

THIS WATER SERVICING AGREEMENT

Dated as of _____ 2020

BETWEEN:

GREEN EDEN DEVELOPMENTS LIMITED

ONxxxxxx

The "Owner"

- And -

THE CORPORATION OF THE CITY OF KAWARTHA LAKES

The "City"

WHEREAS the Owner herein proposes to develop its lands, which are described in Schedule A of this agreement and referenced as the "Owner's lands";

AND WHEREAS the Owner's lands do not abut a municipal water supply line which is necessary for the proposed development;

AND WHEREAS the Owner has agreed to pay for the extension of a municipal water supply line to service the subject lands (referenced as the "dedicated water service");

AND WHEREAS the dedicated water service will be designed and sized solely to provide water for the proposed 30 unit residential development on the Owner's lands and is not capable of or intended to serve other lands within the City;

AND WHEREAS the City grants exemption to Section 5.03 (e) vi of By-Law 2018-039 as amended to permit a single water service for multiple buildings, as per Section 5.03 (f) of By-Law 2018-039;

AND WHEREAS the municipal water system known as Victoria Glen and associated dedicated water service is not capable of providing fire protection, and the Owner must provide alternative fire protection measures, which will be determined through Site Plan Approval, as per municipal and provincial requirements;

AND WHEREAS the City will not allow or provide for the connection of other lands to the dedicated water service, as per Council Resolution CR2020-xxx;

NOW THEREFORE, the Parties agree as follows:

1. OWNER'S LANDS AND REGISTRATIONS

1.1 The land to be serviced by the dedicated water service are described as follows:

Part Lot 4, Plan 110; Part of Park Lot 4 S/S Mary Street Plan 109 as in R258612, City of Kawartha Lakes, being all of the lands described in P.I.N. 63259-0095 (LT) and also known as 40 Mary Street West, Omemee.

1.2 The Owner consents to the registration of this agreement against the title to the Owner's Lands.

1.3 The Owner acknowledges and agrees that this agreement may be included as a schedule to any agreement authorized under the *Planning Act*.

2. DESCRIPTION OF WORK

2.1 The parties agree that the City shall design and construct a dedicated water service extending from the existing municipal water system known as Victoria Glen to the property limit of the Developer's Lands in accordance with Council Resolutions CR2013-864 and CR2020-XXX, resulting from Report WWW 2013-010 "Municipal Servicing for Green Eden Development in Omemee" and Report ENG2020-002 Water Servicing Green Eden Developments Limited, respectively, which are attached hereto as Schedule "A". Specifically, the City shall:

- a) retain WSP Canada Inc., as selected by the Owner from the City's pre-qualified list of Municipal Servicing Engineers, to complete the dedicated water service detailed engineering design, tender, contract administration, external agency approvals (Ministry of Transportation, Kawartha Region Conservation Authority), construction inspection, associated legal & topographic survey, geotechnical inspection, materials testing and as-constructed documentation and certification, as further detailed below;
- b) ensure that the design and installation of any water treatment system improvements required ensure safe potable drinking water in accordance with the Safe Water Drinking Act, as amended and replaced, and all other applicable legislative requirements and in accordance with the City's specifications and approvals in effect as of the date hereof for such works and as approved by the City of Kawartha Lakes Director of Engineering and Corporate Assets and the Director of Public Works;
- c) obtain all required approvals (including but not limited to the Ministry of

Environment Conservation & Parks for the design of the dedicated water service and shall administer the design and construction to City specifications in effect as at the date hereof;

- d) undertake the preparation and issuance of the construction tender in accordance with the specifications prepared by WSP Canada Inc. and the City of Kawartha Lakes Purchasing Policies, following clearance of payment in full from the Owner of actual tender costs, estimated to be \$485,520 (plus HST) as per the Engineering Cost Estimate, dated January 14, 2020 and included in ENG2020-002 Water Servicing Green Eden Developments Limited, Appendix B.
- e) undertake the construction or installation in accordance with the specifications prepared by WSP Canada Inc., following clearance of payment in full from the Owner for any additional funds required as per the City's accepted tender value;
- f) construct and install in accordance with the City's specifications in effect as of the date hereof, and in accordance with the approval by the Director of Engineering and Corporate Assets for the City, and in a good and workmanlike manner under the supervision and inspection of the WSP Canada Inc. inspectors and under the observation of the City's inspectors.

All of the foregoing may be referred to as the "works".

- 2.2 The City agrees to take all reasonable steps to complete the works in a timely and diligent manner. The Owner acknowledges and agrees that the City is not obliged to make the dedicated water service available by any specific date and that certain actions required of the Owner under this agreement may affect the timing of the completion of the works. The City agrees that the construction of the water service will commence when the Site Plan Agreement is executed.
- 2.3 The parties acknowledge and agree that the dedicated water service has been designed and sized solely to provide domestic water servicing for the proposed 30 unit residential development on the Owner's lands and is not capable of or intended to serve other lands within the City.

3. OWNER'S OBLIGATION TO PAY FOR WORKS

- 3.1 The Owner agrees and acknowledges that it shall be responsible for all costs incurred by the City arising from the construction and installation of the works as described in section 2 above and shall pay the amounts in accordance with section 3.2.
- 3.2 Payment Schedule - The Owner agrees to pay the Municipality's costs as follows:

- a) prior to execution of this agreement by the City the Owner shall pay the estimated costs for the detailed engineering design, contract administration, tender specifications, construction inspection, legal & topographic survey, geotechnical investigation, as recorded drawings, which is estimated to be \$63,525 (plus HST), as per the Engineering Cost Estimate for the Detailed Design, Contract Administration, Tender Specifications, Construction Inspection, Legal and Topographic Survey, Geotechnical Investigation, and As Recorded Drawings, prepared by WSP Canada Inc., dated January 13, 2020, included in ENG2020-002 Water Servicing Green Eden Developments Limited, Appendix B.
 - b) upon completion of the detailed design, and preparation of the construction tender specifications and prior to issuance of a construction tender for the works as designed, the Owner shall pay the actual costs for the construction, estimated to be \$485,520 (plus HST), as per the Engineering Cost Estimate for the Construction and Installation of the Water Service, prepared by WSP Canada Inc., dated January 14, 2020 and included in ENG2020-002 Water Servicing Green Eden Developments Limited, Appendix B.
- 3.3 Upon closing of the tender, whereupon the tender that is accepted exceeds the amount set out in section 3.2 b), the City shall provide a written notice to the Owner, within 5 business days of tender acceptance, setting out the additional costs and the Owner shall be entitled to select one of the following options:
- a) that it does not require the City to proceed with the construction due to the increased costs of the project; or
 - b) that it requires the City to proceed with the construction, notwithstanding that the tender amount exceeds the estimated cost.
- 3.4 The Owner shall provide written notice to the City within 5 (five business) days of the date of the notice letter provided by the City under section 3.3 and identify which option (under section 3.3) it has chosen.
- 3.5 Selection of Option 3(a) - Where the Owner has selected the option set out in section 3.3(a), the City shall be authorized to terminate the tender process, and this agreement shall be terminated. The City shall refund the amount set out in section 3.2(b) minus any amount for costs incurred by the City as a consequence of this agreement for which the City has not already been paid.
- 3.6 Selection of Option 3(b) - Where the Owner has selected the option set out in section 3.3(b), the Owner shall provide the amount set out in the notice letter (issued under section 3.2) by way of cash, certified cheque or bank draft. Upon receipt of those funds, the City shall be authorized to accept the tender and proceed with the project.

- 3.7. Should changes to the works be required to address on-site conditions which would increase the cost of construction:
- a) by an amount less than \$5,000.00, the City shall be authorized to issue the change order and the Owner shall pay the amount to the City within 15 days; or
 - b) by an amount equal to or greater than \$5,000.00, the City shall not issue the change order until such time as an amount equal to the cost of the change order has been received from the Owner.
- 3.8 The Owner, shall, be responsible for connecting to the dedicated water service at the Owner's sole expense, after the 30 unit residential development located at 40 Mary Street West, Omemee, is constructed, as per the Site Plan Agreement and an occupancy inspection has been successfully completed for the issuance of an occupancy permit, for any unit, by the Chief Building Official or designate.
- 3.9 The Owner acknowledges that the construction of works under this Agreement shall not obligate the City to enter into a Site Plan Agreement for the 30 unit residential development located at 40 Mary Street West, Omemee unless the Owner has satisfied the City's terms and requirements

4 OWNER'S OBLIGATION FOR ONGOING MAINTENANCE COSTS

- 4.9 The Owner acknowledges that the design and construction of the dedicated water service may give rise to the need to conduct non-routine operational and maintenance activities to ensure compliance with all applicable legislation. The Owner agrees that it shall be responsible for all costs of any non-routine maintenance and operational activities for the dedicated water service, to the satisfaction of the Director of Public Works. The water service shall not be connected until the development is constructed as per the Site Plan Agreement and occupancy.
- 4.10 The Owner shall lodge with the City, security in an amount determined by the City in consultation with WSP Canada Inc. upon completion of the detailed design for the dedicated water service for such maintenance activities and within 10 business days of written notice from the City. If the Owner fails to deliver the money by the specified timeframe, the City will halt construction and the Owner will be responsible for all construction costs related to the delay.
- 4.11 During the period of time that the Owner is responsible for maintenance activities, the Owner will submit a Road Occupancy Permit to the City and obtain an issued permit before doing any work in the City roadway.

5 EXPENSE/COST RECOVERY

- 5.3 Every provision of this Agreement by which the Owner is obligated in any way shall be deemed to include the words "at the expense of the Owner" unless the context otherwise requires.
- 5.4 Frontage charges pursuant to City of Kawartha Lakes By-Law 2018-039, as amended, do not apply.
- 5.5 All expenses, for which demand for payment has been made by the Municipality, shall bear interest at the rate of 12% per annum commencing 30 days after demand is made.
- 5.6 Notwithstanding any security that may be held by the City, the Owner acknowledges that the dedicated water service is for the sole benefit of the Owner's lands and that the Municipality may utilize its authority under Part XII of the *Municipal Act, 2001* to impose fees and charges upon the owners of the Owner's lands which are to be serviced by the dedicated water service in connection with its design, construction and maintenance as contemplated in this agreement.

6 USE OF SECURITY

- 6.1 Any Letter of Credit or other security filed with the Municipality may be used as security for any expense or cost which under the terms of this Agreement is the responsibility of the Owner.

7 STATUS OF THIS AGREEMENT

- 7.1 This Agreement is entered into and executed by the Owner for the purpose of having the City act in reliance on the covenants by the Owner contained herein and the Owner hereby waives any right or claim which it now has or may hereinafter acquire which is inconsistent with the terms of this Agreement.
- 7.2 This Agreement shall be enforceable by and against the Parties hereto, their heirs, executors, administrators, successors and permitted assigns, and the Agreement and all the covenants by the Owner contained herein shall run with the Lands for the benefit of the City and the land or interests in land owned by the City upon the registration of this Agreement.
- 7.3 If construction is not completed, site plan agreement registered and dedicated water service connected to the City's water system within 5 years of the in force date of this Agreement, this Agreement is terminated. The City is entitled to use any security to remove the dedicated water service from City property and cap the service on the private side. The Owner is responsible for all costs, including those exceeding the

security posted. The City will return any monies held net of expenses incurred. The Owner will continue to be responsible to pay the City for net costs as of and following the date of termination.

8 INTERPRETATION

8.1 Whenever in this Agreement the pronoun "it" is used, it shall be read and construed as "he", "she", "they", "him", and "her" or "them", and the number of the verb agreeing therewith shall be construed accordingly.

8.2 The Schedules attached hereto shall form part of this Agreement.

8.3 Whenever used, "Director of Engineering and Corporate Assets and Director, Public Works shall include the delegate of the Director.

9 NOTICE

9.1 Any notice required to be given hereunder may be given by personal delivery or registered mail,

(a) in the case of the Owner, to:

Green Eden Developments Ltd., ONxxxxxxx

Name: Betty Lowes

Address: 31 Cornwall Street , Omemee,
Ontario

Phone: 705)768-8307

Email: Greenedenliving@gmail.com

In the case of a successor in title, to the mailing address for every registered owner, and including mortgagees.

(b) in the case of the City, to:

City Clerk, the Corporation of the City of Kawartha
Lakes 26 Francis Street, Lindsay ON K9V 5R8

9.2 Each Party may re-designate the person(s) or the address, or both, to whom or to which such notice may be given by giving written notice to the other.

9.3 Any notice given in accordance with this section shall be deemed to have been given on the second day following the day of delivery or the fourth day following the day of mailing unless within the four days following the day of mailing there is a postal delivery interruption in which event on the 4th day

following the end of the postal delivery interruption, as the case may be.

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their respective Corporate Seals attested to by the hands of their authorized officers.

SIGNED, SEALED AND DELIVERED

THE CORPORATION OF THE CITY OF KAWARTHA LAKES

Andy Letham, MAYOR

Date

Cathie Ritchie, CITY CLERK

Date

GREEN EDEN DEVELOPMENTS LIMITED ONxxxxxx

Owner's Name: Alex Ing

Title: Director/President

I have the authority to bind the Corporation

Date

THIS IS SCHEDULE A TO THE AGREEMENT BETWEEN THE CITY OF KAWARTHA LAKES AND
GREEN EDEN DEVELOPMENTS LIMITED

SCHEDULE A

Council Report ENG2020-002 Water Servicing Green Eden Developments Limited, including all
appendices:

DRAFT