OOWA ONTARIO
Onsite Wastewater Association

Municipal Responsibility Agreements for Communal Wastewater Systems in Ontario

Frequently Asked Questions

Submitted by: OOWA External Relations Committee
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This document is intended to be a living document, subject to change from time to time, to reflect industry advances.

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Introduction

For municipalities in which centralized municipal services are not available, communal services are the next level of service specified by the Provincial Planning Statement (PPS). Communal systems must be in alignment with the local Official Plan and also have financial assurance, management and operation components.

While communal, or decentralized, systems are not yet prevalent in Ontario, in the United States these systems have been considered a cost-effective, long-term option for meeting public health and water quality goals and have been considered an integral component of the permanent national infrastructure since 1997.

Further, in the United States, onsite/communal wastewater currently serve 20% of all households (or 1 in 5 homes)[1] and are planned for 33%[2] of all new homes. The onsite /decentralized sector supports 85,000 jobs[3], mostly in the private sector. These types of systems effectively remove pollutants including nitrogen and phosphorous and can treat effluent to the same standards as centralized sewage treatment plants with smaller energy footprints than conventional systems. Decentralized systems that use subsurface discharge of treated effluent disperse treated water below ground, thereby keeping water within the watershed and recharge local underground aquifers.

Despite the benefits and recognition of communal systems as a viable solution in the United States, Ontario is slow to adopt these solutions. The Ontario Onsite Wastewater Association (OOWA) identified Municipal Responsibility Agreements (MRAs) as a challenge to private communal system implementation in Ontario. Specifically, MRAs are typically required for private communal system implementation, but many municipalities will not engage in these agreements. Municipalities, their consultants and local developers are hesitant to engage in this process because it is not well understood and examples are not widely available.

These FAQs are intended to inform municipalities, consultants and developers about Municipal Responsibility Agreements (MRAs) and the process required for implementation of private communal water and wastewater systems in Ontario.

[1] According to the 2015 U.S. Census Bureau's American Housing Survey (AHS)

[2] https://www.epa.gov/sites/default/files/2015-06/documents/septic_guidelines.pdf

[3] According to the 2021 Pipeline to a Sustainable Workforce: A Report on Decentralized/Onsite Wastewater Occupations (EPA Office of Wastewater Management)

01 What is an MRA and when is it needed?

MRAs are legal agreements between a municipality and a developer that stipulate the conditions under which private communal services will be constructed, operated and maintained, as well as the action to be taken by the municipality in the event of a default. MRAs form the basis for a risk prevention mechanism by establishing responsibilities for proper construction, operation and maintenance management practices and by providing up-front secured funds for the start-up phase or any remedial measures that may be necessary in the event of default. When proper management practices are in place and enforced, malfunctions arising from poor operation and maintenance can be prevented and the long-term viability of the services and protection of the environment and public health, can be assured. MRAs are custom insurance against system risks. Early discussion between the municipality and the developer is key to risk mitigation.

The MRA may be used to ensure consistency with Official Plan (OP) policies that may allow for private communal infrastructure servicing projects. MRAs are a tool that a municipality can use to ensure the long-term management of these systems in a fiscally and environmentally responsible manner and are a condition of approval applied to the developer. They should contain Financial Assurance (FA) commensurate with a proportion of capital and operating costs for the project as risk protection from a potential future default by a private sector owner/operator that would require a municipality to assume responsibility for the system.

The MRA requirement is linked to the D-5 Guideline for Planning for Sewage and Water Services, administered by the Ministry of Environment, Conservation and Parks (MECP) in support of the Provincial Policy Statement and other provincial direction. The D-5 Guideline provides guidance on a number of issues related to infrastructure planning, communal services and private services. Within the D-5 Guideline is Procedure D-5-2- Application of Municipal Responsibility for Communal Water and Sewage Services (1995), which provides guidance and procedures related to MRAs.

See Appendix A for a sample MRA

02 How can an MRA be of benefit to a municipality?

If a municipal Official Plan allows private communal services, the MRA is a tool that the municipality can use to ensure proper long term management and operation of these systems in its jurisdiction. All private communal systems for permanent development require an MRA. However, the MRA is not a stand alone approval, but is a requirement that is a condition of obtaining the Environmental Compliance Approval (ECA) for the communal system.

Private communal systems are a sustainable servicing option that can facilitate growth and development at greater densities and can offer greater environmental protection than from individual private sewage systems in areas where full centralized municipal services are not available. Private communal servicing, where appropriate, is one solution for municipalities to consider that can assist them to meet their growth and development objectives in a financially sustainable and responsible manner. Communal systems generally offer a much higher level of treatment than individual conventional septic systems and offer benefits to municipalities and the environment in terms of accommodating higher population densities. MRAs can be used as a risk mitigation tool for upgrades to existing communal systems. Communal systems can be key to unlocking a broader range of housing options under the PPS, such as elderly care facilities that are often absent but needed in small /rural populations with aging populations.

Decentralized systems with subsurface discharge of treated effluent disperse treated water onsite and below ground. They require less energy than larger centralized facilities, keep water within the watershed and recharge local underground aquifers, a valuable resource.

03 What needs to be included in an MRA?

Procedure D-5-2 provides advice on the content of Responsibility Agreements and states that they generally include:

a) *operating and maintenance standards,*
   Generally, the approach here is that the developer agrees to operate and maintain the communal services system at its sole cost and expense and without contribution from the municipality, except where the developer is in default. “Default” is defined within the agreement.
b) *a definition of default,*
c) *an outline of remedial action in the event of default,*

d) financial assurance provisions, (See FAQ 5 through 8 for more details on Financial Assurance.)
e) registration on title of the subject property,
f) easements, where required,
g) right of entry and inspection,
h) Generally, the developer grants the township unobstructed, unrestricted access.
i) when required, communal services (including any interests in the land) not already owned by the municipality will be transferred to the municipality at no cost to the municipality.

04 What is Financial Assurance (FA)?

Financial Assurance (FA) is security put in place as municipal risk protection from a potential future default or system failure related to the private communal services. FA is required by the municipality and the amount required is commensurate with the project costs.

For the purpose of an MRA, it is ultimately up to the municipality to work with the developer to establish the form and amount of the FA and work with the proponent to establish the basis of the FA as part of the agreement.

MECP provides guidance in this regard through the Guideline F-15: Financial Assurance Guideline, which explains FA, when FA applies, and how to calculate FA. For the purpose of an Environmental Compliance Approval, Guideline *F-15: Financial Assurance Guideline*, Section 6.5.9.1, states:

> *The amount of Financial Assurance required should be equal to 100% of three years of undiscounted operating costs plus 15% of the capital costs sufficient to provide funds for upgrading or clean-up that may be required after a default and for temporary operation by the Ministry until a municipality or another local organization takes over operations.*

05 How does FA relate to an MRA?

Any MRA should contain FA provisions which will ensure a security satisfactory to the municipality is available to the municipality for capital improvements, should repair or replacement of services become necessary in the event of default and municipal assumption of the communal services. Ongoing operations costs that would have to be assumed by the municipality in the case of operator default should also be included.

MECP has stated the following regarding FA and its link to MRAs:

> *Guideline F-15 can be applied to existing and new activities which would be in receipt of an Environmental Compliance Approval from the ministry. In general, they only hold the FA temporarily until a MRA is received. If a MRA is not received, then the FA requirement will remain.*

If the FA is a condition of the ECA, the Province holds the security, where in the case of an MRA, the municipality holds the security. The Province does not typically allow for new development to occur on the basis of provincially held FA in organized municipalities, but this may vary depending on the specific circumstances.

06 Can the FA components vary and what are the main components?

The FA components can vary. Section 5.4.1 of the Financial Assurance Guideline lists the standard forms of FA that are always acceptable as:

- cash;
- irrevocable letters of credit;
- surety bonds;
- negotiable securities issued by or guaranteed by provincial or federal government.

Non-standard forms identified in 5.4.2 may be accepted on a case by case basis and include:

- any security or collateral accepted by the Program Director;
- agreements, contracts or other non-standard forms of FA with conditions stated in the order or approval;
- insurance policies;
- Guaranteed Investment Certificates (GICs) reissued payable to the Ontario Minister of Finance; Marketable securities or other negotiable securities;
- Indemnification agreements, letter of guarantee;

- Qualified Environmental Trust accompanied by letter of credit, cash or bond. This form of agreement is made between two parties for the purpose of a tax benefit to the regulated party.

A Condominium Corporation structure with requirements for financing, regular review of common assets, building replacement reserve funds can be applied to communal systems. Under The Condominium Act, 1998, Subsection 115(5) defines an eligible security as "a bond, debenture, guaranteed investment certificate, deposit receipt, deposit note, certificate of deposit, term deposit or other similar instrument that,

- is issued or guaranteed by the government of Canada or the government of any province of Canada,
- is issued by an institution located in Ontario insured by the Canada Deposit Insurance Corporation, or
- is a security of a prescribed class."

The main components in existing MRAs are:

- Security cost for construction
- Financial security against operating and maintenance default
- Capital replacement or reserve fund
- Obligation to insure (in some cases insurance replaces one or more components of the FA)

07 Is there an example of an MRA Communal Services Agreement available?

The MECP Environmental Permissions and Approvals Branch has a Communal Services Systems Default Agreement that can be used as a guide. However, municipalities are free to decide on the specifics of financial assurance in their MRAs and may include requirements beyond the F-15 Guideline.

08 Do all municipalities allow MRAs?

Some municipalities may have an OP that does not allow for MRAs or have a council position that they will not sign an MRA. In some cases, FA per the F-15 Guideline, may be allowed by the Province in place of an MRA.

MECP has stated the following regarding circumstances wherein an MRA agreement is not possible:

> *Please note that the FA should not be replacing MRA if (an) application is for approval of any new or expansion to existing communal sewage works (i.e., serving 5 or more lots/units for permanent residency) that are located in an organized township. However, in some cases when the townships are very small and they object (to) entering into MRA agreements due to limited resources and lack of knowledge for (their) preparation, the Director may agree to accept the FA on a site-specific basis.*

See Appendix B for an example of an existing MRA agreement.

09 What is the process for an MRA or for including FA in the Environmental Compliance Approval (ECA)?

The following process outlines how to obtain an MRA or for including FA in an ECA:

Step 1: Confirm
Does the property include more than five lots or units serviced by a private communal water and/or sewage system? If yes, then an MRA and/ or FA is required.

Step 2: Discuss
Discussions need to occur between a developer/proponent and the local municipality responsible for water/wastewater servicing to discuss the need for an MRA. This may be the lower tier or upper tier municipality depending on the area.

Assess the level of risk mitigation required by each party and prepare an agreement in accordance with the D-5-2 Procedure.

Step 3: Estimate Costs

Prepare capital and operating cost estimates for the water/wastewater system(s). For an ECA, calculate the associated FA amount according to Guideline F-15 (i.e., 15% of capital and 100% of annual operating costs for three years). For an MRA a municipality can use the F-15 amount as a guide, and may apply other methodologies depending on their specific policies and requirements.

Step 4: Apply

Apply to the MECP for an ECA for communal sewage works.

a. If an MRA is not yet complete, the ECA is typically issued with a condition that requires a complete (i.e., signed) MRA.
b. If the municipality will not enter into an MRA, propose Financial Assurance to MECP as a Condition of the ECA. Calculated FA amounts are provided by the consultant to MECP, and the FA is provided to the province instead of the municipality.

10 Who can I contact at the MECP with questions about an MRA?

Contact the MECP, Drinking Water and Environmental Compliance Division.

General inquiry - 416-325-4000
Toll free - 1-800-565-4923
TTY toll free - 855-515-2759

11 Does an MRA mean that the municipality must have in-house water or wastewater operations staff to operate the facility in the event of a default?

No. The MRA establishes conditions under which the municipality would assume overall responsibility, but this could be contracted out to a third party operator using the available financial assurance funds.

See Appendix C for entities that operate and service onsite wastewater treatment systems.

Resources

- *Decentralized Wastewater Management Memorandum of Understanding Between USEPA and Partner Organizations. Available at: https://www.epa.gov/sites/production/files/2017-11/documents/2017_decentralized_mou_agreement_app_a_final.pdf*
- *National Onsite Wastewater Recycling factsheet. Available at: http://www.nowra.org/files/About_NOWRA/Partnership agreements/2011_MOU_factsheet.pdf*
- *D-5 Guideline: Planning for Sewage and Water Services* (August 1996). Available at: https://www.ontario.ca/page/d-5-planning-sewage-and-water-services
- *D-5-2 - Application of Municipal Responsibility for Communal Water and Sewage Services* (March 1995). Available at: https://www.ontario.ca/page/d-5-2-application-municipal-responsibility-communal-water-and-sewage-services
- *Environmental Protection Act, 1990 (Part XII - Financial Assurance)*. Available at: https://www.ontario.ca/laws/statute/90e19#BK157
- *F-15 Guideline: Financial Assurance Guideline* (2011). Available at: https://www.ontario.ca/document/f-15-financial-assurance-guideline-0
- Municipality of Dysart et al By-law No. 2014-25 - *Tariff of Fees for the Processing of Applications Made in Respect of Planning Matters*. Available at: https://www.dysartetal.ca/wp-content/uploads/2014/05/BL-2014-25_Planning-Fees.pdf
- Township of Leeds and Thousand Islands Official Plan 2018. Available at: http://www.leeds1000islands.ca/en/governing/resources/Documents/TLTI-OP---Council-Adoption-September-10-2018-reducedTextOnly.pdf

For further information or to provide feedback on this FAQ document, please contact:

outreach@oowa.org
1-855-905-6692 ext. 101

Appendix A

DRINKING WATER AND SEWAGE DISPOSAL SYSTEMS
RESPONSIBILITY AGREEMENT

"SITE NAME"

THIS AGREEMENT MADE

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF XXXXX
(hereinafter called the "Municipality")

- and -

YYYYY ONTARIO INC.
(hereinafter called the "Owner")

WHEREAS the lands affected by this Agreement are the lands described in Schedule A (the "subject lands");

AND WHEREAS the subject lands are not served by a municipal drinking water system or a municipal sanitary sewage collection and disposal system;

AND WHEREAS the Owner has received approval for and intends to develop a residential vacant land condominium on the subject lands, which approval was premised upon the establishment of a Non-Municipal Drinking Water System as defined in the Safe Drinking Water Act, 2002 and the regulations thereto and a privately owned, communal sanitary sewage collection and disposal system;

AND WHEREAS the Municipality requires the Owner to enter into a "responsibility agreement" as a condition of issuing its consent to the establishment of the drinking water system and as a condition of the entering into of an agreement pursuant to section 51(26) of the Planning Act;

AND WHEREAS the Owner will be responsible for the construction, maintenance and operation of the systems;

AND WHEREAS the Owner intends to establish a condominium corporation and the Systems will comprise a component of the common elements and will become assets of the Condominium Corporation;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and for other good and valuable consideration and 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, (the receipt whereof is hereby acknowledged), the parties hereto covenant and agree with one another as follows:

1. DEFINITIONS

a. "Applicable Standards" shall mean any and all statutes, regulations, policies and guidelines of the Province of Ontario, any Environmental Compliance Approvals, Orders or Permits (municipal or otherwise) which are applicable to the systems.

b. "Development Agreement" shall mean any agreement entered into with the Municipality pursuant to section 41 and/or 51 of the Planning Act.

c. "Estimated Replacement Value" shall mean the total cost of repairing or replacing the systems as identified in Schedule C in accordance with the

Applicable Standards that prevail at the time of repair or replacement and shall include, among other things, the cost of all of the components, including installation, supervision and administration of such repair or replacement.

d. "Reserve Fund" shall mean the reserve fund established in the declaration of the condominium corporation, which fund is, by operation of the Condominium Act, 1998 dedicated exclusively for the repair and replacement of the systems, and for no other purpose.

e. "services" means the supply of water or sanitary sewage disposal services.

f. "systems" means the "drinking water system" and/or the "sewage system".

g. "drinking water system" means the "Non-Municipal Drinking Water System" as defined in the Safe Drinking Water Act, 2002 and/or the "Non-Municipal Year-Round Residential System", as defined in Ontario Regulation 170/03, proposed to be located and constructed on the subject lands and includes the "back up" electrical power supply.

h. "sewage system" means the private, communal sanitary sewage collection and disposal system on the subject lands and includes the "back up" electrical power supply.

2. GENERAL PROVISIONS

a. This Agreement shall run with the land and all covenants and provisions herein shall be binding upon the parties hereto and their respective successors and assigns. The Owner consents to the registration of this agreement against title to the Owner's lands by the Municipality.

b. The Owner shall not make any application or permit or authorize any person to make application, to remove this Agreement from the title of the lands described in Schedule "A".

c. For the purposes of this Agreement, it is acknowledged and agreed that the development shall be in accordance with the Master Development Agreement for the subject lands.

d. The Owner shall provide all purchasers of any interest in the Owner's Lands with a copy of this Agreement prior to completing the transfer of any such property interests. The Owner shall not, at any time, represent, imply or suggest that the systems are a Municipal System or that there is any intent that such works become a Municipal System.

e. The following warning shall appear in capital letters in bold type in the agreements of purchase and sale documents between the Owner and any lessees or purchasers of condominium units and in the condominium disclosure statement:

> "WARNING: THE DRINKING WATER SYSTEM AND SEWAGE SYSTEM SERVICING THE LANDS/UNITS ARE PRIVATE. IN THE EVENT THE WORKS FAIL OR REQUIRE REPAIR OR MODIFICATION, IT IS THE RESPONSIBILITY OF THE OWNER OF THE SYSTEM TO EFFECT SUCH REPAIRS".

f. Any Notice to be given by any party under this Agreement may be given by:

i. personal service on the parties hereto, or

ii. prepaid first class mail addressed to the other party at THE following addresses:

(1) to the Owner at CCCCCC

(2) to the Municipality at DDDDDDD

which Notice shall be deemed to have been received 48 hours after mailing, or

iii. by telecopier message to the other Party at their last known telecopier number which shall be deemed to have been received at the time of sending.

g. The following schedules are attached to, and form part of, this Agreement:

Schedule "A"	Legal Description, Subject Lands
Schedule "B"	Cash Payments, Development Charges and Securities
Schedule "C"	Estimated Replacement Value

3. OWNER'S OBLIGATIONS

a. The Owner agrees and acknowledges that it is responsible for the design, construction, operation and maintenance of the systems and all costs arising therefrom and all costs incurred by the Municipality related to or arising from this agreement.

b. The Owner agrees and acknowledges that it shall maintain and operate the systems in accordance with all Applicable Standards at its own cost and expense including, but not limited to:

i. the Safe Drinking Water Act, 2002, the Ontario Water Resources Act, R.S.O. 1990, c.O.40 and any regulations passed thereunder;
ii. the Environmental Protection Act, R.S.O. 1990, any regulations passed thereunder, and any Environmental Compliance Approval (ECA) issued for the sewage system.

c. The Owner shall provide to the Municipality all documents and information as required by the Applicable Standards in accordance with the provisions therein.

d. Upon request of the Municipality, the Owner shall provide access to the Systems to the Municipality, its employees, servants, agents, etc.

e. The Owner shall comply with all notices, Orders, directions issued by the Ministry of Environment and Climate Change, and where the Owner has retained an “Accredited Operating Authority”, the Owner shall comply with all directions, instructions, requisitions, reports etc. issued by the authority concerning the operation of the systems in compliance with the Applicable Standards and the Owner shall forthwith carry out the necessary remedial work and obtain all approvals necessary for such remedial work.

f. The Owner agrees to include, in the condominium declaration, a requirement to establish a reserve fund (or funds) for the sole purpose of maintaining, repairing and/or replacing the systems as further identified in section 9 of this agreement.

4. DEFAULT

a. The Owner shall be in default of this Agreement if any of the following occurs:

i. The Owner fails to provide the Financial Security required by Section 8(a);
ii. The Owner fails to maintain and operate the systems in accordance with all Applicable Standards;
iii. The Owner both fails to remedy a defect or Deficiency in the systems and fails to make arrangements with the Ministry of the Environment to deal with such defect or Deficiency;
iv. The Owner both fails to comply with a Ministry of Environment and Climate Change Order relating to the systems and fails to make arrangements with the Ministry of Environment and Climate Change to comply with such Order;
v. The Municipality receives legal notice, or otherwise finds, that the Owner has ceased to carry on business, whether such cessation of business is voluntary or involuntary; or,
vi. The Owner otherwise fails to meet any of its obligations under this agreement.

b. Remedies of Default:

i. The Municipality shall give written notice within three (3) business days of the event of default that it considers the Owner in default of its obligations;
ii. The Municipality will not take any action subsequent to a default by the Owner unless it has given written notice to the Owner in accordance with the provisions for giving notices set out in section 2(f);
iii. The Owner shall, within four (4) business days, reply to the Municipality's notice and the reply shall set out a plan and timetable (a "Rectification Plan") for the correction of the items set out in the Municipality's notice;
iv. The Rectification Plan shall be reviewed and approved by an independent engineer retained by the Municipality, the cost of whose retainer shall be funded by the Owner;
v. If the Owner does not submit the Rectification Plan within four (4) business days of receipt of the Municipality's notice, or does not make the corrections in accordance with the Rectification Plan as it may be amended with concurrence from the Municipality from time to time, the Municipality may assume full responsibility for the operation and maintenance of the systems until all default conditions are remedied;
vi. In the event that a default is not corrected by the Owner in accordance with the provisions of this Section, the Municipality shall have the right to use the funds from the Replacement Reserve Fund or the balance of the Financial Security to rectify the default.

c. In addition to any of the foregoing, upon receiving notice in writing from the Municipality advising that the Municipality has been compelled to remedy a deficiency in the systems, to assume the systems or take such other corrective action as directed by the Ministry (or such other authority having jurisdiction) and upon the written request of the Municipality, the Owner, the condominium corporation and/or unit owners shall terminate or cause to be terminated all human habitation of the subject lands, until such time as the provision of services from the systems has been restored or until such time as alternative drinking water supply and/or sanitary sewage systems are available to service the subject lands.

5. EMERGENCY SITUATION

a. Notwithstanding the provisions of Section 4(b) of this agreement, if as a result of any work undertaken or not completed by the Owner, its servants or agents, or any act or omission by the Owner causes the operation and maintenance of the systems to be so faulty as, at the sole determination of the Municipality or the Ministry of the Environment, there are reasonable grounds to believe that a health hazard or an environmental hazard exists or is likely to be created (the "Emergency Situation"), the Municipality may immediately take such actions and complete such works as are necessary to repair the deficiency in order to rectify the Emergency Situation, and any such work shall be at the expense of the Owner, but written notice given in accordance with Paragraph 2(f) shall be given to the Owner at the earliest possible time following the determination of the existence of the Emergency Situation. In the event of an Emergency Situation, the Municipality may assume full responsibility for the operation and maintenance of the systems until all default conditions are remedied to the satisfaction of the Municipality. Securities held by the Municipality and/or the Reserve Fund may be applied toward the costs incurred by the municipality in the completion of the works. The determination by the Municipality that an Emergency Situation exists shall be final and binding upon the Owner, and the provisions of Section 12 of this Agreement shall apply, mutatis mutandis, to such decision.

6. RIGHTS OF MINISTER OF ENVIRONMENT TO COMPEL MUNICIPALITY TO REMEDY, ASSUME, ETC.

a. The parties expressly acknowledge and agree that:

i. The Municipality shall not at any time be required or expected to assume ownership of or responsibility for the systems except in accordance with this agreement. The parties agree that the Municipality shall only become responsible for the operation and maintenance of the systems in the event, and only to the extent that, the Municipality is ordered to do so pursuant to Part 9 of the Safe Drinking Water Act, 2002, S.O. 2002, c.32., or the Ontario Water Resources Act, R.S.O. 1990 c.O40. as amended or any similar or successor legislation ; and

ii. In no circumstances shall the Municipality be deemed to have any obligation to provide services to the owners or occupants of units within the proposed condominium except in accordance with this agreement or be construed to be a landlord of or in respect of any units within the proposed condominium.

b. The parties acknowledge, each to the other, that the Safe Drinking Water Act in Part 9, and the Ontario Water Resources Act, R.S.O. 1990, c.O40 provides, that:

i. Where a "Director " within the meaning of the Acts reports in writing to the clerk of a municipality that he or she is of the opinion that it is necessary in the public interest that the water works or any part thereof be established, maintained, operated, improved, extended, enlarged, altered, repaired or replaced, the municipality shall forthwith to do every act and thing in its power to implement the report of the Director;

ii. If the municipality fails to do everything in its power to implement the report forthwith after receiving it, and the time for taking an

appeal has passed or there has been a final disposition of an appeal confirming or altering the report, the Director, with the approval of the Ontario Municipal Board, may direct that whatever is necessary to implement the report or the report as confirmed or altered be done at the expense of the municipality, and may arrange for the Agency to do it; and

iii. The Minister of the Environment may recover the expense incurred in implementing the report, with costs, by action in a court of competent jurisdiction, as a debt due to the Crown or the Agency, as the case may be, by the municipality.

7. INDEMNITY

a. In the event that the Municipality is made subject to or required to take action or incur any costs as a result an Order or Report issued under the Safe Drinking Water Act, 2002, or the Ontario Water Resources Act, R.S.O. 1990, c.O40 or any similar or successor legislation, the Owner shall indemnify and save harmless the Municipality for any cost relating to or arising from such order.

b. In addition to the indemnification given in subsection (a) above, the Owner shall indemnify and keep indemnified and save harmless the Municipality from all loss, damage, cost and expense of every nature and kind whatsoever arising from or in consequence of the construction, maintenance and operation of the systems or any other matter under this Agreement, whether such loss, damage, cost or expense is incurred by reason of negligence or without negligence on the part of the Owner, and whether such loss, damage, cost or expense is sustained by the Municipality, the Owner or their several and respective employees, workmen, servants and agents, or any other person or corporation.

c. Without limiting subsections (a) and (b) the indemnity provided therein shall apply or include any such loss, damage, cost or expense is incurred by Owner, any condominium corporation or any individual owner of a unit/condominium unit arising from any order municipal or provincial requiring the termination of human habitation on all or part of the subject lands.

8. SECURITY

a. The Owner shall provide to the Municipality security ("the Financial Security"), the purpose of which is to ensure that sufficient funds will be available for repair or replacement of the systems and such that the systems can be operated and maintained in accordance with the Applicable Standards by the Municipality should the Municipality be required to do so pursuant to the Safe Drinking Water Act, 2002, Ontario Water Resources Act, R.S.O. 1990, c.O40 or any Order issued thereunder, as follows:

i. An amount equal to XX% of the Estimated Replacement Value (established in Schedule C) until such time as the Municipality receives documentation confirming that the condominium reserve fund is equal to or greater than XX% of the Estimated Replacement Value for the systems, whereupon the Municipality shall release XX% of the security held by the Municipality;

ii. The Municipality may, at its discretion, prior to such condominium reserve fund satisfying the requirements set out in subsection (i),

credit to the developer against the security required herein any amount currently shown in the reserve fund and may reduce the amount of such security accordingly.

b. The Owner shall provide to the Municipality, prior to the execution of this agreement by the Municipality, the required cash deposits and security set out herein and shall, where necessary, lodge such additional security as is necessary to satisfy the provisions herein.

c. In addition to the Financial Security provided for in section 8(a), the Owner shall also be responsible for all costs, including the Municipality-s, related to the preparation of or review of the Estimated Replacement Value pursuant to section 8(e) and/or 8(f).

d. For the purpose of section 8(c) the amount set out in Schedule "C" shall be the "Estimated Replacement Value" until such time as a more current "Estimated Replacement Value" is obtained pursuant to section 8(e) and/or 8(f).

e. The "Estimated Replacement Value", commencing from the date of execution of this agreement, shall be updated no less than every X years and shall be determined as follows:

i. The Owner shall retain a licensed professional engineer who shall provide a written report to the Municipality setting out the estimated amount to repair and/or replace the Systems, in accordance with the legislation and regulations applying to such Systems at that time. Such report shall include a summary/explanation of all measures taken, since the last report provided under this section, to upgrade/repair/replace the Systems (or major components thereof) in accordance with the Applicable Standards;

ii. The report referenced in subsection (a) shall be submitted no later than 6 months prior to the expiry of each X year period;

iii. The Municipality, may in its discretion, submit the report for a peer review by a licensed professional engineer;

iv. The Municipality shall establish the Estimated Replacement Value; and

v. the Owner shall pay to the Municipality the difference between the existing amount of the Securities and the Estimated Replacement Value and such costs incurred by the Municipality related thereto.

f. Whereupon the Owner fails to submit the report required pursuant to section 8(e), the Municipality may do so in place of the Owner at its discretion.

g. The Owner, may initiate the approval of anupdated Estimated Replacement Value in intervals less than 6 years if so desired.

h. Whereupon the Owner has posted the Financial Security provided for in section 8(a) in the form of cash (certified cheque) or Letter of Credit approved by the Municipality, any such cash may be invested as allowed for under Provincial legislation and the policies of the Municipality. All interest earned shall be added to the Financial Security until such time as an updated Estimated Replacement Value is approved. The Municipality shall advise the Owner, upon receiving a written request, regarding the amount of any interest earned, and any such interest earned shall be

credited to the Owner when or if additional security is required to be lodged pursuant to section 8(e).

i. Whereupon a condominium corporation has been established and the declaration for such condominium corporation includes a reserve fund for the Systems, the Municipality may accept a reserve fund study prepared in accordance with the Condominium Act, 1998, as amended to determine the Estimated Replacement Value of the Systems in lieu of the procedure outlined in section 8(e). Where such reserve fund study is acceptable to the Municipality, the Municipality will provide notice that the requirements of section 8(e) have been waived. Such waiver shall only apply to the such reserve fund study as is referenced therein and shall not be construed or deemed to be a continuing waiver of the requirements set out in section 8(e).

9. CONDOMINIUM DECLARATION

a. The Owner agrees that the ownership of the Systems will be transferred to the condominium corporation(s) and the declaration for such condominium shall include:

1) a specific reserve fund for the systems (or one for each) (as an asset of the corporation and/or a component of the common elements);

2) provisions stating that in the event the Municipality is subject to any order, directions etc. as contemplated in section 6(b) of this agreement, upon the written request of the Municipality, the reserve fund shall be paid to the Municipality and that such funds may be used by the Municipality as security hereunder for the purposes set out in section 8(a) of this agreement;

3) provisions stating that upon dissolution of the condominium corporation, any monies remaining in the reserve fund for the Systems are a debt owing to the Municipality for the purposes of being added to security held under section 8 (a); and

4) a statement of the express authority of the corporation(s) to borrow money for the specific purpose of repairing, operating, maintaining and/or replacing the Systems should the Reserve Fund for such Systems be insufficient for such purpose.

The specific contents of the declaration, as related to the foregoing shall be subject to approval by the Municipality.

10. USE OF SECURITY

a. Any Letter of Credit or other security filed with the Municipality is based upon the estimated cost of replacing the systems as prescribed by this Agreement. However, the Financial Security received by the Municipality may be used as security for any item or any other matter which under the terms of this Agreement is the responsibility of the Owner.

b. If the costs of repairing or replacing the systems exceeds the amount of the Financial Security held by the Municipality, notwithstanding the existence of such Financial Security, the Owner shall pay to the Municipality such excess amount within 30 days after invoicing by the Municipality. All overdue accounts shall bear interest at the rate of 15% per annum.

11. WARNING: ADDITIONAL REMEDIES AND COST RECOVERY MECHANISMS

a. If the costs of repairing or replacing the systems exceeds the amount of the Financial Security held by the Municipality, notwithstanding any obligations and remedies arising under subsection 9(b), the Municipality may utilize its authority under Part XII of the Municipal Act, 2001 to impose fees and charges upon the owners of the lands which are serviced by the systems (or such repaired or replaced systems).

12. EXPENSES TO BE PAID BY THE OWNER

a. 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.

b. The Owner shall pay such reasonable fees as may be invoiced to the Municipality by its Solicitor in connection with all work to be performed as a result of the provisions of this Agreement.

c. All expenses for which demand for payment has been made by the Municipality, shall bear interest at the rate of 15% per annum commencing 30 days after demand is made.

d. In the event that the Municipality finds it is necessary to engage the services of an engineer or technical personnel not permanently employed by the Municipality, to review the plans of the Owner and/or carry out onsite inspections of the work performed, the Municipality will advise the Owner accordingly of this need, and the costs of such outside engineers so engaged shall be the responsibility of the Owner. The Municipality may require a deposit for this purpose.

13. CONDITIONS PRIOR TO EXECUTION OF AGREEMENT BY THE MUNICIPALITY

a. The Owner prior to the execution of this Agreement by the Municipality, shall:

i. Taxes - have paid all municipal tax bills issued and outstanding against the said lands;

ii. Cash Deposits, Development Charges & Security - have paid to the Municipality all cash deposits, development charges and security required hereunder.

14. ESTOPPEL OF OWNER AND SEVERABILITY

a. The Owner agrees to not call into question directly or indirectly in any proceeding whatsoever, in law or in equity, or before any administrative tribunal, the right of the Municipality to enter into this Agreement and to enforce each and every term, covenant and condition herein contained and this Agreement may be pleaded as an estoppel against the Owner in any such proceedings.

b. The Owner agrees and acknowledges that it will not make any request in writing or orally of the Ministry of Environment and Climate Change to issue an order requiring the Municipality to assume responsibility for the operation, maintenance, repair or replacement of the Systems.

15. ENTIRE AGREEMENT

a. This Agreement may not be modified or amended except by an instrument in writing signed by the parties hereto or by their successors or assigns.

b. This Agreement and the schedules hereto constitute the entire agreement between the parties and neither party is bound by any representation, warranty, promise, agreement or inducement not embodied herein or therein.

c. There shall be no changes in the Schedules attached hereto, or in any Plan accepted by the Municipality or others, unless such proposed changes have been submitted to, and approved by, the Municipality.

16. ATTACHED SCHEDULES

a. It is agreed that everything included in this Agreement and the Schedules attached thereto, together with all engineering drawings, material and undertakings filed by the Owner and accepted by the Municipality, or by any Ministry of the Government, shall be included in and form part of this Agreement.

b. The Plans attached hereto as Schedules are either photographic or photostatic reductions or reproductions of the original plans filed and accepted by the Municipality. Where uncertainty exists as to the content or accuracy of the plans, the reader should refer to the original full scale drawings filed with the Municipality

17. INTERPRETATION

a. The parties agree that in interpreting the provisions of this Agreement:

i. The word "Owner" and the personal pronoun "he" or "his" relating thereto and used therewith, shall be read and construed as "Owners" and "his", "hers", "its", or "their", respectively as the number and gender of the party or parties referred to in each case require, and the number of the verb agreeing therewith shall be so construed as agreeing with the said word or pronoun so substituted;

ii. all covenants, rights, advantages, privileges, immunities, powers and things hereby secured to the Municipality shall be equally secured to and exercisable by its successors and assigns as the case may be;

iii. all covenants, liabilities and obligations entered into and imposed hereunder upon the Owner shall be equally binding upon his, her, its or their heirs, executors, administrators and assigns, or successors and assigns as the case may be, and that all such covenants and liabilities and obligations shall be joint and several.

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IN WITNESS WHEREOF the parties hereto have executed this Agreement on the following dates:

By The Owner on the __ day of , 20XX

Per:_____

I have authority to bind the Corporation

By The Corporation Of The Municipality on the __ day of , YEAR

THE CORPORATION OF THE MUNICIPALITY

Per: _____
Name, Title

Per: _____
Name, Title

SCHEDULE A

LEGAL DESCRIPTION

DESCRIPTION, SURVEY, PIN INFO

SCHEDULE "B"

CASH DEPOSITS AND SECURITY

The Developer shall, on the dates specified herein, lodge with the Municipality the following described cash deposits, capital levies and security.

1. TYPE OF SECURITY

Any security required to be filed under this Agreement, shall be by a certified cheque, a Letter of Credit valid for a period of l year with extension provisions and prepared in a form provided by the Municipality (which shall be drawn on a Schedule 1 Chartered Bank of Canada and shall be for the amount hereafter set out) or a Performance Bond in a form satisfactory to the Township.

2. CASH DEPOSITS AND SECURITY TO THE MUNICIPALITY

The following cash deposits and are estimates only and are to be paid to the Municipality prior to the execution of this Agreement by the Municipality, except where otherwise noted. In the event that the actual costs incurred by the Municipality exceed the deposits, such excess shall be invoiced to the Developer and be due and payable 30 days after demand:

(a) For legal, planning and engineering expenses and disbursements in connection with this Agreement,

i) preliminary deposit of $XXXX.00

3. SECURITY SUMMARY

Security to the following amounts shall be deposited with the Municipality to initially finance the Securities, and shall be deposited prior to the execution of this Agreement by the Municipality, in the amounts set out below (which reflect the initial Estimated Replacement Value):

TO BE UPDATED BASED ON APPROVED COST ESTIMATES

SCHEDULE "C"

ESTIMATED REPLACEMENT VALUE CALCULATIONS

For the Purposes of this agreement and specifically for the purposes of establishing the amount of security to be lodged with the Municipality, the Estimated Replacement Value shall be based XX% of the Value of Mechanical Components of the systems plus XX% of the Value of the Non-Mechanical Components of the systems.

TO BE UPDATED BASED ON APPROVED COST ESTIMATES

Appendix B

EXAMPLE OF EXISTING MUNICIPAL RESPONSIBILITY AGREEMENT

THIS AGREEMENT dated the day of , 20xx

BETWEEN:

[redacted]

(hereinafter called the "Owner")

- and -

[redacted]

(hereinafter called the "Municipality")

- and –

TRUSTEE XX

(hereinafter called the "Trustee")

WHEREAS the Owner warrants to the Municipality that it is the registered owner of the lands and premises described in Schedule "A" attached hereto and forming part of this Agreement (herein called the "Lands");

AND WHEREAS the Owner has applied to the Municipality for an amendment to the Municipality's official plan and zoning by-law so as to permit the continued use of the North Parcel of the Lands for a year-round land lease community, not to exceed a maximum of 150 sites and 20 hotel & 4 apartment units and ancillary facilities, with the South Parcel to be used for up to 100 seasonal camping sites;

AND WHEREAS the development on the Lands is to be serviced by means of private drinking water system and private sewage system owned by the Owner;

AND WHEREAS pursuant to the provisions of the *Environmental Protection Act*, R.S.O. 1990, c. E. 19 and the *Ontario Water Resources Act*, R.S.O. 1990, c. 0.40, the Owner has obtained Amended Environmental Compliance Approvals [redacted] for the private sewage system and a Permit to Take Water [redacted] for the private drinking water system;

AND WHEREAS the Owner agrees to operate and maintain the private drinking water system in accordance with the *Safe Drinking Water Act, 2002*, S.O. 2002, c. 32 and O. Reg. 170/03 applicable to Non-Municipal Year-Round Residential drinking water systems, as defined therein;

AND WHEREAS the Municipality requires and the Owner agrees that the Owner shall, at the Owner's expense, properly construct, operate, maintain, repair, replace and enhance the private water and sewer services that will serve the development on the Lands and will promptly remedy any default with respect to the Private Services at its own expense and will provide proper and sufficient security to enable the Municipality to operate and maintain the Private Services, at no expense to its ratepayers outside of the Lands, in the event that the Municipality is the subject of an Order pursuant to the provisions of the *Ontario Water Resources Act*, or the *Safe Drinking Water Act, 2002*, S.O. 2002, c. 32 or other related or similar legislation;

AND WHEREAS the Owner has agreed to enter into this Agreement for the purpose of providing the Municipality with such assurances;

AND WHEREAS section 23 of the *Municipal Act, 2001*, S.O. 2001, c.25, authorizes the Municipality to enter into an agreement relating to private water or sewage works;

AND WHEREAS at its meeting of the XX day of XXX, 20XX, the Council of the Municipality approved of Item XX of Report YY of the Planning and Economic Development Committee and did thereby authorize the entering into and execution of this Agreement;

NOW THEREFORE in consideration of the mutual agreements, covenants and promises herein contained, and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by the parties hereto), the parties hereto agree as follows:

1. DEFINITIONS

For the purposes of this Agreement:

(a) "Agreement" means this Municipal Responsibility Agreement;

(b) "Capital Reserve Fund" means the monies held by a Trustee pursuant to Section 12 of this Agreement, for the purposes provided in this Agreement, including for the remedy of any Default;

(c) "Capital Reserve Fund Review" means a study undertaken in accordance with section 12.3(g) of this Agreement;

(d) "Default" means the occurrence of any event described in Section 14 of this Agreement;

(e) "Deficiency" means a situation wherein the Private Services are not being operated, maintained, repaired, replaced or enhanced by the Owner in accordance with the requirements of this Agreement or are otherwise not in compliance with the requirements of the applicable Environmental Compliance Approval;

(f) "Environmental Compliance Approval" or "ECA" means an approval issued by the Ministry of the Environment under the *Environmental Protection Act*, R.S.O. 1990, c. E. 19 or the *Ontario Water Resources Act*, R.S.O. 1990, c. 0.40 in respect of the construction, operation, alteration, extension or replacement of any part of the services defined as Private Services in the Agreement, including the Environmental Compliance Approval attached as Schedule "C" to this Agreement;

(g) "Lands" means the lands and premises described in Schedule "A" hereto which consist *inter alia*, of a North Parcel containing 150 sites, an accessory clubhouse which may include as ancillary uses to the park, administrative offices, a convenience store, a hotel consisting of 20 suites, a restaurant and tavern, and fitness and leisure facilities including a pool, hot tub, sauna, showers, and fitness room, manager's residence, 3 staff apartment units, and facilities for outdoor sports and leisure, including an outdoor pool and hot tub and a South Parcel containing up to 100 seasonal camp sites and associated seasonal recreational uses;

(h) "Ministry" means the Ministry of the Environment of Ontario and shall include any authorized representative of the Ministry of the Environment;

(i) "Municipal Charge" means charges levied on the Owner by the Municipality, and for greater clarity, has the same meaning as in section 2 of the *Residential Tenancies Act, 2006*, S.O. 2006, c.17.

(j) "Municipal Operations Fund" means the cash monies held by the Municipality pursuant to Section 12 of this Agreement, for the purposes provided in this Agreement;

(k) "Municipality" means the [redacted], its successors and assigns;

(l) "Notice of Deficiency" means a written notice from the Municipality, the Ministry of the Environment or Public Health to the Owner, giving reasonable particulars of the Deficiency and a time within which, subject to any rights of appeal of the Owner, the Deficiency is to be corrected.

(m) "Owner" means [redacted] its successors in title and permitted assigns;

(n) "Party" means either the Municipality or the Owner and "Parties" means both the Municipality and the Owner;

(o) "Private Services" means the existing private Non-Municipal Year-Round Residential drinking water system as defined in the *Safe Drinking Water Act, 2002,* and private sewage system and all related buildings and infrastructure, including but not limited to the water and sewage distribution lines, and any future improvement or expansion thereof;

(p) "Projected Amount" means the amount of monies projected to be in the Capital Reserve Fund at each month determined by the Reserve Fund Study or Capital Reserve Fund Review pursuant to Schedule "F" and section 12.3(g).

(q) "Reserve Fund Charge" has the meaning ascribed to it in Section 12 and Schedule "B" of this Agreement and is a Municipal Charge upon the Owner of the Lands;

(r) "Reserve Fund Study" means the study described in Schedule "F" of this Agreement;

(s) "Trust Agreement" shall mean the agreement attached as Schedule "E" herein; and,

(t) "Trustee" shall mean a trust company licensed under the *Trust and Loan Companies Act*, S.C. 1991, c.45 which has agreed to assume the obligations of the Trustee set out herein and which has been designated to act as Trustee by the Owner and the Municipality. The Owner and the Municipality may from time to time replace a Trustee appointed hereunder by a written instrument executed by them.

2. SCHEDULES

The following Schedules are attached, incorporated by reference into this Agreement and are deemed to be a part of this Agreement:

(a)) Schedule "A" Legal Description of the Lands

(b) Schedule "B" Conditions of Occupancy for Land Lease Tenants

(c)) Schedule "C" Regulatory Approvals: Environmental Compliance Approval and Permit to Take Water

(d) Schedule "D" Form of Assumption Agreement

(e)) Schedule "E" Form of Capital Reserve Fund Trust Agreement

(f)) Schedule "F" Reserve Fund Study

(g) Schedule "G" Insurance Provisions

3. REGISTRATION OF AGREEMENT

The parties agree that this Agreement shall:

(a) be registered, at the Owner's expense, against the title of the lands described in Schedule "A", and shall come into force and take effect on the date of such registration;

(b) run with the land all covenants and provisions herein shall ensure the benefit of the parties and be binding upon their respective successors and assigns.

4. CONDITIONS OF OCCUPANCY FOR LAND LEASE TENANTS

The Owner covenants and agrees that:

(a) it will only allow occupancy on the sites of the North Parcel of the Lands by new tenants pursuant to written leases which shall contain, as a minimum, the provisions set out in Schedule "B" to this Agreement, to the extent that they apply. It is acknowledged that the leases to be entered into by the Owner may contain additional provisions, however, the Owner covenants and agrees with the Municipality that such additional provisions shall not vary, amend or alter the provisions set out in Schedule "B" hereto;

(b) it will enter into written leases with all existing tenants that include the applicable provisions of Schedule "B", in accordance with the following:

(i) where written leases already exist, the Owner will forthwith make best efforts to amend the existing leases, in accordance with the terms prescribed therein; or,

(ii) where no written leases currently exist, then the Owner will forthwith use best efforts to require the tenant to enter into a written lease in accordance with this section.

(c) in the event of Default, the Owner will assign the Reserve Fund Charge in priority to all other creditors, to the Municipality forthwith; and,

(d) it will only allow occupancy on the sites of the South Parcel of the Lands pursuant to an agreement which states that occupants of the South Parcel may be required to immediately vacate the Lands in the event of a Default, with seven (7) days' notice (or earlier if ordered through a court, tribunal or public authority with the appropriate jurisdiction).

5. ASSUMPTION OF OWNER'S OBLIGATIONS

The Owner covenants and agrees:

(a) that it will not dispose of or transfer the whole or any part of the lands on which the works are situated without first obtaining the prior written consent of the Municipality which consent to not be unreasonably withheld; and

(b) to be bound by the terms and conditions of this Agreement and not to seek a release from the provisions thereof until such time as the Owner's obligations hereunder have been assumed by its successor, assignee or transferee by way of written agreement substantially in the form set out in Schedule "D".

6. NATURE OF DEVELOPMENT

The Owner covenants and agrees:

(a) that with respect to the Private Services that are existing on the Lands as of the date of execution of this Agreement which service approximately 250 residential sites, inclusive of both seasonal and permanent sites and ancillary facilities, that the Municipality has no liability nor responsibility for the design, construction and installation of such services, nor for their operation, maintenance and management to date;

(b) that the Owner will also make all upgrades or adjustments to the existing portion of the Private Services which are required by the Municipality acting reasonably, including those described in Section 8 to this Agreement and those required to the distribution lines and associated infrastructure which will be more particularly identified through an approved site plan, in accordance with the terms of this Agreement;

(c) that each of the sites within the Lands shall be provided with water and sanitary sewage services by means of a private water system and private sewer system. The sewage

system shall be operated and maintained in accordance with Amended Environmental Compliance Approval No. [redacted], copies of which approval(s) are attached as Schedule "C" to this Agreement, and any other regulatory approvals that may be subsequently issued;

(d) the Owner acknowledges and agrees that the upgrades and adjustments to the existing Private Services required by the Municipality in (b), above, may exceed the performance standards required by the Environmental Compliance Approval or other regulatory approvals cited in (c), above;

(e) that the Private Services shall be located totally within the Lands; and

(f) that the Lands, including the Private Services shall be developed in phases and in accordance with an approved site plan. Prior to the issuance of a Building Permit by the Municipality for the development of the Private Services and/or any Sites in any phase, the Owner shall obtain final site plan approval for that phase and post financial security, in a form and an amount satisfactory to the Municipality, for that phase.

7. PRIVATE SERVICES OPERATION & MAINTENANCE

The Owner covenants and agrees:

(a) to properly operate and maintain, at no expense to the Municipality, the Private Services within the Lands in a manner satisfactory to the Ministry and the Municipality and in accordance with the approved plans and specifications, the provisions of the Agreement and all applicable legislation, regulations, by-laws, orders and guidelines;

(b) to monitor and keep records of the operation and performance of the Private Services, and to provide on or before March 31 in each and every year, an annual report to the Ministry and to the Municipality on the performance and operation of the Private Services in accordance with applicable environmental legislation, regulations, by-laws, ECA, orders and guidelines. In the event that the annual report identifies non-compliance with any of these, the annual report shall include the recommendations for resolving the non-compliance, which the Owner shall immediately implement and document in the subsequent annual report;

(c) The Owner agrees that it will comply with Ministry water testing procedures and standards. If any water samples submitted to the Ministry, as required by O. Reg. 170 or the ECA, disclose non-compliance or exceedance of Ministry water quality standards or parameters, the Owner will within five (5) days of submitting those water samples to the Ministry, provide notice to the Municipality, any associated data and an action plan to resolve the non-compliance or exceedance. Further notice will be provided to the Ministry and the Municipality demonstrating that the non-compliance or exceedance has been resolved;

(d) that proper design and construction alone will not guarantee the long-term integrity of the Private Services, that regular and proper maintenance is essential and that the provisions of annual monitoring reports to the Municipality and the Ministry is of vital importance to ensure that the Private Services are functioning as designed and not having a negative impact on the environment;

(e) to operate and maintain the Private Services in accordance with the Environmental Compliance Approval and the terms of this Agreement;

(f) to retain a person, company or entity to operate and maintain the Private Services and that person, company or entity shall be an operator or operators approved by the Ministry, and all applicable laws, including the *Safe Drinking Water Act, 2002*, and the *Ontario Water Resources Act*, to operate the Private Services or part thereof;

(g) within one year of registering this Agreement, to provide the Municipality with a copy of established contingency plans and procedures, which makes available adequate equipment and material dealing with emergency and upset conditions including but not

limited to equipment breakdowns of the Private Services, to the satisfaction of the Municipality;

(h) within one year of registering this Agreement, to provide the Municipality with a copy of established notification procedures to be used to contact the Municipality and the Ministry of the Environment and other relevant authorities in the case of all emergency and upset conditions; and,

(i) for clarity, failure to comply with any of the provisions of this section shall be sufficient to constitute a Deficiency.

8. PRIVATE SERVICES CONSTRUCTION, UPGRADES & REPAIRS

The Owner covenants and agrees to:

(a) to forthwith undertake the following upgrades to the private drinking water system, subject to Ministry approval, which shall include obtaining all required regulatory approvals from Ministry and the Municipality, as the case may be:

(i) Two (2) additional third-stage filters equivalent to the existing units;

(ii) Two (2) additional UV units equivalent to the existing units;

(iii) Two (2) additional high-lift pumps equivalent to the existing units;

(iv) Expansion of the existing water treatment building to accommodate the equipment in (i) to (iii), above, as may be required; and,

(v) Additional domestic water storage in the amount of 97,000 litres.

(b) to undertake any repairs or improvements i) to the distribution and collection systems required by the Municipality acting reasonably, Ministry or other regulatory authority having jurisdiction, and ii) required in Section 9 of this Agreement, the construction of which will be phased in accordance with an approved site plan, and shall include achieving compliance with the *Building Code Act, 1992*, SO 1992, c. 23 and associated Regulations, and obtaining any required approvals under any statute in connection with the Private Services, as well as implementation of any repairs, improvements or other measures required as aforesaid;

(c) to prepare entirely at its own cost and expense all plans, specifications, profiles, contours, and other engineering material, drawings and data required in the opinion of the Municipality acting reasonably to implement this Agreement. The Owner shall ensure that all such plans satisfy all government requirements including, but not limited to, the applicable Ministry of the Environment design guidelines for water treatment plants and sewage treatment plants, and that all such plans are prepared in accordance with sound engineering and construction standards and practices applicable to Private Services of the kind and nature set out in this Agreement;

(d) to comply with all laws regulating the design, construction and installation of the Private Services, including, but not limited to, the *Safe Drinking Water Act*, *Ontario Water Resources Act* and the *Environmental Protection Act*, all of which may be amended from time to time and to exercise due diligence at all times with respect to the Private Services systems;

(e) that all materials to be supplied by the Owner with respect to the Private Services shall be in accordance with the design guidelines of the Municipality or an approved alternative thereto, and if no materials are specified in any particular case then the same shall be of good quality and appropriate in design and construction for the Private Services Systems to be installed, and shall be subject to the approval of the Municipality acting reasonably;

(f) to use best efforts to ensure that all equipment for the Private Services carry a warranty which will be in effect for a minimum period of one year from the date of Substantial Completion of each phase of the Private Services Systems, and shall ensure that such warranty may be transferred to Municipality in the event of the Municipality's temporary or permanent assumption of the operation and maintenance of the Private Services Systems in the event of Default by the Owner, at no cost to the Municipality;

(g) to comply with the *Construction Lien Act*, R.S.O. 1990, Chapter C.30 and to maintain trust funds and all statutory holdbacks as required by the *Construction Lien Act*. Such money will not be disbursed except in compliance with the *Construction Lien Act*;

(h) to provide to the Municipality, at the Owner's sole cost and expense, mylars of the "as built" plans showing the location of the Private Services and other underground utilities, within one (1) month of the completion of the installation, repairs and/or upgrades of the Private Services or any Phase thereof. The "as built" plans shall be certified by the Owner's consulting engineer;

(i) to supply to the Municipality copies of all operating and maintenance manuals for the Private Services Systems at the Owner's sole cost and expense and within one (1) month of the completion of the installation of the Private Services or any phase thereof. The Owner shall also supply any and all amendments or updates to said operating and maintenance manuals which may occur within one (1) month of the Owner receiving same;

(j) where upgrades and improvements are proposed to the existing private water and sewage system, no work shall be undertaken prior to the Municipality approving, if required, the plans and specifications; and

(k) for clarity, failure to initiate and/or comply with any of the provisions of this section shall be sufficient to constitute a Deficiency.

9. ENGINEER'S REPORT ON PRIVATE SERVICES

The Owner covenants and agrees:

(a) to forthwith commence collecting detailed occupancy records for both the North and South lands;

(b) to the private sewage treatment system, to forthwith install two (2) magnetic or other type of suitable flowmeters on the forcemain from the Main Lift Station, calibrate the flowmeters annually and provide the calibration certificate to the Municipality, and collect daily sewage flow data for at least three (3) consecutive years;

(c) to the private water treatment system, to forthwith install two (2) magnetic or other type of suitable flowmeters on the forcemain from the High Lift Station, calibrate the flowmeters annually and provide the calibration certificate to the Municipality, and collect hourly water flow data for at least three (3) consecutive years;

(d) to retain a qualified professional engineer on a date that is at least three (3) years after the date of execution of the Agreement, who will prepare and submit to the Owner, the Municipality and the Ministry before four (4) years following the date of execution of the Agreement, a report addressing the following issues:

(i) for the private sewage treatment system, the report shall analyze the flow data collected in 9(b) to calculate the average day and maximum day flowrate for the minimum three (3) year period;

(ii) for the private water treatment system, the report shall analyze the flow data collected in 9(c) to calculate the average day and maximum day, and peak hour, flowrate for the minimum three (3) year period;

(iii) for both the private sewage and water systems, correlate the flow data analysis in 9(d)(i) and (ii), above, with the occupancy records collected in 9(a) to calculate the per capita sewage production and per capita water demand and confirm the ability of the water and sewage treatment facilities to accommodate the flows; and

(iv) if the report concludes that the either or both of the private water and sewage treatment systems cannot accommodate the flows, the report shall identify and recommend upgrades to the Private Services to remedy the deficiencies.

(e) to implement the recommendations made in 9(d)(iv), subject to Ministry approval, within two (2) years, which timeline can be extended with the Municipality's consent if presented with reasonable reasons for the delayed implementation; and,

(f) if the Owner does not produce a report in accordance with the requirements in 9(a) to (d), above, and as may be further described or agreed by the Parties, the Municipality may require the Private Services to be upgraded in accordance with [redacted] Engineers Memo entitled "[redacted] Engineering Review of Water and Sewage Treatment Systems", dated [redacted].

The Owner further covenants and agrees:

(g) to retain a qualified professional engineer to inspect the Private Services on a date that is at least four (4) years after the date of execution of the Agreement, who will prepare and submit to the Owner, the Municipality and the Ministry before five (5) years following the date of execution of the Agreement, a report addressing the following issues:

(i) the nature and extent of the engineer's examination of the Private Services and the sufficiency thereof;

(ii) the condition of the Private Services and the various components thereof;

(iii) the nature, extent and adequacy of on-going maintenance, monitoring and inspection procedures;

(iv) recommendations, if any for repairs, replacements or additions to the Private Services which are necessary or advisable to ensure their long-term viability;

(h) that the professional engineer's report shall be completed and submitted to the Owner, the Municipality and the Ministry by the professional engineer prior to the fifth anniversary of the date of this Agreement and that the foregoing inspection and report process shall be repeated every five (5) years thereafter;

(i) that the form and substance of the professional engineer's report shall be substantially in conformity with the Reserve Fund Study appended as Schedule "F" to this agreement and which forms the basis for the methodology and quantum of determination of the Capital Reserve Fund and charges necessary to maintain the adequacy of the Capital Reserve Fund; and

(j) that, in the event that the Owner fails to initiate and complete such inspection and report in accordance with the foregoing provisions, the Municipality may deliver a Notice of Deficiency to the Owner or such obligation and that if the Owner fails to initiate the required inspection and report within twenty-one (21) days of receiving such notice and/or to complete and submit the report within three (3) months thereafter, the Municipality may retain a qualified professional engineer to undertake the inspection and report set out in this subsection and all costs thereof shall be paid by the Owner to the Municipality within thirty (30) days of demand.

10. ACCESS TO AND INSPECTION OF PRIVATE SERVICES

The Owner covenants and agrees that:

(a) the Municipality, its employees and agents, including the Medical Officer of Health and his/her designate, shall be entitled to free and unobstructed access at all times to the private streets and Private Services within the Lands to the extent reasonably necessary to permit the Municipality, its employees and agents to ensure that the Owner is fulfilling the obligations pursuant to this Agreement; and

(b) that the Municipality shall be entitled to engage persons who are not employees of the Municipality to assist it in reviewing and inspecting the Private Services and the annual monitoring reports and to provide advice with respect to the construction, operation, maintenance, repair, replacement, enhancement and performance of the Private Services and that the Owner shall reimburse the Municipality forthwith on demand for the reasonable costs of such review and inspection and the provision of advice based on such review and inspection.

11. PERMANENT EASEMENTS

(a) The Owner covenants and agrees, at the same time that this Agreement is registered on title to the Lands, to transfer to, and register in favour of, the Municipality a temporary easement over the Lands which are required by the Municipality to inspect, monitor, enter and lay down, install, construct, operate, maintain, manage, alter, repair and keep in good condition, remove, replace, reconstruct and supplement the Private Services and all components appurtenant thereto so that such rights may be exercised by the Municipality in the event of temporary or permanent operation, maintenance and management of the Private Services as otherwise set out in this Agreement;

(b) The Owner covenants and agrees, following completion of the improvements and upgrades described in sections 6 and 8 of this Agreement, to register a permanent easement over the Lands, for the same purposes described in 11(a), above, and until such registration occurs in the form outlined in (c), below, release of the outstanding financial securities under the site plan agreement may be withheld;

(c) Accordingly, the Owner agrees to grant to the Municipality for nominal consideration such easements and shall provide the following easement documentation to the Municipality:

i. Transfer/Deed granting the easements to the Municipality;

ii. Reference plan of the lands on which the easements are to be located and granted, the cost and expense of preparation of which shall be borne by the Owner;

iii. A signed option to purchase the easements, as prepared by the Municipality.

iv. A tax certificate indicating that all outstanding Municipality charges have been paid to date for the Land; and

v. Such further and other documents required by the Municipality to evidence that the grants of easement are free and clear from all liens and encumbrances, which may include the an opinion from the Owner's solicitor, upon which the Municipality will be entitled to rely, that the transfer of all such easements covers the entirety of the Lands and the Municipality's title to the easements is free of all charges, encumbrances, construction liens or any other registered interests and that upon the completion of such conveyances, the Municipality shall have good an marketable title thereto.

12. FINANCIAL SECURITY

12.1. *Repairs and Upgrades to Existing Private Services*

(a) The Owner covenants and agrees to secure the cost of any repairs, upgrades, improvements or other measures to the Private Services required under subsection 8 (b) by posting financial security with the Municipality prior to site plan approval, which securities shall be phased in accordance with an approved site plan, and be in a form and amount satisfactory to the Municipality;

(b) the Municipality will accept an irrevocable letter of credit in lieu of such total cash amounts, provided such letter of credit shall be in a form acceptable to the Municipality and contain the following provisions:

i. the letter of credit shall be security for any obligations of the Owner pursuant to subsection 8(b) of this Agreement and more particularly specified through a phased site plan;

ii. drawings on the letter of credit shall be permitted upon presentation of a letter from the Municipality to the bank claiming default by the Owner under the terms of this Agreement, and such default shall not be limited to the actions of the Owner;

iii. partial drawings shall be permitted;

iv. if the Municipality has not determined the extent of the default of the amount required to rectify the default or compensate the Municipality or third parties as a result thereof, the Municipality may draw on the full amount of the letter of credit without any requirement to justify the amount of the draw; and,

v. if the Municipality is not provided with a renewal of a letter of credit at least thirty (30) days prior to its date of expiry, the Municipality may forthwith draw the full amount secured and hold it upon the same terms that applied to the letter of credit.

(c) Upon certification by the Building Services Division of the Municipality following the completion of each phase, and in consultation with any other division, staff or persons engaged by the Municipality in accordance with section 10(b), that the Owner's obligations under sections 8(a) and 8(b) of this Agreement with respect to that phase have been satisfied, the Municipality shall forthwith release to the Owner the financial security posted for that phase as outlined in subsection 12.1(a) if this Agreement; and,

(d) If there is a conflict between any term of the site plan agreement and this Agreement with respect to the form, term and release of securities posted under the site plan agreement, the terms of the site plan agreement will apply.

12.2 *Municipal Operations Fund*

The Owner covenants and agrees to establish a Municipal Operations Fund to be held by the Municipality and, for clarity, administered by the Sustainable Initiatives Section, [redacted] Water, Public Works Department to secure operation and maintenance of the Private Services system by the Municipality in the event of Default by the Owner under this Agreement, in accordance with the following terms:

(a) prior to registration of this Agreement, to deposit [redacted] with the Municipality's Finance Department by certified cheque, or bank draft, which sum equals fifteen percent (15%) of the total capital replacement cost of the Private Services plus an amount equalling three (3) years of operating costs, as identified in Schedule "F";

(b) the sum calculated in (a) shall include the [redacted] transferred from the Ministry currently held by it as security for the performance of the Owner's obligations to effect capital expenditures for repairs, maintenance and/or enhancements to the Private Services;

(c) all of the security set out in this section, including any investment interest accrued, shall remain in place in perpetuity notwithstanding that the Municipality may have assumed the temporary or permanent operation, maintenance and management of the Private Services;

(d) The parties agree that the total capital replacement cost shall be determined by the Reserve Fund Study in Schedule "F" of this Agreement. For clarity, the financial security posted in (a) and in accordance with Schedule "F" reflects the value of the initial upgrades specified in section 8(a) and will be subsequently amended to reflect the value of the system as a result of upgrades undertaken pursuant to sections and 8(b) and 9 of this Agreement;,

(e) The parties agree that if the total capital replacement cost of the Private Services is either increased or reduced due to implementing engineering recommendations pursuant to section 9, and identified through the initial 5 (five)-year Capital Reserve Fund Review under 12.3(g), an adjustment shall be made to the total capital replacement costs calculation and the Owner shall post any additional financial security with the Municipality, or have any excess amounts returned by the Municipality, within six (6) months of the Review under 12.3(g) being issued.

12.3 ***Capital Reserve Fund***

The Owner covenants and agrees to establish a Capital Reserve Fund to be held by a Trustee to ensure that adequate funds are available to repair, maintain, replace and update the Private Services, in accordance with the following terms:

(a) prior to registration of this Agreement, to deposit with the Trustee an initial contribution of [redacted] to the Capital Reserve Fund to be held by the Trustee, which shall amount to no less than two (2) times the Annual Reserve Contribution provided in Schedule "F", and provide the Municipality with a report from the Trustee as proof thereof;

(b) to pay into the Capital Reserve Fund, on a monthly basis, the total Reserve Fund Charge, which is a Municipal Charge, to be calculated and determined under Schedule "F" to this Agreement and any supplementary contributions to the Capital Reserve Fund determined by the Capital Reserve Fund assessment prepared in accordance with section 12.3(g) or otherwise required in accordance with the provisions of this Agreement;

(c) that, at a minimum, the Capital Reserve Fund shall contain the initial sum contributed under 12.3(a),;

(d) at any time where the amount in the Capital Reserve Fund exceeds its Projected Amount as indicated in Schedule "F" or the Capital Reserve Fund Review pursuant to 12.3(g) the Owner may apply to the Municipality to authorize the Trustee's release of monies from the Capital Reserve Fund to use for the Owner's purposes, and shall provide such information to the Municipality as may be required for the Municipality to evaluate the request, whose decision will be issued within three (3) months of receiving all documentation requested by it to evaluate the request. Subject to 12.3(h) of this Agreement, the Municipality shall forthwith pay Owner such amount;

(e) that the Capital Reserve Fund shall be held by the Trustee for the purposes of and pursuant to the provisions of this Agreement and that the Trustee shall only invest sums in the Capital Reserve Fund in investments authorized by the *Municipal Act, 2001*, S.O. 2001, c. 25 and O. Reg. 438/97, as may be amended from time to time. The Owner and the Trustee shall agree that the Capital Reserve Fund shall not be used to personally benefit the Owner or used as a mortgage on the Lands:

i. without limiting the generality of this Agreement, it is acknowledged and agreed that restoring the Capital Reserve Fund shall be the Owner's responsibility and any and all successors in title to the Lands;

ii. the obligation to restore the Capital Reserve Fund shall be joint and several;

iii. in the event that the Capital Reserve Fund is not restored within three (3) months, the outstanding balance shall be subject to the equivalent interest rate applicable to property tax arrears in effect in the Municipality at the time; and,

iv. if the outstanding balance has not been paid into the Capital Reserve Fund within one (1) year of the Trustee's annual accounting report, the Municipality may, in addition to any other remedies available herein or at law, impose all such levies, charges, taxes and/or user fees against any portion of or all of the Lands as are, in its sole discretion acting reasonably, necessary to restore the Capital Reserve Fund.

(f) that the Trustee shall hold the Capital Reserve Fund in trust for the sole purpose of effecting capital expenditures for repairs, maintenance and/or enhancement of the Private Services and that the Trustee shall expend such Capital Reserve Fund in accordance with the terms of this Agreement;

(g) to undertake a Capital Reserve Fund Review to review the amount of money in the Capital Reserve Fund and further annual contributions and the amount thereof, on a date that is five (5) years after the execution of this Agreement, and continuously thereafter in five (5) year cycles, and that following each review, the amount of further contributions shall be subject to the Municipality's approval acting reasonably, it being understood that the need to have sufficient funds to repair or upgrade the Private Services is paramount;;

(h) prior to authorizing any withdrawal under subsection 12.3(d), the Municipality shall review the Annual Report described in subsection 7(b) and any Trustee reports described therein. The discretion as to whether or not a payout is possible and the amount is in the sole discretion of the City acting reasonably;

(i) to request the release of funds in the Capital Reserve Fund from the Trustee in the manner provided for in the Trust Agreement attached herein as Schedule "E" with the Trustee for the purposes described herein;

(j) the Owner acknowledges and agrees that the financial security set out in this section shall remain in place notwithstanding the fact that the Municipality may have assumed the temporary or permanent operation, maintenance and management of the Private Services in accordance with the provisions of this Agreement; and

(k) that the Capital Reserve Fund shall be funded by the Owner, irrespective of any occupancy levels, vacancies and/or defaulting tenants. For clarity, for the purposes of this Agreement, the Owner is solely responsible for the monthly Reserve Fund Charge contributions as set out in this Agreement. The mechanism, amount and frequency by which the Owner collects or recovers these funds, or any part thereof, from his tenants or by other means is outside the scope of this Agreement.

13. WITHDRAWAL OF FUNDS

13.1 Withdrawal from the Capital Reserve Fund shall be made in the following situations:

(a) the Owner requests funds from the Trustee to meet its obligations under this Agreement or applicable legislation, regulations, by-laws, orders or guidelines;

(b) the Ministry makes an order to the Owner or Municipality to carry out any work on the Private Services systems;

(c) the Municipality requires funds to remedy any Default of the Owner;

(d) the Municipality requires funds to replenish the Municipal Operations Fund following any withdrawals made from it for any purposes under this Agreement; or

(e) the Municipality has authorized a release of surplus funds from the Capital Reserve Fund in accordance with subsection 12.3(d) and the Trust Agreement.

13.2 Withdrawal from the Municipal Operations Fund can be made by the Municipality, at its sole discretion acting reasonably, at any time and from time to time to:

(a) rectify any deficiency in the design, construction, installation (including but not limited to the closing of the Private Services in the event that the Owner does not complete them), operation, maintenance or replacement of the Private Services;

(b) pay the cost of any matter or obligation for which the Owner is liable under the Agreement, including but not limited to the Owner's failure to pay to the Municipality the Capital Reserve Fund amounts in accordance with this Agreement; or

(c) remedy any Default by the Owner.

13.3 For capital expenditures made by the Municipality in the case of the Owner's Default, the Municipality shall first use funds in the Capital Reserve Fund prior to using funds in the Municipal Operations Fund.

14. DEFAULT

(a) The Owner shall be in Default of this Agreement if any of the following occurs:

i. the Owner fails to maintain the Capital Reserve Fund, in accordance with Section 12 of this Agreement;

ii. the Owner fails to meet two successive deadlines established by the Municipality for compliance with any provision of this Agreement;

iii. the Municipality or Ministry of Environment determines that there is a Deficiency and the Owner fails to remedy the Deficiency, pursuant to Subsection 14(b) of this Agreement;

iv. the Owner fails to comply with an Order by the Ministry or the Medical Officer of Health and/or fails to make arrangements with the Ministry or the Medical Officer or Health to comply with an Order;

v. an act or omission by the Owner causes the operation and maintenance of the Private Services to be so faulty as, in the opinion of the Medical Officer of Health, there are reasonable grounds to believe that a health hazard, as defined in the *Health Protection and Promotion Act* exists;

vi. the Municipality receives notice of the Owner's insolvency;

vii. the Owner fails upon 5 days written notice to the Owner of its failure to meet its obligations to any third party that would affect the operation, maintenance or management of the Private Services, including but not limited to the failure of the Owner to pay any or all amounts owing to third parties relating to encumbrances on any part or all of the Private Services Systems; or

viii. the Municipality receives legal notice, or otherwise finds, that the Owner has ceased to carry on business, whether such cessation of business is voluntary or involuntary.

(b) In the event the Municipality determines that there is a Deficiency in the Private Services, the Municipality shall issue to the Owner a Notice of Deficiency and specifics for remediation. The Owner shall, at its sole expense, immediately carry out such remedial works or implement such measures as are necessary to correct the Deficiency. In the event the Owner disputes that there is a Deficiency and

i. the costs to remedy the Deficiency are in excess of $ [redacted]; and

ii. the Deficiency does not occur during any phase of the site plan period outlined in Section 6(f) of this Agreement,

the Owner may request that the matter be submitted to arbitration in accordance with the provisions of this Agreement. Upon a finding of the arbitrator that remedial works or measures are necessary, the Owner shall forthwith carry out such work or measures pursuant to the terms of this Agreement. Failure to carry out such work will be sufficient to constitute a Default under this section.

(c) In the event of Default, the Municipality may, at its sole option, pursue any or all of the following remedies, but shall not be bound to do so:

i. require the Trustee to have any works or other required measures completed that were to be done by the Owner, the costs of which will be paid from the Capital Reserve Fund;

ii. enter upon the Lands and complete or undertake any works or measures required to be done by the Owner pursuant to the terms of this Agreement and to collect the costs thereof from the Capital Reserve Fund;

iii. enter upon the Lands and temporarily or permanently assume operations of the Private Services and fund the cost of the operations of the Private Services from either the Municipal Operations Fund or the Capital Reserve Fund, which decision will be solely within the Municipality's discretion;

iv. make any payment which ought to have been made by the Owner and upon demand, the amount demanded shall be forthwith paid by the Owner to the Municipality;

v. commence legal action to compel specific performance of all or any part of this Agreement and/or for damages;

vi. exercise any other remedy granted to the Municipality pursuant to the terms of this Agreement or available to the Municipality in law including, but not limited to, the provisions of the *Municipal Act, 2001*.

(d) If, as a consequence of the failure of the Owner to properly operate, repair, maintain, replace and/or enhance the Private Services in accordance with the requirements of the provisions of this Agreement, the Municipality is required by a Direction with the Ministry, pursuant to the *Environmental Protection Act*, the *Ontario Water Resources Act*, the *Safe Drinking Water Act, 2002* or any related legislation to assume responsibility for the operation and maintenance of the Private Services, the following provisions shall apply:

i. the Municipality shall be entitled to draw on the Municipal Operations Fund or require the Trustee to pay from the Capital Reserve Fund all costs and expenses incurred by the Municipality with respect to the operation and maintenance of the Private Services, and the decision to draw on either the Municipal Operations Fund or the Capital Reserve Fund shall be solely within the Municipality's discretion;

ii. all costs and expenses incurred by the Municipality in operating and maintaining the Private Services shall be a charge upon the Lands recoverable in the same manner and to the same extent as municipal taxes. In particular, and without limiting the generality of the foregoing, such charges shall have priority over any lease or encumbrance affecting the Lands; and,

iii. the Owner shall assign the Reserve Fund Charge received under the leases to the Municipality and the Municipality shall have the right to apply all amounts it receives to the operation, maintenance, replacement and/or repair of the Private Services. The Municipality may apply such amounts in such order of priority as the Municipality in its sole discretion determines.

(e) If the Municipality assumes responsibility for the operation and maintenance of the Private Services pursuant to Subsections 14(c) or 14(d), and the Municipality has been operating and maintaining the Private Services for 6 (six) months, and the Owner has not remedied all default conditions, then the Municipality may, in its sole discretion, assume ownership and control of the Capital Reserve Fund;

(f) The parties hereto expressly acknowledge and agree that the Municipality shall not at any time be required or expected by the Owner to assume ownership of or responsibility for the Private Services. The parties hereto agree that the Municipality shall only become responsible for the operation and maintenance of the Private Services in the event that the Municipality is ordered to do so as referenced in Subsection 14(d), or upon choosing to do so, as referenced in Subsection 14(c) of this Agreement;

(g) The Municipality may, upon the temporary operation, maintenance and management of the Private Services in the event of Default by the Owner assess and levy on the Lands all costs and expenses of maintenance, operation and management of the Private Services and such other costs and expenses as are set out in any applicable legislation and the Owner hereby covenants to pay such costs and expenses, as invoiced by the Municipality. The amount of such assessment and levy may be increased by the Municipality from time to time, in its sole discretion, to ensure that the Municipality at all material times is operating the Private Services on a full cost-recovery basis;

(h) If at any time that this Agreement is in force and effect, the total security to be provided by the Owner under section 12 is reduced below the amounts required and the Owner has failed to remedy it within a reasonable amount of time, then the Municipality may in its sole discretion temporarily or permanently assume the Private Services and the operation, maintenance, and management thereof, or contract for such services with a private operator. The Municipality's costs and expenses associated with such temporary or permanent assumption of the Private Services shall be collected on a full cost-recovery basis in such manner as is permitted by law or in equity, including but not limited to collecting such costs from the Owner, or from the residents on the Lands; and,

(i) The Municipality is under no obligation under the Agreement to construct or complete the construction of the Private Services (or any phase thereof) should such systems not be constructed or completed by the Owner.

15. INSURANCE

The Owner covenants and agrees to purchase and maintain in force, at its sole cost and expense, including the payment of all deductibles, the policies of insurance set out in Schedule "G" to this Agreement and to require from any contractor it retains to construct, install, repair, upgrade or make improvements to the Private Services the policies of insurance set out in Schedule "G" to this Agreement.

16. INDEMNITY

(a) The Owner shall defend, indemnify and keep indemnified and save harmless the Municipality, its officers, officials, employees, contractors and agents for all loss, damage, cost and expense of every nature and kind whatsoever arising from or in consequence of the design, construction, installation, maintenance, operation and management of the Private Services or any other matter under this Agreement, including but not limited to any untruth or inaccuracy in any representation, warranty or covenant contained in this Agreement, whether such loss, damage, cost or expense is incurred by reason of negligence or without negligence on the part of the Owner, and whether such loss, damage, cost or expense is sustained by the Municipality or the Owner or their

several and respective employees, servants and agents, or any other person or corporation;

(b) This indemnity shall survive the temporary or permanent operation of the Private Services by the Municipality; and,

(c) This indemnity shall not apply to any loss, damage, cost or expenses if such loss, damage cost or expense is incurred due to any act, negligence or omission of the Municipality in their operation, whether permanent or temporary, of the Private Services Systems.

17. ASSIGNMENT OF RESERVE FUND CHARGE, POSTPONEMENT AND SUBORDINATION

(a) The Owner shall register on title to the Lands, an assignment of the Reserve Fund Charge in favour of the Municipality (the "Assignment");

(b) This Assignment shall be registered as first priority against title to the Lands and shall take priority over any vendor take-back mortgages or subsequent mortgages, encumbrances and registrations or any other agreements and encumbrances against title to the lands;

(c) The Owner, prior to registration of the Assignment, shall obtain for registration postponement agreements from each and every mortgagee or other encumbrancer registered on title subordinating and postponing all its (their) right, title and interest in the Schedule "A" land to the Municipality to ensure that the Municipality's remedies under this Agreement arising from a Default by the Owner hereunder shall have priority to any such third party mortgagee or other encumbrancer under their respective registered security instruments; and,

(d) The Municipality shall not be required to register the Assignment until such documentation in (c) evidencing postponement and subordination have been registered by the Owner.

18. INTERPRETATION OF AGREEMENT

The Parties agree that:

(a) the part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience or reference only and shall not affect the construction or interpretation of this Agreement;

(b) all changes in number and gender shall be construed as may be required by the context;

(c) 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, including the payment of any applicable taxes (including HST);

(d) references herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted and/or consolidated from to time to time and any successor statute thereto;

(e) all obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants;

(f) wherever a statement or provisions in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference; and

(g) all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.

19. MISCELLANEOUS

The Parties agree that:

(a) the terms of this Agreement may be imposed as a condition of approval in the ECA issued pursuant to the *Environmental Protection Act* and the *Ontario Water Resources Act* or related legislation and the Owner agrees that it will not object to or otherwise appeal the imposition of such terms in such ECA;

(b) the failure of the Municipality at any time to require performance by the Owner of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Municipality of the performance of any obligation hereunder be taken or be held to be a waiver of the performance of the same or any other obligation hereunder at any later time;

(c) nothing in this Agreement shall prevent or limit the Municipality from:

i. establishing special taxes, levies or rates on the Lands for the purposes of raising costs with respect to the operation, maintenance, repair, replacing or enhancement of the Private Services, in the event that the Municipality is ordered to operate and maintain the private services by a Director;

ii. pursuing any remedy available to it at law, including in the event of Default under section 14 of this Agreement, for the recovery of costs incurred by it;

(d) No reference to or exercise of any specific right or remedy by the Municipality shall prejudice or preclude the Municipality from any other remedy in respect thereof, whether allowed at law or in equity or expressly provided for herein, and the Municipality may from time to time exercise anyone or more of such remedies independently or in combination;

(e) the Owner shall not add to, alter or extend the Private Services without prior notice to the Municipality and without prior approval from the Municipality and all other relevant government authorities;

(f) the Reserve Fund Charge required to be paid is deemed to be a Municipal Charge levied by the municipality upon the Owner pursuant to this agreement and for which payment may be enforced under the terms of this Agreement;

(g) If the Landlord and Tenant Board, or any court of competent jurisdiction, finds that the Reserve Fund Charge is not a Municipal Charge, the Owner will be liable for all remedies ordered by the tribunal or court, as the case may be. The Owner further covenants and agrees that the Reserve Fund Charge amounts to be deposited monthly will be paid by the Owner, in accordance with the terms of this Agreement;

(h) any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability, and shall be severed from the balance of this Agreement, all without affecting the validity or enforceability of such provision in any other jurisdiction, and without affecting the validity or enforceability of the remaining terms of this Agreement;

(i) except where specifically prohibited by this Agreement, all other disputes, claims or controversies arising out of or in any way connected with or arising from this Agreement, its negotiation, performance, breach, enforcement, existence or validity, any failure of the parties to reach agreement with respect to matters provided for in this Agreement, and all matters of dispute relating to the rights and obligations of the parties, which cannot be

) **THE CITY OF** [redacted]
)
)
) _____
) Mayor
)
) _____
) Clerk
)
)

Note:
Potential Schedules to be attached to the agreement could include:

- Legal description of the property
- Copies of relevant permits and approvals (e.g. Environmental Compliance Approval, Permit to Take Water)
- Cost calculations to support financial security and/or reserve fund amounts
- Site plan and other relevant drawings as needed to support the content of the agreement
- Any other forms, agreements or supporting documents that may be relevant to the specific agreement

Appendix C

Entities that operate and service onsite wastewater treatment systems:

1. Ontario Clean Water Agency (Crown Corporation)

Corporate Office
2085 Hurontario Street, Suite 500
Mississauga ON L5A 4G1
905-491-4000 | 1-800-667-6292
ocwa@ocwa.com

2. Clearford Water Systems

300 – 1545 Carling Ave
Ottawa, ON K1Z 8P9
613-599-6474
info@clearford.com

3. Aquatech Canadian Water Services

440 Laurier Avenue West, 2nd floor
Ottawa, ON K1R 7X6
1-866-932-4507

Most wastewater facilities treating over 10,000 litres per day (L/d) are governed by O. Reg. 129/04. As per the ECA, the Owner of the facility must file an application with MECP to classify the facility. This is usually completed by a consultant and treatment system supplier. Facilities are classified as Class I, Class II, Class III and Class IV. This dictates the level of operator required to manage and operate the facility. There is an Ontario Water Wastewater Certification Office that tracks and controls licensing of operators. Each level requires a certain amount of training, experience at the particular level, and successful completion of an exam in order to receive certification as an Ontario Wastewater Operator.

Appendix D

{Placeholder for Testimonials of successful Municipal Responsibility Agreements}