

THIS AGREEMENT made this \_\_\_\_\_ day of March 2021.

B E T W E E N:

**KILWORTH HEIGHTS WEST LTD.**, a corporation incorporated under the laws of the Province of Ontario having its registered office in the City of London and the County of Middlesex (hereinafter referred to as the “**Developer**”)

OF THE FIRST PART

- and -

**MUNICIPALITY OF MIDDLESEX CENTRE**  
(hereinafter referred to as the “**Municipality**”)

OF THE SECOND PART

**WHEREAS** the Developer is the owner of the land described in Schedule “A”, (hereinafter referred to as the “**Land**”);

**AND WHEREAS** the Developer and the Municipality entered into a vacant land condominium agreement dated July 15, 2020 and registered on September 2, 2020 as instrument ER1321419 (hereinafter referred to as the “**Vacant Land Condominium Agreement**”);

**AND WHEREAS** section 40 of the Vacant Land Condominium Agreement requires that, when the Developer submits to the Municipal Engineer a Completion Certificate, it shall be accompanied by, amongst other things, an agreement made by the Developer in favour of the Municipality that complies with section 158 of the *Condominium Act, 1998*, as amended, which ensures the installation and completion of all of the Site Development Works, as defined in the Vacant Land Condominium Agreement;

**AND WHEREAS** the Parties have agreed that this Agreement satisfies the requirement of paragraph 40.2 of the Vacant Land Condominium Agreement for an agreement made by the Developer in favour of the Municipality that complies with section 158 of the *Condominium Act, 1998(Ontario)*, as amended, which ensures the installation and completion of all of the said Site Development Works;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that, in consideration of the mutual covenants and agreements in this Agreement and other good and valuable consideration, the receipt and sufficiency of which consideration is acknowledged, the Developer and the Municipality hereby covenant and agree with each other as follows:

1. The Parties agree that words and phrases defined in the Vacant Land Condominium Agreement shall have the same meaning when used in this Agreement.
2. The Developer covenants and agrees with the Municipality as follows:
  - 2.1 Until all dwellings have been completed on all of the units as shown on the Condominium Plan, the Developer shall maintain, repair and replace, the private common element streets to the satisfaction of the Municipal Engineer; and that the Developer shall continue to do so thereafter until after all such dwellings have been completed on all of the units as shown on the Condominium Plan; and that, after all such dwellings have been completed, the Developer shall complete the installation and construction of the private common element streets, including asphalt repair, correcting any settlement, applying a final course of asphalt, restoring curbs and making final adjustments to and parging of manholes and catchbasins such that all is in good order and repair, in accordance with the approved plans and specifications and otherwise in accordance with the Vacant Land Condominium Agreement and to the satisfaction of the Municipal Engineer.

- 2.2 The Developer shall continue to adhere to the Stormwater Management Plan in accordance and as required by section 19 of the Vacant Land Condominium Agreement as based on the following document(s): Final Stormwater Management Plan prepared by Eng. Plus Ltd. for Kilworth Heights West Ltd., and dated July 2018, as amended.
- 2.3 The Developer shall construct and install the required utilities and street lighting in accordance with the approved plans and specifications, and otherwise in accordance with the Vacant Land Condominium Agreement in accordance with section 38 of the Vacant Land Condominium Agreement and to the satisfaction of the Municipal Engineer and shall prohibit occupancy of any unit until the Municipal Engineer is so satisfied.
- 2.4 The Developer shall complete landscaping, plantings and grading of the Land in accordance with the plans and specifications approved in accordance with the Vacant Land Condominium Agreement and otherwise to the satisfaction of the Municipal Engineer until after all dwellings have been completed on all of the units as shown on the Condominium Plan, and in this connection the parties agree that the delivery of a Final Grading Certificate may be deferred until all such dwellings have been completed on all of the units as shown on the Condominium Plan.
- 2.5 This Agreement shall provide that the following provisions of the Vacant Land Condominium Agreement shall continue to apply mutatis mutandis:
- a. Section 22 (Sign of Condominium Plan);
  - b. Section 24 (Supervision of Construction);
  - c. Section 25 (Standard of Work and Variations);
  - d. Section 26 (General Maintenance);
  - e. Section 27 (Maintenance of Drains);
  - f. Section 28 (Haul Roads);
  - g. Section 31 (Utilities Co-ordination);
  - h. Page 14 unnumbered paragraph(Letter of Credit) adjusted to provide that the Letter of Credit is required to be amended to reference and stand as security for the obligations arising under both this Agreement and the Vacant Land Condominium Agreement;
  - i. Section 34 (Security for All Developer's Obligations);
  - j. Section 36 (Insurance) adjusted to provide an amended Insurance Certificate is required which confirms coverage applies to the obligations arising under both this Agreement and the Vacant Land Condominium Agreement;
  - k. Section 37 (Indemnity);
  - l. Section 38 (Utility Installation)
  - m. Section 40 (Completion Certificate of Site Development Works) adjusted to apply to the exceptions referred to in section 40.1;
  - n. Section 41 (Release of Condominium Registration) adjusted to reflect the exceptions referred to in section 40.1;
  - o. Section 43 (Construction Lien);
  - p. Section 44 (Right of Inspection);

- q. Section 45 (Municipal Engineer Orders);
- r. Section 46 (Remedies);
- s. Section 47 (Court Action);
- t. Section 49 (Realizing on Security);
- u. Section 50 (Call on Letter of Credit);
- v. Section 51 (Replacement of Letter of Credit);
- w. Section 62 (Municipal Costs);
- x. Section 63 (Complaint Procedure);
- y. Section 65 (Right to Contest Municipality's Costs);
- z. Section 69 (Conflict of Requirements);
- aa. Section 70 (Expense of Developer);
- bb. Section 71 (Interest and Liens);
- cc. Section 72 (Estoppel);
- dd. Section 74 (Time of Essence);
- ee. Section 75 (Giving of Notice);
- ff. Section 76 (Assignment);
- gg. Section 77 (Severability);
- hh. Section 78 (Number and Gender); and
- ii. Section 79 (Interpretation).

2.6 The Developer shall post a letter of credit security to ensure the Developer discharges all of its obligations set out in this Agreement.

2.7 Not later than ten (10) days after the registration of the Declaration and Description under the *Condominium Act, 1998*, as amended, the Developer shall give notice to the MECP,

- i. advising of the date of registration of the Declaration and Description for the vacant land condominium,
- ii. offering to register the private common element water supply infrastructure as a non-municipal year-round residential drinking water system under the *Safe Drinking Water Act* and associated regulations, if required,
- iii. giving the notice contemplated by subsection 10.1(1) of O.Reg. 170/03 with respect to such private common element water supply infrastructure in the event the MECP determines that the *Safe Drinking Water Act* and associated regulations apply to such water supply infrastructure,

and shall provide to the Municipality confirmation that the notice has been sent, along with a copy of the notice.

- 2.8 The Developer shall make such amendments to the Declaration as are necessary in the opinion of the Municipal Solicitor to satisfy the requirements of clause 158(1)(b)(iii) of the *Condominium Act, 1998* as amended.
3. To be clear, nothing in this Agreement alters or in any way derogates from the Developer's continuing obligations under the Vacant Land Condominium Agreement which the Parties agree continues in full force and effect in accordance with its terms to be binding upon the Developer and upon its successors and assigns, as owners and occupiers of the Land. If and to the extent of any inconsistency or conflict in the obligations of the Developer between the Vacant Land Condominium Agreement and this Agreement, the more demanding obligation(s) shall prevail.
  4. Until the Declaration has been amended as required by section 6 below, the Developer shall not accept any offer to purchase any unit as shown on the Condominium Plan unless the Developer has given to such offeree, prior to the making of such offer, written advice to the effect that the common element infrastructure specified in the Declaration and Description have not all been completed to the satisfaction of the Municipality. If at the time of the execution and delivery of this Agreement the Developer has already entered into one or more agreements of purchase and sale for units as shown on the Condominium Plan, the Developer shall provide notice to such purchasers within 10 days after the execution and delivery of this Agreement and prior to the transfer of the unit which is the subject matter of the agreement of purchase and sale.
  5. The Municipality agrees to and does hereby authorize the Municipality's Director of Public Works and Engineering to sign the Statement of Municipality attached as **Error! Reference source not found.** to this Agreement, which signed Statement of Municipality is to be attached as Schedule "G" to the Declaration to be registered to establish the vacant land condominium contemplated by the Vacant Land Condominium Agreement.
  6. The Developer agrees that, after completion by the Developer of its obligations under paragraph 2 of this Agreement, the Developer shall use its best efforts to cause the Declaration to be amended as necessary to satisfy the requirements of clause 158(1)(b)(iii) of the *Condominium Act, 1998*, as amended, to include in the Declaration a Certificate of Engineer required by the *Condominium Act, 1998*, as amended, and the regulations thereunder in substantially the form attached as Schedule "C" to this Agreement; without limiting the generality of the foregoing, the Developer's best efforts shall include condominium board authorization of the amendment and registration of the amendment in compliance with the *Condominium Act, 1998* as amended.
  7. Forthwith after the registration of the amendment to the Declaration contemplated by section 6 above, the Developer will provide the Municipality of the particulars of registration and provide to the Municipality a copy of the of the amendment as registered.
  8. The Developer acknowledges and agrees that the Developer's obligations under this Agreement shall not be completed such that security provided under this Agreement may be released until the amendment to the Declaration required by section 6 above has been effected in accordance with the procedural, including notice, requirements of the *Condominium Act, 1998*, as amended.
  9. The Developer represents and warrants to the Municipality that, at the date of this Agreement and at the date of the registration of this Agreement upon title, the Developer will be the owner in fee simple of the Land.
  10. The Developer consents to and will register this Agreement against the title to the Land in the appropriate Land Titles Office within thirty (30) days after the execution and delivery of this Agreement to the intent and purpose that this Agreement shall run with the Land. Forthwith after registration, the Developer shall provide to the Municipality

particulars of registration and a copy of this Agreement as registered. The Municipality shall not require postponements of utility easement registrations provided they are in standard form.

11. Not later than sixty (60) days after registration of this Agreement the Developer shall cause to be delivered to the Municipality an opinion by a solicitor authorized to practice in Ontario, to the effect that at the date of signing of this Agreement and at the date of the registration of this Agreement upon title, the Developer is the owner in fee simple of the Land and that this Agreement has been registered against the Land in a first priority position, save and except for utility easement registrations provided they are in standard form and any registered agreement in favour of the Municipality. The said opinion(s) shall be addressed to the Municipality in consideration of a fee of \$1.00 payable to the Solicitor rendering the same.
12. The Parties agree that the costs of the Municipality incurred for engineering and legal fees and disbursements in connection with this Agreement are deemed to costs recoverable from the Developer as if in accordance with the provisions of paragraph 65 of the Vacant Land Condominium Agreement.
13. This Agreement shall run with the Land, and shall be binding upon the Developer and upon its successors and assigns, as owners and occupiers of the Land. From and after registration of a Condominium Plan on all or any part of the Land, under the *Condominium Act, 1998*, as may be amended or substituted from time to time, for the purposes of this Agreement, "successors and assigns, as owners and occupiers of the Land" shall mean unit owners, as successor owners and occupiers of the Land by virtue of their ownership of unit(s), together with their appurtenant undivided interest as tenants in common of the common elements shown on the Condominium Plan and the Condominium Corporation created by the registration of the Condominium Plan, which corporation has responsibility for management of the property and the assets of the condominium corporation on behalf of unit owners, including the common elements. This Agreement shall be binding upon and shall enure to the benefit of the Municipality and its successors and assigns.

signatures next page

**IN WITNESS WHEREOF** the parties have hereunto affixed their respective corporate seals attested to by the hands of their respective proper officers duly authorized in that behalf.

**KILWORTH HEIGHTS WEST LTD.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
I have the authority to bind the company

**MUNICIPALITY OF MIDDLESEX CENTRE**

Per: \_\_\_\_\_  
Aina DeViet, Mayor

Approved and authorized by By-law  
No. 2021 - \_\_\_\_\_ enacted the \_\_\_\_\_  
day of March, 2021.

Per: \_\_\_\_\_  
James Hutson, Clerk

**SCHEDULE “A”**

to

THIS AGREEMENT made this \_\_\_\_\_ day of March 2021.

B E T W E E N:

**KILWORTH HEIGHTS WEST LTD.**, a corporation incorporated  
under the laws of the Province of Ontario having its registered  
office in the City of London and the County of Middlesex  
(hereinafter referred to as the “**Developer**”)

OF THE FIRST PART

- and -

**MUNICIPALITY OF MIDDLESEX CENTRE**  
(hereinafter referred to as the “**Municipality**”)

OF THE SECOND PART

**THE LAND**

Block 233, Plan 33M761, subject to an easement in gross over Part 1, 33R20419 as in  
ER1247193; subject to an easement as in ER1286740; Municipality of Middlesex Centre.

being all of PIN 08502-1493 (LT)

SCHEDULE “B”

to

THIS AGREEMENT made this \_\_\_\_\_ day of March 2021.

B E T W E E N:

**KILWORTH HEIGHTS WEST LTD.**, a corporation incorporated under the laws of the Province of Ontario having its registered office in the City of London and the County of Middlesex (hereinafter referred to as the “**Developer**”)

OF THE FIRST PART

- and -

**MUNICIPALITY OF MIDDLESEX CENTRE**  
(hereinafter referred to as the “**Municipality**”)

OF THE SECOND PART

SCHEDULE "G"

STATEMENT OF MUNICIPALITY

I hereby confirm that a bond or other security that is satisfactory to the Municipality has been posted by **KILWORTH HEIGHTS WEST LTD.** with the Municipality of Middlesex Centre in respect of the proposed vacant land condominium being legally described as \_\_\_\_\_ and that the said security is sufficient to ensure that:

- 1. the buildings and structures that the Declaration and Description show are included in the Common Elements will be completed and installed in accordance with the regulations made under the Act,
- 2. the facilities and services that the Declaration and Description show are included in the Common Elements will be installed and provided in accordance with the regulations made under the Act,
- 3. the items described in clause 158(3)(b) of the Act will be included in an amendment to the description.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

MUNICIPALITY OF MIDDLESEX CENTRE

Per:

\_\_\_\_\_

Name:  
Title: Director of Public Works and Engineering  
Municipality of Middlesex Centre

*I have the authority to bind the Municipality.*



SCHEDULE “C”

to

THIS AGREEMENT made this \_\_\_\_\_ day of March 2021.

B E T W E E N:

**KILWORTH HEIGHTS WEST LTD.**, a corporation incorporated under the laws of the Province of Ontario having its registered office in the City of London and the County of Middlesex (hereinafter referred to as the “**Developer**”)

OF THE FIRST PART

- and -

**MUNICIPALITY OF MIDDLESEX CENTRE**  
(hereinafter referred to as the “**Municipality**”)

OF THE SECOND PART

*Condominium Act, 1998*

Certificate of Engineer

I certify that:

I        Each building and structure that the declaration and description show are included in the common elements has been constructed in accordance with the regulations made under the *Condominium Act, 1998* with respect to the following matters:

(Check whichever boxes are applicable)

1,2,3 ☒        The declaration and description show that there are no buildings or structures included in the common elements.

OR

1.

☐

The exterior building envelope, including roofing assembly, exterior wall cladding, doors and windows, caulking and sealants, is weather resistant if required by the construction documents and has been completed in general conformity with the construction documents.
2.

☐

Floor assemblies of the buildings and structures are constructed and completed to the final covering.
3.

☐

Walls and ceilings of the buildings and structures are completed to the drywall (including taping and sanding), plaster or other final covering.
4.

☐

All underground garages have walls and floor assemblies in place.

OR

- ☒

There are no underground garages.
5.

☐

All elevating devices as defined in the *Elevating Devices Act* are licensed under that Act if it requires a license, except for elevating devices contained wholly in a unit and designed for use only within the unit.

OR

- ☒

There are no elevating devices as defined in the *Elevating Devices Act*, except for elevating devices contained wholly in a unit and designed for use only within the unit.

6. ☒ All installations with respect to the provision of water and sewage services are in place and operable.

**OR**

- ☐ There are no installations with respect to the provision of water and sewage services.

7. ☐ All installations with respect to the provision of heat and ventilation are in place and heat and ventilation can be provided.

**OR**

- ☒ There are no installations with respect to the provision of heat and ventilation.

8. ☐ All installations with respect to the provision of air conditioning are in place.

**OR**

- ☒ There are no installations with respect to the provision of air conditioning.

9. ☒ All installations with respect to the provision of electricity are in place and operable.

**OR**

- ☐ There are no installations with respect to the provision of electricity.

10. ☐ All indoor and outdoor swimming pools are roughed in to the extent that they are ready to receive finishes, equipment and accessories.

**OR**

- ☒ There are no indoor and outdoor swimming pools.

*[Strike out whichever is not applicable:]*

- II All facilities and services that the declaration and description show are included in the common elements

**OR**

~~The following facilities and services that the declaration and description show are included in the common elements:~~

~~(Specify by reference to the item numbers in Schedule H)~~

have been installed and provided in accordance with the requirements of the municipalities in which the land is situate or the requirements of the Minister of Municipal Affairs and Housing, if the land is not situated in a municipality.

Dated this                      day of                      , 2021.

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Signed and Sealed by Professional Engineer