

THIS DECLARATION (hereinafter called the "**Declaration**") is made and executed pursuant to the provisions of the *Condominium Act*, 1998, S.O. 1998, C.19, and the regulations made thereunder, as amended from time to time (all of which are hereinafter collectively referred to as the "**Act**"), by:

Sean Mason Homes (Essa Rd.) Inc.
a corporation incorporated under the laws of the province of Ontario
(hereinafter collectively called the "**Declarant**")

WHEREAS:

- A. The Declarant is the owner in fee simple of certain lands and premises situate in the City of Barrie, in the Province of Ontario and being more particularly described in Schedule "A" annexed hereto and in the description submitted herewith by the Declarant (hereinafter called the "**Description**") for registration in accordance with the Act and which lands are sometimes referred to as the "**Lands**" or the "**Property**";
- B. The Declarant will create a freehold common elements condominium; and
- C. The common elements of the corporation are intended for the use and enjoyment of the owners.

NOW THEREFORE THE DECLARANT HEREBY DECLARES AS FOLLOWS:

ARTICLE 1.00 - INTRODUCTORY

1.1 Definitions

The following terms used herein have the meanings set out below, unless the context otherwise requires:

- (a) "**Board**" shall mean the board of directors of the Corporation.
- (b) "**By-Laws**" means the by-laws of the Corporation enacted from time to time.
- (c) "**Common Elements**" means all the Property;
- (d) "**Condominium**" shall mean all the Property and shall be composed of, *inter alia*, private roads, underground service connections, small children's playground, fence, landscaped area, street lights, visitor parking areas and those items noted in Schedule "H" herein;
- (e) "**Corporation**" shall mean the Condominium created upon the registration of this Declaration.
- (f) "**Declaration**" means this declaration and all amendments thereto and all schedules referred to herein.
- (g) "**Dwelling**" means the dwellings situate upon each of the Potls.
- (h) "**LID Infrastructure**" means such low impact development (LID) infrastructure situated, erected and/or installed on the Common Elements.
- (i) "**Manager**" means the Manager appointed by the Corporation to manage the day to day affairs of the Corporation.
- (j) "**Owner**" means the Owner or Owners of a common interest in the Common Elements and who owns, pursuant to the Act, a freehold estate(s) in a Potl, but does not include a mortgagee of a Potl unless in possession.
- (k) "**Potl**" or "**Potls**" means the parcel or parcel(s) of tied land to which a common interest is attached as described in Schedule "D" to this declaration. These Potls are presently designated as part of one (1) Block, being part of Block 1, Plan 51M-____. It is anticipated that there shall be fifty-seven (57) Potls which shall

have a common interest in the Condominium upon the passage of a part lot control exemption bylaw.

- (l) **"Rules"** means the Rules passed by the Board.
- (m) **"City"** means the City of Barrie.

Other terms used herein shall have ascribed to them the definitions contained in the Act, as amended from time to time.

1.2 Act Governs the Property

The Lands described in Schedule "A" annexed hereto and in the Description together with all interests appurtenant to the Lands are governed by the Act.

1.3 Common Elements Condominium

The registration of this Declaration and the Description will create a freehold condominium that constitutes a common elements condominium corporation.

1.4 Division of Potls

A Potl may not be divided into two (2) or more Potls unless an amendment is registered to the Declaration that takes into account the division of a Potl.

1.5 Consent of Encumbrancers

The consent of all persons having registered mortgages against the land or interests appurtenant to the land described in Schedule "A" is contained in Schedule "B" attached hereto.

1.6 Common Interest and Common Expenses

Each Owner shall have an undivided interest in the Common Elements as a tenant in common with all other Owners in the proportions set forth opposite each Potl in Schedule "D" attached hereto and shall contribute to the Common Expenses in the proportion set forth opposite each Potl in Schedule "D" attached hereto. The total of the proportions of the common interests and proportionate contribution to Common Expenses shall each be one hundred (100%) percent.

1.7 Address for Service and Mailing Address of Corporation

The address for service and the mailing address for the Corporation shall be that of the Manager, being:

c/o 401 Essa Road, Barrie, Ontario , L4N 9C8

or such other address as the Corporation may by resolution of the Board determine and the mailing address of the Corporation shall be as set out above.

1.8 Architect/Engineer Certificates

The certificate(s) of the architect and/or engineer(s) that all buildings and structures that the Declaration and description show are included in the Common Elements and have been constructed in accordance with the regulations is/are contained in Schedule "G" attached hereto.

1.9 Statements of Conditions

- (a) As a condition to the draft plan of subdivision approval, the City requires the Declarant to acknowledge that the City will not agree, at any time, to own or be liable for the operation and maintenance of any of the privately owned Common Elements driveways or any other private facilities or services. The Declarant shall agree that it will be the responsibility of the Condominium to ensure the safe and proper operation and maintenance of all of the Common Elements and facilities.

- (b) As conditions to the condominium approval, the City requires that future owners acknowledge the following:
- (i) "All owners and future tenants/purchasers acknowledge and agree that snow removal and the ownership and maintenance of private driveways shall remain the sole responsibility of the condominium corporation and the City of Barrie will not own, operate or maintain any common element facilities including private roads and services and will retain no future liability within private driveways with the exception of water and sewer within the City easement."
 - (ii) "All owners and future tenants/purchasers acknowledge and agree to maintain the private driveway as unobstructed at all times to ensure safe operations within this development."
 - (iii) "All owners and future tenants/purchasers acknowledge and agree that in the event of insufficient on-site snow storage, contracting for private snow removal from the site, shall remain the sole responsibility of the condominium corporation."
 - (iv) "All owners and future tenants/purchasers acknowledge and agree that the maintenance of the common element areas within shall remain the sole responsibility of the condominium corporation."
 - (v) "All owners and future tenants/purchasers acknowledge and agree that outdoor storage of refuse materials, recycling materials, refuse containers and recycling containers within all common element condominium areas and outside the Unit, including on the patio and deck, is strictly prohibited and that enforcement of these outdoor storage restrictions shall remain the sole responsibility of the condominium corporation."
 - (vi) "All owners and future tenants/purchasers acknowledge and agree that parking within all common element condominium areas is strictly prohibited and that enforcement of these restrictions shall remain the sole responsibility of the condominium corporation."

ARTICLE 2.00 - COMMON EXPENSES

2.1 Specifications of Common Expenses

Common Expenses mean the expenses of the performance of the objects and duties of the Corporation and without limiting the generality of the foregoing, shall include those expenses set out in Schedule "E" attached hereto.

2.2 Payment of Common Expenses

Each Owner shall pay to the Corporation his/her proportionate share of the common expenses and the assessment and collection of contributions toward common expenses may be regulated by the Board pursuant to the By-laws. In addition to the foregoing, any losses, costs or damages incurred by the Corporation by reason of a breach of any provision of this Declaration, or in any By-laws or Rules in force from time to time by any Owner, or by members of his/her family and/or their respective tenants, invitees or licensees shall be borne and paid for by such Owner and may be recovered by the Corporation against such Owner in the same manner as Common Expenses.

2.3 Reserve Fund

The Corporation shall establish and maintain one or more reserve funds and shall collect from the Owners as part of their contribution towards the Common Expenses, amounts that are reasonably expected to provide sufficient funds for major repairs and replacements of Common Elements and assets of the Corporation, in accordance with the provisions of the Act.

No part of any reserve fund shall be used except for the purpose for which such fund was established. The reserve fund shall constitute an asset of the Corporation and shall not be distributed to any Owner except on termination of the Corporation in accordance with the Act.

2.4 Status Certificate

The Corporation shall provide a status certificate to any requesting party who has paid (in advance) the applicable fees charged by the Corporation for providing same in accordance with the provisions of the Act, together with all accompanying documentation and information prescribed by the Act. The Corporation shall forthwith provide the Declarant (and/or any purchaser, transferee or mortgagee of a Potl from the Declarant) with a status certificate and all such accompanying documentation and information, as may be requested from time to time by or on behalf of the Declarant (or by any such purchaser, transferee, or mortgagee) in connection with the Declarant's sale, transfer or mortgage of any Potls, all at no charge or fee to the Declarant or the person requesting same on behalf of the Declarant.

ARTICLE 3.00 - COMMON ELEMENTS

3.1 Use of Common Elements

Subject to the provisions of the Act, this Declaration, the By-laws and any Rules, each Owner has the full use, occupancy and enjoyment of the whole or any parts of the Condominium, except as herein otherwise provided.

However, save and except as expressly provided or contemplated in this Declaration to the contrary, no condition shall be permitted to exist, and no activity shall be carried on, within any Potl or upon any portion of the Condominium that:

- (a) will result in a contravention of any term or provision set out in the Act, this Declaration, the By-laws and Rules of the Corporation;
- (b) is likely to damage the property of the Corporation, injure any person, or impair the structural integrity of any Potl or the Common Elements;
- (c) will unreasonably interfere with the use and enjoyment by the other Owners of the Common Elements and/or their respective Potls;
- (d) may result in the cancellation (or threatened cancellation) of any policy of insurance obtained or maintained by the Corporation, or that may significantly increase any applicable insurance premium(s) with respect thereto, or any deductible portion in respect of such policy;
- (e) is likely to damage or harm LID Infrastructure;
- (f) will adversely impact the adjacent environmentally protected lands vegetation preservation zone located along the north west limit of the lands including, without limitation, the erection of accessory structures or alteration of municipally approved grading plans for the Condominium; or
- (g) will permit placement of garbage receptacles or bins external to the buildings constructed on the Potls in contravention of municipal requirements for the approval of the Condominium.

No one shall, by any conduct or activity undertaken in or upon any part of the Common Elements, impede, hinder or obstruct any right, privilege, easement or benefit given to any party, person or other entity pursuant to this Declaration, any By-law and/or the Rules.

3.2 Exclusive Use Common Elements

- (a) The Exclusive Use Common Elements means those portions of the Common Elements that the adjacent Owners have exclusive use of and shall be in accordance with Schedule "F" attached hereto.

3.3 Modifications of Common Elements, Assets and Services

- (a) General Prohibition

No Owner shall make any change or alteration to the Common Elements whatsoever, including any installation(s) thereon, nor alter, decorate, renovate, maintain or repair any part of the Common Elements (except for maintaining those parts of the Common Elements which he or she has a duty to maintain in accordance with the provisions of this Declaration) without obtaining the prior written approval of the Board and having entered into an agreement with the Corporation in accordance with Section 98 of the Act.

- (b) Non-Substantial Additions, Alterations and Improvements by the Corporation

The Corporation may make a non-substantial addition, alteration, or improvement to the Common Elements, a non-substantial change in the assets of the Corporation or a non-substantial change in a service that the Corporation provides to the Owners in accordance with Subsections 97(2) and (3) of the Act.

- (c) Substantial Additions, Alterations and Improvements by the Corporation

The Corporation may, by a vote of Owners who own at least sixty-six and two thirds (66 2/3%) percent of the Potls make a substantial addition, alteration or improvement to the Common Elements, a substantial change in the assets of the Corporation or a substantial change in a service the Corporation provides to the Owners in accordance with Subsections 97 (4), (5) and (6) of the Act.

- (d) Notwithstanding anything herein:

- (i) the alteration of the surface elevation of the lands comprising the Condominium, including the road and/or the visitor parking area shall not be permitted;
- (ii) the alteration or removal of any hydrants, any street lighting and/or other exterior lighting within the Condominium shall not be permitted;
- (iii) the alteration of LID Infrastructure;
- (iv) except in accordance with good horticultural practice or in the case of death or disease, alteration or removal of any vegetation within the Condominium shall not be permitted;
- (v) except for the purposes of repair or replacement, the alteration or removal of any fencing within the Condominium as approved by the City shall not be permitted.

3.4 Declarant Rights

Notwithstanding anything provided in this Declaration to the contrary, and notwithstanding any Rules or By-laws of the Corporation hereafter passed or enacted to the contrary, it is expressly stipulated and declared that:

- (a) the Declarant and its authorized agents, representatives and/or invitees shall have free and uninterrupted access to and egress from the Common Elements, for the purposes of implementing, operating and/or administering the Declarant's marketing, sale, construction and/or customer-service program(s) with respect to any unsold Potls from time to time;

- (b) the Declarant and its authorized agents or representatives shall be entitled to erect and maintain signs and displays for marketing/sale purposes or one or more offices for marketing, sales, construction and/or customer-service purposes, upon any portion of the Common Elements, and within or outside any unsold Potls, at such locations and having such dimensions as the Declarant may determine in its sole and unfettered discretion, all without any charge to the Declarant for the use of the space(s) so occupied, nor for any utility services (or any other usual or customary services) supplied thereto or consumed thereby, nor shall the Corporation (or any one else acting on behalf of the Corporation) prevent or interfere with the provision of utility services (or any other usual or customary services) to the Declarant's marketing/sales/construction/customer-service office(s); and
- (c) the Corporation shall ensure that no actions or steps are taken by anyone which would prohibit, limit or restrict the access and egress of the Declarant and its authorized agents, representative and/or invitees over the Common Elements,

until such time as all of the Potls have been transferred by the Declarant.

3.5 Parking

- (a) Parking of vehicles is not permitted on any portion of the entrance way or roadways located within the Condominium;
- (b) Visitors to the Dwellings shall park their vehicles only upon the designated visitor parking areas located within the Condominium. The visitor parking areas shall contain a total of ten (10) parking spaces for visitors to the Dwellings including two (2) handicapped parking space(s).
- (c) The Declarant reserves the right to change the location, dimensions and number of the designated parking spaces in its sole and absolute discretion.

3.6 Creation of Potls

The fifty-seven (57) Potls described in 1.1(j) are comprised of part of one (1) block (the "Block") on Plan 51M-_____ (the "Plan") to be comprised of fifty-seven (57) lots (the "Lots") upon the passage of a part-lot exemption bylaw to be registered on title to the Potls. The owners of said Lots shall, by virtue of also being owners of Potls, be entitled to use the visitor parking, private roads and landscaped area, located upon the Condominium for themselves, their tenants, guests and invitees.

ARTICLE 4.00- MAINTENANCE AND REPAIRS

4.1 Responsibility of Owner for Damage

Each Owner shall be responsible for all damage to the Condominium, which is caused by the negligence or wilful misconduct of the Owner, his or her tenants, licensees or invitees, save and except for any such damage for which the cost of repairing same may be recovered under any policy of insurance held by the Corporation;

4.2 Repair and Maintenance by Corporation

- (a) The Corporation shall maintain and repair the Condominium at its own expense and such maintenance and repair shall include and not be limited to, the maintenance and repair of the private roads, sidewalks, underground service connections, landscaped areas, visitor parking spaces, street lights, children's playground and those items noted in Schedule "H" herein;
- (b) The Corporation shall also maintain and repair all services (including without limitation, LID Infrastructure, water mains, storm and sanitary sewers, as applicable) which service more than one Potl, whether located within the Condominium or wholly or partly within a Potl and the Corporation and its designated agents shall have full access to a Potl to carry out its obligation pursuant to this paragraph.

- (c) The Corporation shall be responsible for the snow clearing and landscaping of the Condominium, as appropriate, and at those times of the year designated by the Board at its sole reasonable discretion.
- (d) The Corporation shall have no obligation to maintain any of the lands within a Potl, any municipal property abutting the Potl, or any exclusive use areas abutting the Potl.

4.3 Maintenance by Unit Owner

- (a) Each Potl Owner shall be responsible for snow clearing of their driveway and any sidewalk or path directly adjacent to their Dwelling.
- (b) The maintenance of photocells located on the Potl shall be the sole responsibility of each Potl Owner.
- (c) Each Owner shall maintain all landscaping on the Potl in accordance with the standards determined from time to time by the Corporation acting reasonably.

ARTICLE 5.00 – INDEMNIFICATION

5.1 Indemnification

Each Owner shall indemnify and save harmless the Corporation from and against any loss, costs, damage, injury or liability whatsoever which the Corporation may suffer or incur resulting from or caused by an act or omission of such Owner, his family, guests, visitors or tenants to or with respect to the Common Elements, except for any loss, costs, damages, injury or liability caused by an insured (as defined in any policy or policies of insurance) and insured against by the Corporation. All payments to be made by an Owner pursuant to this Article shall be deemed to be additional contributions toward Common Expenses payable by such Owner and shall be recoverable as such.

ARTICLE 6.00 – INSURANCE

6.1 Insurance

The Corporation shall obtain and maintain to the extent obtainable, at reasonable cost, the following insurance, in one or more policies:

- (a) Policy Provisions

Every policy of insurance shall insure the interests of the Corporation (with all mortgagee endorsements subject to the provisions of the Act, this Declaration and the Insurance Trust Agreement, if applicable) and shall contain the following provisions:

- (i) waivers of subrogation against the Corporation, its directors, officers, manager, agents, employees and servants and against the Owners, and the Owners' respective residents, tenants, invitees or licensees, except for damage arising from arson, fraud, vehicle impact, vandalism or malicious mischief caused by any one of the above;
- (ii) such policy or policies of insurance shall not be terminated or substantially modified without at least sixty (60) days prior written notice to the Corporation;
- (iii) waivers of the insurer's obligation to repair, rebuild or replace the damaged property in the event that after damage the government of the Property is terminated pursuant to the Act;
- (iv) waivers of any defence based on co-insurance (other than a stated amount co-insurance clause); and

- (v) waivers of any defence based on any invalidity arising from the conduct or act or omission of or breach of a statutory condition by any insured person.
- (b) Public Liability Insurance: Public liability and property damage insurance, and insurance against the Corporation's liability resulting from breach of duty as occupier of the Common Elements insuring the liability of the Corporation and the Owners from time to time, with limits to be determined by the Board, but not less than TWO MILLION (\$2,000,000.00) DOLLARS per occurrence and without right of subrogation as against the Corporation, its directors, officers, manager, agents, employees and servants, and as against the Owners and any member of the household or guests of any Owner or occupant of a Potl.

6.2 General Provisions

- (a) The Corporation, its Board and its officers shall have the exclusive right, on behalf of itself and as agents for the Owners, to adjust any loss and settle any claims with respect to all insurance placed by the Corporation, and to give such releases as are required, and any claimant, shall be bound by such adjustment.
- (b) Every mortgagee shall be deemed to have agreed to waive any right to have proceeds of any insurance applied on account of the mortgage where such application would prevent application of the insurance proceeds in satisfaction of an obligation to repair. This subparagraph shall be read without prejudice to the right of any mortgagee to exercise the right of an Owner to vote or to consent if the mortgage itself contains a provision giving the mortgagee that right;
- (c) A certificate or memorandum of all insurance policies, and endorsements thereto, shall be issued as soon as possible to each Owner, and a duplicate original or certified copy of the policy to each mortgagee who has notified the Corporation of its interest in any Potl. Renewal certificates or certificates of new insurance policies shall be furnished to each Owner and to each mortgagee noted on the Record of the Corporation who have requested same. The master policy for any insurance coverage shall be kept by the Corporation in its offices, available for inspection by any Owner or mortgagee on reasonable notice to the Corporation;
- (d) No insured, other than the Corporation, shall be entitled to amend any policy or policies of insurance obtained and maintained by the Corporation. No insured shall be entitled to direct that the loss shall be payable in any manner other than as provided in the Declaration and the Act;
- (e) Where insurance proceeds are received by the Corporation or any other person, they shall be held in trust and applied, utilized and distributed in accordance with the Act; and
- (f) Prior to obtaining any new policy or policies of insurance and at such other time as the Board may deem advisable and in any event, at least every three (3) years, the Board shall obtain an appraisal from an independent qualified appraiser of the full replacement cost of the assets for the purpose of determining the amount of insurance to be effected and the cost of such appraisal shall be a Common Expense.

6.3 By the Owner

It is acknowledged that the foregoing insurance is the only insurance required to be obtained and maintained by the Corporation and that the following insurance must be obtained and maintained by each Owner at such Owner's own risk:

- (a) Insurance on the Owner's Potl and all buildings constructed thereon. Every such policy of insurance shall contain waiver of subrogation against the Corporation, its manager, agents, employees and servants and against the other Owners and any members of their household or guests except for any damage arising from arson, fraud, vehicle impact, vandalism or malicious mischief caused or contributed by any of the aforementioned parties.

- (b) Public liability insurance covering any liability of any Owner or any resident, tenant, invitee or licensee of such Owner, to the extent not covered by any public liability and property damage insurance obtained and maintained by the Corporation.
- (c) Insurance covering the deductible on the Corporation's main policy for which an owner may be responsible.

6.4 Indemnity Insurance for Directors and Officers of the Corporation

The Corporation shall obtain and maintain insurance for the benefit of all of the directors and officers of the Corporation, if such insurance is reasonably available, in order to indemnify them against the matters described in the Act, including any liability, cost, charge or expense incurred by them in the execution of their respective duties (hereinafter collectively referred to as the "**Liabilities**"), provided however that such insurance shall not indemnify any of the directors or officers against any of the Liabilities respectively incurred by them as a result of a breach of their duty to act honestly and in good faith, or in contravention of the provisions of the Act.

ARTICLE 7.00 - DUTIES OF THE CORPORATION

7.1 Duties of the Corporation

In addition to any other duties or obligations of the Corporation set out elsewhere in this Declaration or specified in the By-laws, the Corporation shall have the following duties, which are not intended to be exhaustive, namely:

- (a) To ensure that no actions or steps are taken by or on behalf of the Corporation, or by any Potl owner or their respective tenants or invitees which would prohibit, restrict, limit, hinder or interfere with the Declarant's ability to utilize portions of the Common Elements for its marketing/sale/construction programs;
- (b) When the Corporation formally retains an independent consultant (who holds a certificate of authorization within the meaning of *The Professional Engineers Act* R.S.O.1990, as amended, or alternatively a certificate of practice within the meaning of *The Architects Act* R.S.O.1990, as amended) to conduct a performance audit of the Common Elements on behalf of the Corporation, in accordance with the provisions of Section 44 of the Act and Section 12 of O.Reg.48/01 (hereinafter referred to as the "**Performance Audit**") at any time between the 6th month and the 10th month following the registration of this Declaration, then the Corporation shall have a duty to:
 - (i) permit the Declarant and its authorized employees, agents and representatives to accompany (and confer with) the consultant(s) retained to carry out the Performance Audit for the Corporation (hereinafter referred to as the "**Performance Auditor**") while same is being conducted, and to provide the Declarant with at least fifteen (15) days written notice prior to the commencement of the Performance Audit; and
 - (ii) permit the Declarant and its authorized employees, agents and representatives to carry out any repair or remedial work identified or recommended by the Performance Auditor in connection with the Performance Audit (if the Declarant chooses to do so);

for the purposes of facilitating and expediting the rectification and audit process (and bringing all matters requiring rectification to the immediate attention of the Declarant, so that same may be promptly dealt with), and affording the Declarant the opportunity to verify, clarify and/or explain any potential matters of dispute to the Performance Auditor, prior to the end of the 11th month following the registration of this Declaration and the corresponding completion of the Performance Audit and the concomitant submission of the Performance Auditor's report to the Board;

- (c) To take all reasonable steps to collect from each Potl owner his or her proportionate share of the common expenses and to maintain and enforce the Corporation's lien arising pursuant to the Act, against each Potl in respect of which the owner has defaulted in the payment of common expenses;
- (d) To grant, immediately after registration of this Declaration, if required, an easement in perpetuity in favour of utility suppliers or cable television operators, over, under, upon, across and through the Common Elements, for the purposes of facilitating the construction, installation, operation, maintenance and/or repair of utility or cable television lines or equipment (and all necessary appurtenances thereto) in order to facilitate the supply of utilities including, without limitation, telephone, internet and cable television services to the Corporation and each of the Potls, as applicable, and if so requested by the grantees of such easements, to enter into (and abide by the terms and provisions of) an agreement with the utility and/or cable television suppliers pertaining to the provision of their services to the Corporation and the Potls and for such purposes shall enact such by-laws or resolutions as may be required to sanction the foregoing;
- (e) To grant, immediately after registration of this Declaration, if required, a conservation easement in perpetuity in favour of Lake Simcoe Regional Conservation Authority ("LSRCA") over a portion or portions of the Common Elements for the purpose of environmental stewardship;
- (f) To enter into, abide by and comply with the terms and provisions of any outstanding subdivision, condominium, site plan, development or similar agreements (as well enter into a formal assumption agreement with the City or any other governmental authority relating thereto, if so required by the City or other governmental authority (collectively, the "**Municipal Agreements**");
- (g) To take all reasonable steps to ensure the safe and proper operation and maintenance of all of the Common Elements and other facilities;
- (h) To abide by lighting policy of public light on private lands;
- (i) To enforce the restrictive covenants registered against title to the Potls;
- (j) To enter into, abide by and comply with the terms and provisions of any contracts or agreements entered into with suppliers of the services set out in Schedule "E" including but not limited to snow removal and private pick up and waste removal for Potl owners;
- (k) To enter into an agreement with the Declarant immediately after the registration of this Declaration (hereinafter referred to as the "**License Agreement**"), if so required by the Declarant or the City or other governmental authority pursuant to which the Corporation shall formally grant the Declarant a license to enter upon the Common Elements for the purposes of complying with all of the terms and provisions of the Municipal Agreements, which license shall automatically expire upon the completion and fulfilment of all obligations of the Declarant thereunder (but in no event later than 21 years following the registration of this Declaration, in order to obviate any contravention of the subdivision control and part-lot control provisions of the *Planning Act*, R.S.O. 1990, as amended) and which license shall be duly authorized by a By-law; and
- (l) To take all actions reasonably necessary as may be required to fulfil any of the Corporation's duties and obligations pursuant to this Declaration.

ARTICLE 8.00 - GENERAL MATTERS AND ADMINISTRATION

8.1 Rights of Entry

The Corporation or any insurer of the Property or any part thereof, their respective agents, or any person authorized by the Board, shall be entitled to enter over any part of the Common Elements for the purpose of making inspections, adjusting losses, making

repairs, correcting any condition which violates the provisions of any insurance policy or policies, remedying any condition which might result in damage to the Property or carrying out any duty imposed upon the Corporation.

8.2 Potls Subject to Declaration, By-Laws, and Easement Agreements

All present and future Owners, tenants and residents of Potls, their families, guests, invitees or tenants shall be subject to and shall comply with the provisions of this Declaration, the By-Laws, and the Rules.

The acceptance of a Transfer/Deed of Land or the entering into a lease or the entering into occupancy of any Potl shall constitute an agreement that the provisions of this Declaration, the By-Laws, and the Rules, as they may be amended from time to time, are accepted and ratified by such Owner, tenant or resident, and all of such provisions shall be deemed and taken to be covenants running with the Potl and shall bind any person having at any time any interest or estate in such Potl as though such provisions were recited and stipulated in full in each and every such deed or transfer or lease or occupancy agreement.

8.3 Invalidity

Each of the provisions of this Declaration shall be deemed independent and severable and the invalidity or unenforceability in whole or in part of any one or more of such provisions shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration and, in such event, all the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

8.4 Waiver

The failure to take action to enforce any provision contained in the Act, this Declaration, the By-Laws or any other Rules of the Corporation, irrespective of the number of violations or breaches which may occur, shall not constitute a waiver of the right to do so thereafter nor be deemed to abrogate or waive any such provisions.

8.5 Notice

Except as hereinbefore set forth, any notice, direction or other instrument required or permitted may be given if served personally by delivering same to the party to be served or to any officer of the party to be served, or may be given by ordinary mail, postage prepaid, addressed to the Corporation at its address for service herein, to each Owner at his respective Potl or at such other address as is given by the Owner to the Corporation for the purpose of notice, and to each mortgagee who has notified its interest to the Corporation at such address as is given by each mortgagee to the Corporation for the purpose of notice; and if mailed as aforesaid, the same shall be deemed to have been received and to be effective on the first business day following the day on which it was mailed. Any Owner or mortgagee may change its address for service by notice given to the Corporation in the manner aforesaid.

8.6 Construction of Declaration

This Declaration shall be read with all changes of number and gender required by the context.

8.7 Headings

The headings in the body of this Declaration form no part of the Declaration, but are inserted for convenience of reference only.

DATED this day of , 20 ,

IN WITNESS WHEREOF the Declarant has hereunto affixed its corporate seal under the hands of its proper officers duly authorized in that behalf.

SEAN MASON HOMES (ESSA RD.) INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:
We have the authority to bind the Corporation.

SCHEDULE "A"

DESCRIPTION OF THE LANDS

(Description will be revised at a later date)

Part of Park Lot 24, Registered Plan 67, City of Barrie, County of Simcoe,

PIN 58914-0002(LT) & PIN 58914-0003(LT)

1. Subject to an Easement – Storm Sewer and Storm Drainage for Overland Flow

Subject to an easement in favour of the Corporation of the City of Barrie as in Instrument number _____ over all of Block 1, Plan 51M-_____, City of Barrie, County of Simcoe;

2. Subject to an Easement - Installation, Replacement, and Servicing for all Underground Utility Infrastructure

Subject to an easement in favour of Simcoe Common Elements Condominium Corporation No. _____ as in Instrument number _____ over all of Block 1 Plan 51M-_____, City of Barrie, County of Simcoe;

3. Subject to an Easement in favour of PowerStream Inc.

Subject to an easement in favour of Barrie Hydro Distribution Inc. as in Instrument number _____ over all of Block 1, Plan 51M-_____, City of Barrie, County of Simcoe;

4. Subject to an Easement in favour of Bell Canada

Subject to an Easement in favour of Bell Canada as in Instrument number _____ over all of Block 1, Plan 51M-_____, City of Barrie, County of Simcoe;

5. Subject to an Easement in favour of Rogers Cable

Subject to an Easement in favour of Rogers Cable Communications Inc. as in Instrument number _____ over all of Block 1, Plan 51M-_____, City of Barrie, County of Simcoe;

6. Subject to an Easement in favour of Enbridge Gas

Subject to an Easement in favour of Enbridge Gas. as in Instrument number _____ over all of Block 1, Plan 51M-_____, City of Barrie, County of Simcoe;

In my opinion, based on the parcel register and the plans and documents recorded in them, the legal description is correct, the easements described will exist in law upon the registration of the Declaration and Description and the Declarant is the registered owner of the property and appurtenant easements.

ROBINS APPLEBY LLP,
Barristers and Solicitors
and duly authorized representatives of

Dated _____ Per: _____
Leor Margulies

NOTE: The Declarant, at his sole discretion, may create, enter into or transfer easements for the servicing and benefit of this Corporation and the adjacent lands and components. The Declarant may, at his sole discretion, transfer portions of the lands for road or lane widening's, 0.3 metre reserve or other purposes, as he deems

necessary or advantageous to the development of the site. The final property limits and the easements pertaining to the Common Elements shall be more precisely described in the final Description and Declaration submitted for condominium registration.

SCHEDULE "B"

CONSENT

(under clause 7(2)(b) of the *Condominium Act, 1998*)

1. The undersigned has a registered mortgage within the meaning of clause 7(2)(b) of the *Condominium Act, 1998* registered on February 14, 2013 as Instrument Number SC1040825 in the Land Titles Division of Simcoe, Registry Office (No. 51).
2. The undersigned consents to the registration of this Declaration, pursuant to the Act, against the land or the interests appurtenant to the land, as the land and the interests are described in the description.
3. The undersigned postpones the mortgage and the interests under it to the Declaration and the easements described in Schedule "A" to the Declaration.
4. The undersigned is entitled by law to grant this consent and postponement.

DATED this _____ day of _____, 20____.

1594755 ONTARIO INC.

Per: _____
Name: Joe DiPietro
Title: President

Per: _____
Name: Philip Arnold
Title: Secretary

I/We have the authority to bind the Bank.

SCHEDULE "B"

**CONSENT TO ATTACHMENT OF A COMMON INTEREST
PARCEL OF TIED LAND**

(under clause 140(c) of the Condominium Act, 1998)

1. THE undersigned has a mortgage registered on February 14, 2014 as Number SC1040825 in the Land Titles Division of Simcoe Registry Office (No. 51) against a parcel of land (known as the "Parcel") to which a common interest in a common elements condominium corporation (known as the "Corporation") will attach upon the registration of the attached declaration (known as the "Declaration") dated _____ and the description (known as the "Description") creating the Corporation.
2. THE undersigned acknowledges that, upon the registration of this Declaration and Description, the Parcel will become subject to all encumbrances, if any, outstanding against the property described in Schedule "A" to the Declaration.
3. THE undersigned consents to the registration of a notice in the prescribed form indicating that a common interest in the Corporation, as the common interest is set out in Schedule "D" to the Declaration, attaches to the Parcel upon the registration of the Declaration and Description.
4. THE undersigned is entitled by law to grant this consent and postponement.

DATED this _____ day of _____, 20__ .

1594755 ONTARIO INC.

Per: _____

Name: Joe DiPietro

Title: President

Per: _____

Name: Philip Arnold

Title: Secretary

I/We have the authority to bind the Bank.

SCHEDULE “C”

BOUNDARIES OF UNITS

NOT APPLICABLE

SCHEDULE “D”

Proportion of Common Interests and Proportion of Contribution to the
Common Expenses as expressed in Percentages

(The common elements are intended for the use and enjoyment
of the owners of the parcels of tied land)

All fifty-seven (57) Potls to be allotted a 1.7544 (1/57th) percentage interest in the common
elements and are to make a 1.7544 percentage contribution to common expenses.

PARCEL OF TIED LAND (POTL)	PERCENTAGE
TOTAL	100.00000

In my opinion, each parcel of tied land described in this Schedule “D” will, upon the registration
of the declaration and description, be capable of being individually conveyed, or otherwise dealt
with, without contravening Section 50 of the *Planning* Act.

ROBINS APPLEBY LLP
Barristers and Solicitors
and duly authorized representatives of
SEAN MASON HOMES (ESSA RD.) INC.

Dated

Per:

Leor Margulies

SCHEDULE "E"

COMMON EXPENSES

Common expenses, without limiting the definition ascribed thereto, shall include the following:

1. All sums of money levied against, charged to or paid by the Corporation on account of, *inter alia*:
 - waste disposal, as applicable;
 - maintenance materials, tools and supplies;
 - insurance premiums;
 - landscaping work, including without limitation grass cutting and tree pruning, of portions of the Common Elements, as appropriate;
 - water, hydro and all applicable utilities, unless separately metered;
 - snow clearing or removal;
 - sweeping and sanding of all hard paved surfaces;
 - adherence to LID maintenance schedule and reporting to City of Barrie and LSRCAs;
 - installation and removal of fabric canopy on parkette once per year;
 - the payment of realty taxes (including local improvement charges) levied against the Property rights held by the Corporation and which are the responsibility of the Corporation; and
2. Remuneration payable by the Corporation to any employees or independent contractors deemed necessary for the proper operation and maintenance of the Property.
3. The cost of any repairs, maintenance or replacement of the Common Elements and the assets of the Corporation.
4. The cost of machinery and equipment used in and about the Common Elements, including that machinery and equipment used in the repairs, maintenance or replacement of the Common Elements and the assets of the Corporation.
5. The cost of engineering, appraisal, legal, accounting, auditing and secretarial or other professional or administrative services required by the Corporation in the performance of its objects, duties and powers.
6. The cost of maintaining fidelity bonds as provided for by the By-Laws.
7. The cost of borrowing money for the purpose of carrying out the objects and duties of the Corporation.
8. Contributions to the reserve fund.

SCHEDULE "F"

EXCLUSIVE USE COMMON ELEMENTS

Subject to the provisions of the Act, the Declaration, the By-laws and Rules of the Corporation and the right of entry of the Corporation thereto and thereon, for the purposes of facilitating any requisite maintenance and/or repair work, or to give access to the utility and service areas appurtenant thereto:

- a) The owners of POTLs are entitled to the exclusive use and possession of the terrace area designated on Part 2, Sheet 1 of the Description containing the number of said unit with the prefix “T”.

The assignment of the Exclusive Use of the Common Elements is as follows:

POTL (Plan 51M-)	T
Part 1	1
Part 2	2
Part 3	3
Part 4	4
Part 5	5
Part 6	6
Part 7	7
Part 8	8
Part 9	9
Part 10	10
Part 11	11
Part 12	12
Part 13	13
Part 14	14
Part 15	15
Part 16	16

Note: Notwithstanding the foregoing, any fixture, outlet, sign, apparatus or structure located within the limit of the Exclusive Use Portions of the Common Elements shall not form part thereof.

SCHEDULE “G”

**CERTIFICATE OF ARCHITECT OR ENGINEER
(SCHEDULE G TO DECLARATION FOR A COMMON ELEMENTS CONDOMINIUM
CORPORATION)**

(under clause 8(1)(e) or (h) of the Condominium Act, 1998)

I certify that:

- I. Each building and structure that the declaration and description show are included in the common elements has been constructed in accordance with the regulations made under the Condominium Act, 1998, with respect to the following matters:

(Check whichever boxes are applicable)

- 1,2,3 ☐ The declaration and description show that there are no buildings or structures included in the common elements.

OR

1. ☐ The exterior building envelope, including roofing assembly, exterior wall cladding, doors and windows, caulking and sealants, is weather resistant if required by the construction documents and has been completed in general conformity with the construction documents.
2. ☐ Floor assemblies of the buildings and structures are constructed and completed to the final covering.
3. ☐ Walls and ceilings of the buildings and structures are completed to the drywall (including taping and sanding), plaster or other final covering.
4. ☐ All underground garages have walls and floor assemblies in place.

OR

- ☐ There are no underground garages.
5. ☐ All elevating devices as defined in the Elevating Devices Act are licensed under that Act if it requires a licence, except for elevating devices contained wholly in a unit and designed for use only within the unit.

OR

- ☐ There are no elevating devices as defined in the Elevating Devices Act, except for elevating devices contained wholly in a unit and designed for use only within the unit.
6. ☐ All installations with respect to the provision of water and sewage services are in place and operable.

OR

- ☐ There are no installations with respect to the provision of water and sewage services.
7. ☐ All installations with respect to the provision of heat and ventilation are in place and heat and ventilation can be provided.

OR

- ☐ There are no installations with respect to the provision of heat and ventilation.
8. ☐ All installations with respect to the provision of air conditioning are in place.

OR

- ☐ There are no installations with respect to the provision of air conditioning.
9. ☐ All installations with respect to the provision of electricity are in place and operable.

OR

- ☐ There are no installations with respect to the provision of electricity.
10. ☐ All indoor and outdoor swimming pools are roughed in to the extent that they are ready to receive finishes, equipment and accessories.

OR

- ☐ There are no indoor and outdoor swimming pools.

II. All facilities and services that the declaration and description show are included in the common elements

OR

The following facilities and services that the declaration and description show are included in the common elements:

have been installed and provided in accordance with the requirements of the municipalities in which the land is situated or the requirements of the Minister of Municipal Affairs and Housing, if the land is not situated in a municipality.

Dated this day of , 20

.....
(signature)

.....
(print name)
(Strike out whichever is not applicable:
Architect
Professional Engineer)

SCHEDULE “H”

Items that are included in the common elements of the Condominium:

Buildings and Structures that are included in the Common Elements:

There are no Buildings and Structures that are included in the Common Elements save and except for the parkette canopy, plaza, and all underground infrastructure of which the low impact development infrastructure is a part.

Facilities and Services that are included in the Common Elements:

1. Storm, sanitary and watermain services – below grade conduits servicing the Parcels of Tied Land
2. Hydro services – below grade wiring servicing the Parcels of Tied Land
3. Visitor Parking Spaces – asphalt paved parking areas for a total of ten (10) vehicles
4. Internal Road – asphalt paved internal road leading to Parcels of Tied Land and to Visitor Parking Spaces
5. Utility pedestals, street lights and transformer boxes;
6. Various landscaped areas including side yards adjacent to Potls;
7. Dog park; and
8. Sidewalks.

SCHEDULE “I”

**CERTIFICATE OF OWNER IN THE MATTER OF A COMMON ELEMENTS
CONDOMINIUM CORPORATION**

(under clause 139(1) of the *Condominium Act*, 1998)

1. Sean Mason Homes (Essa Rd.) Inc. is the owner of the freehold estate in all of the lands described in Schedule "D" to the Declaration (known as the “Parcels”).
2. Sean Mason Homes (Essa Rd.) Inc. consents to the registration of the attached declaration to create a common elements condominium corporation (known as the “Corporation”) on ----- as more particularly set out in Schedule “A” to this Declaration.
3. Sean Mason Homes (Essa Rd.) Inc. acknowledges that, upon registration of the Declaration and the description, the Parcel will become subject to all encumbrances, if any, outstanding against the property described in Schedule "A" to the declaration.
4. Sean Mason Homes (Essa Rd.) Inc. consents to the registration of a notice in the prescribed form against the Parcel indicating that a common interest in the Corporation, as the common interest is set out in Schedule "D" to the declaration, attaches to the Parcel upon the registration of the declaration and description.

DATED this _____ day of ___, 20__.

SEAN MASON HOMES (ESSA RD.) INC.

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation.

SCHEDULE "J"

**NOTICE OF ATTACHMENT OF A COMMON INTEREST IN A COMMON
ELEMENTS CONDOMINIUM CORPORATION**

(under clause 139(2)(b) of the *Condominium Act*, 1998)

Take Notice that:

- 1. The attached declaration and the description create a common elements condominium corporation (known as the "Corporation").
- 2. A common interest in the Corporation, as the common interest as set out in Schedule "D" to this declaration, attaches to the following parcels of land:

●
- 3. The common interest cannot be severed from the Parcel upon the sale of the parcel or the enforcement of an encumbrance registered against the Parcel.
- 4. A copy of the certificate of the owner of the Parcel consenting to the registration of the declaration and this notice is attached to this declaration as Schedule "I".
- 5. If the owner of the Parcel defaults in the obligation to contribute to the common expenses of the Corporation, the Corporation has a lien against the Parcel.

DATED this _____ day of ___, 20__.

SEAN MASON HOMES (ESSA RD.) INC.

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation.

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