

## AGREEMENT

THIS AGREEMENT dated the                      day of June, 2017.

B E T W E E N :

Wahkaihanun Futures Corporation (collectively, the "Owner")

and

The Corporation of the Town of Fort Frances (the "Town")

### WHEREAS:

- A. The Owner and the Town (herein collectively the "Parties", individually a "Party") entered into a Site Plan Control Agreement (the "SPA") dated June 30, 2011 relating to the construction of a 10 unit residential apartment complex (herein sometimes referred to as the "Phase 1 Development") in and on the Lands (as "Lands" is defined in paragraph A. of the SPA);
- B. Paragraph 5(a) of Schedule 2 to the SPA reads, in part, as follows:
- ... the Owner's development of the Lands [as "Lands" is defined in paragraph A. of the SPA] in accordance with the Plans and Drawings is part of a phased development plan, and that the Owner anticipates further development within the next 5 years. The Owner acknowledges that each development phase shall be subject to the approval of the Town prior to the issuance of any building permit for any phase, and that any subsequent development shall require, without limitation, submission to the Town of fresh and further plans and drawings relating to such subsequent development, a further site plan agreement in respect thereof, and such further and other things as the Town may require therefor;
- C. The Owner:
- (i) by application dated June 27, 2013, made application to construct, in and on the lands (the "Phase 2 Property") legally described in **Schedule 1** attached to and forming part of this Agreement, a further 6 unit multi-unit residential complex (herein sometimes referred to as the "Phase 2 Development"); and
  - (ii) by application dated September 3, 2015, made application to construct, in and on the lands (the "Phase 3 Property") legally described in **Schedule 1**, an additional 6 unit multi-unit residential complex (herein sometimes referred to as the "Phase 3 Development"); and
  - (iii) by application dated May 29, 2017, made application to construct, in and on the lands (the "Phase 4 Property") legally described in **Schedule 1**, an additional 6 unit multi-unit residential complex (herein sometimes referred to as the "Phase 4 Development"); and
  - (iv)
- D. The Owner wishes to amend the SPA in light of, and to include and provide for, the Phase 2, Phase 3 and Phase 4 Developments.

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the mutual covenants hereinafter expressed and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. The preamble to this Agreement is incorporated into and forms an integral part of this Agreement.
2. The Parties acknowledge and agree that:
  - (a) plans and drawings and accompanying materials (collectively, the "Phase 2, 3 and 4 Plans and Drawings") of and relating to the Phase 2 and Phase 3 Developments are listed in **Schedule 2** attached to and forming part of this Agreement, and have been provided to and filed with the Town at the offices of the Town prior to the execution of this Agreement; and

- (b) such Phase 2 and Phase 3 Plans and Drawings shall be and be deemed to be added into and listed in Schedule 1 attached to and forming part of the SPA, and such Schedule 1 (so amended to include such Phase 2, Phase 3 and Phase 4 Plans and Drawings) shall be and be deemed to be the Schedule 1 attached to and forming part of the SPA;
- (c) the Phase 2, Phase 3 and Phase 4 Plans and Drawings shall be and be deemed to be included in and within the definition of Plans and Drawings in the SPA for all purposes of the SPA, and the SPA shall be and be deemed to be amended to reflect same and reference the Phase 2 and Phase 3 Developments accordingly;
- (d) the definition of "Lands" as set out in paragraph A. of the preamble to the SPA shall be and is hereby deemed expanded so as to include and be deemed to include (in addition to the Lands defined in the SPA) any and all lands comprising the Phase 2, Phase 3 and Phase 4 Properties, and any reference to Lands in this Agreement (other than as referenced in paragraphs A. and B. of the preamble to this Agreement) shall be and be deemed to include the Phase 2 and Phase 3 Properties;
- (e) the definition of "Works" as set out in paragraph 3(b) of the SPA shall be and is hereby deemed expanded so as to include and be deemed to include (in addition to any items or matters or things to be done as provided for in the SPA) any and/or all buildings, structures, works, services, facilities, and/or matters and/or otherwise (and whether internal or external to the Phase 2, 3 or 4 Properties), shown on, or specified in or on, or contemplated or required by or for, the Phase 2, 3 and 4 Plans and Drawings and/or the Phase 2 Phase 3 and Phase 4 Developments;
- (f) without limiting the generality of the foregoing, and in addition thereto, the Owner shall, on or before an occupancy permit being issued by the Town permitting occupancy of any part of the Phase 3 Development and occupancy of the Phase 3

Development or any part thereof being permitted, at Owner's sole cost and expense:

- (i) surface/surface treat with concrete, asphalt, double float tar and chip surface, or a combination thereof, in accordance with the Town's Zoning Bylaw and other requirements and in a good and workmanlike manner and in a manner and to the satisfaction of the Town, all parking lots, approaches, loading, walkways, and areas in connection therewith relating to or in respect of the Phase 1, Phase 2, Phase 3 and Phase 4 Developments; and
  - (ii) design and provide lighting, light standards, fixtures, and illumination devices to adequately illuminate the Phase 2, Phase 3 and Phase 4 Properties and otherwise related thereto but also to prevent the spread of light onto other properties, all to the satisfaction of the Town; and
  - (iii) clean and grade, in a good and workmanlike manner and to the satisfaction of the Town, the ditch(es) along Eighth Street adjacent to, abutting, or in the immediate vicinity of the Phase 1, 2, 3 and 4 Properties; and
  - (iv) sod/seed, in a good and workmanlike manner and to the satisfaction of the Town, and so as to prevent the transmission and run-off of silt and soil into the Town's drainage and water systems, the storm water retention ponds in, on, or relating to, the Phase 1, 2, 3 and 4 Properties;
  - (v) provide, in addition to the Plans and Drawings, such other plans, specifications, and drawings as the Town may require; and
  - (vi) the Owner shall construct and install all Works in a good and workmanlike manner and to the satisfaction of the Town.
3. The Owner shall and does hereby agree that the SPA and this Agreement, together with any Schedules thereto, shall, forthwith upon request of the Town, be registered against title to the Lands. The covenants, agreements, conditions and undertakings herein contained on the part of the Owner shall run with the Lands and shall be binding upon the Owner, its successors and assigns as Owner and occupiers from time to time and this covenant shall be to the benefit of the Town and its lands and highways appurtenant and adjacent to the Lands. The Owner further covenants and agrees, notwithstanding anything contained in the SPA, to pay to the Town the legal and other costs and expenses of the preparation and registration of this Agreement or otherwise related thereto, as well as any further costs incurred by the Town as a result of the preparation, registration, or otherwise of any other documents pertaining to this Agreement.

4. The Owner covenants and agrees, at its own cost and expense and if so requested by the Town, to obtain and register such documentation (collectively, the "Subordination and Postponement Documentation") from its mortgagees, lessees, and/or encumbrancers and otherwise interested therein or with respect thereto (collectively, "Encumbrancers") as may be deemed necessary by the Town to postpone and subordinate their interest in the Lands in order to ensure that this Agreement shall take effect and have priority as if it had been executed and registered prior to the execution and registration of the document or documents giving to the Encumbrancers their interest in the Lands. The Subordination and Postponement Documentation shall, if so requested by the Town, be registered (at the sole cost and expense of the Owner), on title to the Lands immediately after the registration of this Agreement.
5. The Owner acknowledges that the Town, in addition to any other remedy it may have at law or equity, shall also be entitled to enforce this Agreement in accordance with and under the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended, including, without limitation, s.446 thereof.
6. Nothing in this Agreement shall relieve the Owner from compliance with all applicable municipal by-laws, laws, regulations, notices or other policies or laws and/or regulations established by any other governmental body that may have jurisdiction of or over the Lands or otherwise.
7. (a) Any part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.  
(b) This Agreement shall be construed with all changes in number and gender 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, without limitation, 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 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) Whenever a statement or provision 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.  
(g) The Owner and the Town agree that 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.  
(h) Any rule of construction that a document is to be construed more strictly against the Party who itself, or through its agent, drafted such document, shall not apply to this Agreement as it is agreed that the Parties, directly or through their agents, have participated in the preparation of this Agreement.
8. Neither this Agreement nor any interest therein nor any rights under it shall be assigned or otherwise transferred in whole or in part without the prior consent in writing of the Town.
9. If the Owner hereunder is constituted by or of more than one Person, their obligations hereunder shall be joint and several.
10. The Owner shall indemnify and save harmless the Town for and against all actions, causes of action, claims, suits, and demands whatsoever which may or do arise directly or indirectly by reason of this Agreement, the Phase 2 and Phase 3 Developments, and/or the Owner undertaking the Phase 2, Phase 3 and Phase 4 Developments.
11. The Owner agrees, at its sole cost and expense, to do such further and other things and sign any further documents necessary or desirable to give effect to this Agreement.
12. The failure of the Town 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 Town 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. The Town shall specifically retain its rights at law and/or otherwise to enforce this Agreement.

13. Time shall be of the essence of this Agreement. Any time limits specified in this Agreement may be extended with the consent in writing of both the Owner and the Town, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit.
14. The Owner covenants and agrees not to call into question or challenge, directly or indirectly, in any proceeding or action in court, or before any administrative tribunal, the Party's right to enter into and enforce this Agreement. The law of contract applies to this Agreement and the Parties are entitled to all remedies arising from it, notwithstanding any provision in the *Planning Act*, R.S.O. 1990, c. P.13, as amended interpreted to the contrary. The Parties agree that adequate consideration has flowed from each Party to the other and that they are not severable. This provision may be pleaded by either Party in any action or proceeding as an estoppel of any denial of such right.
15. This Agreement shall be interpreted under and be governed by the laws of the Province of Ontario.
16. The Owner understands and agrees that this Agreement and any materials or information provided to the Town may be subject to disclosure under the *Municipal Freedom of Information and Protection of Privacy Act* or as otherwise required by law.
17. The Parties acknowledge and confirm that the SPA is and remains in full force and effect, subject to as set out herein and except as may be amended by this Agreement.
18. Any notice required or permitted to be given hereunder shall be in writing and shall be effectively given if (a) delivered personally, (b) sent by prepaid courier service or mail,  
  
or (c) sent prepaid by facsimile or other similar means of electronic communication and confirmed on the same or following day by prepaid mail, addressed, in the case of notice to the Owner, if addressed to it as follows:

Wahkaihanun Futures Corporation P.O. Box 393  
Fort Frances, Ontario  
P9A 3M7  
Facsimile: (807) 274-7968

and in the case of notice to the Town, if addressed to it as follows:

The Corporation of the Town of Fort Frances 320 Portage Ave.  
Fort Frances, Ontario  
P9A 3M5  
Attention: Clerk  
Facsimile: (807) 274-8479

and in all cases so delivered personally or by courier or so sent by means of electronic communication, so confirmed. Any notice so given is deemed conclusively to have been given and received when so personally delivered or sent by facsimile or other electronic communication, or on the second day following the sending thereof by private courier or mail. Any Party hereto or others mentioned above may change any particulars of its address for notice by notice to the others in the manner aforesaid.

19. This Agreement may be executed and/or amended by facsimile and/or electronic transmission, and any such execution, amendments, and/or signatures and/or initials, or otherwise done by or via facsimile and/or email transmission shall be good and valid as if original.
20. This Agreement may be executed in any number of counterparts and all of these counterparts shall for all purposes constitute one agreement, binding on the Parties, notwithstanding that all Parties are not signatory to the same counterpart.
21. This Agreement and everything herein contained shall ensure to the benefit of and be binding upon the parties hereto and their successors and assigns.

**IN WITNESS WHEREOF** the Parties have executed this Agreement under seal.

SIGNED, SEALED AND DELIVERED

Wahkaihanun Futures Corporation

Per Neil Kahl Name:  
Title:

Per Manager Name:  
Title:

I/we have authority to bind the Corporation

The Corporation of the Town of Fort Frances

Per \_\_\_\_\_  
Name: R. Avis  
Title: Mayor

Per \_\_\_\_\_  
Name: E. Slomke Title: Clerk

I/we have authority to bind the Town

Schedule 1

Legal Description of the Phase 2, Phase 3 Phase 4 Properties

The legal Description of the Phase 2, Phase 3 and Phase 4 Properties is:

1. Firstly; Part of Lots 2 & 3, Plan SM138 Mclrvine Part 3, Plan 48R4369; Surface Rights Only Secondly; Part Lots 1 &2, Plan SM138 Mclrvine Part 3, Plan 48R-4286 Surface Rights Only; Town of Fort Frances [PIN 56019-1125]; and
2. Part Lt 3, PI SM138 Mclrvine, Surface Rights Only Des Pt 6, PI 48R-4456; Town of Fort Frances [PIN 56019-1133] ; and
3. Part Lt 4, PI SM138 Mclrvine, Pt 5 48R-4456; Town of Fort Frances [PIN 56019-1135]; and
4. Part Lt 4, PI SM138 Mclrvine, Pts 3 & 4 48R-4456; Town of Fort Frances [PIN 560191136].

Schedule 2

List of Phase 2, 3 and 4 Plans and Drawings

5. Site Plan and Drainage Plan, Hatch Engineering Dated June 15, 2017, Plan # A1-348468-G16
- 6.. General Notes and Project Plans Seaulteaux Consulting and Engineering Dated May 11, 2017, Plan Project # 17-022
7. Site Plan, Revision 4, date 06/10/15, Sheet No. SP.