

# The Corporation of the Township of Huron-Kinloss



## BY-LAW

### 2021-94

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Being a By-law to Authorize the Signing of a

Severance Agreement with Francine and Pierre Pilon

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**WHEREAS** the Municipal Act S.O. 2001, c 25, Section 5(1), as amended, provides that the powers of a municipal corporation are to be exercised by its Council;

**AND WHEREAS** the Municipal Act S.O. 2001, c 25, Section 5(3), as amended, provides that a municipal power, including a municipality's capacity rights, powers and privileges under Section 9; shall be exercised by By-Law;

**AND WHEREAS** The Council for The Corporation of the Township of Huron-Kinloss deems it expedient to enter into a severance agreement with Francine and Pierre Pilon to construct and install services, and provide such financial payments and undertakings, relating to lands being severed;

**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 Council hereby enters into a Severance Agreement with Francine and Pierre Pilon 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 final passage.
- 4.0 This By-law may be cited as the "Pilon Severance Agreement By-Law".

**READ a FIRST and SECOND TIME** this 16<sup>th</sup> day of August, 2021.

**READ a THIRD TIME and FINALLY PASSED** this 16<sup>th</sup> day of August, 2021

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Mitch Twolan, Mayor

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Emily Dance, Clerk

**SEVERANCE AGREEMENT**

**THIS AGREEMENT** made as of this \_\_\_\_ day of August, 2021 pursuant to Section 51(26) of the *Planning Act* and authorized by By-Law No. \_\_\_\_\_ of The Corporation of The Township of Huron-Kinloss (the "Agreement"),

**BETWEEN:**

**Francine Nicole Pilon and Pierre Palma Pilon**  
(Hereinafter collectively called the "Owner")

-AND-

**The Corporation of the Township of Huron-Kinloss**  
(Hereinafter called the "Township")

**WHEREAS** the Owner is the registered owner of the Lot described in Schedule "A" (the "Lot") which is the subject of a Provisional Consent approved under Section 53 of the Planning Act, RSO 1990 as amended;

**AND WHEREAS** the Corporation of the County of Bruce, the Approval Authority, as a Condition of Provisional Consent as authorized by Section 51(25) of the Planning Act RSO 1990 as amended, requires that the Owner enter into an Agreement with the Township to construct and install such services, and provide such financial payments and undertakings, and such dedications or easements of lands to the Township and others as may be required herein relating to the lands being severed;

**AND WHEREAS** this Agreement is made to satisfy said Conditions of Provisional Consent;

**AND WHEREAS** the Township has approved the plans and drawings attached to this Agreement subject to conditions here within;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the mutual covenants and agreements to be observed and performed by each of the Parties hereto, and in consideration of the sum of ONE (\$1.00) DOLLAR of lawful money of Canada now paid by each Party to the other, the receipt and sufficiency whereof is hereby acknowledged, the Parties hereto mutually covenant and agree as follows:

**1. Definitions**

In this Agreement:

- 1.1 **CHIEF BUILDING OFFICIAL (CBO)** shall mean the Chief Building Official (CBO) for the Township from time to time or the holder of the office exercising the functions presently performed by the said CBO, or his designate.
- 1.2 **LOT** shall mean the lands described in Schedule A of this Agreement.
- 1.3 **ONTARIO LAND SURVEYOR** shall mean a land surveyor registered as an Ontario land Surveyor (OLS) with the Association of Land Surveyors of Ontario.
- 1.4 **TERTIARY SEPTIC SYSTEM** means a Septic System that complies with the Effluent Quality Criteria as regulated by the Ontario Building Code (OBC) Table 8.6.2.2.A "treatment unit" as amended from time to time.
- 1.5 **OWNER** shall include its authorized agents and servants, heirs, executors, administrators, successors and assigns.
- 1.6 **PLANS** means plot plans, drawings, designs, specification and elevations approved in writing by and filed in the office of the Chief Building Officer

(CBO) and includes without limiting the generality of the foregoing all amendments outlined in red thereon and initialed by the Owner and the Township.

- 1.7 **QUALIFIED ENGINEER** means the person or persons registered with the Association of Professional Engineers of Ontario who are employed to provide engineering services on behalf of the Owner for the proposed development.
- 1.8 **SECURITY** shall mean either a Standby Municipal Irrevocable Letter of Credit issued by a major Chartered Bank posted with the Township OR a Certified Cheque payable to the Township of Huron-Kinloss. The Letter of Credit shall be in a form and issued by a financial institution satisfactory to the Township, and shall contain a provision which automatically renews it from year to year unless the financial institution gives thirty (30) days advance written notice of its intention not to renew.
- 1.9 **WORKS** shall mean all services, construction, erection and installation required by this Agreement.

## 2. Schedules

The following Schedules are attached hereto and form part of this Agreement:

- 2.1 SCHEDULE "A" Being a description of the Lot subject to the Provisional Consent.
- 2.2 SCHEDULE "B" Being a schedule of financial obligations of the Owner payable upon execution of this Agreement or as otherwise provided.
- 2.3 SCHEDULE "C" Being a schedule for the release of Security by the Township to the Owner.
- 2.4 SCHEDULE "D" Being copies of the approved plans and drawings referred to in Section 3 of this Agreement.

## 3. Approved Plans and Drawings

The Township has approved the following plans and drawings that are attached hereto and form part of this Agreement [Schedule "D"]:

### 3.1 LOT GRADING AND SITE SKETCH

Site Plan - Building Envelope SP-1 Project 211-101 Designed and Drawn By K.Pilon dated August 2021

## 4. General Provisions

### 4.1 Development at Sole Expense of Owner

Unless the context otherwise requires, where the Owner is obligated by this Agreement or the approved Plans to make any payments or install or construct or carry out any services or action the provisions therefor contained herein shall be deemed to include the words "at the sole expense of the Owner".

### 4.2 Application of By-laws, Statutes and Regulations

Notwithstanding any of the provisions of this Agreement, the Owner shall be subject to all of the By-laws of the Township and all Provincial and Federal Government statutes and/or regulations and amendments thereto affecting the development of land and installation of municipal services.

#### 4.3 Indemnification

The Owner hereby covenants, warrants and agrees to save harmless and keep the Township and its agents, contractors, employees and elected officials indemnified from and against all manner of actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly by reason of the design, installation, construction or operation of any of the Works required under this Agreement, or by reason of the maintenance or lack of maintenance of such Works by the Owner pursuant to the terms of this Agreement or by reason of any defect in workmanship or material.

#### 4.4 Covenants that Run With the Lot

The Owner and the Township acknowledge and agree that it is their intent that all the terms, conditions and covenants contained herein shall be covenants that run with the Lot and that the burden of such covenants shall be binding upon the Owner, its successors and assigns and successors in title from time to time of the Lot described in Schedule "A" to this Agreement and any part or parts thereof. The Owner consents to the Township registering this agreement on title to the Lot and to the Owner's Adjacent lands.

#### 4.5 Notices

Any notices required or permitted to be given pursuant to the terms of this Agreement shall be given in the manner hereinafter set out, in writing addressed in the case of:

- (a) The Corporation of the Township of Huron-Kinloss  
21 Queen Street  
P.O. Box 130  
Ripley, ON N0G 2R0  
Attn: Clerk
- (b) Francine and Pierre Pilon  
100 McCormick Drive  
Kincardine, ON  
N2Z 0B3

and the giving of such written notice shall be deemed to be complete, where notice is given by personal service, on the day that the serving of written notice is completed, and where notice is given by prepaid registered mail, two (2) days after the date of mailing, and where notice is given by telephone transmission of a facsimile of the notice, on the day that the transmission of the written notice is completed.

#### 4.6 Binding on Heirs, etc.

This Agreement and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the Parties hereto and upon those persons and/or corporations hereafter acquiring title to all or any part of the Lot.

#### 4.7 Schedules

The Schedules attached hereto are deemed to be a part of this Agreement and are to be interpreted as if the contents thereof were included in the main body of this Agreement.

#### 4.8 Section 67 - Planning Act

The Owner acknowledges and understands the penalty provisions set forth in Section 67 of the *Planning Act*, R.S.O. 1990, c.P.13, and amendments thereto.

#### 4.9 Municipal Taxes

The Owner shall, prior to execution of this Agreement by the Township:

- a) pay all outstanding taxes (including arrears and penalties) levied upon the Lot; and
- b) pay all outstanding municipal charges, if any, affecting the Lot.

#### 4.10 Severance of *Ultra Vires* Terms

If any term of this Agreement shall be found to be *ultra vires* the Township, or otherwise unlawful, such term shall conclusively be deemed to be severable and the remainder of this Agreement *mutatis mutandis* shall be and remain in full force and effect.

#### 4.11 Incontestability

The Owner shall not call into question directly or indirectly, in any proceeding whatsoever in law or in equity, before any court or administrative or other tribunal, the right of the Township to enter into this Agreement and to enforce each and every term, covenant and condition thereof, and this provision may be pleaded by the Township in any such action or proceeding as a complete and conclusive estoppel of any denial of such right.

#### 4.12 Survey Monuments to be Preserved

The Owner agrees:

- a) all survey monuments or related markings established in connection with the installation of public utility and municipal services are to be preserved; and
- b) if any survey monument or related marking on or adjacent to the Lot is accidentally or deliberately damaged, destroyed or removed, to immediately repair or replace such monuments or related markings under the direction of the person or persons responsible for establishing said survey monuments or related markings.

#### 4.13 Mortgagee's Postponement

The Owner hereby agrees to procure, register and provide to the Township any postponement of any mortgages, charges or agreements which the Township solicitor considers necessary in order to ensure that this Agreement shall have priority over any interest of a mortgagee, chargee or person with a contractual interest in the Lot.

#### 4.14 Maintenance of Internal Works & Facilities

The Owner covenants and agrees that once all works, services and facilities required to be provided, constructed or installed by it that are internal to the Lot under the terms of this Agreement have been completed to the satisfaction of the Township, and in accordance with all Township specifications and in a good and workmanlike manner, it shall maintain such works, services and facilities in the approved condition until this Agreement is amended or otherwise released from title. In the event that any of the internal works, services or facilities are not being maintained to the satisfaction of the Township, or if the Owner is otherwise in default of this Agreement, the Township may, on written notice to the Owner, require the Owner to comply with the terms of this Agreement. If the Owner fails to comply with any such written notice, the Township may, not sooner than ten (10) after such notice unless an emergency exists, enter onto the Lot or the Owner's adjacent lands for the purposes of carrying out any corrective measures deemed necessary by the Township.

#### 4.15 Exercise of Township Authority in its Sole Discretion

Wherever this Agreement grants to the Township the authority to make a decision or exercise discretion, such authority may be exercised by the Township in its sole, absolute and unfettered discretion.

### **5. General Conditions**

The Owner covenants and agrees as follows:

#### 5.1 Tertiary Sewage System

- 5.1.1 The Owner, shall construct and maintain, or cause to have constructed and maintained on the new Lot a 'Tertiary Sewage System' that meets the specifications of the CAN/BNQ 3680-600 NI standard, as amended from time to time or by connection to a Municipal sewage disposal system.
- 5.1.2 The septic system on the retained lot shall not be replaced except with an advanced tertiary sewage disposal system that meets the specifications of the CAN/BNQ 3680-600 NI standard, as amended from time to time or by connection to a Municipal Sewage disposal system.
- 5.1.3 The Owner shall employ a competent and qualified professional to prepare plans, profiles and specifications for the 'Tertiary Sewage System' and submit detailed plans, profiles and specifications to the Chief Building Official for approval prior to installation or construction of such Works. The 'Tertiary Sewage System' shall be constructed according to the approved Plans and specifications.
- 5.1.4 All Plans and specifications must be approved in writing by the Chief Building Official prior to the Owner commencing construction of any of the 'Tertiary Sewage System'.
- 5.1.5 It is understood and agreed the Chief Building Official in his review of the Plans and specifications will be guided by current requirements of the Province of Ontario, established specifications and standards adopted by the Township or existing practices and standards as may from time to time be established or amended by the Township, by its officials or agents. The Township may require, in writing, such variances from the Plans as it may deem appropriate due to conditions which may be disclosed as the work progresses and by sound engineering practices.
- 5.1.6 No approval by the Chief Building Official shall operate as a release by the Township of any liability of the Owner which, but for such approval, might exist or hereafter arise.

#### 5.2 Lot Grading and Site Sketch

- 5.2.1 Grading for the Lot shall be carried out in conformity with the approved Lot Grading and Site Sketch as approved in at Schedule 'D'.
- 5.2.2 The Owner shall submit to the Township two copies of the Lot Grading and Site Sketch prepared by a Ontario Land Surveyor or Qualified Engineer.
- 5.2.3 Prior to issuance of a Building Permit for the Lot, the Owner shall submit to the Township as security for carrying out the provisions of the Lot Grading and Site Sketch a deposit in the amount of \$2,000.00 (the 'Lot Grading Deposit'). The Lot Grading Deposit shall be in the form of the Security as outlined in section 1.8.
- 5.2.4 Upon completion of the Lot Grading prior to landscaping or fencing, the Owner shall submit to the Township an "as constructed" Lot Grading showing the finished final elevations.

5.2.5 Upon acceptance of the “as constructed” Lot Grading by the Township, the Owner may apply in writing for release of the ‘Lot Grading Deposit’, less any cost of remedial work performed by the Town, as set in Schedule ‘C’.

5.2.6 The Owner, its heirs, executors, administrators, successors and assigns hereby irrevocably undertake to maintain the grading and drainage schemes as established and not to alter or revise the grading or drainage without the express written consent of the Chief Building Official.

### **5.3 Roof Water**

5.3.1 The Owner agrees that roof water drainage from any structure or building shall be directed via downspouts discharging to grass surfaces. Roof water shall be directed away from the building, not onto walks or driveways and not towards adjacent property.

## **6. Building Permit Issuance**

The Owner agrees not to apply for a Building Permit(s) until:

(a) the transfer is registered, with the Certificate of Consent attached, to finalize the severance of the Lot; and

(b) this Agreement has been executed by the Owner and the Township and registered on title to the Lot.

## **7. Building Occupancy**

The Owner agrees not to permit any building or structure or part thereof to be occupied until:

(a) a certificate of occupancy has been issued by the Township and until the work for which the building permit was issued has been completed in accordance with the requirements of the *Building Code Act, 1992* and all other applicable law;

(b) the Qualified Engineer has certified that the lot grading has been completed in accordance with the overall Lot Grading and Site Sketch.

## **8. Release of Agreement from Title**

The Township and Owner agree that this Agreement, or any part thereof, shall not be released from title to the Lot until the Township is of the opinion that registration is no longer required, and not without the concordance/agreement of the County of Bruce.

## **9. Postponement of Outstanding Claims, Liens and Encumbrances**

The Owner acknowledges and agrees that all outstanding claims, liens and encumbrances shall be postponed to this Agreement and all other documentations related thereto, to the entire satisfaction of the Township’s solicitor.

## **10. Issuance of Building and Plumbing Permits**

The Owner acknowledges that the entering into of this Agreement by the Township shall not entitle him to issuance of a Building Permit for the Lot.

## **11. Development Charges**

Development Charges shall be paid in accordance with the current Development Charges By-law of the Municipality, and as set out in Schedule “B” attached hereto.

## **12. Parkland Dedication Fee**

The Parkland Dedication Fee shall be paid in full in accordance the current Parkland Dedication Fee By-law of the Municipality, and as set out in Schedule “B” attached hereto.

13. Legal Fees

A Deposit of \$2000.00 shall be paid for legal fees associated with preparation, title search and registration of this agreement. All fees not used with be returned to the Owner and any additional fees shall be paid by the Owner.

IN WITNESS WHEREOF the Parties have hereunto caused their seals to be affixed and attested by their proper signing officers and the individual Parties have hereunto set their hands and seals, as of the date hereof.

SIGNED, SEALED and DELIVERED in the Presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**Francine Nicole Pilon**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**Pierre Palma Pilon**

THE CORPORATION of the TOWNSHIP OF HURON-KINLOSS

Per:  
\_\_\_\_\_  
Mayor

Per:  
\_\_\_\_\_  
Clerk

We have authority to bind the Township.



SCHEDULE "A"

LEGAL DESCRIPTION OF LOT SUBJECT TO PROVISIONAL CONSENT

PCL 23-1 SEC M37: LT 23 PL M37; HURON-KINLOSS, being all of PIN 33320-0028 (LT)

SCHEDULE "B"

FINANCIAL OBLIGATIONS PAYABLE

1.	Legal Fees Deposit Required	\$ 2000.00
2.	Cash-in-lieu of Parkland Dedication	\$ 750.00
3.	Development Charges	\$ 2086.55
	<b>TOTAL</b>	<b>\$ \$4836.55</b>

## SCHEDULE "C"

### RELEASE OF SECURITY

#### Application for Release of Security

Prior to the reduction or release of any Security held by the Township for the works, facilities and matters set out in this Agreement, the Owner must supply the Township with the following documentation:

- 1) letter of application for release;
- 2) consultant's certificate confirming that services completed;
- 3) as-constructed drawings.

#### Release of Security

Upon the completion of the works, facilities or matters as verified by the Township, and the receipt by the Township of all the documents identified above, the Township shall reduce the Security required under Clause 5.2.3 to Zero (0%).

Copies of these approved plans and drawings may be reviewed in the Township's municipal office during normal business hours.

