

AGREEMENT RESPECTING SERVICING AND REPAYMENT

THIS AGREEMENT made the day of , 2020

BETWEEN

TOWNSHIP OF WEST LINCOLN

hereinafter called the "Township"

of the first part

- AND -

R.V.L. CONTRACTING INC.

hereinafter called the "Developer"

of the second part

WHEREAS the Township is the owner of Spring Creek Road, (hereinafter called the "Road") in the Township of West Lincoln;

AND WHEREAS the Developer owns and is developing the lands to the north and south of Spring Creek Road West of Station Street in the Township of West Lincoln, as described in Schedule "A" (hereinafter called the "Lands") and wishes to carry out certain improvements upon the Lands related to the Spring Creek Manor Plan of Condominium and the "Ellis" lots (hereinafter jointly called the "Development");

AND WHEREAS upgrades to the Road and installation of sidewalks are necessary to accommodate the Development and increased traffic, servicing and access including, but not limited to the installation of curbing, urbanization of the road cross section, street lighting and installation of sidewalk, which in turn require related engineering, inspection and contingencies as outlined in Schedule 'B'.;

AND WHEREAS the Developer wishes to enter into this Agreement with the Township (hereinafter called the "Agreement") which sets out the Developer's financial and other obligations pertaining to the Road Project;

AND WHEREAS the terms of the Agreement must both comply with the Township's requirements and be consistent with the conditions of approval required through the draft plan of condominium approval process;

AND WHEREAS the Developer wishes to complete the Road Project by retaining qualified contractors and engineering consultants to construct and inspect the Project;

AND WHEREAS the Developer has agreed to pay for all costs related to the Road Project, including, but not limited to design, tender, construction, and engineering inspection to the satisfaction of the Township. Estimated costs of the Road Project are contained in Schedule 'B'.

AND WHEREAS the Township has approved the design of the Road Project;

AND WHEREAS this Agreement with the Developer respecting its financial obligations for the Projects is subject to the approval of Township Council;

AND WHEREAS both parties have agreed in principle to co-operate in accommodating these Projects;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein contained and subject to the terms and conditions hereinafter set out, the parties agree as follows:

1) The recitals herein are true in substance and in fact.

2) Definitions

In this Agreement and in the recitals and schedules hereto, unless there is something in the subject matter or context inconsistent therewith, the following words, terms and expressions shall have the following meanings:

- a) "Completion Certificate" means the certificate issued by the Township and evidencing Construction Completion.
- b) "Construction Completion" means when the Township is satisfied that the price of completion, correction of a known defect, or last supply of services or Materials is not more than the lesser of: 1% of the Contract price; or \$1,000.
- c) "Contract Price" means the estimated construction costs for the Road Project attached in Schedule 'B' and 'E' respectively.
- d) "Final Design and Contract Documents" means the final design and contract documents based on the principles and concepts contained in the draft Spring Creek Manor tender documents negotiated to date, including addendums, as amended and approved by the Township from time to time acting reasonably.

3) The Developer shall complete the Road Project in accordance with the Township's approved design, the Niagara Peninsula Standard Contract Documents, and project overview as shown in Schedule 'C' (subject to such changes required by the Township acting reasonably as the Road Project progresses or requested by the Developer and approved by the Township acting reasonably) including installation of curbing, an urbanized cross section, street

lighting, engineering inspection, appropriate materials testing, equipment and appurtenances, and in accordance with the terms and conditions of this Agreement, and shall complete all restoration to the satisfaction of the Township.

4) The costs of the Road Project shall be paid as follows:

- (a)** The Developer shall pay all costs of the Road Project as they are incurred and invoiced in accordance with the terms of any such invoice.
- (b)** The Developer shall pay all the Township's costs including but not limited to engineering, monitoring and ongoing inspection of the Road Project as they are incurred and invoiced.
- (c)** Prior to the execution of this Agreement by the Developer, the Developer shall provide to the Township security for the Road Project, in the form of an automatically renewable and irrevocable standby letter of credit in a form satisfactory to the Treasurer in the amount of **\$XX** which is the current estimated cost of the Road Project as itemized in Schedule "C". The amount of this security shall in no way limit the liability of the Developer to pay the full amount of any costs incurred to construct the Road Project as and when incurred and in accordance with the requirements of this Agreement even if the costs exceed the amount of the security. As the Road Project proceeds, the Developer may request the Township to accept replacement letters of credit in amounts reduced based upon the amount of work-in-place at such time provided the Township shall not be obligated to accept any request unless it is wholly satisfied in its discretion acting reasonably, that the replacement security is sufficient in all respects to ensure due completion of the Road Project.

Repayment shall be as follows:

- i. That the first payment to the developer from the development charge account occur once the completion certificate has been issued to a maximum value of **\$XX**; and,
- ii. That on or around July 1st of each subsequent year for a total of 10 years a repayment of **\$XX** occur; and,
- iii. That this repayment plan can occur on a quicker timeline subject to the mutual consent of both parties should additional money be available in the development charge account of the Township.
- iv. The Developer, acknowledges and agrees a maximum payment of **\$XX** excluding HST, is a reasonable upper limit for the Township's commitment herein.

- v. For greater clarity, in the event the actual quantities used for the Road Work Project are less than the quantities estimated in Schedule 'C' the Township shall receive credit for such reduction based on the application of the unit price to the reduction in required materials.
 - vi. The Township shall, notwithstanding and in addition to the rights granted by Section X(x) herein, be entitled to withhold from any monies otherwise payable an amount sufficient to cover any outstanding or disputed liabilities, including the cost to remedy deficiencies, reduction in value of substandard portions of the works and claims for damage by third parties that have not been determined in writing in accordance with the criteria attached hereto as Schedule 'X'.
- (d) Forthwith after execution of the Agreement by the Owner, the Owner shall pay to the Township the applicable Township administration fees, together with any applicable taxes thereon.
- (e) The Developer shall warrant the Road Project for a period of one (1) year (the "**Warranty Period**") following issue of the Completion Certificate for each such project, such that the Developer shall be responsible for remedying any deficiencies that may arise during the Warranty Period in relation to the Road Project. The Township may, but shall not, be obligated to accept the Road Project at different times depending on their respective completion dates and the Warranty Periods referenced herein shall not necessarily be during identical periods of time.
- (f) Subject to section 5(i) of this Agreement, in respect to the security provided pursuant to Clause 5(c) above, the Township agrees that: (i) upon request, following the issuance of Completion Certificate by the Township for the Road Project to the Developer, the Township shall reduce its security requirements to an amount equal to ten (10) per cent of the original face value of that portion of the Letter of Credit to secure the warranty for the Project; (ii) No later than Thirty (30) days following the expiration of the Warranty Period arising from the Road Project, the Township shall return that portion of the remaining Letter of Credit related to the project with respect to which the Warranty Period has expired provided there are no outstanding deficiencies related to such Project.
- (g) The Township shall, notwithstanding sections 5(d) , 5(f) and 5(h) herein be entitled to withhold from any monies otherwise payable or security to otherwise be released an amount sufficient to cover any outstanding or disputed liabilities, including the cost to remedy deficiencies, reduction in value of substandard portions of the works forming part of the Road Project and claims for damage by third parties that have not been determined in writing in accordance with the criteria attached hereto as Schedule "F".

- (h) The Developer shall retain a qualified contractor satisfactory to the Township and make payments directly to the successful contractor based on construction progress as determined by the Developer's contract administrator.
 - (i) Upon written notice of default from the Township, if the Developer or its contractor is in default of any obligation pursuant to this Agreement, and refuses or neglects to remedy such default within thirty (30) business days, the Township may forthwith unilaterally realize upon the security provided for herein and withhold payment of other amounts otherwise due to the Developer to remedy the default and/or complete the Road Project as the Township deems appropriate. The Township will provide an extension of the thirty (30) day period if reasonably required so long as the Developer commences to cure within the notice period and diligently proceeds thereafter.
 - (j) Forthwith upon execution of this Agreement and/or any subsequent agreements which may be deemed necessary by the Township acting reasonably, the Developer shall pay to the Township or as directed by the Township, for the Township's legal costs associated with the preparation, review and approval of this or any other necessary agreement, together with any applicable taxes thereon, as invoiced or directed by the Township.
- 5) The Developer shall be responsible for all required works, construction, engineering, and inspection and testing of the Road Project in accordance with the Final Design and Contract Documents as approved by the Township. For greater clarity this includes, but is not limited to: Contract Administration and Construction Inspection by a qualified engineering consultant approved by the Township; Construction Coordination; appropriate materials testing; Regulatory Requirements; Quality Control; and addressing all deficiencies, to the satisfaction of the Township. All requirements of the Township shall be met prior to issuance of a Completion Certificate by the Township for the Road Project. Developer shall complete the Road Project within **two (2) years** of execution of this Agreement.
- 6) The Developer shall complete the design and tender of the Road Project and obtain approval from the Township within **six (6) months** of execution of this agreement;
- 7) In order to allow the Township to inspect the Road Project, the Developer, or his agent, will provide the Township with advanced notice of major construction activities to be undertaken by the Developer's contractor. These activities will include, but not limited to: granular installation, asphalt installation, pavement markings, street light installation, pipe installation; tie-ins; and similar works.
- 8) The Developer or his agent or contractor shall obtain all regulatory approvals, including but not limited to, Ministry of the Environment, Conservation and Parks

(MECP), Ministry of Transportation Ontario (MTO), Ministry of Natural Resources (MNR), and Niagara Peninsula Conservation Authority (NPCA) and provide appropriate documentation as proof of approval by said agencies, prior to any permits or approvals being issued by the Township. Any costs associated with obtaining the necessary approvals shall be borne and immediately paid by the Developer in addition to any other costs or charges identified in this Agreement. No construction of the Project shall commence until the Township is in receipt of the final Environmental Compliance Approval from MECP.

- 9) The Developer shall indemnify and save harmless the Township, its elected officials, officers, employees, contractors and agents from and against all claims, all costs and expenses, including legal fees and disbursements (including legal fees and disbursements in connection with any and all appeals) arising from completion of the Road Project or arising in any other way directly or indirectly out of the performance or non-performance of the Agreement except for claims arising solely from the negligence or willful misconduct of the Township.
- 10) Within forty five (45) calendar days of issuance of the Completion Certificate for the Road Project the Developer, or his agent, shall provide the Township with stamped "Record Drawings", as defined by Professional Engineers Ontario (PEO). These "Record Drawings" will become the property of the Township.
- 11) The Developer shall purchase and maintain or cause its contractor to purchase and maintain at all times during the term of this Agreement, or as otherwise set out in this Agreement, the insurance coverage listed below:
 - (a) **Commercial General Liability Insurance**
Commercial General Liability insurance insuring the Developer and/or Contractor and covering all work related to the Project as described in the Agreement to a limit of not less than FIVE MILLION DOLLARS (\$5,000,000) per occurrence and in the aggregate. The policy will be extended to include:
 - a) bodily injury, death and property damage;
 - b) cross liability and severability of interest;
 - c) blanket contractual;
 - d) premises and operations;
 - e) personal and advertising injury;
 - f) broad form property damage;
 - g) products and completed operations;
 - h) Township's and contractors protective;
 - i) non-owned Automobile to a limit of not less than TWO MILLION DOLLARS (\$2,000,000);

The policy shall be endorsed to:

- a) include the Township as an additional insured; and
- b) contain an undertaking by the insurers to give thirty (30) days prior written notice in the event that there is a material change in the foregoing policies or coverage affecting the Additional Insured(s) or cancellation of coverage before the expiration date of any of the foregoing policies.

(b) **Automobile Insurance**

Automobile Insurance (OAP1) for both owned and leased vehicles with inclusive limits of not less than TWO MILLION DOLLARS (\$2,000,000). The policy shall contain an undertaking by the insurers to give fifteen (15) days prior written notice in the event that there is a material change in the foregoing policies or coverage affecting the Additional Insured(s) or cancellation of coverage before the expiration date of any of the foregoing policies.

(c) **Other Insurance**

Any other type (e.g. Environmental), form or as otherwise may be required from time to time as identified at any time by either party.

(d) **Policy Requirements**

All policies of insurance shall:

- a) be written with an insurer licensed to do business in Ontario;
- b) be non-contributing with, and will apply only as primary and not excess to any other insurance or self-insurance available to the Township;

(e) **Certificates of Insurance**

Certificates of insurance originally signed by authorized insurance representatives shall be delivered to the Township **prior to the commencement of the Project**, on a form of Certificate of Insurance which is acceptable to the Township. The Certificate of Insurance must comply with these insurance requirements and must be on the Township's form of Certificate of Insurance, which can be found on the Township's website – www.westlincoln.ca . If the Certificate of Insurance is provided in a non-original form (e.g. a facsimile, photocopy or scanned electronic copy), the Developer acknowledges and agrees that the Township is fully entitled to treat any such Certificate as an original and that the Developer will be responsible for the accuracy and validity of the information contained therein. If required by the Township, certified copies of all the above-mentioned policies shall be delivered to the Township. All subsequent policy renewals and certificates of insurance thereafter, during the time that this Agreement is in force, shall be forwarded to the Township within fifteen (15) days of their renewal date.

- 12) The Developer or his agent or contractor shall obtain any required work permits prior to any works within the Road allowance which has been reviewed and approved by the Township.
- 13) This Agreement shall enure to the benefit of and be binding upon the Parties hereto, their successors and assigns.

- 14) The Developer shall not assign or transfer this Agreement without obtaining the prior written consent of the Township, which consent may be withheld by the Township in its sole and absolute discretion.
- 15) The Agreement including Schedules "A", "B", "C", "D", "E" and "F" constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understanding and agreements between the Parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory between the Parties other than those expressly set forth in this Agreement.
- 16) This Agreement is governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. The parties hereby irrevocably and unconditionally attorn to the jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom. No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by all the Parties hereto. No waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and unless otherwise provided in the written waiver, shall be limited to the specified breach waived.
- 17) In the event that any provision or term of this Agreement is deemed invalid or void, in whole or in part, by any court of competent jurisdiction, the remaining terms and provisions of this Agreement remain in full force and effect.

IN WITNESS WHEREOF The Township of West Lincoln has affixed its name under the hands of its duly authorized signing officers.

) **THE TOWNSHIP OF WEST LINCOLN**
)
)
)
) _____
) (Mayor Dave Bylsma
)
)
) _____
) (Joanne Scime, Township Clerk)
)
) We have the authority to bind the Corporation.
)

IN WITNESS WHEREOF R.V.L. Contracting Inc. has affixed its corporate seal attested by the hands of its duly authorized officers.

) **R.V.L. CONTRACTING INC.**
)
)
) _____
) (XXXXXXXXXXXXXXXXXXXXXXXXXX)
)
)
) _____
) (XXXXXXXXXXXXXXXXXXXXXXXXXX)
)
) We have the authority to bind the Corporation.

ATTACHMENTS

- Schedule A – Legal Description
- Schedule B – Estimated Costs for Road Project
- Schedule C – Road Project Overview Drawing
- Schedule D – Claims Process
- Schedule E –
- Schedule F –

Schedule A
Legal Description

Spring Creek Manor

Parcel 1 - 375 Station Street

Concession 8, Part Lot 8, Part 1 of RP 30R14639, South Grimsby

“Ellis” Property

Parcel 2 - 371 Station Street

Part Lot 13 of Plan M94, Parts 1-7 of RP 30R15523, South Grimsby

Schedule B
Estimated Costs for Road Payment

DRAFT

Schedule C
Road Project Overview Drawing

DRAFT

Schedule D
Claims Process

WHEN YOU RECEIVE NOTICE OF A CLAIM

To ensure timely release of funds under the Construction Lien Act

CONTRACTOR'S OPTIONS (to be completed within 30 days of notice of a claim):

1. **CONFIRM SETTLEMENT OF THE CLAIM** – Provide the Township with a copy of the cheque paid to the claimant and a copy of the Full and Final Release signed by the claimant. The Release needs to specifically include that both the contractor and the Township are released. (We have attached a copy of a Release to use that meets our requirements)
2. **CONFIRM THAT YOUR INSURER HAS ASSUMED THE CLAIM** – Obtain a letter from your insurer that confirms that the insurer has assumed carriage of the claim on behalf of the contractor and the Township and forward a copy to the Township.
3. **CONFIRM A DENIAL OF THE CLAIM** – Provide the Township with a letter from an independent insurance adjuster that outlines the basis of the denial of the claim (including details of the evidence used to arrive at the conclusion); indicates who is liable; and gives a value of the damage. If the Township does not agree with the findings of the independent insurance adjuster, the Township has the right to hire their own adjuster to review the claim and determine liability.

If you required further information, please contact Jennifer Bernard, Coordinator, Engineering Services, at jbernard@westlincoln.ca.

Schedule E

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Schedule F

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