

DEVELOPMENT AGREEMENT

This Agreement made this ____ day of _____, 2024.

B E T W E E N:

2504970 ONTARIO LIMITED

hereinafter called the "**Owner**"
of the FIRST PART

AND:

THE CORPORATION OF THE MUNICIPALITY OF ARRAN-ELDERSLIE

hereinafter called the "**Municipality**"
of the SECOND PART

WHEREAS the Owner is the registered owner of those lands municipally known as 3437 Bruce Road 3 (Queen Street North), Paisley, described in more detail in **Schedule "A"** (the "**Lands**");

AND WHEREAS the Owner is undertaking certain improvements to its buildings located upon the Lands, including the installation of an engineered fire suppression system (the "**Fire System**");

AND WHEREAS the Fire System cannot operate effectively using the existing 4" watermain that currently services the Lands along Bruce Road 3 (the "**Existing Watermain**"), and requires an 8" watermain in order to have sufficient flow and operability of the Fire System;

AND WHEREAS the Municipality is the owner and operator of the Existing Watermain, which is located within, or about, that highway known as Bruce Road 3 (Queen Street North), which is under the jurisdiction of The Corporation of the County of Bruce;

AND WHEREAS the Owner has requested to have a portion of the Existing Watermain upgraded to an 8" watermain (the "**New Watermain**"), on the terms and conditions contained herein, which New Watermain shall be approximately eighty-six metres in length (86m), and shall be at the sole expense of the Owner, using the Contractor (as hereinafter defined);

AND WHEREAS the Municipality has agreed to permit the Owner to undertake the works in relation to the New Watermain, on the condition that the Owner, via the Contractor, also complete those additional works as required by the Municipality, as set forth herein, and including without limitation, the replacement of three (3) service line connections and one (1) fire hydrant (the "**Municipal Upgrades**"), for which the Municipality shall reimburse the Owner the costs as further described herein;

AND WHEREAS the County of Bruce has agreed to permit the Owner to undertake the works in relation to the use of the highway known as Bruce Road 3;

NOW THEREFORE this Agreement witnesses that in consideration of the sum of TWO DOLLARS (\$2.00) of lawful money of Canada, now paid by each of the parties hereto to each of the other parties hereto and other good and valuable consideration, the receipt and sufficiency of which is

hereby acknowledged, the parties hereto covenant, promise and agree with each other as follows:

1. The Owner and the Municipality mutually agree that the lands to be subject to this Agreement are the lands described in **Schedule "A"** hereto, and the Owner consents to the registration of this Agreement upon title of the Lands, if deemed necessary by the Municipality.
2. The Owner shall engage and have retained at all times, until the Owner has fulfilled all of its obligations pursuant to this Agreement, an engineer registered with the Association of Professional Engineers of Ontario (the "**Engineer**"), in order to provide engineering services with respect to the municipal services set forth in Section 3 below. The Engineer retained by the Owner shall be subject to the prior approval of the Municipality; at the time of entering into this Agreement, the Engineer has been approved as G.M. BluePlan Engineering., and any replacement or other change thereto shall require the prior written approval of the Municipality.
3. The Owner shall retain the Engineer to provide engineering services with respect to the design and installation of the municipal services set forth below, which shall be in accordance with the current standards and specifications of the Municipality. All plan(s) and specifications and any modifications thereto required by applicable ministries and agencies, and the Engineer, shall be subject to the written approval of the Municipality's Manager of Public Works.
4. The Owner shall engage and have retained at all times, until the Owner has fulfilled all of its obligations pursuant to this Agreement with an experienced competent contractor approved by the Municipality, at the time of entering into this Agreement, the Contractor has been approved as R.F. King Contracting Ltd. without limiting the generality of the foregoing, the Contractor shall be retained by the Owner to perform the following works, in accordance with the approved engineering drawings attached hereto as **Schedule "B"** (the "**Public Works**"):
 - a. To replace the Existing Watermain with the New Watermain, at such location(s) as more particularly described in the approved engineering drawings, and being approximately eighty-six metres (86m) in length, commencing from Ross Street and extending south along Bruce Road 3, and then directly west across Bruce Road 3 to the Lands (the "**Watermain Upgrade**"); and
 - b. To perform the Municipal Works as reasonably required by the Municipality, which shall include the replacement of the three (3) service line connections and one (1) fire hydrant as specified by the Municipality.
5. The Owner and Municipality further agree as follows:
 - a. The parties shall, acting reasonably, mutually agree upon a schedule of works for the completion of the Public Works as soon as practicable following the execution of this Agreement;
 - b. The parties shall be responsible for the costs of the Public Works in accordance with the following:
 - i. The Owner shall be responsible for all costs incurred in relation to the Public Works, provided that the Owner is entitled to a reimbursement of the Municipal

Upgrades, described in the following subparagraph. For certainty, the Owner is solely responsible for the costs of the Watermain Upgrade; and

- ii. The Municipality agrees to reimburse the Owner, within thirty (30) days of Assumption (as hereinafter defined), the costs of the Municipal Upgrades, less any fees or interest charged or owing as a result of late payments or otherwise.
 - c. The Owner shall undertake and complete the Public Works in a good and workmanlike manner to the satisfaction of the Manager of Public Works for the Municipality;
 - d. The Owner shall certify that the Public Works, and all noted deficiencies, have been completed, addressed, and performed in conformity with the approved drawings in Schedule "B" prior to the acceptance of the of the Public Works by the Municipality;
 - e. The Municipality, its employees, agents, contractors or any other authorized persons are entitled to inspect the installation of the Public Works, without relieving the Owner from its responsibility to supervise, inspect and be responsible for the said construction and installation; and
 - f. If the work is being performed in a manner that may result in a completed installation that would not satisfactorily meet the Municipality's specifications, in the opinion of the Manager of Public Works, the Municipality is entitled to stop any work and issue instructions to the Owner to take such steps as may be deemed necessary to ensure compliance with the provisions of this Agreement.
6. The Municipality covenants and agrees to accept the Public Works (the "**Acceptance**") if:
- a. The Manager of Public Works receives a certificate from the Owner's Consulting Engineer certifying that all Public Works have been constructed and installed in accordance with the design drawings and the Municipality's specifications; and
 - b. The Manager of Public Works or their designate conducts an inspection and satisfactorily confirms the certification, provided however that Acceptance shall be performed between April-October to allow for seasonal conditions conducive for inspection by the Municipality and to prevent any delays for Acceptance.
7. The Municipality covenants and agrees to assume the Public Works (the "**Assumption**") if
- a. A certificate of completion from the Owner's Consulting Engineer has been delivered to the Manager of Public Works, confirming that all Public Works have been completed according to the approved design plan and any subsequent approved change orders;
 - b. A statutory declaration from the Owner has been delivered to the Manager of Public Works, confirming that all contractors and subcontractors associated with the construction of the Public Works have been paid and that there is no liability owing to anyone under any circumstances related to the Public Works, that no liens have been registered, and that all applicable *Construction Act* lien periods have expired;

- c. All “as-constructed” drawings of the Public Works have been delivered to the Manager of Public Works; and
 - d. Confirmation that all supplier/maker warranties have been transferred to the name of the Municipality.
8. The Owner covenants and agrees that all Public Works shall vest in the Municipality upon Assumption and the Owner shall have no claims or rights thereto.
9. The Owner covenants and agrees to indemnify, save completely harmless, and defend the County of Bruce, the Municipality and its agents, contractors and employees from all actions, causes of actions, suits, losses, expenses, fines, costs (including legal costs), claims and demands whatsoever which may arise directly or indirectly by reason of the design, installation, or construction of any of the Public Works required under this Agreement, or by reason of any defect in workmanship or material in relation to the Public Works.
10. The Owner covenants and agrees that:
 - a. At the time of signing the agreement, the Owner shall pay to the Municipality any fees associated with the Development Agreement as per the Municipality’s Rates and Charges By-Law. At the time of entering into the agreement the fee is \$500.
 - b. Before commencing any of the Public Works, the Owner shall supply the Municipality with all applicable certificates of insurance;
 - c. The certificates of insurance shall be maintained and carried at its own expense in full force and effect with financially sound and reputable insurers;
 - d. The applicable policies of insurance shall include:
 - i. A commercial general liability policy of insurance with limits of no less than five million (\$5,000,000.00) per occurrence in respect of bodily injury and property damage; and
 - ii. An automobile liability policy of insurance with limits of no less than two million (\$2,000,000.00) per occurrence in respect of any of the Owner’s owned or licensed vehicles(s);
 - e. The policy shall name the Municipality and The Corporation of the County of Bruce as an additional insured and if the policy contains an insured exclusion, the exclusion shall be amended to permit claims by the Municipality and/or The Corporation of the County of Bruce against the Contractor, as the named insured;
 - f. The Owner shall provide the Municipality with at least (10) days advance written notice in the event of a cancellation or material change in the Owner’s insurance policy; and
 - g. The Owner shall provide these certificates of insurance satisfactory to the Manager of Public Works, prior to the commencement of the Agreement and at least ten (10) days prior to expiry.
11. The execution of this Agreement by the Municipality shall not be deemed to give any advantageous planning, servicing, financial or other consideration or treatment in favour of

the Owner by virtue of it having entered into this Agreement or by virtue of the existence of this Agreement. None of the provisions of this Agreement (including a provision stating the Parties' intention) are intended to operate, nor shall have the effect of operating, in any way to fetter either the Municipal 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.

12. The Owner agrees not to call into question, directly or indirectly, in any proceedings whatsoever, in law or in equity or before any administrative tribunal, the right of the Municipality to enter into this Agreement and the right to enforce each and every term, condition and covenant herein contained, and this Agreement may be pleaded as an estoppel against the Owner in any case.
13. The Owner acknowledges and agrees that any funds reimbursed to the Owner by the Municipality under the terms of this Agreement, if any, shall be paid without interest.
14. It is agreed between the parties hereto that the appropriate changes in number and gender shall be implied where the context of this Agreement and any schedules hereto, so require, in order that the Agreement and any other part thereof, shall be construed to have its proper and reasonable meaning.
15. Any notice, invoice or other writing required or permitted to be given pursuant to this agreement (including notice of a change in address) shall be deemed to have been given if delivered personally to the party or to an officer of the applicable corporation or if delivered by prepaid first class mail, on the third (3rd) day after mailing. The address for service of each of the parties is as follows:

Owner: 2504970 Ontario Limited
c/o Keri Bradley
3437 Bruce Road 3,
Paisley ON, N0G 2N0

Municipality: The Corporation of the Municipality of Arran-Elderslie
c/o Clerk
1925 Bruce Road 10, Box 70
Chesley ON, N0G 1L0

16. The following Schedules are attached hereto and form part of this Agreement:
 - Schedule "A" – The Lands
 - Schedule "B" – List of Approved Plans and Drawings
17. It is declared and agreed that the covenants, Agreements and conditions herein contained on the part of the Owner shall run with the land and shall enure to the benefit of and be binding upon, their respective heirs, executors, administrators, successors and assigns.
18. The Parties agree that this Agreement shall not be amended or removed from title to the Lands (where it has been registered in accordance with Section 1 herein) except where agreed upon in writing by the Municipality.

19. The Owner’s covenants herein shall be treated as restrictive covenants which run with the land for the benefit of the adjoining or adjacent lands of the Municipality or such of them as may be benefited thereby and such covenants shall be binding on the Owner, its heirs, executors, administrators, successors and assigns.

20. In the event that the Owner fails to make any payments specified hereunto or fails to pay any invoice or statement issued pursuant to this Agreement within thirty (30) days, the Owner shall be declared to be in default under this Agreement.

21. It is expressly understood and agreed that the remedies of the Municipality under this Agreement are cumulative and the exercise by the Municipality of any right or remedy for the default or breach of any term, condition, covenant or agreement herein contained, shall not be deemed to be a waiver of or alter, affect or prejudice any other right or remedy or other rights or remedies to which the Municipality may be lawfully entitled for the same default or breach; and any waiver by the Municipality of the strict observance, performance or compliance by the Owner with any term, condition, covenant or agreement herein contained, or any indulgence granted by the Municipality to the Owner, shall not be deemed to be a waiver of any subsequent default or breach by the Owner or to entitle the Owner to any similar indulgence heretofore granted.

22. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF the Parties hereto have hereunto set their hands and seals or where applicable have caused to be affixed their corporate seals under the hands of their duly authorized officers on that behalf.

Dated this ____ day of _____, 2024:

THE CORPORATION OF THE MUNICIPALITY OF
ARRAN-ELDERSLIE

Per: _____
Name: Steve Hammell
Title: Mayor

Per: _____
Name: Christine Fraser-McDonald
Title: Clerk

We have authority to bind the Corporation.

Dated this ____ day of _____, 2024:

2504970 ONTARIO LIMITED

Per: _____
Name:
Title:

Per: _____
Name:
Title:

We have authority to bind the Corporation.

SCHEDULE "A"
THE LANDS

PT LT 16-17 CON A ELDERSLIE; PT LT 3-25 PL 156 PT 1 3R7788; MUNICIPALITY OF ARRAN-
ELDERSLIE

PIN: 33243-0073 (LT)

SCHEDULE "B"

LIST OF APPROVED PLANS AND DRAWINGS

GM BluePlan Engineering – Proposed Watermain Extension – Site Plan Dwg 1 No 3
Dated July 22, 2024