

The Township of Cavan

Monaghan By-law No. 2022-62

**Being a by-law to authorize the execution of a Site Alteration
Agreement between Towerhill Developments Inc. (Subdivider) and
the Township of Cavan Monaghan (Municipality)**

Whereas the Subdivider is the registered owner of those lands described as PART LOTS 11 & 12 CONCESSION 6 (CAVAN) PARTS 1 & 2 45R12338 & AS IN R711854 EXCEPT PARTS 9 TO 12 9R210, PARTS 1, 2 & 3 45R16430; S/T CVN3115, CVN3591, CVN3626, CVN4680; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1 45R16040 AS IN PE228266; TOWNSHIP OF CAVAN-MONAGHAN being all of the lands described in PIN 28008-0334;

And Whereas the Subdivider has received Draft Plan Approval concerning the Subdivision Lands;

And Whereas the Subdivider desires to undertake site alteration and grading operations on the Subject prior to the execution and registration of a Subdivision Agreement and the registration of the Plan of Subdivision and;

Now Therefore the Council of the Township of Cavan Monaghan hereby enacts as follows:

1. That the Mayor and Clerk are hereby authorized on behalf of the Township of Cavan Monaghan to enter into and execute that certain agreement marked Schedule "1" attached hereto and forming part of this By-law.
2. That the By-law shall become effective immediately upon the passing thereof.

Read a first, second and third time and passed this 20th day of September, 2022.

Scott McFadden
Mayor

Cindy Page
Clerk

**SITE ALTERATION AGREEMENT
"TOWERHILL NORTH"**

THIS AGREEMENT made the _____ day of _____, 2022

BETWEEN:

TOWERHILL DEVELOPMENTS INC.

hereinafter called the "Subdivider"

OF THE FIRST PART

AND

THE CORPORATION OF THE TOWNSHIP OF CAVAN MONAGHAN

hereinafter called the "Municipality"

OF THE SECOND PART

WHEREAS the Subdivider is the registered owner of the "Subdivision Lands" as defined in section 1.1;

AND WHEREAS the Subdivider has received Draft Plan Approval concerning the Subdivision Lands;

AND WHEREAS the Subdivider desires to undertake site alteration and grading operations on the Subject prior to the execution and registration of a Subdivision Agreement and the registration of the Plan of Subdivision and;

NOW THEREFORE in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. DEFINITIONS

1.1 In this Site Alteration Agreement, unless something in the subject matter or context is inconsistent therewith:

- (a) **"Draft Plan Approval"** means the draft Plan of Subdivision with Conditions which has been issued for the Subdivision Lands by the County of Peterborough bearing file number 15T-18002;
- (b) **"Off-Site"** means outside of the boundaries of the Subdivision Lands;
- (c) **"On-Site"** means on the Subdivision Lands or portions thereof;
- (d) **"Plan of Subdivision"** means the Plan of Subdivision (M-Plan) to be registered pursuant to the Draft Plan Approval;
- (e) **"Subdivision Agreement"** means the Agreement to be entered into between the Municipality and the Subdivider pursuant to the Draft Plan Approval;
- (f) **"Subdivision Lands"** means those lands described as PART LOTS 11 & 12 CONCESSION 6 (CAVAN) PARTS 1 & 2 45R12338 & AS IN R711854 EXCEPT PARTS 9 TO 12 9R210, PARTS 1, 2 & 3 45R16430; S/T CVN3115, CVN3591, CVN3626, CVN4680; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1 45R16040 AS IN PE228266; TOWNSHIP OF CAVAN-MONAGHAN being all of the lands described in PIN 28008-0334.

2. ASSUMPTION OF RISK BY SUBDIVIDER

2.1 The Subdivider agrees to assume all risk in commencing site alteration and grading activities prior to the execution of a Subdivision Agreement with the

Municipality, and the registration of the Plan of Subdivision. The Subdivider hereby releases the Municipality, its agents, servants and employees from and against all actions, suits, claims and demands whatsoever which may arise either directly or indirectly as a result of the installation of Municipal Services by the Subdivider, except for those actions, suits, claims or demands arising as a result of the negligent acts or omissions of the Municipality, its servants or agents.

2.2 The Subdivider acknowledges and agrees that, in the event that a Subdivision Agreement with the Municipality and the Plan of Subdivision is not finalized and registered for any reason within twelve (12) months of the date of execution of this Agreement, where works have been conducted on Municipal Lands, the Subdivider shall not be entitled to payment for any work conducted on the Municipality's lands and the Subdivider agrees to restore those lands to their original condition, if so required, to the satisfaction of the Municipality.

2.3 Works on County Lands (County Road 10) - The Subdivider acknowledges that the conduct of work on or upon County Road 10 (or any property owned by the County of Peterborough) are subject to approval by the County. ***Work on County property is not authorized by this agreement.***

3. **REQUIREMENTS PRIOR TO EXECUTION OF AGREEMENT BY MUNICIPALITY**

3.1 Prior to Execution of Agreement by the Municipality - The Subdivider agrees to submit the following to the Municipality, in a form satisfactory to the Municipality:

- (a) Construction/Engineering Plan and Specifications - those plans and specifications for the site alteration and grading necessary to identify the construction/ engineering aspects of the proposed development, in conformity with the general design concepts of the Municipality and where applicable confirmation that such plans have been approved by the Conservation Authority and/or Ministry of Environment. Any Plans referenced in this Agreement or incorporated by reference shall also be provided to the Township in an electronic/digital format requested by the Municipality referring to horizontal controls surveys UTM (Zone 17) NAD 83 map datum; such plans and specifications shall include all necessary measures to ensure that stormwater flows and sediment wash off (erosion and siltation control) are controlled to protect all downstream or upstream lands;
- (b) Consulting Engineer's Letter - a letter from a qualified engineer experienced in the field of Municipal Services, confirming the terms of his retainer, which letter shall be in the format of the draft letter supplied by the Municipality;
- (c) Otonabee Region Conservation Authority - a letter or letters from ORCA confirming it has accepted or approved (as the case may be) the plans identified in Schedule A and that the conduct of site alteration/grading activities conducted in accordance with such plans does not violate Condition 16 or 17 of the Draft Plan Approval.
- (d) Groundwater Monitoring – have provided to and received approval from the Township and/or County (as applicable) of the ground water monitoring program required under Condition 21;
- (e) Utility Authorities - letters from the appropriate Natural Gas, Electricity, Telephone and Telecommunications authorities confirming that satisfactory arrangements have been made with those authorities concerning the relocation and/or construction/reconstruction of any authority facilities located

adjacent to, underneath or within the subdivision land;

- (f) Cash Deposits - payment by certified cheque of the deposits due to the Municipality as set out in Schedule "B" attached;
- (g) Taxes - have paid all municipal tax bills issued and outstanding against the said lands.
- (h) Ministry Approvals - confirmation that all Certificates or Approvals as may be necessary to permit the construction of the Municipal Services have been obtained from the requisite approval authorities including, without limiting the generality of the foregoing, a Certificate of Approval from the Ministry of Environment relating to the stormwater management system;
- (i) Security - a Letter of Credit in the amount set out in Schedule "B" attached, as security;
- (j) Insurance Certificate - a certified copy of an insurance policy, or a certificate of insurance, confirming comprehensive general liability in the amount of \$5,000,000.00, naming the Municipality as co-insured with respect to work on all Municipal Services and containing the following additional provisions or endorsements:
 - (1) Products/Completed Operations provisions;
 - (2) Cross-liability clause;
 - (3) Notice of Cancellation - a provision that the insurance company agrees to notify the Municipality 15 days in advance of any cancellation or expiry of the said Insurance Policy; and

shall have received written confirmation from the Director of Public Works that site alteration/grading works may commence.

4. **AUTHORIZED SITE ALTERATION AND GRADING**

- 4.1 Subject to the provisions of this Agreement, the Subdivider is authorized to conduct on-site site alteration and grading upon the Subdivision Lands in accordance with the plans referenced in Schedule "A" (the "approved plans"). Such work shall be conducted under the direction and supervision of a practicing consulting engineer retained by the Subdivider who will certify that works have occurred in accordance and comply with the approved plans.

5. **INSPECTION AND MAINTENANCE OF SEDIMENT CONTROLS**

- 5.1 The Subdivider shall construct and install all erosion and siltation control devices prior to the commencement of the stripping of any soil on the Subdivision Lands. Erosion and siltation control devices shall be installed in accordance with approved plans.
- 5.2 The Subdivider shall inspect and repair such control devices at the end of each day to ensure that such devices remain in good repair during the construction period, to the satisfaction of the Township of Cavan Monaghan.
- 5.3 Subdivider agrees to permit unrestricted access to the Subdivision Lands to the Municipality and its agents, the Conservation Authority and its agents, during construction, for the purpose of inspection of the works authorized hereinunder. Notwithstanding that inspections may be conducted by the Municipality or the Conservation Authority, the Subdivider shall bear sole responsibility for the soundness of the engineering design.
- 5.4 If, in the opinion of the Municipality, there is an emergency situation as a result of any work undertaken by the Subdivider or its servants, or agents,

which requires immediate attention to avoid damage to private or public property or services owned by the Municipality or to eliminate a potential hazard to persons, such work may be done immediately by the Municipality at the expense of the Subdivider, but notice shall be given to the Subdivider at the earliest possible time.

6. **APPLICATION OF SECURITY**

- 6.1 In the event of default by the Subdivider under the terms of this Agreement, or if the Municipality is required to conduct any work on the Subdivision Lands or Off-Site infrastructure/facilities and or lands due to an emergency or in the event that the Subdivider is in default under any of the terms of this Agreement, the Municipality shall be entitled to draw upon the security posted for its benefit by the Subdivider pursuant the terms of this Agreement, in whole or in part, to cover the costs incurred in remedying the default on the part of the Subdivider, or in addressing the emergency situation. Should the security lodged hereunder be insufficient to pay the costs incurred by the Municipality any such amount shall be a debt of the Subdivider and the Municipality shall be entitled to collect such amounts as a cash payment in the Subdivision Agreement to be entered into pursuant to the Draft Plan Approval and in addition the Municipality may utilize any other authority under the *Municipal Act, 2001* to collect such amount from the Subdivider, including adding such amount to the tax roll of the Subdivision Lands.
- 6.2 The Municipality presently holds security under a subdivision agreement registered as Instrument PE301651. The Subdivider acknowledges and agrees that any security held thereunder may be utilized as security under this Agreement (required under section 9.1). For clarity the Municipality is entitled to draw on the security held under Instrument PE301651 for the purposes outlined in section 6.1 above.

7. **NO REDUCTION OF SECURITY**

- 7.1 The Subdivider acknowledges and agrees that no reduction in the amount of security filed by the Subdivider with the Municipality in accordance with the terms of this Agreement shall be permitted until such time as the Subdivider has entered into the Subdivision Agreement for the Subdivision Lands with the Municipality. Thereafter, any reductions in the security posted by the Subdivider shall be completed in accordance with the terms of the said Subdivision Agreement. To the extent that securities for matters covered in this Agreement are also covered in the Subdivision Agreement, then reductions in the securities for this Agreement shall be permitted to the amount of the matters so covered.

8. **SPECIAL PROVISIONS**

- 8.1 Pre-commencement Site Meeting – Prior to commencement of any site alteration or grading activities on the Subdivision Lands, the Subdivider and Municipality shall convene a site meeting whereat, among other things, the Subdivider shall provide a written work schedule, a plan showing the fill material deposit area (referenced in section 8.2) and a map/plan showing the proposed Haul Routes for truck traffic.
- 8.2 Fill Material Deposit Area (Fire Hall Construction) – The Subdivider acknowledges that it has agreed to accept fill from the Township's Firehall Construction Project occurring on abutting lands. The Township's contractor will transport such fill to the designated location depicted on the plan referenced in section 8.1 as approved by the Subdivider. The Municipality shall provide a certificate from a qualified geotechnical consultant, which includes a chemical analysis that the material is suitable for residential use. Approximate volume quantity should be indicated by the Municipality.

- 8.3 Groundwater - In the event that there is a disruption in the water supply on adjacent lands during the site alteration and grading, upon being advised by the Township that there has been interference with an adjacent water supply, the Subdivider shall provide, to the Township's satisfaction, an alternate source of potable water to any affected property/dwelling within 24 hours unless or until such time as it is determined that the site alteration and grading on the Subdivision Lands has not caused the interference.

9. **CASH DEPOSITS AND SECURITY**

- 9.1 The Subdivider shall lodge with the Municipality, as applicable, those cash deposits and security more particularly described in Schedule "B" attached, prior to the date of execution of this Agreement by the Municipality.

10. **EXPENSES TO BE PAID BY THE SUBDIVIDER**

- 10.1 Every provision of this Agreement by which the Subdivider is obligated in any way shall be deemed to include the words "at the expense of the Subdivider" unless the context otherwise requires.
- 10.2 The Subdivider shall pay such reasonable fees as may be invoiced to the Municipality by its Solicitor, its Planner, and its Municipal Engineer in connection with all work to be performed as a result of the provisions of this Agreement.
- 10.3 All expenses for which demand for payment has been made by the Municipality, shall bear interest at the rate of 12% per annum commencing 30 days after demand is made, if 30 days following such demand the said amounts remain unpaid.
- 10.4 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 Subdivider and/or carry out on-site inspections of the work performed, the Municipality will advise the Subdivider accordingly of this need, and the costs of such outside engineers so engaged shall be the responsibility of the Subdivider. The Municipality may require a deposit for this purpose.

11. **MAINTENANCE OF MUNICIPAL STREETS**

- 11.1 The Subdivider will maintain proper vehicular access over the municipal streets adjacent to or leading to the Subdivision Lands at all times. Without limiting the generality of the foregoing, the Subdivider agrees to repair and maintain Fallis Line to an acceptable standard, as determined by the Municipality, at all times during the period of site alteration and grading.

12. **DRAFT PLAN CONDITIONS - BINDING**

- 12.1 The Subdivider covenants and agrees to be bound by conditions 16, 17, 21, 34, 35, 39, 40, 41, 42, 48, and 49 of the Draft Plan Approval prior to and/or when undertaking works (as applicable) on the Subdivision Lands.

13. **NOTICE**

- 13.1 Any notice required to be given pursuant to this Agreement may be given by prepaid registered post or by facsimile transmission:

To the Subdivider: 2800 Highway 7 West, Suite 301, Vaughan, Ontario L4K 1W8;
Attention: Mario Cortellucci

To the Municipality: 988 County Road 10, Millbrook, ON L0A 1G0.

Notice sent by mail shall be deemed to have been given and received on the third day after mailing.

14. **INDEMNIFICATION FROM LIABILITY AND RELEASE**

- 14.1 The Subdivider covenants and agrees with the Municipality, on behalf of itself, its successors and assigns, to indemnify and save harmless the Municipality, its servants and agents from and against any and all actions, suits, claims and demands whatsoever which may arise either directly or indirectly by reason of any work performed by the Subdivider or on its behalf in connection with the carrying out of the provisions of this Agreement, except for those claims, demands and causes of action, arising as a result of the negligent acts or omissions of the Municipality or its servants or agents.
- 14.2 The Subdivider further covenants and agrees to release and forever discharge the Municipality from and against all claims, demands, causes of actions, of every nature and type whatsoever that may arise either as a result of the failure of the Municipality to carry out any of their obligations under this Agreement, or, as a result of the Municipality performing any municipal work on the said lands or the adjacent properties which may damage or interfere with the works of the Subdivider, provided that such default, failure or neglect was not caused as a result of negligence on the part of the Municipality, its servants or agents.
- 14.3 The Subdivider further covenants and agrees to release and forever discharge the Municipality, its servants, contractors, agents, etc from and against all claims, demands, causes of actions, of every nature and type whatsoever related to or arising from the transportation of the material fill to the fill material deposit area and/or acceptance by the Subdivider of fill material described in section 8.2.

15. **NO ASSIGNMENT**

15.1 The Subdivider shall not assign or otherwise transfer the benefit of this Agreement without the written consent of the Municipality.

IN WITNESS WHEREOF the Subdivider has hereunto set its hands and seals this day
of , 2022.

TOWERHILL DEVELOPMENTS INC.

Per: _____

Name:

Title:

I have authority to bind the Corporation.

IN WITNESS WHEREOF the Municipality as hereunto sets its hands and seals this day
of , 2022.

**THE CORPORATION OF THE
TOWNSHIP OF CAVAN MONAGHAN**

Per: _____

Mayor: Scott McFadden

Per: _____

Clerk: Cindy Page

SCHEDULE "A"

APPROVED PLANS

The following plans and specifications prepared by Valdor Engineering Inc., Towerhill Development Inc., 15T-18002, Project Number 17125:

1. Sediment Control Plans – SCP-1, SCP-2, SCP-3, SCP-4, SCP-5.
2. Lot Grading Plans – LG-1, LG-2, LG-3, LG-4, LG-5, LG-6, LG-7, LG-8, & LG-9.

SCHEDULE "B"

CASH DEPOSITS AND SECURITY

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

1. **TYPE OF SECURITY**

Any security required to be filed under this Agreement, shall be by Letter of Credit valid for a period of 1 year with extension provisions and prepared in a form provided by the Municipality, as applicable, and shall be for the amount or amounts hereinafter set out. It shall be drawn on a Schedule A Chartered Bank of Canada and shall be for the amount hereafter set out.

2. **CASH DEPOSITS**

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

(a) For legal and planning expenses and disbursements	\$5,000.00
(b) For engineering expenses	<u>\$50,000.00</u>
Total Cash Deposits	\$55,000.00

3. **SECURITY SUMMARY**

Security in the following amounts shall be deposited with the Municipality to guarantee the due performance of all work and obligations required under this Agreement, and shall be deposited prior to the execution of this Agreement by the Municipality, in the amounts set out below:

Set amount	<u>\$100,000.00</u>
 Total Cash Deposits and Security	 <u>\$155,000.00</u>