*, S.O. 1997, c.27;

“Development Charges By-law”

means any development charges by-law of any government authority in effect on the date a building permit for an individual Lot or part Lot is issued by the Town’s Building Department;

“Drainage Act”

means the *Drainage Act*, R.S.O. 1990, c. D.17;

“Environmental Protection Act”

means the *Environmental Protection Act*, R.S.O. 1990, c. E.19;

“Fees By-law”

means Town By-law No. 19-60, as may be amended or replaced from time to time;

“Final Acceptance” shall have the meaning attributed thereto in Subsection 12.1.1 hereof

“Final Approval”

means final approval of the Plan for registration given by the Town in accordance with the requirements of the Planning Act;

“Fire Prevention Officer”

means the Fire Prevention Officer of the Town or his or her designate;

“Individual Grade Control Plan”

shall mean a plan as described in Subsection 9.5.1;

“Individual Occupancy Certificate”

means a certificate which permits occupancy of a dwelling unit, either conditionally or unconditionally, pursuant to Sections 10.1 and 10.3 of this Agreement, which certificate is required before any dwelling unit may be occupied for human habitation, and this certificate is in addition to any occupancy permit issued or required pursuant to the Building Code Act;

“install”

includes the reinstallation, provision, construction, or reconstruction of any matter or thing;

“Lands”

shall have the meaning attributed thereto in the first recital of this Agreement;

“Land Titles Act”

means the *Land Titles Act*, R.S.O. 1990, c. L.5;

“Laws”

means any federal, provincial or municipal statute, regulation, by-law, order, ordinance, rule, policy or resolution;

- “Letter of Credit”  
means a letter of credit in the format required pursuant to the Town’s Letters of Credit Policy, as may be amended from time to time;
- “Lot” means any lot or block within the Plan;
- “Lot Grading”  
includes sodding, driveway paving to the garage and installation of retaining walls, where applicable;
- “Lot Grading Certificate”  
shall have the meaning attributed thereto in Subsection 9.5.5;
- “Maintenance Period”  
means the period for which the Developer is responsible for repair and maintenance of all the Services pursuant to Section 11.1 of this Agreement;
- “MOE” means the Ministry of the Environment, Conservation and Parks;
- “MNR” means the Ministry of Northern Development, Mines, Natural Resources and Forestry;
- “Municipal Act”  
means the *Municipal Act, 2001*, S.O. 2001, c.25;
- “Occupational Health and Safety Act”  
means the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1;
- “Ontario Water Resources Act”  
means the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40;
- “Overall Occupancy Certificate”  
means a certificate which permits issuance of the first Individual Occupancy Certificate, either conditionally or unconditionally, pursuant to Sections 10.1 and 10.2 of this Agreement, and this certificate is in addition to any occupancy permit issued or required pursuant to the Building Code Act;
- “Parkland” means land which is to be conveyed to the Town for park or other public recreational purposes, pursuant to Schedule “H” and “K” of this Agreement;
- “Person” includes a corporation and the successors, assigns, heirs, executors, administrators, or other legal representatives of a person to whom the context may apply according to law;
- “Plan” shall have the meaning attributed thereto in the second recital of this Agreement;
- “Planning Act”  
means the *Planning Act*, R.S.O. 1990, c. P.13;

- “Plans and Specifications” means all plans and specifications referred to in Schedule “D” and any other plans and specifications which may be required pursuant to Subsection 8.11.3 of this Agreement;
- “Qualified Person” means a person who is defined as a “qualified person” pursuant to Part II of O. Reg. 153/04;
- “Resident Supervision” means a degree of service much greater than is normally provided under contract administration, and shall require the placement of competent personnel, including supervisory, inspection and layout staff, on the project in order to provide continuous service during all phases of construction of the Services;
- “Schedule of Works” shall have the meaning attributed thereto in Subsection 8.6.1;
- “Security or “Securities” includes Letters of Credit, cash and certified cheques;
- “Services” means all works, facilities and services which may be required to fully service the Lands and any lands adjacent thereto in conjunction with the Lands, whether municipal services or services of a nature or kind that are not deemed to be municipal services, and without limiting the generality of the foregoing, shall include roads, curbs, gutters, sidewalks, storm sewers, sanitary sewers, private sewage disposal systems, water systems, drainage works, sump pumps, swales, grading, landscaping, sodding, seeding, erosion control works, street lighting, fencing, signage, and all services, works, facilities and matters incidental thereto or in connection therewith, or necessary to complete any and all of the foregoing and shall be deemed to include Works, Special Works and Additional Works;
- “Sign By-law” means Town By-law No. 03-58, as amended by 04-47 and may be amended or replaced from time to time;
- “Special Works” means Services on lands other than the Lands;
- “Structure” means a building or structure of any kind whatsoever, including any dwelling or building governed by the Building Code Act;
- “Tile Drainage Act” means the *Tile Drainage Act*, R.S.O. 1990, c. T.8;
- “Town” means The Corporation of the Town of Erin;
- “Town Consulting Engineer” means the engineer retained by the Town to assist in the administration and engineering review including site inspection for carrying out the terms of this Agreement;

- “Town Engineer” means the Director of Infrastructure Services and Engineer, or his or her designate;
- “Town Solicitor” means a person or firm designated by the Town to be Town Solicitor;
- “Town Staff” includes the Director of Planning and Development or his/her designate, and other staff employed by the Town;
- “Town Standards” means the Town Engineering Standards, as amended or replaced from time to time;
- “Underground Works” means the Services described in Subsection 8.31.2; and
- “Works” means Services within the Lands and includes items described on Schedule “D”.

## **1.2 Headings**

The headings inserted in this Agreement are inserted for convenience only and not as a means of interpreting this Agreement

## **1.3 Terminology**

All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa and shall refer solely to the parties signatory thereto except where otherwise specifically provided. All references herein to articles, sections, paragraphs or subdivisions thereof, shall refer to the corresponding article, section, paragraph or subdivision thereof, unless specified reference is made to such articles, sections or subdivisions of another document or instrument.

## **1.4 Lists**

Whenever a statement or provision in this Agreement is followed by words denoting inclusion or examples and then lists or references specific items such list or reference should not be read as to limit the generality of that statement or provision even if words such as “without limiting the generality of the foregoing” do not precede such list or reference.

## **1.5 Reference to Statutes and Regulations**

References herein to any statute or regulation or any provision thereof includes such statute or regulation, or provision thereof, as amended, revised, re-enacted and/or consolidated from time to time and any successor statute or regulation thereto.

## **1.6 Developer's Expense**

Every provision of this Agreement by which the Developer is obligated in any way is deemed to include the words "at the expense of the Developer" and "to the Town's satisfaction", unless specifically stated otherwise.

## **1.7 Parties to Act Reasonably**

Notwithstanding anything else in this Agreement, wherever in this Agreement any decision, action or fee is to be made, taken or charged by or on behalf of any party hereto, this Agreement requires that the parties and their respective agents, servants, consultants or contractors shall act reasonably, expeditiously and in good faith in respect thereof.

## **1.8 Attached Schedules**

All the Schedules attached hereto form part of this Agreement and have the same force and effect as if the information on them were contained in the body of this Agreement.

## **PART 2 - ADMINISTRATION**

### **2.1 Designated Authority**

- 2.1.1 The authority for administering this Agreement on behalf of the Town is delegated to the Town Engineer.
- 2.1.2 Where the consent of the Town is required under this Agreement, such consent may be exercised by the Town Engineer except for an assumption by-law which must be passed by Council.

### **2.2 Applicable Laws**

- 2.2.1 In constructing, installing or providing the Services, the Developer shall comply with all statutes, laws, by-laws, regulations, ordinances, orders and requirements of governmental or other public authorities having jurisdiction at any time, applicable and in force. Without limiting the generality of the foregoing, the Developer shall comply with, and cause to be complied with, the provisions of the Occupational Health and Safety Act, the Environmental Protection Act and the Ontario Water Resources Act and any regulations, policies and guidelines relating thereto, including all obligations of the constructor and employer under the Occupational Health and Safety Act and regulations as applicable, and any obligation to obtain any approval or permit required under the Environmental Protection Act or the Ontario Water Resources Act or any regulations, policies or guidelines thereto. The Developer further shall handle and dispose of all materials in accordance with the foregoing legislation.
- 2.2.2 The Developer shall do, cause to be done, or refrain from doing, any act or thing, as directed by the Town, if at any time the Town considers that any situation or condition is unsafe, damaging to the environment, or contrary to the provisions of any applicable law. If the Developer fails to comply with such direction, the Town may take action to remedy the situation and if action is taken the Town is entitled to draw upon any Securities filed by the Developer under this Agreement.

### **2.3 Town as Agent of Developer**

Any work completed by the Town, for or on behalf of the Developer, or by reason of the Developer not having completed the work in the first instance, will be deemed to be completed as agent for the Developer and will not, for any purpose whatsoever, be deemed as Final Acceptance or Assumption of any Services by the Town.

## **2.4 Town Consulting Engineer**

The Town may retain a Town Consulting Engineer to assist in the administration and technical review including site inspection during the course of the development. The Town Consulting Engineer acts as an agent for the Town. The Developer shall reimburse the Town for the costs incurred by the Town for the services of the Town Consulting Engineer.

## **2.5 Developer's Consulting Engineer**

2.5.1 The Developer's Consulting Engineer acts as the Developer's representative in all matters pertaining to the Plan. The Developer's Consulting Engineer shall be employed by the Developer to:

- (a) design all Services;
- (b) prepare and furnish all drawings, plans, specifications, reports and certificates as required by the Town Engineer, or pursuant to this Agreement, at any time and from time to time;
- (c) obtain all approvals required from all other governmental authorities or agencies;
- (d) provide the field layout, the contract administration and Resident Supervision and inspection of the construction of all Services;
- (e) maintain all records of construction and upon completion, advise the Town Engineer of all construction changes and final measurements;
- (f) provide the Town with "as constructed" drawings from time to time upon completion of the construction of the Services;
- (g) act as the Developer's representative in all matters pertaining to the construction of the Services;
- (h) carry out contract administration whenever a contractor is undertaking work on the Services; and
- (i) perform such additional functions and services as may be required pursuant to this Agreement.

2.5.2 In the event of any negligence by the Developer's Consulting Engineer, including any negligence in estimating the cost of the Services to be constructed under this Agreement for the purposes of providing Securities therefore, the Developer shall assign any rights it may have to claim against the Developer's Consulting Engineer for such negligence, at the request of the Town.

2.5.3 The Developer shall provide the Town Engineer with a copy of the contract between the Developer's Consulting Engineer (and all other subcontractors) and the Developer, provided that fee quotes and arrangements may be redacted therefrom.

2.5.4 The Developer shall provide a copy of this Section and the Agreement in its entirety to the Developer's Consulting Engineer prior to the Developer's Consulting Engineer commencing any of the Services and shall obtain a written acknowledgement in the format attached as Schedule "L", from the Developer's Consulting Engineer. The Developer shall ensure that a copy of this executed acknowledgement is provided to the Town prior to the commencement of any of the Services.

2.5.5 The Developer shall not replace the Developer's Consulting Engineer except with another engineering firm approved by the Town which approval shall not be arbitrarily or unreasonably withheld. In the event the Developer's Consulting Engineer fails to provide services in accordance with the contract with the Developer as herein provided, or in accordance with the terms of this Agreement, or should the Developer's Consulting Engineer withdraw his services for the Developer, such failure or withdrawal shall be deemed to be a default pursuant to this Agreement.

## **2.6 Other Consultants**

2.6.1 The Town may, at its option, require other consultants to assist the Town Engineer, or otherwise supervise, inspect, or submit reports to the Town, and the Developer shall pay for the reasonable cost of such additional consultants. If during the construction of Services, the Town Engineer or the Town deems it necessary to revise or alter the Plans and Specifications, the Developer shall cause its Developer's Consulting Engineer to revise the same and submit such revisions to the Town Engineer for approval. In such event, all Services shall be constructed in accordance with such approved revised Plans and Specifications.

2.6.2 The Developer shall, at all times and from time to time, at the Developer's expense, furnish all reasonable aid and assistance to the Developer's Consulting Engineer, the Town Engineer and any other consultant, inspector or inspection firm in connection with this Agreement, the Services, the Plan or the Lands, including all necessary testing and inspection of material and methods as may be required by the Developer's Consulting Engineer, the Town Engineer, inspector or inspection firm, including the provision of facilities under Section 8.26.3 for the inspection of any materials and workmanship, and when required, the provision of samples for testing. All tests required as aforesaid, shall be carried out in accordance with the specifications of the Person requesting such test, and shall be performed at the cost of the Developer. Notwithstanding any inspection that may be carried out by the Town Engineer, or any inspector or inspection firm on behalf of the Town, the failure of the Town Engineer or the said inspector or inspection firm to condemn or object to any defective work or material shall not constitute a waiver of any specification or the approval or acceptance of any defective work or material, and the Developer shall remain responsible for all and any work done or required to be done in accordance with the terms of this Agreement, including the repair or replacement of any defective work or material, at the Developer's sole cost and expense. In the event the Town Engineer has required any quantitative or qualitative test for any purpose whatsoever as a precondition of any further construction, the Developer shall not construct such Services for which the test is required until such test has been received, reviewed and approved by the Town Engineer and has issued an order in connection therewith. Such order may specify such work and in what manner it should be done, and may be subject to conditions and may specify that such work is to be completed within a specified time period, and the Developer shall comply with all terms of such order.

## **2.7 Requirement of Town re: Servicing Capacity**

The Town acknowledges that the Developer has servicing capacity for the sanitary sewage collection and treatment system and the water supply and distribution system for the development proposed in this Agreement.

## **2.8 Registration of Agreement**

2.8.1 The Developer hereby consents to the registration of this Agreement upon the Lands and hereby acknowledges that the same constitutes a first lien upon the Lands (not subject to any other liens or encumbrances) save and except any registered municipal agreements and registered agreements with publicly regulated

utilities, any minor easements for the supply of domestic utility or telephone services to the Lands or adjacent lands, any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, or other services, as security for any financial obligation of the Developer pursuant to this Agreement. The said lien shall be enforceable upon a judgment or order of any court and all or any part of the Lands may be realized as Security for such lien in the same manner as if the Town was enforcing its financial rights as a mortgagee under a mortgage.

2.8.2 The Developer shall obtain from each mortgagee having a registered charge on title to the Lands and register on those titles, a postponement of each such charge in favour of this Agreement so that this Agreement has the priority described in Subsection 2.8.1.

2.8.3 In the event of a mortgagee obtaining or transferring the equity of redemption in the Lands under its mortgage, the title thereto shall be subject to the terms hereof in the same manner as if the mortgagee had executed this Agreement as Developer.

## **2.9 Digital Plan of Subdivision**

Immediately following registration of the Plan, the Developer shall provide the Town with two copies of the final Plan and the Plans and Specifications in a format accepted by the Town (AutoCAD and Adobe .pdf). Each copy must be labeled identifying the legal property description, Developer's name, file name and date delivered. The Developer shall ensure that all drawing changes occurring throughout the approvals process are incorporated into the digital submission using the Town's accepted format and the line accuracy and layer standards required by the Town.

## **2.10 Developer's Undertaking**

Without the prior written consent of the Town, the Developer will not register directly or authorize the registration of any documents on title after the execution of this Agreement until such time as the Plan, this Agreement, Inhibiting Order and Restriction, where applicable, have been registered on title to the Lands. The Developer shall notify the Town or the Town Solicitor when the Plan is ready for registration.

## **2.11 Application for Inhibiting Order**

The Land Registrar for the Land Titles Division of Wellington (No. 66) is authorized to issue and enter on the parcel register of all the Lands in the Plan an Order pursuant to section 23 of the Land Titles Act, requesting the Registrar to inhibit any dealings with the Lands set out in the Inhibiting Order until all transfers of land, easements and discharges as set out in the Inhibiting Order have been complied with. The Developer will not register any document after registration of the Plan and Agreement until the Inhibiting Order is registered, where applicable.

## **2.12 Legal Notice to Parties**

Where this Agreement requires notice to be delivered by one party to the other, such notice must be in writing and delivered either personally, by prepaid registered mail, or by e-mail sent to all listed e-mail addresses, by one party to the other party at the addresses noted below. Such notice is deemed to have been given, if by personal delivery on the date of delivery, if by prepaid registered mail on the fourth business day following the posting thereof, and if by e-mail on the date of delivery to all listed e-mail addresses. If notice is given by mail, the same shall be effective five (5) business days upon being deposited with the post office, or upon proof of delivery by return receipt. However, in the event of an interruption of postal services, the notice shall not be deemed to have been given by prepaid registered



mail during such period of interruption, unless the notice has been actually received.

**Town:**

The Corporation of the Town of Erin  
5684 Trafalgar Road  
Hillsburgh, ON N0B 1Z0

Attention:  
Email:

**Developer:**

XXXXXX

Attention: XXXXXX  
Email: XXXXXXXXXXXX

The addresses may be changed by written notice to the parties. Any notice delivered will be deemed good and sufficient notice under the terms of the Agreement.

**2.13 Mortgages**

- 2.13.1 All mortgagees shall be bound by the terms of this Agreement and postpone their interest in the Lands as if this Agreement were registered in priority to their mortgage including any subsequent amendments, extensions and assignments of their mortgage, and all mortgagees shall execute a postponement of their mortgage to this Agreement including any amendments to this Agreement which may be registered on title to the Lands.
- 2.13.2 Any amounts which the Town is entitled to collect pursuant to this Agreement, including all funds expended by or expenses incurred on behalf of the Town to rectify any breaches of this Agreement by any of the parties will constitute a first charge against the Lands and any mortgagees are required to execute postponements of their charges to any outstanding amounts pursuant to this Agreement at the Town's request.
- 2.13.3 The Town is entitled to recover any amounts owed to it pursuant to this Agreement upon the sale or distribution of the Lands in priority to the interest of any party hereto and prior to the interest of any subsequent encumbrancers or owners of the Lands.
- 2.13.4 In the event of becoming owner or otherwise gaining control of all or part of the Lands pursuant to their mortgage, either beneficially or in trust and either alone or in combination with another party, any mortgagee will be subject to this Agreement in the same manner as if the mortgagee had executed this Agreement in the capacity of the Developer.
- 2.13.5 In the event of a sale or conveyance of all or part of a mortgagee's interest in the Lands, such mortgagees must require, as a condition precedent to the closing of any such sale or conveyance, that the new owner will have covenanted with the Town, in writing, to perform and undertake all of the terms of this Agreement in the same manner as if the new owner had executed this Agreement in the capacity of the Developer.

## **2.14 Consent to Assign**

2.14.1 The Developer cannot assign this Agreement without the prior written consent of the Town. The Town will not unreasonably withhold its consent to any assignment provided:

- (a) the Developer is at the time in good standing under this Agreement, and is not in default under any of the terms of this Agreement;
- (b) the Person this Agreement is proposed to be assigned to ("Assignee") agrees in writing, in a form acceptable to the Town Solicitor, to assume all of the outstanding obligations of the Developer under this Agreement including, but not limited to, the Developer's obligation to provide and maintain Securities to assure the due carrying out of this Agreement;
- (c) the Developer's Consulting Engineer has agreed to be employed by the Assignee and continue to act as Developer's Consulting Engineer as required by this Agreement;
- (d) the encumbrancers have consented to the assignment; and
- (e) the Assignee must be shown as the registered owner of the Lands.

2.14.2 In the event of the sale of the entire Lands, the Developer shall obtain the purchaser's covenant in writing to assume full and complete responsibility for the performance of the Developer's continuing obligations under this Agreement. Upon any such assignment being completed, the Developer and the Town will have no further obligations to one another under this Agreement. All obligations will be between the Town and the Assignee. However the Town will not return to the Developer any Securities deposited until Securities in a like amount and in a form satisfactory to the Town's Treasurer are deposited with the Town by the Assignee.

## **2.15 Status Reports**

Recognizing that each party hereto may find it necessary from time to time to establish to third parties the then current status of performance hereunder, each party agrees upon the written request of any other party, to furnish promptly a written statement on the state of any matter pertaining to this Agreement to the best of the knowledge and belief of the party making such statement.

## **PART 3 – FINANCE**

### **3.1 Security**

3.1.1 Prior to the commencement of construction of any of the Services (including any grading, but not including works already secured and constructed as part of a pre-servicing agreement)), the Developer shall provide the Town with an amount as set out in Schedule "E" attached hereto, payable in (at the option of the Developer) cash, certified cheques, or an irrevocable Letter of Credit drawn on a chartered bank of Canada that is acceptable to the Town, which shall be held by the Town as Security for the obligations of the Developer pursuant to any of the provisions of this Agreement. If in the opinion of the Town at any time and from time to time, such amounts are insufficient, such amounts may be increased, and the Developer shall pay such additional sum or increase the Letter of Credit as may be required as a result of such increase. In determining the sufficiency of the amount, regard need not be placed solely to the particulars outlined in Schedule "E" attached hereto, but the total cost of satisfying all of the obligations of the Developer pursuant to any of the provisions of this Agreement.

### Construction Security

- 3.1.2 The Developer shall post with the Town Construction Security in the amount set out in Schedule "E".

### Maintenance Security

- 3.1.3 The Developer shall maintain a Maintenance Security in the amount of 15% of the Construction Security as set out in Schedule "E". Upon the issuance of the Certificate of Completion and Acceptance, the Construction Security can reduced to 15% for the Maintenance Security.

### Firebreak Lot Security

- 3.1.4 The Developer shall post Firebreak Lot Security in the amount of \$1,000.00 per Firebreak Lot, as set out in Schedule "E".
- 3.1.5 In the event the Developer fails to provide sufficient cash or a Letter of Credit as required pursuant to the provisions of this Agreement, such failure shall be deemed to be a substantial default pursuant to the provisions of this Agreement and such default shall enable the Town to realize on all or a part of the Lands secured by this Agreement in the same manner as if the Town was enforcing its rights as a mortgagee against such lands.
- 3.1.6 Prior to the registration of the Plan (or at any time set out in Schedule "G", whichever is later), the Developer shall pay to the Town in cash or by certified cheque the total amount of such levies, fees, deposits, assessments, and charges more particularly set out in Schedule "G" attached hereto. In the event any of the fees and charges are estimated, the Town shall account to the Developer for such fees and charges when they are actually incurred, and if additional monies are required with respect to such fees and charges, the Developer shall pay such fees and charges forthwith to the Town.

## **3.2 Discharging Securities**

### Construction Security

- 3.2.1 The Developer may request release/reduction of Securities at the following points of the development:
- (a) if the Developer has pre-serviced the Lands and the works under the pre-servicing agreement have been completed so as to satisfy the requirements for a Certificate of Completion and Acceptance of Underground Works under this Agreement, the Town may reduce the Construction Security to the value of the uncompleted Services;
  - (b) upon issuance of the Certificate of Completion and Acceptance of Underground Works;
  - (c) annually, following issuance of the Certificate of Completion and Acceptance of Underground Works
  - (d) six (6) months following the issuance of the Certificate of Maintenance and Final Acceptance, provided all accounts have been paid in full.
- 3.2.2 The Town shall only release Security pursuant to Subsection 3.2.1 for Services that have been certified by the Town Engineer as complete and acceptable.

- 3.2.3 With each request for a reduction, the Developer's Consulting Engineer shall provide an estimate of the cost to complete the Services. This estimate will be reviewed by the Town, and provided the Developer is not in default of any of the requirements of this Agreement, the Town may proceed to reduce the Securities to the greater of \$100,000.00 or to an amount being the cost of the Services that have not been constructed.
- 3.2.4 For the purposes of discharging of Securities, the total estimated cost of the Services means the total estimated cost of the Services set out in Schedule "E".
- 3.2.5 Prior to any reduction in Security being processed:
- (a) the Developer shall provide the Town with a copy of the publication of a certificate in a construction trade newspaper pursuant to section 32 of the Construction Act;
  - (b) sixty (60) days shall have expired following such publication;
  - (c) the Developer shall provide the Town with a record of paid accounts;
  - (d) the Developer shall provide the Town with a Statutory Declaration that all accounts for Services and materials have been paid except for normal holdbacks; and
  - (e) there must be no claims for liens or otherwise in connection with work done or materials supplied for or on behalf of the Developer in connection with the Plan or this Agreement.

#### Maintenance Security

- 3.2.6 The Maintenance Security will be released forthwith following the date of issuance of the Certificate of Maintenance and Final Acceptance.

#### Firebreak Lot Security

- 3.2.7 The Firebreak Lot Security may be released for each Firebreak Lot upon issuance by the Town of a Firebreak Lot Certificate as referenced in Subsection 9.4.3.

### **3.3 Development Charges**

- 3.3.1 The Developer has reviewed the Development Charges By-law and understands that before the issuance of a building permit, a development charge must be paid, as applicable, in accordance with the provisions of the Development Charges By-law.
- 3.3.2 The development charges for each Lot or part Lot are payable at the time of building permit issuance or such other time as set out in Development Charges By-law.
- 3.3.3 The Developer hereby releases and forever discharges the authority having jurisdiction over the Development Charges By-law from any and all claims for credits against development charges payable hereunder or payable at the issuance of a building permit or permits for construction within the Lands, except as may be expressly provided for in this Agreement. Furthermore, the Developer hereby waives all such claims for credits except for the credits that may be specified by any schedule forming part of this Agreement. Any such credits and the calculation thereof will be deemed to be conclusive and binding on the Developer.

### **3.4 Taxes, Drainage, Local Improvement Charges and Other Charges**

The Developer hereby agrees:

- (a) to pay all current taxes and arrears of taxes assessed or charged against the Lands, prior to registration of the Plan;
- (b) to pay all taxes as aforesaid as and when the same become due and payable;
- (c) to commute and pay all charges, including the Town's share, with respect to existing local improvements, assessed against the Developer or the Lands or any adjacent lands, if in the opinion of the Town such charges for local improvements should be commuted and paid; and
- (d) to pay all of the Developer's obligations or any of the Town's share of any obligations or charges levied against the Developer or the Lands under the Tile Drainage Act, the Drainage Act, Ontario Regulation 586/06 under the Municipal Act, and any sewer frontage capital charges, water frontage capital charges, weed cutting charges, burning charges, hydro arrears, water user fees, sewer user fees or business licensing fees, and any other fee assessed against the Lands.

### **3.5 Approval Fees**

The Developer shall deal directly with the all applicable utilities, authorities and/or agencies to obtain all necessary permits and approvals. The Developer shall be responsible for paying all fees and charges directly to the appropriate entity until a Certificate of Maintenance and Final Acceptance is issued for all Services.

### **3.6 Horizontal/Vertical Control Monuments**

Prior to registration of the Plan the Developer shall install two horizontal/vertical control monuments established in conformity with the Universal Transverse Mercator Co-ordinate (UTM) System. Such monuments shall be preserved and maintained by the Developer, and if necessary, the Developer shall, at the request of the Town Engineer, establish such additional monuments as the Town Engineer may require.

### **3.7 Insurance**

3.7.1 Prior to the registration of the Plan, the Developer shall obtain and maintain commercial general liability insurance, and continue to maintain such insurance until Final Acceptance, against all damages or claims for damage with an insurance company satisfactory to the Town. Such policy or policies shall include the Town as an additional insured and a certified copy of such insurance shall be delivered to the Town and be in full force and effect until a Certificate of Completion and Acceptance of Aboveground Works or a Certificate of Completion and Acceptance of Underground Works has been issued by the Town Engineer for all Services required pursuant to this Agreement and a Certificate of Maintenance and Final Acceptance has been issued by the Town in respect of such Services. Such policy of insurance shall be in the form provided by the Town and without limiting the generality of the foregoing, shall provide:

- (a) that the minimum limits shall be not less than \$5,000,000.00 for any single occurrence;
- (b) that it includes a cross-liability and completed operations coverage;

- (c) that it shall not contain an exclusion for blasting, shoring, underpinning, raising or demolition of any building or structure, collapse of any structure or subsidence of any structure or land from any cause;
- (d) that the insurance premium has been prepaid for a period of not less than one year;
- (e) that the policy will provide that it is not cancellable unless prior notice by registered mails has been received by the Town from the insurer not less than thirty (30) days prior to the cancellation date;
- (f) if the policy contains a deductible clause, the same shall be approved by the Town, and the Developer shall provide an additional cash deposit payable to the Town in an amount to be determined by the Town. In the event of claims made against the Town to which the deductible applies, the Town shall appoint an independent adjuster to investigate such claim, and the finding of the independent adjuster shall authorize the Town to pay such claims deemed valid by such adjuster out of the additional cash deposit posted with the Town. In the event such additional cash deposits are deemed to be insufficient by the Town at any time and from time to time, the Developer hereby agrees to pay such additional cash deposits forthwith to the Town. All costs of the adjuster shall be borne by the Developer.

3.7.2 Where a subcontractor is retained for work where Professional Liability coverage is a contract requirement, the Developer must ensure that the Professional Liability insurance is in an amount not less than \$2,000,000.00 per claim.

3.7.3 If the Town upgrades or amends any of its insurance requirements the Town may request that the Developer provide an updated amended insurance policy. If the Town does so the Developer shall provide a certificate of insurance within ten (10) days of a written request by the Town followed by a copy of the full insurance policy within three (3) months.

3.7.4 If there are multiple named Developers in this Agreement, the Town requires one (1) insurance policy covering the entire development including all of the Developers within the one insurance policy.

3.7.5 Neither the issuance of the policy of insurance, nor the acceptance of the policy of insurance by the Town, will be construed as relieving the Developer from responsibility for other or larger claims, if any, for which it may be held responsible.

3.7.6 If the insurance policy is inadequate to cover a claim for which the Developer might otherwise be responsible, or the Developer's insurer fails to cover a claim for which the Developer might otherwise be responsible, the Town may utilize any Securities provided by the Developer, or other remedies provided for in this Agreement, to satisfy the claims.

3.7.7 If the Developer fails to comply with any of the obligations set out in this Section, upon 48 hours written notice of the failure to comply the Town may issue a stop work order. Upon receipt of a stop work order the Developer must ensure that all work ceases until the obligations under this Section have been fully satisfied and the Town has provided written authorization to the Developer to proceed.

3.7.8 In addition, to the rights set out above if the Town receives notice from the insurer that it has cancelled, or refused to renew, the insurance coverage, or that it intends to do so, or if the Town otherwise determines that the insurance coverage has lapsed, or is about to lapse without renewal, or replacement, the Town, on written notice to the Developer, will be automatically entitled to obtain a new insurance policy or add the necessary insurance coverage to the Town's insurance coverage.

The Developer shall pay all costs associated with this process even if the Developer obtains a renewal policy prior to the policy expiration date but not within the thirty (30) day period set out herein. The Developer shall forthwith, upon receipt of written notice from the Town, reimburse the Town for the cost of such insurance payable as noted above. In addition, the Town may draw upon the Security posted under this Agreement, or utilize any other remedy provided for in this Agreement, to cover the costs of this insurance.

## **PART 4 – REMEDIES**

### **4.1 Default**

4.1.1 Any default by the Developer, or by its agents, servants, heirs, executors, administrators, successors or assigns of any provision of this Agreement shall permit the Town to enforce its rights pursuant to this Agreement by taking any of the following actions, or any combinations thereof:

- (a) issue a stop work order, whereupon the Developer shall cease and desist from any and all work upon the Lands or any part thereof, notwithstanding the conveyance of all or part of the Lands to a successor in title, or from any and all work with respect to Special Works;
- (b) draw on any Letter of Credit held as Security by the Town pursuant to this Agreement, whether for payment in full or in part;
- (c) any cash or deposits held by the Town pursuant to this Agreement or any proceeds obtained from the presentation of any Letter of Credit, whether received from the Developer, the Builder, or any other person, firm or corporation, may be applied on account of any expenses incurred, whether directly or indirectly, or damages suffered by the Town, as a result of any default as aforesaid or apply the same towards the cost of completing or performing any of the obligations of the Developer pursuant to this Agreement. For the purposes of this paragraph, "cost of completing or performing any of the obligations of the Developer pursuant to this Agreement" includes all costs and expenses deemed necessary or appropriate by the Town and without limiting the generality of the foregoing may include:
  - (i) the appointment and employment of a manager;
  - (ii) the appointment and employment of a replacement for the Developer's Consulting Engineer;
  - (iii) other consultants;
  - (iv) administrative costs;
  - (v) interest;
  - (vi) legal expenses;
  - (vii) the reimbursement of third parties who have incurred a loss or have suffered damages as a result of the default of the Developer pursuant to the terms of this Agreement; and
  - (viii) the payment of any and all costs or expenses incurred, whether directly or indirectly in connection with any of the provisions of Section 4.1 hereof;

- (d) perform or cause to be performed, at the Developer's expense, any and all of the obligations of the Developer pursuant to this Agreement and for this purpose enter upon the Lands and do all work upon the Lands or upon any lands affected by the conveyances or easements, or other lands as the Town may decide;
- (e) bring any proceeding in the nature of specific performance, injunction or other equitable remedy, it being acknowledged by the Developer that damages at law may be an inadequate remedy for a default or threatened default or breach of this Agreement;
- (f) bring any action at law by or on behalf of the Town or any other party as a result of any default under this Agreement in order to recover damages;
- (g) institute any other legal proceedings to enforce any of the provisions of this Agreement or compliance with any Laws or to take any other action deemed appropriate in the sole opinion of the Town.

4.1.2 Any action taken or remedy elected by the Town shall not be, or construed to be, mutually exclusive of any other action not taken or remedy not elected by the Town, nor shall the Town be required to take any action or elect any remedy, other than such action or remedy which the Town in its sole discretion determines advisable, and the Town shall not be liable to any party to this Agreement or otherwise for failure to take any action or elect any remedy. No consent or waiver, express or implied, by the Town to or of any breach or default hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default, and the Town hereby expressly reserves its rights to rescind or repeal any waiver, whether express or implied, with respect to any breach or default, whereupon the Town shall have all of its rights and remedies pursuant to this Agreement, notwithstanding its previous consent or waiver. Failure on the part of the Town to complain of any act or failure to act or to declare or notify the Developer of any breach or default, irrespective of how long such failure continues, shall not constitute a consent or waiver of the Town of its rights hereunder.

4.1.3 Nothing herein shall give any third party the right to compel the Town to enforce any of its remedies pursuant to this Agreement or to hold the Town or its agents accountable or liable for any acts or omissions with respect to this Agreement.

4.1.4 Any action taken by the Town, or on its behalf, pursuant to this Agreement is in addition to and without prejudice to any Security or other guarantee given on behalf of the Developer for the performance of its covenants and agreements herein and upon default of the part of the Developer hereunder the Town shall, in addition to any other remedy available to it, be at liberty to utilize the provisions of sections 349(1)-(3), 442, and 446 of the Municipal Act.

## **4.2 Refusal of Final Plan Approval**

4.2.1 Should the Plan for any reason be refused Final Approval, servicing must cease and the Developer is fully responsible financially and otherwise, for all servicing installed.

4.2.2 Should the Plan be refused Final Approval, the Developer shall remove servicing, or rectify any situation, including, but not limited to, restoration as a result of construction to the satisfaction of the Town, if requested by the Town to do so. The Town may require the Developer to bring the Lands to a condition which is acceptable from a perspective of public safety and restoration of the Lands to a reasonable level, including reforestation with naturalization trees and grading to the satisfaction of the Town, and if the Developer neglects or refuses to do so, the



Town may do so itself using Securities posted pursuant to this Agreement, and any other remedy provided for in this Agreement.

### **4.3 Further Agreements**

Should the Developer be deemed to be in default of the Schedule of Works or in any other way in substantial default under this Agreement, in addition to the remedies set out above, the Town may refuse to approve any further agreements for these Lands until all requirements of this Agreement have been either satisfied or brought current.

### **4.4 Failure to Maintain**

4.4.1 If, during the Maintenance Period the Developer fails to carry out maintenance work within twenty-four (24) hours after receipt of a request from the Town, then the Town may, without further notice, undertake the maintenance work and the total cost of the work including engineering fees, will be borne by the Developer.

4.4.2 The Town has the option of deducting the total amount of the cost of the work from the Securities or billing the Developer.

4.4.3 If the Town elects to bill the Developer and the Developer fails to pay the Town within thirty (30) days of a written invoice from the Town, then the money owing may be deducted from the Securities.

### **4.5 Administrative Fee**

Where any obligations of the Developer pursuant to this Agreement are undertaken by or on behalf of the Town, pursuant to Part 4 of this Agreement or otherwise, the Developer shall pay to the Town an Administrative Fee equal to ten percent (10%) of the cost of performing such work.

### **4.6 Filing of Liens**

4.6.1 The service of any written notice of lien on the Town, or registration of any claim for lien or certificate of action arising pursuant to the Construction Act, or the commencement of any action against the Developer or the Town by any Person purporting to be a subcontractor or material or equipment supplier will, at the Town's option, constitute a default under the terms of this Agreement.

4.6.2 The Developer must vacate any claims for lien or certificates of action arising from the development in respect of improvements made to land owned by the Developer or Town, at its own expense, forthwith upon being advised in writing of the existence of such by the Town. The Developer shall defend any proceedings arising therefrom against the Town. The Developer will be deemed in default of this Agreement if it fails to do so.

4.6.3 In the event of default, the Town may draw upon any Securities posted, for such purposes as may be determined by the Town that may be necessary to protect the Town's interests. The Town will have no obligation to hold back or pay into court any sum of money in regard to dealings with land not owned by the Town.

4.6.4 Without limiting the generality of the foregoing, the purposes referred to in this Section may include, but are not limited to, taking legal advice and defending any proceedings arising from the service of any written notices of lien or the registration of any claims for lien or certificates of action, vacating the registration of any claims for lien or certificates of action filed in respect of the lien of any Person, making payment into court of Security pursuant to any orders vacating the registration of

liens or obtaining orders dismissing lien actions against the Town after a lien is vacated from lands owned by the Town.

#### **4.7 Waiver of Provisions or Breach**

4.7.1 The Town is at liberty to waive any or all of the provisions of this Agreement whether or not the Developer is in breach of the provision and such waiver shall not affect in any way the enforceability of this Agreement. In particular, without limiting the generality of the foregoing, it is agreed that the Town may, at any time:

- (a) release or modify Securities which it holds;
- (b) provide comfort letters to prospective purchasers of some or all of the Lands; and
- (c) issue building permits.

4.7.2 The above-noted actions will not affect the obligations of the parties to this Agreement or in any way prejudice the ability of the Town to enforce the terms of this Agreement.

#### **4.8 Municipal Act**

In addition to all other remedies set out under this Section, sections 349(1)-(3), 442 and 446 of the Municipal Act, and any Town by-law passed pursuant to the Municipal Act, or the Planning Act, will apply should the Developer fail to provide and/or properly maintain, to the satisfaction of the Town, the Services and other matters referred to in this Agreement.

#### **4.9 General Indemnification**

4.9.1 The Developer hereby agrees to indemnify and save completely harmless the Town, its agents, employees or servants, from and against all claims, demands, losses, damages, debts, actions, causes of action, suits, proceedings or costs whatsoever, at law or in equity, suffered or incurred by the Town whether directly or indirectly, as a result of this Agreement, the Lands, the Plan, or as a result of any other matter or thing in connection therewith or pertaining thereto, including inspection of the Services or any aspect of construction review by the Town or its agents, or the carrying out of the Developer's obligations in this Agreement, or from the Developer having entered into this Agreement, or which may arise either directly, or indirectly, by reason of the Developer undertaking construction of the Services pursuant to this Agreement. This includes claims pursuant to the Construction Act, in tort, contract or otherwise. This shall also include any damage, or interference, resulting from winter road maintenance, or any other works, or actions, undertaken by the Town, its agents or servants acting as agents of the Developer. Without limiting the generality of the foregoing, such indemnification shall extend to the following:

- (a) all engineering fees, consulting fees, disbursements and related expenses of the Town Engineer as a result of his services and any consultants required to be retained by the Town Engineer required to be performed for the Town in connection with this Agreement, the Lands or the Plan or any other matter or thing in connection herewith or pertaining thereto;
- (b) all legal fees and disbursements as a result of legal services rendered to the Town in connection with this Agreement, the Lands, the Plan or any other matter or thing in connection herewith or pertaining thereto;

- (c) all administrative costs incurred by the Town associated with the negotiation, drafting and administrative fees associated with this Agreement and undertaking of the Services and enforcement of this Agreement;
- (d) any costs and damages suffered by third parties as a result of the negligence of the Developer or the default of the Developer pursuant to the terms of this Agreement or the contravention of any Laws; and
- (e) the cost of all Services and the employment of all Persons and firms in connection with this Agreement or referred to herein.

## **PART 5 - SALE OF LAND**

### **5.1 Notice of Agreement**

This Agreement will be registered against the Lands pursuant to subsection 51(26) of the Planning Act. The Town is entitled to enforce the provisions of this Agreement against the Developer and any and all subsequent owners of the Lands. The Developer shall attach Schedule "M" to all agreements of purchase and sale used for the sale of the Lots or part Lots in this Plan to ensure that the obligations and warnings in said Schedule are conveyed to subsequent owners.

### **5.2 Notice by Subsequent Owners**

Subsequent owners of any Lots or part Lots must also attach Schedule "M" to any agreement of purchase and sale to ensure all purchasers are aware of the obligations and warnings set out therein.

### **5.3 Existing Agreements of Purchase and Sale**

As of the date of execution of this Agreement, certain Lots or part Lots may be the subject of existing agreements of purchase and sale. In this event, the Developer shall forthwith provide all such prospective purchasers with a copy of Schedule "M".

## **PART 6 - LAND DEDICATION AND LAND REGISTRATIONS**

### **6.1 Environmental Site Assessment**

6.1.1 The Developer shall retain a Qualified Person, as defined in O. Reg. 153/04, to perform a Phase I Environmental Site Assessment ("Phase I ESA"), with respect to the entirety of the Lands, in compliance with the Phase I ESA Standard designated as CAN/CSA Z768-01 published by the Canadian Standards Association and dated November 2001, as amended.

6.1.2 The Qualified Person referred to Subsection 6.1.1 shall prepare a report in accordance with the requirements set out in O. Reg. 153/04. This report shall include, but not be limited to, the following:

- (a) confirmation of insurance coverage in compliance with O. Reg. 153/04;
- (b) certification that the qualified Person meets the requirements of a Qualified Person in O. Reg. 153/04;
- (c) the qualified Person's opinion as to whether based on the Phase I ESA a Phase II Environmental Site Assessment ("Phase II ESA") is warranted;
- (d) if the qualified Person's opinion is that a Phase II ESA is not required the qualified Person shall include the statement that "in his/her opinion and based on the Phase I ESA a Phase II ESA is not necessary";

- (e) confirmation that the report may be relied upon by the Town in making the decision to accept ownership of the property.
- 6.1.3 Prior to the Town accepting the transfer or dedication of any part of the Lands the report of the Qualified Person must be completed and provided to the Town and a determination made as to whether further investigative work is required. Unless determined otherwise in the discretion of the Town, a Phase II ESA will be required for any part of the Lands to be conveyed to the Town.
- 6.1.4 The Town will not take ownership of any part of the Lands for which environmental issues have been identified by the Qualified Person or the Town, and which have not been resolved to the satisfaction of the Town in its sole discretion.
- 6.1.5 The Developer shall indemnify the Town for any damages, claims, orders or costs which result directly or indirectly as result of environmental issues being discovered after the transfer or grant of any Lands. The Town is entitled to apply any Securities that it may hold on behalf of the Developer to any claim under this Section.

## **6.2 Conveyances, Easements and Further Agreements**

- 6.2.1 The Developer hereby agrees to convey or cause to be conveyed those lands and premises more particularly set out in Schedule "H" attached hereto to such grantees as the Town may direct and in such form and manner acceptable to the Town Solicitor. If the conveyance is to be made in fee simple, such conveyance shall be for good and marketable title to the lands to be conveyed, free and clear of all liens and encumbrances. If the conveyance is by way of easement, the form of the conveyance shall be acceptable to the Town Solicitor, and the grantee shall acquire good and marketable title to the easement free and clear of all liens and encumbrances, or in the alternative, any encumbrancer affecting the lands being subject matter of the easement shall postpone and subordinate its interest in favour of the grantee on such terms and in such form approved by the Town Solicitor. All conveyances, whether in fee simple or for easements, shall be made at the Developer's expense, and the Developer shall reimburse the Town for any and all costs and expenses incurred by the Town, whether directly or indirectly for the aforesaid.
- 6.2.2 All such conveyances of land made in fee simple or by way of an easement are to be messaged to the Town Solicitor together with discharges and/or postponements of all title encumbrances and accompanied by the Developer's solicitor's certificate of title, in the form attached as Schedule "N" to this Agreement, prior to registration of the Plan. All documents shall be signed and in a form suitable for registration, except for the registered plan number and reference plan number which may be left blank in the description of those portions to be conveyed. The Developer hereby authorizes the Town Solicitor to complete the description pertaining to the conveyance to the Town when the Plan is registered and any reference plan is deposited, and thereafter to register all such conveyances at the expense of the Developer.
- 6.2.3 All land dedications and grants of easements must occur at the time of registration of the Plan.
- 6.2.4 All conveyances referred to in this Section shall be at the expense of the Developer and the Developer shall provide all reference plans requested by the Town Solicitor in connection with such conveyances.
- 6.2.5 The Developer shall not use any of the lands or easements conveyed pursuant to this Agreement or any other lands owned by the Town or by any governmental agency or body or by any utility, or subject to any easement in favour of the Town

or any governmental agency or body or any utility, for the depositing of any debris or storage of earth or material in connection with the development of the Lands or otherwise, and the Developer shall be responsible for preventing and removing the same from the Lands or other lands as aforesaid caused by third parties, at the Developer's expense. If necessary, the Developer shall, at the direction of the Town Engineer, erect signs, temporary barriers and fencing to prevent the same.

### **6.3 Ownership of Services**

All the Services to be constructed on lands conveyed to the Town or to such other governmental agency as herein provided, whether by a conveyance in fee simple or by easement, shall upon construction thereof at any and from time to time, vest wholly in the Town, and the Developer shall have no claims or rights thereto, except as expressly provided herein to the contrary, and the Developer hereby further waives any claim or right pursuant to the Construction Act in respect thereof or the Lands.

### **6.4 Partial Discharges and Postponements**

The Developer shall provide partial discharges of mortgages for each grant in fee simple, and postponements of mortgages for each grant of easement conveyed to the Town.

### **6.5 Additional Easements and Land Dedications**

6.5.1 In addition to the conveyances and easements described in Schedule "H" attached hereto, if in the opinion of the Town additional easements or conveyances are required in connection with or to facilitate the Services, then upon request, the Developer shall convey or cause to be conveyed such additional lands or easements on the same terms and conditions as if the same had been included in Schedule "H" attached hereto, provided such request for any additional land or easement required to be conveyed to the Town shall not include any of the Lands covered by any Structure, and provided further, any request for a conveyance of any part of the Lands in fee simple shall be limited to the obligation of the Developer hereunder and shall not be binding on any purchaser of any Lot on which a dwelling has been erected.

6.5.2 The Developer hereby agrees that it shall obtain from any purchaser of the Lands, or any part thereof, or any Lot, a covenant to grant on any part of the Lands not covered by any Structure such additional easements required for utility or drainage purposes by the Town as the Town may in writing advise. Notwithstanding the aforesaid, registration of this Agreement on title to the Lands shall be deemed to be binding on all successors in the title to the Developer.

### **6.6 Temporary Turning Circles**

The Developer shall grant easements as may be set out in Schedule "H" for use as a temporary turning circle. When the temporary turning circle is no longer required, the Town will release the easement.

### **6.7 Right of Entry and Re-Entry**

6.7.1 The Developer will have reserved unto itself, its successors and assigns, and grants to the Town, its successors, employees, contractors or agents, an easement or license to enter, or re-enter, upon any of the Lands, and any external lands, upon which any Services have been, or are to be constructed, pursuant to this Agreement for the purpose of making emergency repairs to any of the Services contemplated by Schedule "D", or to correct any drainage, or grading problem to

the satisfaction of the Town or to construct, complete or repair any other Services required by this Agreement and which have not been completed by the Developer.

- 6.7.2 Such entry or re-entry, repairing and/or correction will not be deemed an acceptance of any of the services or drainage works by the Town nor an Assumption by the Town of any liability in connection therewith, nor a release of the Developer from any liability in connection therewith or of its liabilities under this Agreement.
- 6.7.3 The Developer hereby agrees that in any agreement for the sale, conveyance, or other disposition of any Lot or any part of the Lands to another person or corporation, the Developer shall obtain from such person or corporation a covenant for a right of entry for a period of twenty (20) years from the date of such conveyance for drainage and grading purposes. Notwithstanding the aforesaid, registration of this Agreement on title to the Lands shall be deemed to have the effect of such reservation and shall be binding on all successors in title to the Developer.

## **PART 7 – PHASING/PRESERVICING**

### **7.1 Phasing**

- 7.1.1 The Lands shall be developed, and building permits for Structures on the Lands shall only be issued, in accordance with the phases and at the times as set out and established in Schedule “C” hereof and on such terms and conditions as set out therein. The Phasing Plan can be modified upon request of the Developer subject to the approval of Council.
- 7.1.2 Required Security must be provided to the Town in accordance with Section 3.1 for the first phase prior to execution of this Agreement, and for each successive phase prior to the registration of the phase.
- 7.1.3 Each successive phase must commence no later than three (3) years from the date of issuance of the Certificate of Maintenance and Final Acceptance for the preceding phase, or as agreed with the Director of Engineering.
- 7.1.4 Notwithstanding anything else contained within this Agreement, no new phase can be developed until all deficiencies within the preceding phase have been completed unless the deficiencies are deemed minor by the Town and, the Developer has provided a written schedule setting out a deadline to complete the deficiencies which has been approved and accepted by the Town. If the deficiencies are not completed in accordance with the approved schedule the Town may proceed to have the deficiencies corrected.

## **PART 8 - CONSTRUCTION**

### **8.1 Commencement of Construction**

- 8.1.1 The Developer shall not commence construction of any Services, except for those already commenced pursuant to a pre-servicing agreement, unless:
- (a) the Plans and Specifications have been approved by the Town Engineer;
  - (b) the Plan has been registered;
  - (c) the Developer has given written notice to the Town Engineer of his intention to commence work, as required by Section 8.4;

- (d) the Developer has notified the Town Engineer of the name of any contractor or contractors to be employed by the Developer in the construction of the Services;
- (e) the Developer has provided the Town Engineer with the Schedule of Works;
- (f) the Developer has entered into an agreement with the County, if required, providing for County requirements to be fulfilled and notification to that effect received from the County;
- (g) the Developer has obtained written approval of the various agencies, as applicable, including, but not limited to the MNR and the MOE (the Certificate of Approval from the MOE for the water supply system, sanitary sewer system and storm sewer system must be submitted to the Town prior to the commencement of construction);
- (h) the Developer has obtained the written approval of the utility companies, as applicable, including hydro, telephone, cable, and gas;
- (i) the Phase I ESA referred to in Section 6.1 has been completed to the satisfaction of the Town, and the Phase II ESA referred to in Section 6.1 has been completed, if required, to the satisfaction of the Town; and
- (j) removal of contaminated soils has been completed in accordance with Section 8.5, unless otherwise approved by the Town Engineer.

8.1.2 The Developer hereby agrees that the Services shall be constructed in a good and workmanlike manner free of any defect, notwithstanding such defect being as a result of faulty workmanship, material or design, so that such Services shall operate for the purpose for which they were intended free of any defects for the duration of the Maintenance Period.

8.1.3 The Developer agrees that it shall maintain and keep current the approvals of all government agencies and utility companies referred to in Subsection 8.1.1 above and that it shall comply with all the requirements of those agencies from time to time.

8.1.4 The Developer shall construct all Services in accordance with the accepted Plans and Specifications and with the conditions contained in Schedule "F" attached hereto. The Developer hereby agrees to construct the Services in accordance with this Agreement including the schedules and to comply with all of the requirements contained in the said schedules.

8.1.5 Should the Town Standards be revised prior to the commencement of a phase the Developer shall revise the Plans and Specifications for that phase to encompass the revised Town Standards. Should the Town Standards be revised following commencement of a phase, the Town Standards as revised may be applied to any construction (including repair) of the Services occurring following the date of the revision, at the discretion of the Town Engineer.

## **8.2 Construction Office**

8.2.1 Any site construction office must be in a location approved by the Town Engineer, and may not be located on land owned by the Town.

8.2.2 Sufficient off-street parking must be provided for any site construction office to the satisfaction of the Town Engineer.

8.2.3 Any materials storage area, in connection with the site construction office or otherwise, must be screened appropriately from public view to the satisfaction of the Town Engineer.

### **8.3 Meetings**

8.3.1 If required by the Town, the Developer shall convene an administrative meeting to be attended by Town Staff, and such parties or individuals as determined by the Town Engineer, including the Town Engineer, the Developer, the Developer's Consulting Engineer, County staff, and Provincial staff to review the requirements of this Agreement prior to commencement of construction.

8.3.2 The Developer shall convene a meeting prior to commencement of construction to be attended by the Developer's Consulting Engineer Town Staff, and such parties or individuals as determined by the Town Engineer including all contractors to be employed on the Lands to undertake the Works, the Town Engineer, County staff, and Ministries staff to review the schedules of construction prepared by the Developer, the methods of construction and the specifications.

8.3.3 The Developer shall convene regular meetings on a schedule determined by the Town Engineer to be attended by the Developer's Consulting Engineer, Town Staff, and such parties or individuals as determined by the Town Engineer including all contractors undertaking Works on the Lands, to review the schedules of construction prepared by the Developer, the methods of construction and the specifications, the extent of the Work undertaken to date, any remedial measures required, and any other matter or thing that the Town Engineer considers appropriate. The Developer shall ensure that adequate facilities are available on the Lands to accommodate these meetings, to the satisfaction of the Town Engineer.

### **8.4 Notice**

8.4.1 The Developer must provide ten (10) days advance written notice to the Town of its intention to commence work.

8.4.2 Should for any reason there be a cessation or interruption of construction for a period exceeding thirty (30) calendar days, the Developer shall provide forty-eight (48) hours written notification to the Town before work is resumed, and the Developer shall in that case convene the meeting described in Subsection 8.3.2.

8.4.3 If construction of the Services has not been commenced within eighteen (18) months after the approval of the Plans and Specifications, or if after commencement, work is interrupted for a period exceeding eighteen (18) months and prior approval for such interruption of work has not been obtained from the Town Engineer, the Town Engineer may revoke the Town's approval of the Plans and Specifications. In the event of the revocation of such approval, the Town Engineer may require the resubmission of Plans and Specifications in accordance with the then current Town Standards and requirements of the Town and other governmental agencies or authorities.

### **8.5 Soil Conditions**

8.5.1 The Town approvals do not verify or confirm the adequacy of soil conditions including soil contamination and the Developer shall indemnify and save the Town harmless from all actions or claims relating to soil conditions on the Lands.

8.5.2 The Developer shall remove from the Lands any material determined to be hazardous to the satisfaction of the Town and the MOE, prior to commencement of construction of any Services unless otherwise permitted by the Town Engineer.



## **8.6 Scheduling the Works**

- 8.6.1 The Developer shall provide a copy of a schedule setting out the order in which the various sections of the Works will be built and the timing for completion of the Works (the "Schedule of Works"), to the Town ten days prior to the commencement of construction of Services. It is the intent of this Agreement that the Works be performed expeditiously and continuously. If the Plan is to be developed in phases, a separate Schedule of Works may be provided for each phase.
- 8.6.2 Upon issuance of a Certificate of Completion and Acceptance of Underground Works by the Town, the Developer must complete all work required for issuance of a Certificate of Completion and Acceptance of Aboveground Works within three (3) years.
- 8.6.3 Upon issuance of a Certificate of Completion and Acceptance of Aboveground Works by the Town, the Developer must complete all work required for issuance of a Certificate of Maintenance and Final Acceptance within three (3) years.
- 8.6.4 The time periods described in Subsections 8.6.2 and 8.6.3 may be extended by the Town Engineer if considered advisable in the sole discretion of the Town Engineer.
- 8.6.5 Failure to fully complete all Services within the period of time described in Subsections 8.6.2 and 8.6.3 shall be deemed to be a default of the Developer pursuant to the terms of this Agreement, and the Town shall be entitled to avail itself of all remedies contained herein with respect to such default. Without limiting the generality of the foregoing, the Town may require that the Developer ceases and desists from doing any further work on the Lands or pursuant to this Agreement, and the Developer hereby agrees to stop work if it receives notice to do so. The aforesaid agreement to stop work refers to any and all construction of any nature or kind whatsoever in connection with the Lands, including the construction of houses or other buildings or Structures on the Lands.
- 8.6.6 Notwithstanding the aforesaid, the Town Engineer shall be permitted to schedule the construction of all Services and in such priority as the Town Engineer in his sole discretion deems advisable, and the Developer hereby agrees to abide by such scheduling as the Town Engineer may from time to time direct.

## **8.7 Additional Works**

If at any time and from time during construction of the Services, the Town Engineer is of the opinion that Additional Works are required to adequately provide for any of the Services referred to, or to properly service the Lands or to provide for the best interest of the Town and its inhabitants, the Developer shall construct such Additional Works as the Town Engineer in writing directs. All Additional Works shall be constructed by the Developer in the same manner as if the same had been Works or Special Works, and without limiting the generality of the foregoing, such Additional Works shall be designed by the Developer's Consulting Engineer at the Developer's expense in accordance with criteria and standards set by the Town Engineer and the design and construction of such Additional Works shall be subject to the approval of the Town Engineer. Provided however the completion of Additional Works shall be on or before a date to be specified by the Town Engineer and shall in any event be completed expeditiously.

## **8.8 Supervision and Inspection of Construction of Services**

- 8.8.1 The Town will make regular site inspections as deemed necessary to ensure that construction methods conform to acceptable engineering practice and in accordance with the approved Plans and Specifications and Town Standards. If in the opinion of the Town, continuous supervision is not being provided or construction is not proceeding satisfactorily the Town may:
- (a) arrange for full-time inspection; or
  - (b) issue a stop work order to the Developer or the Developer's Consulting Engineer.
- 8.8.2 If the Town arranges for full-time inspection this will not relieve the Developer from its separate responsibilities to provide continuous site inspection through the Developer's Consulting Engineer. A copy of this clause must be delivered by the Developer to each and every contractor engaged for construction of the Services.
- 8.8.3 Notwithstanding any acceptance of the Plans and Specifications given by the Town, neither the Town, nor the Town's Engineer will be responsible for the Plans and Specifications. The Developer shall be responsible for the soundness of the engineering design and for ensuring that the Services required to be done will function as intended and contemplated and will be compatible with the final approved subdivision services.
- 8.8.4 If the Developer covers or permits to be covered work that has been designated for special tests, inspections, or approvals by the Town Engineer before such special tests, inspections or approvals have been made, given or completed, the Developer shall, if so directed by the Town Engineer, uncover such work, have the inspection or test satisfactorily completed and make good such work at the Developer's expense. The Town Engineer may order any part or parts of the Services to be specially examined should he believe that such work is not in accordance with the requirements of this Agreement. If, upon examination such work is in the opinion of the Town Engineer found not in accordance with the requirements of this Agreement, the Developer shall correct such work and regardless of any finding as aforesaid the Developer shall pay all expenses in connection with the provisions of this clause.

## **8.9 Work Hours**

- 8.9.1 All work on the Lands will be performed during the permitted hours pursuant to the Town's Noise Control By-law 2009-104.
- 8.9.2 Work on the Lands will be prohibited outside of these hours without prior written approval from the Town.

## **8.10 Signage**

- 8.10.1 The Developer shall erect signs at each entrance of the subdivision and the sign must read "Roads Not Assumed by Municipality - Use at Your Own Risk". The signs are to be in accordance with Ontario Traffic Manual Book 1B, Table 1 Sign Rc with Engineering Grade sheeting and Highway Gothic D upper case lettering.
- 8.10.2 The signs shall include the name of the Developer's Consulting Engineer and a contact telephone number.

8.10.3 The signs must not be removed until the Town has passed a by-law assuming the roads into the municipal road system and the by-law has been registered on title in the Land Registry Office for the County.

8.10.4 The Developer shall erect signs as required by the Town on all public walkways, parks, detention pond facilities and institutional, residential or commercial blocks, as required by the Town Engineer to notify the public of future land use or potential hazards in relation to these undeveloped sites and confirming that the sites have not yet been accepted by the Town and the use of them is at the public's own risk. The exact wording, type of sign and size of the lettering is to be decided by the Town Engineer. The signs must not be removed until the Town Engineer has authorized their removal in writing.

8.10.5 Without limiting the generality of Section 13.9, all signage erected by the Developer shall comply with the provisions of the Sign By-law.

## **8.11 Services**

8.11.1 The Developer shall construct the Works and Special Works described in this Agreement, together with all Additional Works required to be constructed in conjunction therewith, or in addition thereto, as may be determined by the Town Engineer in accordance with the provisions hereof, and in compliance with all Laws, it being understood and agreed that the Works and Special Works enumerated or referred to in this Agreement or the schedules thereto may not be the only works required to be constructed by the Developer.

8.11.2 All of the requisite works required by this Agreement in order to provide services to the Lots or part Lots within the Plan pertain solely to the area within the limits of the Plan unless stated otherwise, and the Works cannot be extended, either in form of aboveground services or underground services beyond the limits of the Plan for any reason, unless specified in this Agreement, or without the prior written approval of the Town.

8.11.3 All Services shall be constructed in accordance with the Plans and Specifications approved by the Town Engineer. Approval of the Town Engineer shall be deemed not to have been given if the Plan has not been registered or if the Plans and Specifications do not comply with all applicable Laws. The Plans and Specifications referred to in Schedule "D" and any other Plans and Specifications approved by the Town Engineer may be amended from time to time, provided such amendments are made on or noted on the approved copies, and such amendments shall not be in effect unless approved by the Town Engineer. All Plans and Specifications, and any other plans, and any other plans or drawings required pursuant to this Agreement of any kind whatsoever, shall be prepared and submitted in accordance with design criteria and standard detail drawings as adopted from time to time by the Town and any elevations on any Plans and Specifications or any other plans required pursuant to this Agreement shall refer and relate to the horizontal/vertical control monuments as referred to therein.

8.11.4 The Developer shall not connect any Services to existing municipal services without the prior written approval of the Town Engineer.

## **8.12 Roads**

8.12.1 No pavement shall be placed upon the streets, or sidewalks or curbs poured until compaction tests have been carried out upon the sub-grade and upon the granular base course by independent consultants appointed by the Town, and such pavement shall be placed upon the streets, and concrete shall be poured for sidewalks and curbs within a time period and in accordance with such conditions as

specified by the Town Engineer after the Town Engineer has received, reviewed, and approved such tests. The Developer shall reimburse the Town for such tests.

8.12.2 The Developer shall raise or lower all valves, hydrants, water boxes, catch basins, manholes and any other Services to the final grade to the satisfaction of the Town Engineer.

8.12.3 The Developer shall maintain the gravel and stone base or the asphalt in a useable condition for vehicular traffic and shall control dust to such a level acceptable to the Town Engineer, and, until such time as the roads have been assumed by the Town, the Developer shall repair any roadway forthwith after having been given notice by the Town Engineer to make repairs. The Developer shall construct all streets that are connected to existing streets and roadways in such a manner as to provide a proper connecting link, including a transitional section. All street signs shall be posted (including the posting of temporary signs) as required by the Plans and Specifications and as directed by the Town Engineer. The Developer shall reimburse the Town for signs at all access points from existing streets to the Lands to advise the public of the current status of the road allowances within the Lands and the cost of the maintenance and replacement thereof if deemed necessary by the Town Engineer.

### **8.13 Parkland Development**

8.13.1 The Developer shall construct all local service components of Parkland works as set out in Schedule "K", to the satisfaction of the Town.

8.13.2 The Developer will seek to complete the Parkland works within the same growing season as the Certificate of Completion and Acceptance for Underground Works is issued for the phase in which the Parkland is located and, if not possible, the Developer shall complete the Parkland during the following growing season.

8.13.3 The Developer shall erect signs on the Parkland stating that "NO ACCESS ALLOWED UNTIL PARK FACILITIES ARE CONSTRUCTED AND APPROVED BY THE TOWN OF ERIN".

8.13.4 The Developer shall ensure that no one deposits any construction materials or refuse on the Parkland and shall remove anything that is deposited within 24 hours of notification by the Town.

### **8.14 Grading and Drainage**

8.14.1 The Developer shall complete the drainage works including all grading, ditches, swales, pipes, apparatus and equipment to service all the Lands within the Plan and adjacent thereto as required by and according to the Plans and Specifications approved by the Town.

8.14.2 The Developer shall maintain the complete drainage system, including clearing any blockage, until issuance of the Certificate of Maintenance and Final Acceptance is issued by the Town.

8.14.3 The Town may connect or authorize connections into the drainage system, and such connections will not constitute acceptance of the drainage system by the Town without issuance of the Certificate of Maintenance of Final Acceptance by the Town.

8.14.4 All Lots and all lands owned by the Developer abutting the Lands shall be graded to drain in accordance with the Plans and Specifications. Until the roads laid out according to the Plan have been expressly assumed by the Town as part of the

Town road system, the Developer shall provide adequate drainage of the surface water from the Lands.

8.14.5 The Developer shall construct all Services in such a manner that no damage shall result by reason of the drainage therefrom or in connection therewith to persons other than the Developer or to property owner by persons other than the Developer. For the purposes of this clause, “persons other than the Developer” shall include successors in title to the Developer.

8.14.6 The Developer shall grant and convey or cause to be granted and conveyed any and all easements required for drainage purposes herein referred to or as may be required from time to time in the discretion of the Town Engineer. If Services are to be constructed to drain the Lands through lands other than the Lands, all such Services shall be designed in a sufficient size for the drainage requirements of an overall drainage area to be determined by the Town Engineer.

### **8.15 Watermains and Service Connections**

8.15.1 All watermains and service connections, as required, must be constructed in accordance with the approved Plans and Specifications and MOE regulations.

8.15.2 The Town may connect or authorize connections into the water system and such connections will not constitute acceptance of the water system by the Town.

### **8.16 Fire Hydrants**

Prior to the Certificate of Completion and Acceptance of Underground Works being issued, the Developer shall undertake through a qualified testing company, watermain flow testing and complete the appropriate colour coding of the fire hydrants in accordance with the Town Standards.

### **8.17 Sanitary Sewer and Service Connections**

8.17.1 All sanitary sewers and service connections as required must be constructed in accordance with the approved Plans and Specifications, and MOE regulations.

8.17.2 The Town may connect or authorize connections into the sanitary sewer system, and such connections will not constitute acceptance of the sanitary sewer system by the Town.

### **8.18 Area Tile Bed and Septic Tank Systems**

All sewage disposal systems must be designed in accordance with the Building Code Act and MOE requirements, where applicable.

### **8.19 Fencing of Parks, Walkways etc.**

The Developer must fence, in accordance with Town Standards, all public walkways, parks, detention pond facilities, institutional and commercial uses and all adjacent lands as shown on the Plans and Specifications set out in Schedule “D”, before the issuance of the Certificate of Maintenance and Final Acceptance for the Plan or a phase thereof if applicable.

## **8.20 Walkway and Pedestrian Paths**

All walkways and pedestrian paths must be developed and constructed in accordance with the Town Standards and with the Plans and Specifications, and linkages must be extended through Town owned lands.

## **8.21 Dead End Barricades**

8.21.1 The Developer shall construct the temporary dead end barricades in accordance with Town Standards as shown on the Plans and Specifications set out in Schedule "D".

8.21.2 The Developer shall, at the Developer's expense, erect permanent type barricades in accordance with such specifications and at such locations as the Town Engineer may in writing direct.

## **8.22 Temporary Turning Circles**

8.22.1 The Developer shall construct the temporary turning circles in accordance with the Town Standards as shown on the Plans and Specifications set out in Schedule "D".

8.22.2 When the temporary turning circle is no longer required the Developer shall remove the temporary turning circle and construct the through road to Town Standards including boulevard works, and Lot grading including, but not limited to, sodding.

## **8.23 Dust and Mud Control**

8.23.1 If for any reason whatsoever, any Person, firm or corporation, their servants and agents, or any unauthorized persons (including trespassers) damage or leave debris or mud in, under, upon or over any of the Services, whether by misadventure, inadvertence, lack of knowledge, intentionally or otherwise, the Developer shall forthwith repair any such Services and remove any debris or mud as the Town Engineer may in writing direct.

8.23.2 At any time before the Certificate of Maintenance of Final Acceptance is issued with respect to the roads, the Developer shall apply dust suppressant approved by the Town Engineer to the roads, or clean the roads if paved, in quantities or at intervals acceptable to the Town, sufficient to prevent any dust or mud problem to traffic, home occupants or road.

8.23.3 The Developer's obligation with regard to dust and mud control applies to both roads within the Plan and roads external to the Plan.

8.23.4 Once occupancy occurs, the Developer shall sweep a minimum of once weekly with a mechanical sweeper approved by the Town. Sweeping must be completed at the end of each week prior to the weekend. Sweeping must continue until all Lots or part Lots in the Plan have been completed with sod.

8.23.5 If the Developer has not taken remedial action within twenty-four (24) hours of receiving a written notification from the Town regarding a dust or mud control problem, related to the development whether internal or external to the Plan, then the Town may employ forces to implement suitable measures of dust or mud control at the Developer's expense.

8.23.6 Upon two (2) notices being issued by the Town pursuant to Subsection 8.23.5, the Town may implement an ongoing weekly street sweeping program as described in Subsection 8.23.4 at the Developer's expense.

## **8.24 Access Roads**

8.24.1 The Town reserves the right to designate point of ingress and egress to the Lands for any purpose whatsoever until Final Acceptance.

8.24.2 All access roads must be maintained by the Developer in good repair during the time of construction.

## **8.25 Road Closures**

8.25.1 No roadway outside the limits of the Plan may be closed without the written consent of the Town.

8.25.2 Following the issuance of the Overall Occupancy Certificate described in Sections 10.1 and 10.2, no roadway within the limits of the Plan may be closed without the written consent of the Town.

8.25.3 Where written consent of the Town is required pursuant to this Section, the Developer shall advise the Town of the date and time it wishes to close a roadway, and a road occupancy permit is required, which may be issued at the Town's discretion.

## **8.26 Damage and Rectification**

8.26.1 The Developer shall repair any damages caused to any existing road, or existing Structure or plant located on the road allowance as a result of the development of the Plan and shall pay for any cost involved in the relocation of the existing service, such as hydrants, telephone poles, etc., which become necessary because of the development of the Plan.

8.26.2 The Developer shall ensure that the Developer's Consulting Engineer arranges for an inspection with Town Staff for the purpose of compiling an inventory of existing conditions prior to work on the Plan. Failing completion of this inventory, Town Staff's assessment of conditions prior to construction will be final.

8.26.3 In the event the Developer has commenced work on the Services, but before the Town has issued a Certificate of Maintenance and Final Acceptance with respect to the Services, and any of the Services fail to function, or do not function properly, or are constructed in such a manner as to cause damage or pose a threat of damage of any nature or kind whatsoever, and in the sole opinion of the Town Engineer, rectification or action is required to prevent damage or hardship to persons or property, the Developer shall, upon the written instructions of the Town Engineer, do all acts and things as are required by the Town Engineer to rectify the condition. In the event the condition as aforesaid is an emergency, or immediate rectification is required, then the Town may take such action and do all such acts and things as are considered necessary and advisable in the place and stead of the Developer, and the Developer shall reimburse the Town for any and all reasonable expenses incurred, whether directly or indirectly by the Town, in connection with the same.

8.26.4 Defective work, whether the result of poor workmanship, use of defective products, or damage through carelessness or other act of commission or omission of the Developer, and whether incorporated in the Services or not, which has been rejected by the Town Engineer as failing to conform with the intent of this Agreement or the Town Standards, shall be removed promptly and replaced or repaired promptly in accordance with the directions of the Town Engineer.

## **8.27 Tidy Condition of the Lands**

- 8.27.1 The Developer shall maintain the Lands in a tidy condition and free from the accumulation of refuse and debris and shall cut all grasses and weeds at any time and from time to time to prevent growth in excess of fifteen (15) centimetres in height.
- 8.27.2 Any construction refuse and debris stored on the Land must be maintained in an orderly and sanitary fashion.
- 8.27.3 Prior to the completion of the development and at other intervals as directed by Town Staff due to accumulation of refuse and debris, proximity to the public, safety or any other reason the Developer shall have all refuse and debris stored on the Lands properly disposed of off-site in compliance with all applicable legislation and municipal by-laws .
- 8.27.4 The Town is not responsible for the removal or disposal of refuse and debris.
- 8.27.5 No refuse or debris is to be deposited or buried on areas or phases of the Plan.
- 8.27.6 If the Developer has not taken remedial action within twenty-four (24) hours of receiving a written notification from Town staff regarding the requirement to dispose of refuse or debris off-site, the Town may employ forces to implement suitable measures to properly dispose of the refuse or debris.
- 8.27.7 When all work is substantially performed pursuant to this Agreement, the Developer shall remove its surplus products, tools, construction machinery, equipment, refuse, and debris from the Lands, including any refuse and debris on the Lands caused by third parties. Notwithstanding the presence of successors in title to the Developer or third parties on the Lands, the Developer shall at all times continue to be responsible for maintaining the Lands in a tidy condition and free from the accumulation of refuse and debris, and the Developer shall remove or cause the removal of any refuse or debris from the Lands and Services or cut grasses and as aforesaid when requested to do so in writing by the Town Engineer. The Developer shall be released from this obligation on a Lot-by-Lot basis only after the unconditional Individual Occupancy Certificate is issued for the Lot.

## **8.28 Preservation of Trees**

- 8.28.1 The Developer must preserve all healthy trees within the limits of the Plan as stipulated by the Town, except for those identified in an approved Tree Preservation Plan for removal.
- 8.28.2 The Town may require the Developer to remove all dead trees, including limbs and stumps from any land which is to be dedicated or transferred to the Town on the Plan. Replacement trees may be required by the Town for dead trees. All such dead trees, limbs and stumps must be disposed of in an authorized disposal site acceptable to the Town. All healthy trees removed by the Developer without the written approval of the Town, and all healthy trees that are damaged, on any land being dedicated or transferred to the Town must be replaced by the Developer to the satisfaction of the Town.
- 8.28.3 The Town may require that any dead trees, or portions of dead trees, including, but not limited to, trees, limbs and stumps, located within the limits of the Plan on lands which are not being dedicated or transferred to the Town in fee simple, be removed by the Developer.



8.28.4 Without limiting the generality of Section 13.9, prior to any tree removal, the Developer must obtain any permits or exemptions required by the County or the Town pursuant to the by-laws of the County or the Town.

8.28.5 In addition to the above requirements, the Developer shall implement the Tree Preservation Plan and any related plans, if applicable, as set out in Schedule "D".

### **8.29 Re-Vegetation**

8.29.1 Removal of vegetation, grading, and soil compaction shall be kept to the minimum necessary to construct the Works. Removal of vegetation shall not occur more than thirty (30) days prior to grading or construction.

8.29.2 If any portion of the Lands have been stripped of topsoil and no construction occurs, or is expected to occur, thereon for a period of one year, the Town may require the Developer to apply topsoil and seed the area.

8.29.3 If the Developer has not taken remedial actions within 24 hours of receiving a written notification from the Town regarding the need to apply topsoil and seed the area, then the Town may implement appropriate actions to apply the topsoil and seed the area as deemed appropriate by the Town.

### **8.30 Siltation and Erosion Control**

8.30.1 The Developer shall provide and maintain all siltation and erosion control facilities during and after construction to the satisfaction of the Town and the MNR.

8.30.2 The Developer shall take any and all necessary steps, to the satisfaction of the Town, to ensure that stormwater flows and sediment wash-off are controlled to the extent that downstream lands and waterways are protected from nuisance and/or damage.

8.30.3 The Developer shall upon request of the Town Engineer, take such erosion control measures and construct such erosion control works as the Town Engineer may in writing direct. Such erosion control measures may, without limiting the generality of the foregoing, include:

- (a) temporary sodding or seeding;
- (b) temporary grading measures;
- (c) use of barriers, fencing and embankments;
- (d) permanent planting, seeding, or sodding;
- (e) use of rip-rap or other similar methods;
- (f) construction of culverts, drains and spillways;
- (g) sedimentation ponds, retention ponds, detention ponds, or siltation ponds.

### **8.31 Underground Works Certificate**

8.31.1 It is intended that the water distribution system, storm sewer system, and sanitary sewer system will be constructed, inspected and approved, and will be operational, before the issuance of building permits. For the purpose of this Subsection, operational means the systems meet all requirements for the MOE and have passed all Town testing procedures. In addition, for the water distribution system,

the MOE requirements are deemed to include all requirements of the safe drinking water standards and the Ontario Water Resources Act.

8.31.2 Prior to issuance of the Certificate of Completion and Acceptance of Underground Works the following are the minimum requirements to be completed:

- (a) base asphalt;
- (b) base curb;
- (c) road granulars;
- (d) hydrants flow tested and colour coded;
- (e) Lots or part Lots pre-graded to no more than 400mm below final grade;
- (f) mail box sites or temporary mail box sites have been installed;
- (g) regulatory traffic and street signs have been installed and applicable by-laws amended by the Town;
- (h) all Underground Works including, but not limited to, sanitary sewer, watermains, storm sewers and storm ponds, tested and approved for operation by the Town
- (i) the Engineered Fill drawings required by Section 9.2; and
- (j) any other item requested by the Town that is reasonably required to complete the Underground Works.

8.31.3 When the Town is satisfied that the Underground Works are substantially completed and the Developer and has supplied the Town with the following:

- (a) a record of accounts paid and a Statutory Declaration that all accounts for Works and materials have been paid except for normal holdbacks and there are no claims for liens or otherwise in connection with work done or materials supplied for or on behalf of the Developer; and
- (b) the Developer's Consulting Engineer has provided a certificate of certification signed by a Professional Engineer, verifying that the Works have been constructed in conformance with the approved Plans and Specifications and best engineering practices;

the Town may issue a Certificate of Completion and Acceptance of Underground Works.

8.31.4 The Certificate of Completion and Acceptance of Underground Works may contain a list of minor deficiencies which have to be corrected by the Developer but which are not considered of sufficient importance to delay the issuance of the Certificate of Completion and Acceptance of Underground Works provided the Developer has provided a written schedule setting out a deadline to complete the deficiencies and the Town has approved and accepted the schedule. If the deficiencies are not completed in accordance with the approved schedule the Town may proceed to have the deficiencies corrected at the Developer's expense.

8.31.5 The Town may withhold the Certificate of Completion and Acceptance of Underground Works if the Developer is in default of any requirements or obligations of this Agreement.

8.31.6 The Maintenance Period for these Underground Works will commence when the Certificate of Completion and Acceptance of Underground Works is issued and continue until the expiry of the Maintenance Period.

8.31.7 Upon issuance of the Certificate of Completion and Acceptance of Underground Works the water supply and waste water collection systems will be operated and managed by the Town in such a manner as the Town deems fit.

8.31.8 The Town shall determine the terms and conditions upon which the water supply and the waste water collection systems will be operated and upon which water will be supplied to and waste water collected from the residents within the Plan.

## **8.32 Aboveground Works Certificate**

8.32.1 When all the Aboveground Works have been completed, except for the surface course of asphalt, the Developer's Consulting Engineer shall notify the Town and request an inspection. Once requested the Town will perform an inspection and arrange for all appropriate agencies and utilities to perform their inspections.

8.32.2 When the Town is satisfied that the Aboveground Works are substantially completed and the Developer has supplied the Town with the following:

- (a) a record of accounts paid and a Statutory Declaration that all accounts for Works and materials have been paid except for normal holdbacks and there are no claims for liens or otherwise in connection with work done or materials supplied for or on behalf of the Developer; and
- (b) the Developer's Consulting Engineer has provided a certificate of certification signed by a Professional Engineer, verifying that the Aboveground Works have been constructed in conformance with the approved Plans and Specifications and best engineering practices;

the Town may issue a Certificate of Completion and Acceptance of Aboveground Works.

8.32.3 The Certificate of Completion and Acceptance of Aboveground Works may contain a list of minor deficiencies which have to be corrected by the Developer but which are not considered of sufficient importance to delay the issuance of the Certificate of Completion and Acceptance of Aboveground Works provided the Developer has provided a written schedule setting out a deadline to complete the deficiencies and the Town has approved and accepted the schedule. If the deficiencies are not completed in accordance with the approved schedule the Town may proceed to have the deficiencies corrected at the Developer's expense.

8.32.4 The two (2) year Maintenance Period will commence when the Certificate of Completion and Acceptance of Aboveground Works has been issued.

8.32.5 The Town may withhold the Certificate of Completion and Acceptance of Aboveground Works if the Developer is in default of any of the requirements or obligations of this Agreement.

8.32.6 Surface course asphalt and any repairs associated with placement of this asphalt will be completed by the Developer when directed to do so by the Town.

## **PART 9 - BUILDING PERMITS**

### **9.1 Issuance**

9.1.1 A Builder will not request issuance of building permits until all of the requirements of this Agreement with respect to issuance of building permits and, specifically this Section, have been met by the Developer.

9.1.2 The Town may refuse the issuance of a building permit for any Structure on any Lot, if:

- (a) the Developer is in default of any of the provisions of this Agreement;
- (b) the Town Engineer has not issued the Certificate of Completion and Acceptance of Underground Works;
- (c) suitable access has not been provided by the Developer sufficient for vehicular traffic to the Lot, including secondary access if required by the Town;
- (d) an adequate supply of water is not available for the Structure;
- (e) a permit or permits from the appropriate authorities for a private sewage disposal system, if applicable, has not been obtained and filed with the Town;
- (f) the Developer has not furnished the Town with satisfactory evidence that the sewer and water facilities required to service the Lot have been completed on the street upon which the Lot fronts, and are connected to the municipal water and sewer system, so as to provide adequate sewer and water services to the Lot;
- (g) an Individual Grade Control Plan has not been filed with the Town, in accordance with Section 9.5;
- (h) all of the conditions contained in Schedule "F" have not been complied with, including any approvals from any other governmental agency;
- (i) the residential blocks and units are not clearly identified with a sign containing the appropriate marking with letters and numbers of at least fifteen (15) centimetres in height at least one (1) metre above the existing grade and located in the middle of the limit of the residential block or unit adjacent to the roadway;
- (j) the applicable provider of hydro-electric services having jurisdiction for electrical services within the Lands has not certified that the Developer has fully complied with its requirements for the provision of:
  - (i) the installation of an underground electric distribution system to adequately service the Lands and all structures to be erected on the lands;
  - (ii) the payment of all fees, charges and costs required to be paid to the said provider to provide for such a system; and
  - (iii) the conveyance of all easements or lands or the execution of all agreements required by the said provider in connection with electric services for the lands and structures to be erected on the Lands;

- (k) the Town Solicitor has not yet certified that the Plan has been registered and that all easements and conveyances required to be conveyed pursuant to this Agreement have been received in satisfactory form and have been registered and that the title with respect to any conveyance is free and clear of any liens or encumbrances and in the case of easements is not subordinate to any liens or encumbrances;
- (l) all dead trees on the Lands have not yet been removed in accordance with Section 8.28.3;
- (m) a curb cut has not been made at the approved location for a driveway to the Lot in a manner and at a location approved by the Town Engineer and the remaining curb and gutter have not been constructed in accordance with the requirements of the Town Engineer. If deemed necessary by the Town or the Town Engineer, the applicant for a building permit shall pay a curb deposit at the time of the issuance of the building permit in an amount and on such terms as determined by the Town;
- (n) all applicable Laws have not been complied with; or
- (o) a Letter of Credit has not been provided to the Town, providing Security in the amount as set out in Schedule "E" for compliance with the provisions of this Agreement relating to the grading and sodding of Lots. The total amount of Security required for the Lands is required prior to issuance of any building permit. The Security required by this Subsection may be released by the Town on a Lot by Lot basis when a Lot Grading Certificate is issued for such Lot.

## **9.2 Engineered Fill Drawings**

- 9.2.1 The Developer shall submit to the Town's Chief Building Official a certificate from the Developer's Consulting Engineer indicating whether any dwelling unit on Lots or part Lots will be constructed on engineered fill.
- 9.2.2 The Developer shall provide, prior to the application for a building permit on engineered fill Lots, a detailed plan outlining the depth of fill by contours overlaid on the Lot fabric. The plan must be in a format acceptable to the Town's Chief Building Official.

## **9.3 Lots Unsuitable for Building**

- 9.3.1 The Lots or part Lots as set out on Schedule "I" are unsuitable for building and the Developer will not request a building permit until the Restriction has been released.
- 9.3.2 The Developer shall register any Restriction described in Schedule "I", pursuant to Section 118 or 119 of the Land Titles Act, prohibiting the transferring of these Lots or part Lots without the consent of the Town and/or providing that these Lots or part Lots are not to be built upon without the consent of the Town. The Town will not provide consent until the items set out on Schedule "I" for each Lot or part Lot have been completed to the satisfaction of the Town.

## **9.4 Firebreak**

- 9.4.1 The units as set out on Schedule "I" are designated as firebreak units ("Firebreak").
- 9.4.2 The Town's Fire Prevention Officer may designate additional units as Firebreak.

- 9.4.3 Notwithstanding that a building permit may have been issued by the Town for a Firebreak, the dwelling unit to be built on the Firebreak must be constructed only to the point where it is left capped at the sub-floor level at grade until such time as the exterior of both dwelling units adjoining the Firebreak are substantially finished including the installation of cladding, roofing and windows, at which time the Town's Fire Prevention Officer may issue a "Firebreak Certificate".
- 9.4.4 All units within the Plan designated as Firebreak must have a minimum lot width of 12 metres. If the Lots on the Plan are less than 12 metres in width due to the approval by the Town of townhomes, link homes, or semi-detached homes, or otherwise, a double foundation must be used as the Firebreak so that two units combined are designated as one Firebreak and capped as set out above.
- 9.4.5 A Firebreak change will only be effective once a Firebreak Certificate has been issued by the Town's Fire Prevention Officer.
- 9.4.6 No construction beyond a capped foundation as described above will commence on a designated Firebreak Lot prior to the issuance of a Firebreak which will be issued by the Town's Fire Prevention Officer releasing the Lot from the designation of a Firebreak Lot.
- 9.4.7 The Developer shall post a 0.6 metre by 0.6 metre sign at the lot frontage of each Firebreak clearly indicating that such unit is a Firebreak and such sign shall remain posted until the issuance of Firebreak Certificate for that unit.

## **9.5 Conformity with Grading**

- 9.5.1 The Developer agrees that prior to the application for any building permit for any Structure on the Plan, it will prepare and have approved by the Town Engineer an Individual Grade Control Plan for all Lots. Prior to submission to the Town, the Individual Grade Control Plan is to be reviewed by the Developer's Consulting Engineer and certified by the Developer's Consulting Engineer with respect to the Town's grading criteria as well as compliance with good engineering practice. The Individual Grade Control Plan shall show all details required by the Town Engineer, and without limiting the generality of the foregoing, shall show:
- (a) all existing and final grades at all corners of the Lot and all intermediate points of grade changes;
  - (b) all original contours;
  - (c) driveway grades along both sides of the driveway (percentage grades);
  - (d) driveway widths at curb line, property line and garage;
  - (e) proposed locations for building envelopes, envelopes for private sewage disposal systems, and private water supply systems;
  - (f) proposed top of foundation and garage slab grades, as well as footing elevations and bottom of foundation;
  - (g) all proposed finished front yard grades at building line for the Lot and finished floor grades and the lowest basement elevation for any proposed Structure on the Lands;
  - (h) the proposed direction of the rear yard drainage with any swales and rear yard catch basins required for any Lot;
  - (i) retaining devices;

- (j) slope details, percentage of fall;
- (k) swales;
- (l) cross-sections in significant locations;
- (m) surface runoff pattern;
- (n) sidewalk and walkway locations;
- (o) servicing structures such as transformer and terminal boxes, hydrants, street light poles, etc.;
- (p) all fencing, acoustical barriers, and/or berms required by the terms of this Agreement;
- (q) location and invert elevations of storm and sanitary laterals;
- (r) location of proposed easements;
- (s) the extent of engineered fill;
- (t) the location of the horizontal/vertical control monuments as designated by the Town Engineer; and
- (u) all embankments required to effect the grading.

9.5.2 The Developer agrees to operate a grade control program to the satisfaction of the Town Engineer to ensure that all proposed development on the Lands conforms with the intent of the approved Individual Grade Control Plans. In the event, in the opinion of the Town Engineer, the Developer is not conforming with an Individual Grade Control Plan, the Town Engineer may issue a work order specifying what changes alterations, or corrections the Developer is required to make. Failure to make such changes, alterations or corrections forthwith upon demand, or within a period of time prescribed by the Town Engineer, shall be deemed to be a default by the Developer under the terms of this Agreement.

9.5.3 The Developer shall provide that all foundation weeping tiles of any Structure constructed on a Lot shall be connected to a storm sewer system or drainage system or otherwise constructed in such a manner to be approved by the Town Engineer.

9.5.4 The Town may permit the Developer to revise a portion of a submitted detailed Individual Grade Control Plan if:

- (a) in the opinion of the Town, such changes result in the purchaser homeowner receiving greater usability of the Lot; and
- (b) there are no adverse drainage impacts from such changes.

9.5.5 A Lot Grading Certificate will be issued by the Town's Engineer when the following conditions have been met:

- (a) Lot grading is completed in accordance with the Town Standards and the approved Individual Grade Control Plan which includes sodding, paving to the garage and installation of retaining walls, where applicable; and

- (b) a lot grading certificate has been provided by the Developer's Consulting Engineer

(a "Lot Grading Certificate").

9.5.6 Lot grading for each Lot shall be completed within twelve months of issuance of an occupancy permit for that Lot pursuant to the Building Code Act.

9.5.7 If the Lot grading has not been completed within the aforementioned timeframe, the Town may have the Lot grading completed at the Developer's expense. Further, the Town shall retain security for the cost of grading each Lot, which will not be released until the Town Engineer has issued a Lot Grading Certificate for said Lot and one winter and one spring has passed.

## **9.6 Water Meters and Remote Reading Units**

9.6.1 Every dwelling unit must have a water meter and remote reading unit which will be purchased from the Town by the Builder. Every dwelling unit must have a back flow prevention valve installed and where appropriate, at the sole discretion of the Town, a pressure reduction valve installed.

9.6.2 All registration apparatus will be installed by the Town, attached to the service line immediately following the stop and drain valve.

## **9.7 Architecture**

9.7.1 The Developer acknowledges that the Lands are subject to architectural controls as may be set out in the schedules to this Agreement.

## **9.8 Site Plan Control**

9.8.1 The Lots listed in Schedule "J" are subject to Site Plan Control pursuant to section 41 of the Planning Act. A Site Plan Agreement is required with the Town prior to development of these Lots.

9.8.2 Where there is a conflict between the provisions of this Agreement and a Site Plan Agreement referred to in this Section, the provisions of the Site Plan Agreement shall prevail.

## **PART 10 – OCCUPANCY CERTIFICATES**

### **10.1 Two Stage Occupancy Certificates**

10.1.1 Despite anything within this Agreement to the contrary, and despite any provisions of the Building Code Act, no dwelling units erected on the Lots or part Lots within the Plan shall be occupied for any purpose whatsoever until the Town has issued an Overall Occupancy Certificate as well as an Individual Occupancy Certificate.

10.1.2 Neither the Overall Occupancy Certificate nor the Individual Occupancy Certificate are the same as, and are required in addition to, the occupancy permit required pursuant to the Building Code Act.

10.1.3 The Developer hereby covenants and agrees to advise any purchaser of any Lot or residential unit of the requirements pertaining to the Overall Occupancy Certificate and Individual Occupancy Certificates as herein contained, and hereby further covenants and agrees that in any agreement whereby the Developer purports to sell, convey, transfer, assign, lease or otherwise deal with any Lot or residential unit, the Developer shall obtain an acknowledgement from the other party to such an agreement that such other party is aware of the provisions of this Agreement



pertaining to the Overall Occupancy Certificate and Individual Occupancy Certificates. In the event the Developer does not obtain such an acknowledgement, the Developer shall be deemed to be in default pursuant to the terms of this Agreement. The Developer, forthwith after receipt of a copy of such acknowledgement shall file a true copy thereof with the Town Solicitor.

## **10.2 Overall Occupancy Certificate**

10.2.1 The following are the requirements for the Overall Occupancy Certificate to be issued by the Town:

- (a) the Town Engineer has reviewed the completion of the Works and certified that the development has been completed to a level acceptable to the Town to permit occupancy. Despite the foregoing, the Town reserves the right to restrict occupancy or impose conditions in order to relieve the Town from any problems arising from occurrence of occupancy before the issuance of the Certificate of Completion and Acceptance of Aboveground Works;
- (b) electrical supply services, street lights, telephone lines and gas services have been installed and approved by the Town Engineer;
- (c) any required reconstruction of existing roads and repairs to roads have been completed and approved by the Town Engineer;
- (d) any acoustical or safety items are installed, as required by the Town Engineer;
- (f) fencing of open space has been Installed, as required by the Town Engineer;
- (g) the Chief Building Official has been advised by Director of Fire Services (Fire Chief) and Emergency Management that there is an adequate water supply for firefighting operations and acceptable access for firefighting equipment is available;
- (f) the Developer is not in default of any of the provisions of this Agreement.

10.2.2 The Overall Occupancy Certificate may provide that its issuance is conditional upon any matter or thing stated in such Overall Occupancy Certificate, and that in the event such conditions are not complied with, then in the discretion of the Town Engineer, the Overall Occupancy Certificate may be revoked.

10.2.3 The Overall Occupancy Certificate may provide for the posting of Security upon the issuance of the Overall Occupancy Certificate to provide for the completion of certain matters or things, and without limiting the generality of the foregoing, such matters or things may include the following:

- (a) the construction of Services; and
- (b) any other matter or thing being a requirement of this Agreement or with respect to compliance with any Laws.

## **10.3 Individual Occupancy Certificate**

10.3.1 The following are the requirements for an Individual Occupancy Certificate to be issued by the Town:

- (a) an Overall Occupancy Certificate has been issued that applies to the Lot;

- (b) connection of water services, sanitary sewers or private sewage disposal system, storm drainage, or such other services as are applicable to the Structure or Lot have been completed to the satisfaction of the Town Engineer;
- (c) hydro-electric services are connected to the Structure and all requirements of the applicable hydro-electric service provider have been complied with, with respect to the Lot;
- (d) all roof drainage and foundation weeping tiles of the Structure have been completed to the satisfaction of the Town Engineer;
- (e) the Structure has been constructed in accordance with all plans in respect of which a building permit was issued and in compliance with the Building Code Act and in the opinion of the Town's Chief Building Official, the Structure is not habitable;
- (f) the driveway to the Structure is constructed pursuant to the provisions of this Agreement and Town Standards to the satisfaction of the Town Engineer;
- (g) the Lot has been topsoiled, sodded or seeded in accordance with the requirements of this Agreement, to the satisfaction of the Town Engineer;
- (h) a Lot Grading Certificate has been issued pursuant to Subsection 9.5.5 of this Agreement. If the Lot grading is not completed prior to issuance of an Individual Occupancy Certificate, the Developer's Consulting Engineer must provide certification that the Lot for which an Individual Occupancy Certificate has been issued, has a base grade, swales and that all slopes are graded to conform to the Individual Grade Control Plan and minimum engineering design standards to the satisfaction of the Town Engineer;
- (i) the house number allocated by the Town has been affixed to each dwelling unit, in accordance with Town By-laws;
- (j) all work on the Lot has been done in accordance with site plan approval as referred to in Section 9.8 hereof;
- (k) The Developer is not in default of any of the provisions of this Agreement.

10.3.2 An Individual Occupancy Certificate may provide that its issuance is conditional upon any matter or thing stated in such Individual Occupancy Certificate, and that in the event such conditions are not complied with, then in the discretion of the Town Engineer, the Individual Occupancy Certificate may be revoked.

10.3.3 An Individual Occupancy Certificate may provide for the posting of Security upon the issuance of the Individual Occupancy Certificate to provide for the completion of certain matters or things, and without limiting the generality of the foregoing, such matters or things may include the following:

- (a) the completion of the Structure, as required by the Building Code Act;
  - (b) the construction of Services;
  - (c) the rectification or completion of any grading, sodding or seeding of the Lot;
  - (d) finishing of the driveway;
  - (e) exterior painting of the Structure or other external finishing of the Structure;
- and

- (f) any other matter or thing being a requirement of this Agreement or with respect to compliance with any Laws.

## **PART 11 – MAINTENANCE**

### **11.1 Maintenance Period**

11.1.1 The Developer covenants and agrees to keep in a proper state of repair and operation all Services from the date of issuance of the Certificate of Completion and Acceptance of Underground Works until the issuance of the Certificate of Maintenance and Final Acceptance by the Town. The Certificate of Maintenance and Final Acceptance shall not be issued until at least two (2) years after issuance of the Certificate of Completion and Acceptance of Aboveground Works.

11.1.2 The obligation in Subsection 11.1.1 includes the obligation to repair and maintain and if necessary replace all Services.

### **11.2 Maintenance of Services**

Without limiting the generality of any of the foregoing, the Developer hereby agrees to perform maintenance during the Maintenance Period as follows:

- (a) to rectify, replace, or repair any Services not constructed in accordance with the approved Plans and Specifications or in accordance with the “as constructed” drawings provided by the Developer upon completion of construction;
- (b) to maintain all roads within the Plan in a mud and dust free condition and free of debris and obstructions and without limiting the generality of the foregoing, the Developer shall continue to implement the dust and mud control measures contained in Section 8.23 of this Agreement including but not limited to the weekly street sweeping program;
- (c) to cut all grasses and weeds on the Lands that are not occupied at any time and from time to time to prevent growth in excess of fifteen (15) centimetres in height, except with respect to those portions of the Lands that are designated as natural environmental areas;
- (d) to do all maintenance and repairs as the Developer may be directed to do in writing by the Town Engineer;
- (e) to ramp with asphalt all manholes and catch basins and appurtenances on the roadway until the application of the final coat of asphalt, or set the manholes level with base course asphalt and raise the manholes to finished grade to the satisfaction of the Town Engineer;
- (f) to re-ramp all manholes and catch basins and raise or lower all valves, hydrants, water boxes and any other Services as may be required and in accordance with the directions of the Town Engineer;
- (g) to plug all openings in the building drains to prevent the entry of earth or any foreign materials into any storm or sanitary sewer;
- (h) to keep visible, replace and obtain all water boxes, survey stakes, and any other Services required to be kept visible and maintained pursuant to this Agreement, or as directed by the Town Engineer;
- (i) to rectify and repair all settlements, depressions or any other defects on the roadway;

- (j) to provide curb depressions adjacent to any approved driveway entrance to a roadway, and to replace any original depressions not required or approved with curbs in accordance with the specifications of the Town Engineer;
- (k) to keep clear of snow and ice any roadways that provide access to dwellings constructed within the Plan, including a secondary means of access if required by the Town;
- (l) to keep all catch basins free and clear of snow, ice, or other material such that the catch basins will accept run off from the roads and that no ponding will occur on the roads.

### **11.3 Maintenance Work by Town**

11.3.1 Notwithstanding the provisions of Sections 11.1 and 11.2, the Town may in its sole discretion perform some of the maintenance obligations for or on behalf of the Developer, at the Developer's expense. The Town shall not be responsible for any damage to Services as a result of this work, and in the event that the Town damages its equipment as a result of the failure of the Developer to keep the Services in a proper state of maintenance and repair, or as a result of any breach by the Developer of the terms of this Agreement, the Developer shall pay all costs and expenses for the repair or replacement of such equipment. Nothing herein shall be construed as maintenance by the Town for any purpose, including for the purposes of creating any statutory duty on the Town for the maintenance of public highways or with respect to the Assumption of the roadways, it being understood and agreed that the Town status in this capacity is as a sub-contractor or agent of the Developer and not as a municipality.

11.3.2 If during any Maintenance Period provided herein, in the opinion of the Town or the Town Engineer, the Developer is not adequately performing its obligations pursuant to this Agreement, or such obligations are not being performed expeditiously or in the best interests of the Town, the Town may, without prior notice to the Developer, enter upon the Lands and repair, replace or otherwise maintain the Services at the Developer's expense.

11.3.3 Once the Town energizes the street lights, the Town will perform maintenance with respect to the street light fixtures including, but not limited to, light bulb replacement. All costs associated with maintenance of the street lights, including the energy costs of operating the street lights, shall be at the developer's expense until issuance of the Certificate of Maintenance and Final Acceptance.

### **11.4 Winter Maintenance**

11.4.1 The Developer is responsible for completing snow removal and sanding of the roads and sidewalks within the Plan until the Overall Occupancy Certificate has been issued.

11.4.2 After the Overall Occupancy Certificate has been issued and until the Certificate of Maintenance and Final Acceptance has been issued, the Town will provide snow removal and sanding of the roads and sidewalks within the Plan to the Town's Maintenance Standards, at the Developer's expense.

11.4.3 After issuance of the Overall Occupancy Certificate, the Town will bill the Developer in the fall of each year for the cost of the snow removal and sanding for the upcoming year.

- 11.4.5 Upon issuance of an occupancy permit under the Building Code Act with respect to the Structure to be built on a Lot, payment for winter maintenance for a Lot shall become the responsibility of the owner of the Lot through municipal taxes.
- 11.4.6 The Town is acting as agent for the Developer when performing snow removal and sanding, or any other winter maintenance work, and the Town and its agents, employees, officers and contractors, will not be responsible for any damage that occurs or for any losses that arise from its performance or non-performance of these items.
- 11.4.7 Until the Certificate of Maintenance and Final Acceptance has been issued, the Developer shall be responsible for ensuring that all catch basins are free and clear of snow, ice or other material such that they will accept run off from the roads and that no ponding will occur on the roads.
- 11.4.8 The Developer shall ensure that all construction materials, refuse and debris are kept at least three metres outside the limits of the roadway curbing from November 1 to March 31 of each year.

## **PART 12 – ACCEPTANCE**

### **12.1 Final Acceptance of Services**

- 12.1.1 Upon the Town being satisfied that the Services required to be constructed pursuant to this Agreement have been constructed in compliance therewith, and that such Services are able to perform the function for which they were intended, and upon the termination of the Maintenance Periods, and upon maintenance of the said Services having been carried out to the satisfaction of the Town Engineer, and upon compliance with all Laws, and upon the Town having considered this Agreement and all of the terms and conditions contained herein, then the Town may issue a Certificate of Maintenance and Final Acceptance of such Services (“Final Acceptance”) whereupon, except as to matters intended to survive such event, or unless otherwise agreed to in writing, the Developer shall be released from any further obligations pursuant to this Agreement with respect to such Services for which the Certificate of Maintenance and Final Acceptance has been issued.
- 12.1.2 The Town may refuse to issue a Certificate of Maintenance and Final Acceptance unless:
- (a) the Developer has complied with all of the provisions of this Agreement and is not in default pursuant to any of the provisions of this Agreement;
  - (b) the Developer has complied with all applicable Laws;
  - (c) the Developer has furnished a current statutory declaration to the Town whereby the Developer declares that he has paid all accounts that are payable in connection with the construction of the Services and that there are no outstanding claims or liens with respect thereto;
  - (d) the Town has received from an Ontario Land Surveyor a current certificate certifying that he has found or replaced all standard iron bars and all monuments for school blocks, park blocks, easements, walkways and conveyances for general municipal purposes shown on the Plan as registered and as shown on any reference plan prepared for the purposes of any easements required pursuant to this Agreement;

- (e) the Developer's Consulting Engineer has provided the Town with a certificate certifying that the Services have been constructed in conformity with this Agreement and in accordance with the Plans and Specifications, subject to any variation or amendment as approved in writing by the Town or the Town Engineer as the case may be;
- (f) the Developer has supplied to the Town the original engineering drawings for the Services, to show the final "as constructed" conditions; two sets of the final "as constructed" drawings have been provided to the Town on Mylars; the drawings have also be provided to the Town by digital submission (all drawing changes occurring throughout the approvals process incorporated into the digital submission using the line accuracy and layer standard required by the Town);
- (g) the Developer has supplied to the Town such additional surveys, plans, conveyances, easements, and documents requested by the Town;
- (h) the Town has issued Lot Grading Certificates pursuant to the provisions of Section 9.5 hereof for not less than eighty-five (85) percent of the Lots with the phase. On those Lots for which Lot Grading Certificates have not been issued, either a building permit must have been issued or the grading for the said Lot must be in accordance with the overall grade control plan set out in the Plans and Specification and the said Lots must be sodded or seeded to the satisfaction of the Town Engineer; and
- (i) the requirements of the County have been completed.

**PART 13 - GENERAL**

**13.1 Covenants**

All obligations contained in this Agreement, although not expressed to be covenants, are deemed to be covenants.

**13.2 Performance of Covenants**

Any action taken by the Town, or on its behalf pursuant to this Agreement, is in addition to, and without prejudice to any Security or other guarantee given, on behalf of the Developer, for the performance of its covenants and agreements herein and upon default on the part of the Developer hereunder.

**13.3 No Duress**

The acknowledges and agrees that the Developer is under no economic duress or any other form of duress in entering into this Agreement.

**13.4 No Fettering of Discretion**

Notwithstanding any other provisions of this Agreement, none of the provisions of this Agreement, including a provision stating the parties' intention, is intended to operate, nor will have the effect of operating, in any way to fetter either the Council which authorized the execution of this Agreement or any of its successor councils in the exercise of any of Council's discretionary powers, duties or authorities. The Developer will not obtain any advantageous planning or other consideration or treatment by virtue of it having entered into this Agreement or by virtue of the existence of this Agreement.

### **13.5 Agreement Not To Be Called Into Question**

13.5.1 The Developer will not call into question, directly or indirectly, in any proceeding or action in court, or before any administrative tribunal, the Town's right to enter into and enforce this Agreement.

13.5.2 The law of contract applies to this Agreement and the parties are entitled to all remedies arising from it, notwithstanding any provision of section 51 of the Planning Act, interpreted to the contrary.

### **13.6 Extension of Time**

Time shall at all times be of the essence in this Agreement. Any time limits specified in this Agreement may be extended with the consent in writing of both parties, but no such extension of time will operate or be deemed to operate as an extension of any other time limit. Time will remain of the essence in this Agreement notwithstanding any extension of any time limit.

### **13.7 Severability**

If any of the provisions of this Agreement or the application thereof to any Person or circumstances are found by a court of competent jurisdiction to be unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other Persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by Law.

### **13.8 Governing Law**

This Agreement is made pursuant to and will be governed by and construed in accordance with the laws of the Province of Ontario and will be treated in all respects as an Ontario contract.

### **13.9 Other Applicable Laws**

Nothing in this Agreement will relieve the Developer from compliance with all applicable municipal by-laws, laws and/or regulations or laws and/or regulations established by any other governmental body which has jurisdiction over the Lands.

### **13.10 County Approval**

Where applicable, and notwithstanding anything else herein contained, the Developer shall obtain such additional approvals as may be required to be obtained from the County, and until such approvals have been obtained, the Developer shall not commence construction of any Services requiring such approval, nor shall the Town be required to issue any building permits or Occupancy Certificates until such approvals have been obtained.

### **13.11 Voiding the Agreement**

In the event that the Plan is not registered within two (2) years, from the date of signing this Agreement by the Town, the Town may declare this Agreement to be void.

### **13.12 Successors and Assigns**

Subject to the restrictions on assignment hereof by the Developer, this Agreement shall remain on title and will be enforceable by and against the parties, and shall enure to the benefit of and be binding upon the respective successors and assigns

of each of the parties hereto. If a party hereto is an individual, this Agreement shall further be binding upon the respective heirs, executors, legal representatives and administrators of such individual. "Successors and assigns" shall include and successor in title to the Developer as if such successor in title had entered into this Agreement in the place and stead of the Developer, and in the event of more than one successor in title to the Developer, or successors in title to part of the Lands, all of such parties collectively shall be deemed to be the Developer pursuant to the terms of this Agreement. For greater certainty, it is intended that the obligations of the Developer shall also be binding upon all of the successors in title to the Developer of the Lands save and except any Lands conveyed to the Town, but no conveyance to any successor in title shall relieve the Developer of its obligations pursuant to this Agreement, except as permitted by Subsection 2.15.2 above.

### **13.13 Counterparts**

This Agreement may be executed electronically and in one or more counterparts, which together shall be deemed to be an original and such counterparts together shall constitute but one and the same instrument. Such counterparts may be delivered by electronic transmission.

*[The rest of this page is intentionally blank]*





**SCHEDULE "A"**

**LEGAL DESCRIPTION OF LANDS**

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

**PIN XXXXX-XXXX (LT)**

**SCHEDULE "B"**

**APPROVED REDUCED COPY OF THE PROPOSED M-PLAN**

See attached.

**SCHEDULE "C"**  
**SCHEDULING OF PHASES**



## SCHEDULE "E"

### COST ESTIMATE OF WORKS AND SECURITIES

[insert chart of cost estimates and total security]

Note:

If the above security is not sufficient to rectify any default, the Town may recover from the Developer all costs and expenses incurred by the Town, whether directly or indirectly, with respect to the default of remedy thereof.

The estimates contained in this Schedule are for information purposes only and shall not restrict the rights of the Town, as set out in Section 3.2 of this Agreement, to draw on the cash or Letter of Credit up to the full remaining balance thereof to rectify any default (based on the full total cost as noted above) as set out therein, nor to require any increase in said Security as set out therein.

## SCHEDULE "F"

### ADDITIONAL CONDITIONS

#### Town Standards

1. All Services required to be constructed, installed, erected or otherwise provided pursuant to this Agreement shall be designed, constructed and maintained in accordance with the following Town Standards:

(a) [ntd: insert applicable standards].

#### Urban Design Guidelines

2. The Developer agrees to:
  - (a) implement the approved Town of Erin Community & Architectural Design Guidelines, Urban Design Guidelines, for the Villages of Erin & Hillsburgh prepared by The Planning Partnership dated April 2021, as approved by the Town (the "Urban Design Guidelines");
  - (b) retain or engage a urban design reviewer, control architect or architectural design guidance consultant ("Design Guidance Consultant") to the satisfaction of the Town who will be responsible for ensuring that the buildings and structures to be constructed within the Lands are constructed in accordance with the Urban Design Guidelines;
  - (c) ensure that prior to the submission of individual building permit applications the Design Guidance Consultant has confirmed that the drawings have complied with the Urban Design Guidelines as outlined in Section XXX Architectural Control Process;
  - (d) retain or engage another professional Design Guidance Consultant if the Town's periodic review of compliance with the Urban Design Guidelines demonstrates an inadequate enforcement of such guidelines by the Design Guidance Consultant; and
  - (e) obtain the prior written approval of the Town for any minor modifications to the proposed buildings and structures from the Urban Design Guidelines.

#### 3. Utilities

The Developer agrees that hydroelectric, telephone, gas and television cable services, and any other forms of telecommunication services shall constructed at no cost to the Town as underground facilities within the public road allowances or within appropriate easements as approved on the composite utility plan, to the satisfaction of the Town and authorized agencies and utilities.

The Developer shall enter into any agreement(s) required by any applicable utility companies, including Hydro One, Enbridge, telecommunications companies, etc.

#### 4. Canada Post

The Developer agrees to facilitate the construction of Canada Post facilities at locations and in manners agreeable to the Town in consultation with Canada Post, and that where such facilities are to be located within public right of ways, they shall be approved on the composite utility plan and be in accordance with Town Standards.

**SCHEDULE "G"**  
**ADDITIONAL COSTS**



**SCHEDULE "H"**

**CONVEYANCES AND EASEMENTS**

**1. Easements**

**1.1 Drainage and Servicing Easements**

The Developer covenants and agrees that such drainage and servicing easements as may be required for access, utilities, servicing, drainage, and construction purposes, road widenings, road purposes or other municipal requirements shall be obtained and granted at the sole cost and expense of the Developer to the appropriate authority and shall be in the form as may be required by the appropriate authority or the Town Solicitor.

**1.2 Easements to the Town for Grading and Drainage**

The Developer shall provide to the Town a general license and easement for grading and drainage purposes for twenty (20) years for Lots/Blocks XXX on the Plan.

**1.3 Specific Easements to the Town for Municipal Purposes**

R Plan	Schedule
<b>Plan 51-</b> (Dwg # XXXXXXXXX)  [NTD: list Parts on R-plan and purpose of easement]	

**1.4 Utility Easements**

Utilities (telecommunications, Hydro, Gas, Cable TV, etc.) to be located within the road allowance at the locations shown on the typical road cross-section, approved as part of the Plans and Specifications. Easements for utilities located other than on road allowances, shall be provided by the Developer at site plan stage at such other locations as may be approved by the Town Engineer.

**1.5 Building Permits**

No building permits shall be issued until all the easements required to permit construction of the Services and the applicable utilities have been approved by the Town Engineer and the Town Solicitor and registered on title by the Town.

**2. Public Highways**

The public roads to be constructed, shown as \_\_\_\_\_ on the Plan, shall be conveyed and dedicated to the Town as public highways at no cost to the Town and free and clear of all liens and encumbrances.

3. **Conveyances**

3.1 The Developer shall convey or cause to be conveyed the following to the Town:

(a) ;

(b) ; [NTD: insert Blocks to be conveyed and purpose]

**SCHEDULE “H-1”**

[NTD: insert draft R-Plans for required easements as Schedules H-1, H-2, etc.]

**SCHEDULE "I"**  
**RESTRICTED BLOCKS**

**1. Firebreak**

The following Lots are Firebreak:

**SCHEDULE "J"**

**BLOCKS SUBJECT TO SITE PLAN CONTROL**

The following Blocks are subject to Site Plan Control:

**SCHEDULE "K"**  
**PARKLAND WORKS**

**SCHEDULE "L"**

**ACKNOWLEDGEMENT BY DEVELOPER AND DEVELOPER'S CONSULTING ENGINEER**

TO: The Corporation of the Town of Erin ("Town")  
FROM: \_\_\_\_\_  
(the "Developer")  
AND FROM: •, ("Developer's Consulting Engineer")  
RE: Draft Plan of Subdivision, \_\_\_\_\_ ("Plan")

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IN CONSIDERATION of the sum of two dollars (\$2.00) and other valuable consideration paid by the parties to each other, the receipt of which is hereby acknowledged, the Developer's Consulting Engineer and the Developer mutually agree that the Developer's Consulting Engineer shall act as the Developer's representative in all matters pertaining to the Plan. The Developer's Consulting Engineer acknowledges that he is aware of the terms of this Agreement and undertakes to provide the Town with thirty (30) days' notice before withdrawing his services.

The undersigned hereby acknowledge having read and understood the contents of the within Acknowledgement and agree to be bound by the terms of this Acknowledgement.

DATE: \_\_\_\_\_

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

DATE: \_\_\_\_\_

•

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

## **SCHEDULE "M"**

### **WARNINGS AND NOTICES**

The Developer shall ensure that the following Warnings and Notices are included in all Agreements of Purchase and Sale for the Lots or part Lots and further that said agreements shall require all subsequent Agreements of Purchase and Sale to contain the same. In any event the Developer undertakes to deliver forthwith to all prospective purchasers who have executed Agreements of Purchase and Sale notices in substantially the same form as below and further to use its best efforts to obtain acknowledgements executed by the same prospective purchasers on or before sale or transfer of any Lot or part Lot to the purchaser. All Agreements of Purchase and Sale shall include information which satisfies subsection 59(4) of the Development Charges Act. In addition, prospective purchasers are also hereby warned as follows:

#### ***Occupancy***

Occupancy of any dwelling units within this development is illegal unless an Occupancy Certificate has been obtained the Town of Erin.

#### ***Development Charges***

Purchasers are advised that this plan of subdivision is subject to the provisions of the Development Charges Act, as amended, and development charge by-laws applicable to the lands from time to time. Development charges for dwelling units are payable at the time of issuance of the building permit and therefore, pursuant to the by-law, are subject to increase until building permits are actually issued. The Town may refuse the issuance of building permits for any dwelling for which the development charge has not been paid. In addition, the Town may add unpaid development charges to the tax roll for the property and may collect such amounts as taxes.

#### ***Storm Water Facilities***

Purchasers and tenants are advised that lands within \_\_\_\_ shall be used for a stormwater management facility. The said lands will contain stormwater management facilities which at times may retain a level of water that may be dangerous to unattended children or to other persons not adequately supervised.

Neither the Developer nor the Township shall be responsible to provide any supervision of any kind on the said lands nor on the stormwater management facilities. Purchasers and tenants agree to release, indemnify and save harmless the Developer and Township from any and all claims arising from the use or occupation of said lands.

#### ***School Development***

Students from the development will have to attend existing schools. The School Boards may or may not provide bussing. If bussing is provided, students will be required to meet the school bus at a designated place convenient to the School Board.

#### ***Postal Service***

Purchasers or tenants are advised that door-to-door postal service will not be available within this plan of subdivision.

Purchasers or tenants are advised that a community super mail box or group mail box will be located on the boulevard within the public road allowance and along private road locations within development blocks.

#### ***Park Development***

Purchasers or tenants are advised that the adjacent Blocks \_\_\_\_ are designated for public park land and that these Blocks, when developed, may contain active lighted facilities for night-time events.



***Fencing***

Purchasers or tenants are advised that privacy fencing may be located on the blocks and that the fencing shall not be altered or removed. Purchasers or tenants are advised that it will be the duty and obligation of the owner of the lot to maintain in a good state of repair that portion of the privacy fence that is located on the lot.

***Right of Entry***

Purchasers or tenants are advised that various provisions of the subdivision agreement provide that the Town shall be entitled to enter onto the lands within the plan of subdivision in order to carry out various inspections, repairs and maintenance activities.

***Obstructions on Public Highway***

Purchasers or tenants are advised that they are not permitted to place or permit to be placed any fence, tree, shrub, hedge, landscape berm, signboard or other object within a public highway or within the lands laid out in the plan of subdivision for a public highway, whether or not such lands actually contain a paved portion of a public highway. Without limiting the generality of the foregoing, purchasers or tenants are advised that no driveway curb or pillar may be placed within a public highway or within the lands laid out in the plan of subdivision for a public highway, whether or not such lands actually contain a paved portion of a public highway and no driveway placed within such lands shall be constructed or altered so as to interfere with the operation of any municipal services, such as snow and garbage removal equipment.

***Grading***

Purchasers or tenants are advised that the Town has reserved the right to amend the provisions and details of the lot grading plans filed with the subdivision agreement and that such amendments may result in alterations to features in said plans or the additions of other features, including, but not limited to, retaining walls. Purchasers or tenants are advised to consult with the Town's Engineering Department to ascertain the particulars of any amended grading plans for any individual lot or lots and are cautioned not to rely solely upon the provisions and details contained in the lot grading plans filed with the subdivision agreement.

***Future Development on Adjacent Lands***

Purchasers must be aware that the surrounding lands may be rezoned to allow for future development.

***Agricultural Uses***

There are nearby properties used for farming and/or the keeping of livestock. According to the Ontario Ministry of Agriculture Food and Rural Affairs "Farms can be noisy, dusty and have odours. Just like any other business, farms have a production schedule. During planting and harvesting season, there may be extra lights in a field at night or equipment working on the farm late in the day. Normal farm practices are activities that happen on the farm as part of day-to-day business. Some of these activities create disturbances, such as noise, odour, flies and electrical wired fencing. The activities and disturbances that are considered normal farm practices are allowed to happen on a farm."

***Assumption of Municipal Services***

Purchasers are advised that a considerable period of time may elapse before the municipal services are eligible for assumption under municipal by-law. The Developer is responsible for the maintenance of all municipal works until assumption of the subdivision.

***Private Services***

All residential lots will be serviced by private individual potable water and tertiary sewage treatment units and to identify the property owners' maintenance obligations of such systems;



**SCHEDULE "N"**

**SOLICITOR'S CERTIFICATE OF TITLE**

Letterhead of Law Firm Giving Title Opinion

Town of Erin  
5684 Trafalgar Road  
Hillsburgh, ON N0B 1Z0

**Attention:** \_\_\_\_\_

Dear Sir:

**Re:** *[Include reference to Schedule "A" and a brief legal description of the subject land defined to be (the "Land") as well as a description of the nature of the transfer to the Town (ie conveyance in fee simple, granting of an easement interest)]*

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We act as solicitors for ● (the "Owner") in connection with the *[conveyance of the Land in fee simple / conveyance of easement interest in the Land]* (the "Conveyance") to the Town of Erin (the "Town") and in connection with the giving of a title opinion to the Town with respect to the Land.

For the purpose of this opinion, we have examined the title to the Land as disclosed by the records of the Land Registry Office for the *[insert land Titles or Registry]* Division of ● (No. ●) (the "LRO"), conducted necessary investigations as to the existence of prior corporate owners of all or part of the Land as disclosed by the records of the LRO in order to confirm the existence of each corporation during their respective period of ownership, conducted searches to ascertain any writs of execution or certificates of lien filed against the Owner and have undertaken the required off title enquiries and searches identified in Schedule C attached. In addition, we have made such other searches, enquiries and investigations as we considered necessary and relevant for the purposes of our title opinion having regard to the nature and location of the Land.

***[NOTE: The enquiries/searches specified are the basic enquiries that must be carried out for the purpose conveying land interests to the Town. However, the Town relies on the opining solicitor to undertake such other searches and enquiries as they consider necessary or desirable having regard to the nature and location of the Land.]***

We have obtained and relied upon statutory declarations and certificates where appropriate and have considered applicable questions of law. We have assumed with respect to documents examined by us, the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity to authentic originals of all documents submitted to us as photocopies, facsimile, certified, conformed or notarial copies. We have also assumed the accuracy and currency of the indices and filing systems maintained at any public offices where we have conducted searches or made enquiries or caused such searches or enquiries to be conducted or made.

***[NTD: If applicable, insert the following paragraph regarding any statutory declarations or certificates relied upon for the purpose of the opinion:***

*We have relied upon a statutory declaration of [Name of Owner / if Owner is a corporation or other entity, indicate the name and position of the signing officer], dated ●, 20●, in connection with Section 44(1) 1, 2, 3 and 4 of the Land Titles Act and certain factual matters which [is/are] relevant for the purpose of providing our opinion expressed in paragraph 1 below. We have also relied upon ] a certificate of [Name of Owner / if Owner is a corporation or other entity, indicate the name and position of the signing officer], dated*

●, 20●, as to certain corporate matters which [is/are] relevant for the purpose of providing our opinion expressed in paragraphs 3 and 4 below. ]

We are solicitors qualified to carry on the practice of law in the Province of Ontario. The opinion expressed extends only to the laws of the Province of Ontario and the federal laws of Canada applicable therein in force as of the date of this opinion.

Our enquiries and searches with respect to the Land confirm that:

- (a) the Land has not escheated to the Crown;
- (b) there are no unregistered easements affecting the Land claimed by Ontario Hydro or other hydro authority;
- (c) there are no outstanding work orders or deficiency notices and there is no record of non-compliance with applicable building or zoning by-laws;
- (d) there are no arrears in the payment of realty taxes;
- (e) there are no outstanding accounts for the supply of water or sewer services to the Land;
- (f) there are no restrictions imposed on the Land by the Ministry of Natural Resources; and
- (g) according to the records of the Ministry of the Environment, the Land has never been used as a waste disposal site, the names in the chain of title to the Lands do not appear in the index record maintained by the Ministry and there are no outstanding violations or action request notices with respect to the Land;
- (h) *[if appropriate, insert determinations based on additional searches and enquiries that were undertaken as being considered necessary or desirable].*

Based upon and subject to the foregoing, we are of the opinion that, as at ● p.m., ●, 20● :

1. The Owner is the registered owner in fee simple of the Land, free from any encumbrances, claims or liens, including any outstanding writs of execution that affect title to the Land, other than those liens, encumbrances, exceptions and qualifications to title set out in Parts I and II to Schedule B attached.
2. None of the documents identified in Schedule B, Part II referred to above, that are not being postponed, discharged or otherwise released, contain rights or remedies in favour of the parties thereto, or their respective successors and assigns, that could preclude, defeat, adversely affect or interfere with the *[Town's fee simple interest in the Land / ability of the Town to exercise the rights established through its easement interest in the Land]*.

*[Where the Owner is a Corporation insert 3 and 4]*

3. The Owner is an existing corporation pursuant to the ● *[insert applicable statute name]* and has not been discontinued or dissolved.
4. The Owner has the corporate power and authority and has taken all necessary corporate action to authorize the *[conveyance of the Land / grant of easement with respect to the Land]* to the Town.
5. The last registered instrument on title to the Land is ● *[insert Instrument #]*.

Notwithstanding that our fee for this opinion will be paid by the Owner, and that we act for the Owner in this transaction, we acknowledge that the Town is relying upon this title opinion. We consent and agree to such reliance. Although this opinion may be relied upon by the Town and its authorized agents for the purposes contemplated herein, it may not be relied upon or quoted, in whole or in part, by any other person or entity for any other purpose without our prior written consent.

Yours truly,

[       ]

[NOTES:        *i) this opinion must be drafted with all applicable inserts and should accompany all agreements submitted to the Town. It must be forwarded directly to the Director of Legal Services or law clerk as applicable; and*

*ii) if this opinion is signed by a "Law Firm" a cover letter must be attached confirming the name of the solicitor providing the opinion]*

**SCHEDULE "A"**  
**LEGAL DESCRIPTION OF LAND**

Lands are registered in [*X*one]:

- REGISTRY
- LT ABSOLUTE
- LTCQ
- LT PLUS

*[Insert PIN and brief legal description or a full metes and bound description if the Lands are in Registry.]*

<b>REFERENCE</b>	Opinion for [ <i>insert brief property reference</i> ] dated • by [ <i>insert name of opining solicitor</i> ]
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**SCHEDULE “B”  
ENCUMBRANCES/QUALIFICATIONS**

**[Lands in LT ABSOLUTE]**

**PART I – General Qualifications**

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates.
2. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including, without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes.
3. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute.
4. The following exceptions and qualification contained in section 44(1) of the *Land Titles Act*: paragraph 7, 8, 9, 10, 12 and 14.

**PART II – Specific Encumbrances**

*[Insert if applicable and insert where discharges, releases etc. are to be provided]*

<b>REFERENCE</b>	Opinion for <i>[insert brief property reference]</i> dated • by <i>[insert name of opining solicitor]</i>
------------------	---

**SCHEDULE “B”  
ENCUMBRANCES/QUALIFICATIONS**

**[Lands in LT CONVERSION QUALIFIED (LTCQ)]**

**PART I – General Qualifications**

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates.
2. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including, without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes.
3. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute.
4. The following exceptions and qualification contained in section 44(1) of the *Land Titles Act*: paragraph 7, 8, 9, 10, 12 and 14.
5. The exceptions and qualifications contained in section 44(1) 11 of the *Land Titles Act* to the date of conversion to LTCQ.

**PART II – Specific Encumbrances**

*[Insert if applicable and insert where discharges, releases etc. are to be provided]*

<b>REFERENCE</b>	Opinion for <i>[insert brief property reference]</i> dated • by <i>[insert name of opining solicitor]</i>
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**SCHEDULE “B”  
ENCUMBRANCES/QUALIFICATIONS**

**[Lands in LT PLUS]**

**PART I – General Qualifications**

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates.
2. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including, without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes.
3. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute.
4. The following exceptions and qualification contained in section 44(1) of the *Land Titles Act*: paragraph 3, 7, 8, 9, 10, 12 and 14.
5. The exceptions and qualifications contained in section 44(1) 11 of the *Land Titles Act* to the date of conversion to LTCQ.

**PART II – Specific Encumbrances**

*[Insert if applicable and insert where discharges, releases etc. are to be provided]*

<b>REFERENCE</b>	Opinion for <i>[insert brief property reference]</i> dated • by <i>[insert name of opining solicitor]</i>
------------------	---

**SCHEDULE "B"**  
**ENCUMBRANCES/QUALIFICATIONS**

[Lands in Registry]

**PART I – General Qualifications**

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates.
2. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute.
3. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including, without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes.
4. Where the registered owner is or a previous owner was a railway company, any interest that may be or may have been created by an instrument deposited in the office of the Secretary of State of Canada or the Registrar General of Canada, as the case may be, under section 81 of the *Railway Act* (Canada), or any predecessor thereof.

**PART II – Specific Encumbrances**

*[Insert if applicable and insert where discharges, releases etc. are to be provided]*

<b>REFERENCE</b>	Opinion for <i>[insert brief property reference]</i> dated • by <i>[insert name of opining solicitor]</i>
------------------	---

**SCHEDULE “C”**

**REQUIRED OFF TITLE SEARCHES AND ENQUIRIES**

1. Property taxes and local improvements (Tax Certificate to be obtained)
2. Town Building Division compliance certificate (as to existence of work orders, deficiency notices or non-compliance with applicable building or zoning by-laws)
3. Local and provincial hydro as to existence of unregistered hydro easements
4. Local water/sewer departments as to existence of arrears in charges
5. Ministry of Environment requirements
6. Ministry of Natural Resources requirements
7. Applicable corporate searches and enquiries

**EXAMPLES: OTHER OFF TITLE SEARCHES AND ENQUIRIES THAT MAY BE NECESSARY DEPENDING ON THE NATURE AND LOCATION OF THE LAND (not all inclusive)**

Existing leases where Town assuming	Crown Patent
Electrical Safety Authority	Fire Department
Elevating Devices	Ontario Heritage Act
Navigable Waters	PPSA Search
Business Improvement Area search	Cemeteries
Brownfields Site Registry	

REFERENCE	Opinion for <i>[insert brief property reference]</i> dated • by <i>[insert name of opining solicitor]</i>
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**SCHEDULE "O"**  
**SURVEYOR'S CERTIFICATE**