

# The Corporation of the Township of Huron-Kinloss



## **BY-LAW**

**2022-157**

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Being a By-Law to Enter into A Pre-Servicing Agreement with 2427255 Ontario Inc for Part 1, Plan 3R-10474 of the McTavish Subdivision

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**WHEREAS** pursuant to Section 41 of the Planning Act, R.S.O. 1990, c. P.13, as amended, the Corporation of the Township of Huron-Kinloss has passed a By-law designating the lands in the Township of Huron-Kinloss as a Site Plan Control Area;

**AND WHEREAS** the Lands described as Part 1, Plan 3R-10474 in the Township of Huron-Kinloss, County of Bruce (the "Lands") are under Site Plan Control;

**AND WHEREAS** the Owner of the lands intends to immediately commence with site grading, the installation of sanitary sewers, storm drainage and watermains as further described in the Agreement ("Works") prior to the execution and the registration of the Site Plan Agreement;

**AND WHEREAS** The Council for The Corporation of the Township of Huron-Kinloss deems it expedient to enter into a Pre-Servicing Agreement with 2427255 to permit the commencement of works prior to the execution and registration of the Site Plan Agreement;

**NOW THEREFORE** the Council of The Corporation of the Township of Huron-Kinloss enacts as follows:

- 1.0 That the Corporation of the Township of Huron-Kinloss hereby enters into a Pre-Servicing Agreement with 2427255 ONTARIO INC. which is attached as Schedule "A" and forms part of this By-Law.
- 2.0 That the Mayor and Clerk are hereby authorized to sign on behalf of the Council for The Corporation of the Township of Huron-Kinloss, any contracts and other documents required to authorize the agreement and to affix the corporate seal of the Township of Huron-Kinloss.
- 3.0 This By-law shall come into full force and effect upon passing.
- 4.0 This By-law may be cited as the "2427255 ONTARIO INC. Pre-Servicing Agreement By-Law".

**READ a FIRST and SECOND TIME this 19<sup>th</sup> day of September, 2022**

**READ a THIRD TIME and FINALLY PASSED this 19th day of September, 2022**

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Mitch Twolan, Mayor

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Emily Dance, Clerk

## PRE-SERVICING AGREEMENT

This Pre-Servicing Agreement made this \_\_\_\_\_ day of September, 2022  
(“Agreement”)

### B E T W E E N:

**2427255 ONTARIO INC.**

(hereinafter collectively called the “Owner”)

- and -

**THE CORPORATION OF THE TOWNSHIP OF HURON-KINLOSS**

(hereinafter called the “Municipality”)

**WHEREAS** the Owner is the owner of Part 1, Plan 3R-10474 in the Township of Huron-Kinloss, County of Bruce (the “Lands”);

**AND WHEREAS** the Owner has executed a subdivision agreement as authorized by By-Law 2020-105 and an amending agreement dated May 1, 2021 with respect to those lands in Plan 3R-10474 being part of Plan M-79 (together, the “Subdivision Agreement”)

**AND WHEREAS** the Owner acknowledges the Subdivision Agreement is registered on title of Block L and that the terms of the Subdivision Agreement continue to apply;

**AND WHEREAS** the Township, pursuant to Section 41 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, has passed a by-law designating the Lands as a site plan control area;

**AND WHEREAS** the Owner agrees that it will enter into a site plan agreement (“the Site Plan Agreement”) upon approval of the site plan (the “Site Plan”);

**AND WHEREAS** the Owner intends to immediately commence with site grading, the installation of sanitary sewers, storm drainage and watermains as further described in the Agreement (“Works”) prior to the execution and the registration of the Site Plan Agreement;

**AND WHEREAS** the Parties hereto have entered into this Agreement for the purpose of defining the terms and conditions upon which the construction, installation and provision of the Works may be carried out;

**AND WHEREAS** the Owner has obtained the required written approval of various agencies (“Agencies”), not limited to but including the Ministry of the Environment, Conservation and Parks, the Saugeen Valley Conservation Authority, the Ministry of Natural Resources, the Ministry of Transportation, the County of Bruce Transportation and Environmental Services department and the Ministry of Citizenship and Culture to the satisfaction of the Municipality in so far as these Agencies and their comments and requirements relate to the construction, installation or provision of the Works;

**AND WHEREAS** the Owner acknowledges that written confirmation from various utility companies that satisfactory agreements or arrangements have been reached for the

provisions of their respective services is required prior to execution of the Site Plan Agreement.

**NOW THEREFORE**, this Agreement witnesseth that in consideration of the covenants herein contained, and other good and valuable consideration, the parties hereto covenant and agree as follows:

**1. SERVICING PRIOR TO SITE PLAN AGREEMENT REGISTRATION:**

The Owner may commence installation of the Works as listed below prior to the registration of the Site Plan Agreement

Agreement . Notwithstanding the foregoing, the Owner acknowledges that, prior to registration of the Site Plan Agreement:

- a) The watermain may not be connected to the Municipal system without the consent of the Municipal Engineer and the Director of Public Works.
- b) Storm and Sanitary sewers may not be connected to the Municipal System without the consent of the Municipal Engineer and the Director of Public Works.
- c) No model home permits, and no building permits of any nature will be issued.

The Municipality agrees to consent to this pre-servicing provided:

- a) This Agreement has been registered on title to the Lands;
- b) Any external easements or property acquisitions have been completed to the satisfaction of the Municipality;
- c) The Owner has posted securities for the Works. Security shall be posted for 100% of the value of all watermain servicing, alterations to or installations of municipal works or works that may be allowed in the municipal right of way, plus 20% of the value of all sanitary Works, and 15% of storm sewers or any other Works that are part of the pre-servicing as outlined in Schedule A;
- d) The Owner has provided proof of liability insurance as required by this Agreement;
- e) The Owner has received Municipal, Ministry of the Environment Conservation and Parks, and Saugeen Valley Conservation Authority approvals of the design drawings; and
- f) That signage during the pre-servicing stage shall include at any access to the site, "PRIVATE PROPERTY" and "NO ACCESS IS PERMITTED AT ANY TIME".

Works to be included in the preservicing include and are limited to:

- a) Sanitary Sewers;
- b) Storm Sewers; and
- c) Watermains

If the Works, as set out in the engineering design drawings, are not being carried out in an acceptable manner and the development is not proceeding expeditiously to the satisfaction of the Municipality, the Municipality, will have the right to require the Owner to cease any or all construction activities, by written notice to the Owner.

The Owner acknowledges and agrees that such servicing work is done at its sole risk and the Owner agrees to indemnify and save harmless the Municipality with respect to any claim, demand, action, cost, suit, or loss by anyone whomsoever which may occur as a result of servicing prior to the registration of a Site Plan Agreement. The Owner acknowledges and agrees that should the Site Plan for this development for any reason be refused and the Site Plan Agreement is not registered, any pre-servicing authorized under this Agreement shall cease and

the Owner agrees to accept full responsibility and obligation, financial and otherwise, for all servicing provided and Works that have been constructed or installed.

Should the Site Plan be refused final approval, the Owner agrees to remove any or all Works or portions of Works if so requested by the Municipality and to rectify any situation, including all making restoration as a result of construction to the satisfaction of the Municipality, if requested by the Municipality to do so.

## **2. ESTIMATED COSTS:**

The Owner acknowledges and agrees that the total estimated costs of the Works to be constructed pursuant to this Agreement are set out in Schedule "A". The Owner acknowledges and agrees that Schedule "A" is only a preliminary estimate, and that additional work may be required prior to the acceptance of the Works by the Municipality. The Owner further acknowledges that the amounts set out in Schedule "A" are estimates only and that the actual cost will be based on tender prices.

## **3. PROFESSIONAL ENGINEER**

The Owner covenants and agrees to retain a consulting Professional Engineer (the "Owner's Engineer"), skilled and experienced in municipal work, to design, create drawings and contracts, obtain necessary approvals, supervise, layout, provide full time site inspection and certify the Works on behalf of the Owner. The Owner's Engineer shall maintain records and provide "as - recorded" plans to the Municipality for the Works undertaken.

## **4. CHECKING PLANS AND SPECIFICATIONS**

The Owner agrees to pay the Municipality the ongoing reasonable costs for legal, planning, administrative, public works and engineering costs for the checking and verification of plans and specifications, and for any site inspection of the Works on behalf of the Municipality.

The Owner agrees to permit unrestricted access to the Lands to the Municipality and its agents for the purpose of inspection of the construction activities and the Works.

## **5. NOTIFICATION OF COMMENCEMENT**

The Owner shall not commence the construction of any of the Works until the Owner has provided 72 hours written notice to the Municipality's Engineer or Director of Public Works of its intent to commence work. Should, for any reason, there be a cessation or interruption of construction, the Owner shall provide 72 hours written notification to the Municipality's Engineer or Director of Public Works before work is resumed.

## **6. REGISTRATION**

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

## **7. EXPIRY OF THIS AGREEMENT**

This agreement shall become null and void should:

- The Owner fail to obtain approval for the Site Plan and register the Site Plan Agreement within 1 year of the date of this Agreement.

This agreement shall be redundant and lapse upon registration of the Site Plan Agreement. At that time, this Agreement may be deleted from title.

## 8. SILTATION AND EROSION CONTROL

The Owner agrees to complete the Works as required by the Agencies where they relate to pre-servicing and construction activities and to provide and maintain all siltation and erosion control facilities during and after construction to the satisfaction of the Municipality and the Saugeen Valley Conservation Authority.

## 9. INSURANCE

Prior to the signing of the Agreement, the Owner shall insure against all damages or claims for damage in an Insurance Company satisfactory to the Municipal Clerk. Such policy or policies shall be issued in the joint names of the Owner, the Municipality and the Municipality's Engineer; and the form and content shall be subject to the approval of the Municipality. The minimum limits of such policies shall be \$5,000,000 all inclusive, but the Municipality shall have the right to set higher amounts.

The said insurance policy shall include a provision that requires the insurance company to provide the Municipality with thirty (30) days notice of termination of such policy. The issuance of such a policy of insurance shall not be construed as relieving the Owner from responsibility for other or larger claims, if any, for which he may be held responsible.

## 10. SECURITY

Prior to the signing of this Agreement, the Owner shall deposit with the Municipality the following securities:

- (a) A Letter of Credit or Cash in the amount as set out in Schedule "A"
- (c) Some combination of cash and Letter of Credit, totaling 100% of the Schedule "A" estimate.
- (d) Prior to depositing such securities, the Owner's Engineer shall submit an estimate of the cost of the Works to the Municipality's Engineer for approval. When the cost estimate has been approved it will be set out in Schedule "A" of this Agreement and will become the basis for the limits of the securities under this Agreement.
- (e) All Letters of Credit shall be for a minimum guaranteed period of one (1) year or such longer time as the Municipality may decide. All Letters of Credit referred to in this Section shall contain the following clause:
 

*"It is a condition of the Letter of Credit that it shall be deemed to be automatically extended without amendment from year to year from the present or any future expiration date thereof, unless at least thirty (30) days prior to the present or any future expiration date, we notify you in writing by registered mail that we elect not to consider this Letter of Credit to be renewable for any additional period."*
- (f) Unless each and every Letter of Credit is renewed as noted above, the Municipality shall have the absolute right to refuse to issue building permits and to prohibit occupancy of homes, whether partially or fully completed, from the said date thirty (30) days prior to the expiration of that Letter of Credit.
- (g) The amount of securities under this Agreement shall be submitted by the Owner's Engineer to the Municipal Engineer for review. The agreed upon security amount shall be inserted in Schedule "A" to this Agreement.

The Municipality reserves the right, at any time, to review the amount of security deposited under this Agreement in light of the value of the work

remaining to be completed for any current or subsequent phases of the project and to require an adjustment in such securities, based upon any anticipated changes to site conditions or construction costs.

**11. SCHEDULES**

The following schedules attached hereto form an integral part of this Agreement:

- (a) Schedule "A" – Estimated Construction Costs; and
- (b) Schedule "B" – Form of Letter of Credit

**IN WITNESS WHEREOF** the Parties hereto have hereunto affixed their corporate seals under the hands of their officers properly authorized in that behalf.

**SIGNED, SEALED & DELIVERED**

**2427255 ONTARIO INC.**

\_\_\_\_\_  
*(I have authority to bind the corporation)*

**THE CORPORATION OF THE TOWNSHIP OF HURON-KINLOSS**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk  
(We have authority to bind the Corporation)

**SCHEDULE "A"**

**ESTIMATED CONSTRUCTION COSTS**

	<b>Estimated Costs</b>	<b>Security Percentage</b>	<b>Security Amount</b>
Sanitary Sewers	43,600.00	20%	8,720.00
Watermains	158,000.00	100%	158,000.00
Storm sewers	9,000.00	15%	1,350.00
Subtotal			<u>168,070.00</u>
Engineering allowance			<u>8,930.00</u>
Subtotal			177,000.00
HST 13% (rounded)			█ 23,000.00
Total Secuitty			<b><u>200,000.00</u></b>

**SCHEDULE "B"**

**FORM OF LETTER OF CREDIT**

*Sample* - Letter of Credit to be provided as security to the Township of Huron-Kinloss for the completion of all site Works as approved in the Pre-Servicing Agreement.

**NAME OF BANK  
BRANCH OR DEPARTMENT  
ADDRESS**

**DATE  
NO.**\_\_\_\_\_

**LETTER OF CREDIT**

**TO: The Corporation of the Township of Huron-Kinloss**

We hereby authorize you to draw on Bank Name and Address, for the account of our customer, \_\_\_\_\_ up to an aggregate amount of \_\_\_\_\_00/100 Dollars ( ) available on demand as follows:

Pursuant to the request of our Customer, we Bank Name hereby establish and give to you an irrevocable Standby Letter of Credit ( the "credit") in your favour in the total amount of \_\_\_\_\_00/100 Dollars (\_\_\_\_) which may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you, which demand we shall honour without inquiring whether you have a right as between yourself and our Customer to make such demand and without recognizing any claim of our customer.

Provided, however, that you are to deliver to us at such time as written demand for payment is made upon us a certificate purported to be signed by an authorized officer of the Township of Huron-Kinloss, agreeing and/or confirming that monies drawn pursuant to this Credit No. \_\_\_\_\_ will be retained and used by you to meet any obligations in connection with the Agreement.

The amount of this Credit shall be reduced from time to time as advised by notice in writing given to this branch from time to time by you.

This credit will continue to the \_\_\_\_\_day of \_\_\_\_\_, \_\_\_\_\_ and will expire at the Branch address at the close of banking business on that date.

It is condition of this Credit that it shall be deemed to be automatically extended for one year from the present or any future expiration date hereof, unless 30 days before any such date we notify you in writing by Registered Mail that we elect not to consider this Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw by means of your demand accompanied by your written certification, that the amount will be retained and used by you to meet obligations incurred or to be incurred in connection with the Agreement. Partial drawings are permitted.

Bank

\_\_\_\_\_  
\_\_\_\_\_

SIGNED

SIGNED