

**EXECUTED IN TRIPLICATE**

## **DEVELOPMENT AGREEMENT**

B E T W E E N:

**THE CORPORATION OF THE MUNICIPALITY OF NEEBING**

(Referred to in this Development Agreement as "Neebing")

- and -

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(Referred to in this Development Agreement as the "Developer")

This Development Agreement (the "Development Agreement") made this \*(insert closing date) (the "Effective Date") by and between The Corporation of the Municipality of Neebing ("Neebing") and \*(insert owner(s) name(s)) ("the Developer").

### **Recitals:**

Neebing sold a residential building lot (the "Lands") to the Developer on the Effective Date upon the express condition subsequent that the Developer will build a permanent dwelling on the lot within three (3) years of the Effective Date. This Development Agreement is entered, for good and valuable consideration, the sufficiency and receipt of which are acknowledged by both Parties, to secure that covenant and to set out the terms and conditions associated with the Developer's compliance with that covenant.

ACCORDINGLY, the Parties agree as follows:

1. **Defined Terms:** Words used in this Development Agreement with their initial letters capitalized are either proper nouns, titles or words that have been specifically defined. Where words are specifically defined in this Agreement and then used elsewhere in this Agreement with their initial letters capitalized, it is intended that the term is being used as defined. Words appearing in ordinary case are intended to have the use ascribed to them in ordinary use of the English language.
2. **Construing this Agreement:** All recitals and schedules to this Development Agreement are inherent parts of it. The captions, article and section names and numbers appearing in this Development Agreement are for convenience of reference only and have no effect on its interpretation. All provisions of this Development Agreement creating agreements or obligations on either Party will be construed as covenants of that Party. This Development Agreement is to be read with all changes of gender or number required by the context. All references to money are considered reference to lawful currency of Canada. References to times and dates refer to the time and date where the Lands are located. The terms "include", "includes" and "including" are to be interpreted without limitation to the words or phrases that precede or follow them.

3. **Term of this Agreement:** This Development Agreement commences on the Effective Date and continues until midnight on the \*(insert date exactly 3 years after Effective Date).
4. **Extension of the Term:** The term of this Development Agreement, as set out in Section 3, may be extended only by an agreement in writing signed by both Parties. The signature of Neebing requires a resolution of its Council as authorization. Any request by the Developer to extend the term of this Development Agreement must be submitted to Neebing's Representative (named in Section 12) on or before the 90<sup>th</sup> date prior to the expiry of the term.

If Neebing agrees to extend the term of this Development Agreement, all of the other terms and conditions of the Development Agreement existing at the time of the request for the extension will remain unaltered, with the only change being the length of time within which the Developer must fulfill its obligations under this Development Agreement.

5. **Covenant to Construct:** The Developer agrees to construct a permanent (as opposed to seasonal) residential dwelling on the Lands within the term of this Development Agreement.
6. **Compliance with Laws:** The Developer agrees to undertake the construction in a workmanlike manner and in compliance with all applicable laws, including all municipal by-laws.
7. **Permits:** The Developer agrees to obtain all necessary building permits and/or permits required by authorities with jurisdiction, and comply with any terms and/or conditions associated with those permits.
8. **Deed Back:** The Developer will sign a Transfer/Deed of Land (the "Deed Back") which will transfer title to the Lands from the Developer to Neebing. The Deed Back will be deposited with Neebing's solicitor to be held in escrow unless and until such time as it is required under Section 10 of this Development Agreement.
9. **Material Default:** The failure by the Developer to comply with its covenants as set out in Sections 5 and 6 constitutes a "Material Default" under this Development Agreement.
10. **Remedy for Material Default:** Upon the occurrence of a Material Default, Neebing, in its sole and unreviewable discretion, may:
  - a) pay to the Developer the sum of money that the Developer paid to Neebing as the "purchase price" defined in the Agreement of Purchase and Sale under which the Developer obtained title to the Lands, less the sum of twenty-five thousand (\$25,000.00) dollars as penalty; and
  - b) cause the Deed Back to be registered.

Should Neebing determine for any reason that it does not wish to register the Deed Back, any and all other legal remedies available to it in the face of the Developer's default, remain available to it.

11. **Non-Material Default:** If either Party defaults on its obligations under this Development Agreement, the following steps shall occur:

- a) The Party which is not in default shall send to the other Party (the “Defaulting Party”) written notice that describes in detail the nature of the default.
- b) The Defaulting Party shall have twenty (20) days from the date that it received the notice set out in paragraph 11(a) of this Development Agreement, to cure the default or to begin substantial completion of a cure of the default in circumstances where the default cannot reasonably be cured in twenty (20) days.
- c) In the event that the Defaulting Party fails to remedy the default, the other Party shall have available to it any remedy otherwise available to it at law.

12. **Parties’ Representatives and Contact Information:** Neebing appoints the Municipal Clerk to be the “Neebing Representative”. The Developer appoints \*(insert name) to be the “Developer Representative”.

The Neebing Representative can be reached at:

Attention: Municipal Clerk  
The Corporation of the Municipality of Neebing  
4766 Highway 61, Neebing, Ontario P7L 0B5  
Telephone (land line): 807-474-5331  
Facsimile: 807-474-5332

The Developer Representative can be reached at:

\*(insert)

13. **Circumstances Outside the Parties’ Control:** If the performance of this Development Agreement or any obligation under this Development Agreement is prevented, restricted or interfered with by causes that are beyond either Party’s reasonable control, and if the Party unable to carry out its obligations gives the other Party prompt written notice of that event, then the obligations of the Party invoking this provision shall be suspended to the extent necessary by such event. These types of circumstances include: acts of God, fire, explosion, vandalism, significant storm events, casualty, significant illness, significant injury, general unavailability of materials, acts of military or civil authority, local emergencies, insurrections, riots or wars, strikes, lock-outs, and work stoppages. These types of circumstances do not include a lack of financial resources on the part of the Party unable to perform or any action committed, omitted or caused by that Party or persons within that Party’s reasonable control. The excused Party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance, and shall proceed to perform with reasonable dispatch whenever such cause is removed or ceases.

14. **Differences of Opinion:** All matters of differences arising between the Parties in any matter connected with or arising out of this Development Agreement, whether to interpretation or otherwise, will be referred to a single arbitrator, should the Parties agree upon the identity of the arbitrator. Should the Parties be unable to agree upon the identity of an arbitrator, then each Party shall appoint an individual person as its representative, and those two people will agree upon the identity of the arbitrator. Any arbitrator chosen shall meet the qualifications of an arbitrator under the *Municipal Arbitrations Act*.

15. **Mediation**: Despite Section 14, the Parties may agree to engage the services of a mediator to attempt to settle their differences in advance of arbitration. Should the Parties be unable to agree upon the identity of a mediator, then each Party's Representative named in this Development Agreement shall appoint an individual person as his representative, and those two people will agree upon the identity of the mediator. Each Party shall bear its own costs relating to the mediation, and the cost of the mediation itself will be shared equally by the Parties.
16. **Conduct of Arbitration**: The arbitrator shall conduct the arbitration pursuant to the *Arbitrations Act* and the *Municipal Arbitrations Act*, and every award or determination will be final and binding on the Parties and their successors and assigns, and shall not be subject to appeal. The arbitrator shall be allowed unfettered and unlimited discretion to determine in each and every case the solution which best balances the competing interests of the Parties to the arbitration in accordance with this Development Agreement.
17. **Entire Agreement/Amendments**: This Development Agreement contains the entire agreement between the Parties. There are no other promises, commitments or conditions in any other document or verbal discussion concerning the subject matter of this Development Agreement. Any amendments to this Development Agreement, must be made in writing and must be signed by each Party. Amendments on Neebing's part must be supported by council resolution.
18. **Governing Law**: This Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario.
19. **Freedom of Information**: Each Party acknowledges that this Development Agreement is a public document. The Developer consents to the registration of this Development Agreement on title to the Lands.
20. **Agreement Runs with the Land**: The covenants in this Development Agreement run with the title to the Lands. The covenants bind the Parties, and their successors and assigns in title.
21. **Independent Legal Advice**: Each Party acknowledges that it has either received or waived the benefit of its own legal advice with respect to the execution of this Development Agreement.
22. **Waiver of Rights**: If either Party fails to enforce any provision of this Development Agreement, that does not mean that it is limited in enforcing that provision, or any other provision, in the future. Both Parties have the right to insist upon strict compliance with every aspect of this Development Agreement.
23. **Notice**: Any notice to be given under this Development Agreement shall be delivered by hand, or facsimile, or sent by prepaid first class mail. Notices addressed to the Developer shall be sent to the Developer's Representative using the contact information set out in Section 12 of this Development Agreement. Notices addressed to Neebing shall be sent to Neebing's Representative using the contact information set out in Section 12 of this Development Agreement.

Receipt of notice shall be deemed on:

- (a) the date of actual delivery of a hand delivered document; or
  - (b) the business day next following the date of facsimile transmission; or
  - (c) five (5) days following the date of mailing of the notice;
- whichever is applicable. Notice shall not be given by electronic mail. Despite Section 17, either Party may change its address for notice by giving notice of change of address pursuant to this Section.

24. **Signatories:** This Agreement shall be signed on behalf of Neebing by the Mayor and Solicitor-Clerk and on behalf of the Developer by the Developer’s Representative.

**TO WITNESS,** the undersigned affixed their corporate seals attested by the hands of our properly authorized officers. By so executing this document, the officers warrant and certify that the corporations for which they are signing are in good standing and duly incorporated and organized under the laws of the jurisdiction in which they are incorporated, and that the officers are authorized and empowered to bind the corporation(s) to the terms of this Agreement by their signatures.

**THE CORPORATION OF THE MUNICIPALITY OF NEEBING**

\_\_\_\_\_  
Ziggy Polkowski, Mayor  
c/s

\_\_\_\_\_  
Rosalie A. Evans, Solicitor-Clerk

We have the authority to bind the Corporation

Witness to the Signature of \*(Developer Representative):

**\*(INSERT NAME DEVELOPER REPRESENTATIVE)**

\_\_\_\_\_  
Printed name:

Date of Signatures: \_\_\_\_\_