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**To:** Mayor and Council

**From:** John Ferguson, CAO

**Meeting Date:** October 28, 2024

**Subject:** Report # CAO-009-2024 DC Early Payment, Project Funding and Water Capacity Allocation Agreements

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## Recommendation

Be It Resolved that Council of the Township of Clearview hereby receive report CAO-009-2024 (DC Early Payment, Project Funding and Water Capacity Allocation Agreements) dated October 28, 2024; and,

- 1) That by-laws be presented to Council at the October 28, 2024, meeting, authorizing the Mayor and Clerk to sign the DC Early Payment, Project Funding & Water Capacity Allocation Agreement(s) with 863194 Ontario Limited, 863195 Ontario Limited, The Estates of Clearview Inc, MacPherson Builders (Clearview) Limited and Kingsmen Group; and,
- 2) That Council provides the CAO delegated authority to make and approve minor amendments to the Agreement(s) as necessary that do not substantially change the intent or direction of the Agreement(s), in consultation with the Township's solicitor, after the approval of the By-law; and,
- 3) That Council directs staff to attach the agreements to the Township's Housing-Enabling Water Systems Fund (HEWSF) application for submission to Infrastructure Ontario by November 1, 2024.

## Background

Our Stayner water project is shovel ready, we have partnered with the development community and subject to Council's consideration we have development agreements that demonstrate Clearview Township's financial capacity to move this important project forward to completion. As part of our application process the Township must demonstrate the project can be properly financed through to completion. This report will discuss where we are presently and what we are striving for with our priority to build new infrastructure for increased water capacity and new homes.

- We have housing development projects half-finished in their early phase because we have no more water to distribute and as such, we cannot approve building permits. We must maintain a reserve amount of water for emergency purposes. The risk to our community is great because half-finished projects create

dissatisfaction in the community. It is important that we complete the development in our neighborhoods, and we need water infrastructure to do so.

- We also need to ensure we have enough water for our foundational industry (Reinhart's Food Ltd) which is the sole producer of vinegar in Canada. This industry requires deep well cold water, otherwise expensive cooling towers would be needed, potentially driving up the cost of vinegar that so many companies depend, such as McDonalds, retail food stores, and other industries in the food business.
- Clean affordable drinking water is needed not only for infill, industry, subdivisions and new homes, but also for the economic future of our local small businesses, volunteer groups, and families.
- We have enclosed the Development Charge Early Payment, Project Funding and Water Capacity Allocation Agreements with our developer group which demonstrates our ability to finance the infrastructure build. Township also intends to finance recoverable development Charges by allocating \$4,772,025 to the infrastructure build for the Stayner water project. It should be noted the funding for our portion is from Development Charges Reserve already collected and will be collected in the future. The three developers forming party to this agreement will be contributing \$10,047,450 each and when combined with our recoverable contribution totals \$34,914,375.
- We have moved to decommission septic systems from 73 homes in the Stayner settlement area to take advantage of our new negotiated sewer capacity and modernize the infrastructure for those residents that will now have municipal sewer. You cannot have good sewer flows without water. Again, this is another reason why water infrastructure is vital to our community
- We have built in contingencies to keep the build on budget and on time. With that said the infrastructure build timeline is 18-24 months. Developers will be able to build a certain number of homes in unison with the infrastructure build allowing home occupancy once water and sewer is connected to the property of each home.

## **Comments and Analysis**

Our water infrastructure project has the following criteria that qualifies under the HEWSF:

- All EAs, permits, and technical detail is completed. This project was already tendered in 2022, but due to high construction cost the infrastructure build had been placed on hold; however, we are as stated earlier, fully shovel ready.

- The Stayner settlement area has a great opportunity for creating more density, through secondary units on existing property, however we need water capacity to allow those permits to proceed. 200 plus properties in the settlement area could construct accessory units and create more density once the infrastructure is finalized.
- Council has unanimously voted requesting the County to expand the Stayner settlement area to ready Clearview Township for migration and immigration and support the province on its important growth initiatives.
- Clearview Township has 2941 homes draft plan approved and 3456 potential units in the Stayner settlement area, but water infrastructure is necessary to allow ongoing construction to continue and to issue permits to start new home construction.
- We have 2500 cubic metres of sewage allocation with immediate access. This sewer capacity permits our township to send sewer flows at any time to Wasaga Beach. Additionally, as our township grows we will be permitted to send 2500 more cubic metres of sewage with the requirement to pay for the upgrades that will be necessary when future sewer demands are forecasted to impact Wasaga Beach's wastewater treatment plant. We continue to work with Wasaga Beach and value the municipal relationship that we have established.
- The existing infrastructure build includes four wells and piping infrastructure from Klondike Park to the Stayner Settlement area. The klondike Park deep well has capacity for 4250 SDEs. The pipeline is approximately two feet in diameter allowing future capacity if more wells are constructed at klondike Park. The aquifer is one of the largest in Ontario
- Clearview is a solution to the housing demands that face New Tecumseth with the expansion of the new Honda plant. Clearview is approximately a 25–30-minute drive to New Tecumseth - Building homes for our workforce and families.
- As we prepare to seek \$35 million from the provincial government, Clearview Township must demonstrate that we can finance the entire infrastructure build. As such we have entered into development agreements with three of our largest project developers and we have successfully put together a draft agreement that will demonstrate we can build the much-needed Stayner Water Project.
- Clearview Township's strategic plan identified infrastructure as the number one priority for our community.

## **Financial Implications**

The Township's financing portion is \$4,772,025. This financing portion is fully recoverable over time.

## **Clearview's Strategic Plan**

The above initiative supports the following strategic pillars:

- Infrastructure

## **Report Appendices**

Appendix A – DC Early Payment, Project Funding and Water Capacity Allocation Agreements

## **Approvals**

**Submitted by:** John Ferguson, CAO

**Financial Implications  
Reviewed by:** Kelly McDonald, Treasurer/Director of Finance

**Approved by:** John Ferguson, CAO

**TOWNSHIP OF CLEARVIEW**

**DEVELOPMENT CHARGE EARLY PAYMENT, PROJECT FUNDING AND WATER CAPACITY  
ALLOCATION AGREEMENT**

**THIS AGREEMENT** is dated and effective as of October 30th, 2024.

**B E T W E E N:**

**863194 ONTARIO LIMITED (“863194”), 863195 ONTARIO LIMITED (“863195”) and THE  
ESTATES OF CLEARVIEW INC. and MACPHERSON BUILDERS (CLEARVIEW) LIMITED  
(together referred to as, “MacPherson”) and [Kingsmen Group - placeholder]  
(collectively hereinafter referred to as the “Developers” or individually as a “Developer”)**

and

**THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW**  
(hereinafter referred to as the “Township”)

**RECITALS:**

- A.** All capitalized terms in these recitals shall have the meanings set out in the latter sections of this Agreement unless specifically defined within the recitals.
- B.** The Developers respectively own and intend to develop the lands more particularly described in Schedule “A” to this Agreement (the “Developers Lands”), being lands located within or adjacent to the designated Primary Urban Settlement Area of Stayner (“Stayner”).
- C.** The Township has, with the assistance of its consultant engineer, R.J. Burnside, determined that it has limited existing water servicing capacity (the “Existing Capacity”) for Stayner and that a new source of water servicing capacity for the municipal supply of water for future development within the Stayner area must be secured (the “Future Capacity”).
- D.** After studying available options, the Township has determined that development of a new well field and watermain connection from the well field site located north east of Stayner near Klondike Road to supply water to Stayner is the most viable option for development of the Future Capacity needed to service development in and around Stayner.
- E.** The estimated costs for development of the well field, watermain connection and the delivery of Future Capacity to Stayner including all water supply improvement works associated with the project (the “Project”) are contained in a Development Charge Background Study (the “DC Background Study”) as hereinafter defined which is to be updated to reflect the present projected total cost for the Project of approximately Seventy Million (\$70,000,000.00) Dollars.
- F.** The Developers wish to secure an immediate allocation of Existing Capacity and Future Capacity (which includes some limited Future Capacity allocation described as “Borrowed Capacity”) as provided in this Agreement to provide water servicing capacity to the Developers Lands and have agreed to prepay the applicable water servicing component of Development Charges payable for the allocation of that capacity as provided in this Agreement (the “Capacity Allocation”) in order to assist the Township with its cash flow funding requirements associated with the development of the Project and which will provide water servicing capacity from the Existing Capacity and Future Capacity as provided in this Agreement for the development of the Developers Lands (the “DC Prepayment Contribution”).
- G.** Release of reserved allocation of Existing Capacity by the Township to the Developer for immediate use is contingent on full funding approval for the completion of the Project including provincial funding, the Developer obtaining final approval of its plan of subdivision including the remittance of any additional Development Charges that are owing at the time the plan of subdivision is registered or building permits are issued, as required pursuant to

the DC Act as hereinafter defined, and the Developer posting security for all required payments pursuant to this Agreement.

- H. The Township is applying for a partial funding commitment in the form of an Infrastructure Ontario grant from the Province of Ontario in the amount of Thirty-Five Million (\$35,000,000.00) Dollars (the “Grant”). The Grant does not fully cover the cost of the Project.
- I. To assist the Township with the cash flow requirements for the Project and ensure fulfilment of the Grant conditions, the Developer has agreed to secure and/or prepay the water supply component of its development charges pursuant to the DC By-law for the portion of the units that will be allocated pursuant to this Agreement.
- J. The DC Pre-payment provided by the Developer is to be utilized by the Township to provide partial funding for the Project in accordance with the terms of this Agreement.
- K. The Township has agreed to fully credit the Developer for the DC Pre-prepayment being made in relation to the Capacity Allocation in the form of SDE Units, as hereinafter defined, pursuant to the terms of this Agreement as SDE Units become available as more particularly set out in Schedule “B”.
- L. Section 27 of the *Development Charges Act*, S.O., 1997, c. 27 (the “DC Act”) and Section 3.16 of the DC By-law authorize the Township to enter into an agreement for the purpose of the early payment of Development Charges.
- M. Provided the Developers have made the total DC Pre-payment required pursuant to this Agreement, the Township shall grant the Capacity Allocation made pursuant to this Agreement to the Developer and shall reserve an allocation of water servicing capacity in the Future Capacity for the benefit of all of the residential units and, where applicable, non-residential uses contained within the Developers Lands in accordance with the terms of this Agreement in the amount set out in Schedule “B” as adjusted in accordance with SDE Equivalency Conversion Table set out in Schedule “B-1”, where applicable.
- N. 863195 and MacPherson have each already paid Top Up Contribution amounts of \$279,744 (“Top Up Contribution”) to the Township pursuant to Development Charge Early Payment and Top Up Contribution Agreements for Allocation of Existing Water Servicing Capacity entered into with the Township in 2020. The Township agrees that 863195 and MacPherson will each be given credit for the Top Up Contribution(s) in order to purchase Existing Capacity and/or Borrowed Capacity (as those terms are defined below) and the total DC Pre-payments required pursuant to this Agreement will be reduced accordingly as more particularly set out in Schedule “B”.
- O. The anticipated completion date of the Future Capacity is estimated to be during the first quarter of 2027 (the Project Completion Date”). Completion will, however, be subject to the progress of construction, weather and site conditions and other factors which may affect the anticipated completion date including funding requirements for completion of the entire project. The Township shall use reasonable and best efforts to complete the Future Capacity Supply in as timely a manner as possible.

**THE PARTIES AGREE** as follows:

## **Article 1 DEFINITIONS**

### **1.1 Definitions**

In this Agreement and the attached Schedules, the words and expressions listed in this Article shall have the meanings set out below.

- (a) **“Agreement”** means this Agreement between the Developers and the Township, including all Schedules attached hereto.
- (b) **“Borrowed Capacity”** means the additional 200 SDE Units that the Township will make available during the last quarter of 2026 subject to the anticipated Project Completion Date

forecast being realized. To the extent that the Project Completion Date is delayed, the release of the Borrowed Capacity will be correspondingly deferred.

- (c) **“Building Permit”** means a permit issued by the Chief Building Official of the Township, pursuant to Section 8 of the *Building Code Act*, 1992, S.O. 1992, c. 23, as amended.
- (d) **“Business Day”** means any day other than a Saturday, Sunday, holiday or any other day on which the Township’s offices are not open to the public.
- (e) **“Capacity Allocation”** means the allocation of Existing Capacity and Future Capacity as more particularly set out in Schedule “B” subject to Section 3.7.
- (f) **“Developers Lands”** shall have the meaning as set out in Recital B.
- (g) **“Development Charges”** means development charges imposed under the DC By-law pursuant to the DC Act (but does not include any other eligible development charges for other levels of government or educational bodies).
- (h) **“DC Act”** means the *Development Charges Act*, S.O., 1997, c. 27.
- (i) **“DC Background Study”** means and includes the following:
  - 1. 2024 DC Background Study (“Report”) – March 26, 2024
- (j) **“DC By-law”** means development charge By-law No. 24-43, as amended, that was enacted by the Township in accordance with the DC Act and any successor development charge by-law.
- (k) **“DC Credit”** means a Development Charge credit in respect of the Water Supply Component of the DC By-law given by the Township pursuant to the DC By-law in accordance with this Agreement, in the amounts provided in Schedule “B”.
- (l) **“DC Pre-payments”** means the early payment of Development Charges to be made by the Developer to the Township in respect of the Works as set out in the DC By-law as provided in Schedule “B”.
- (m) **“DC Rate”** means the Development Charge applicable to a Unit based on the DC Schedule and, for greater clarity, for purposes of the Water Supply Component of the DC By-law, shall be the rate of Development Charges for 2024 as updated based upon receiving the provincial grant funding and final Project cost.
- (n) **“Existing Capacity”** means water supply capacity that presently exists in the Township’s water supply system for the Stayner community consisting of 250 total SDE units available for allocation is more particularly provided in this Agreement.
- (o) **“Future Capacity”** means the water supply capacity that will be added to the Township’s water supply system upon completion, acceptance and commissioning of the Works by the Township and includes Borrowed Capacity.
- (p) **“Project”** means the Stayner water capacity improvement project for development of the Future Capacity and other water supply capacity improvement works associated with improvements to water supply within Stayner (as more particularly set out and detailed in Schedule “C”)
- (q) **“SDE Unit”** means a Unit equivalent to a single detached residential dwelling unit as defined in the DC By-law and further referred to in Schedule “B” and “B-1”.
- (r) **“Treasurer”** means the Township’s Director of Finance or his or her designate.
- (s) **“Unit”** means a residential unit, including without limitation, single detached, semi-detached, row or other multiples and/or apartments or a non-residential use within the Developer’s Lands.

1.2 Schedules

The following Schedules referred to in this Agreement shall be deemed to form part hereof:

Schedule “A”	Legal Description of Developer’s Lands
Schedule “B”	Existing Capacity & Future Capacity Allocation of SDE Units, DC Pre-payments and DC Credit Conversion Rate
Schedule “B-1”	SDE Equivalency Calculation Conversion Table
Schedule “B-2”	Cash Flow Payment Allocation Table
Schedule “C”	Description of the Project

Article 2  
PURPOSE OF AGREEMENT

2.1 Acknowledgements

The DC Pre-payment is being provided by the Developers for the purpose of assisting the Township in funding the cost of the Project as more particularly described in Schedule “C” for development of the Future Capacity. The Developers acknowledge that the Project is required for the Future Capacity needed for the development of land located in and around Stayner which includes all of the Developers Lands.

2.2 Conditions

The Township and the Developers acknowledge and agree that the following conditions (“Conditions”) form part of this Agreement:

- 2.2.1 The Township completing and submitting to Infrastructure Ontario an application pursuant to the HEWSF Intake II funding program an application seeking funding approval for the Project in the amount of Thirty-Five Million (\$35,000,000.00) Dollars for partial funding of the Project by the Province (the “Grant”).
- 2.2.2 The Township and the Developers working cooperatively together with respect to the design and construction of the Project to ensure transparency, cost control and timely completion. This will include the right of the Developers to meaningfully participate in the Project tender process with the Township including the ability to review and achieve consensus on the tender and contract documents (including without limitation the structure and terms of the contract) in advance before they are issued and to reject respondents that participate in the pre-qualification tendering process for the Project. This will also include the right of the Developers to meaningfully participate in the administration of the contract(s) once awarded on a go forward basis. The Developers shall each designate one (1) key contact person per Developer for the purposes of this Section to communicate on behalf of the Developers in a timely manner and shall advise in advance if the designated individuals change.
- 2.2.3 Kingsmen having acquired ownership of the land more particularly described in Schedule “A” by November, \*\*\*, 2024.
- 2.2.4 The inclusion of the additional lands now owned or to be owned by each of the Developers adjacent to and outside of the Primary Urban Settlement Area of Stayner Settlement boundary being included within the Township’s Official Plan and designated for residential urban development by way of an approved and in-force Official Plan Amendment or other provincially approved mechanism.
- 2.2.5 The Township accepting a Surety Bond or Bonds unconditionally and irrevocably issued by a Surety licensed to issue surety products by the Federal Office of the Superintendent of Financial Institutions or a provincial insurance regulatory authority in a form acceptable to the Township to secure and guarantee the cash flow DC Pre-Payment obligations of each of the Developers pursuant to this Agreement to the Township for completion of the Project.



- 2.2.6 The Province approving the HEWSF Intake II Grant for the Project in the amount of Thirty-Five Million (\$35,000,000.00) Dollars.
- 2.2.7 Upon fulfilment of conditions 2.2.1 through 2.2.6, the Township immediately releasing to the Developers the Existing Capacity that it presently holds in reserve in accordance with the Existing Capacity allocation set out in Schedule B to this Agreement.

### **Article 3**

#### **PRE-PAYMENTS AND DC CREDITS AND DEVELOPER PEER REVIEW**

##### **3.1 Delivery of Pre-payments**

Upon the execution of this Agreement and funding approval received from and an associated agreement having been executed with the Province and subject to the terms hereof related to security for cash flow payments in Section 3.9, the Developers agree to remit to the Township their respective portion of the DC Pre-payment as identified in Schedule “B” in accordance with the Cash Flow Payment Allocation Table set out in Schedule “B-2”. The DC Pre-payment shall be made by delivery of a bank draft or certified cheque drawn from or by electronic fund transfer made through an Ontario Branch of a Schedule One Canadian Chartered Bank on or before the first day of each annual quarter based on the estimated Project cost to be spent for each quarter. Subject to the prior written approval of the Province, the timing and amount of payments required by the Developers according to the Cash Flow Payment Allocation Table set out in Schedule “B-2” will be adjusted to require the exhaustion of the HEWSF Intake II grant prior to the Developers being required to remit their respective portion of the DC Pre-payment in accordance with this section.

##### **3.2 Use of DC Pre-Payment & Reporting by the Township**

The Township shall utilize the DC Pre-payment only for the purposes of completion of the Project. The Township shall provide the Developers with regular status updates regarding the progress of design, construction, summary accounting with respect to the project payments and cost updates and the application of the DC Prepayment funds utilized by the Township pursuant to this Section 3.2. The Township’s accounting shall include a statement of any HST paid or payable by the Township with sufficient particulars to allow the Developers to claim any input tax credit to which the Developers may be entitled in connection with the Developers pre-payment contribution toward the costs of the Project. Such updates shall be provided at a minimum every three (3) months, and shall be initiated upon commencement of the Project and shall end upon completion of the Project with a final payment reconciliation in accordance with the requirements of this Agreement.

##### **3.3 DC Credits**

The Developers shall each receive, in aggregate, DC Credits totaling such Developer’s entire DC Pre-payment that is equivalent to allocation of the SDE Units set out in Schedule “B” subject to any equivalency calculation as set out in Schedule “B-1” related to ancillary units or additional apartments that may form a portion of a new residential dwelling including a new single, semi-detached, townhouse or similar unit. It is acknowledged that the DC Pre-payments represent full and final payments of the Capacity Allocation related to Existing Capacity and Future Capacity for Development Charges payable in respect of the SDE Units, or their applicable conversion as set out in Schedule “B” and “B-1”, and will not be subject to any subsequent indexing but shall be subject to adjustment for actual costs of the Project as provided in Section 3.7 of this Agreement.

##### **3.4 Application of DC Credits**

The Parties acknowledge and agree that the existing water capacity supply components of the residential Development Charges for each SDE Unit is set out in the Township’s DC By-law 24-43, as amended. Under DC By-law 24-43, the Water Supply and Water Distribution Components have been separated. This has been done to ensure clarity and transparency with the respect to the applicable DC Charges for each component of the Project and the application of the DC Prepayment being made pursuant to the terms of this Agreement.

The Parties further acknowledge that present charges are payable for the Project pursuant to DC By-law 24-43. The development charge for water supply will be updated based upon the final cost of the Project and final grant funding. The DC by-law will then be amended to include the updated DC for water supply.

Until a Developer's aggregate DC Credits as identified in Schedule "B", as amended from time to time, are exhausted, when a Developer obtains a Building Permit, the Developer shall receive a full DC Credit at the DC Rate for the water supply component of the Development Charges that would otherwise be payable in respect of all SDE Units that are the subject of a DC Pre-payment in accordance with Schedule "B", as may be amended from time to time.

### **3.5 Transfer of Unused DC Credit and Capacity Allocation**

In the event that the Developer wishes to transfer/sell all or part of its DC Credits and corresponding Capacity Allocation prior to that Developer's utilization of its DC Credits and Capacity Allocation, any remaining entitlement to a DC Credit and Capacity Allocation pursuant to this Agreement shall, at the Developer's sole option, accrue to an assignee or successor in title to the Developer or to any other third party transferee (whether or not that third party transferee is acquiring all or part of the Developer's Lands). In such instance, the Developer shall provide a written direction to the Township authorizing the Township to allocate the specified number of outstanding DC Credits and corresponding Capacity Allocation to the applicable party, assignee or successor in title.

Notwithstanding the foregoing, no DC Credit and corresponding Capacity Allocation shall be transferrable until the DC Pre-payment has been paid in full to the Township in accordance with the Cash Flow Payment Allocation Table requirements in accordance with Section 3.1 and Schedule B-2 (subject to any adjustments required pursuant to paragraph 3.7) by certified cheque or electronic funds deposit drawn upon or electronically deposited from an Ontario Branch of a Schedule One Canadian Chartered Bank and until transferee has entered into a transfer agreement in which the transferee assumes the responsibilities of the Developer pursuant to this Agreement in a manner satisfactory to the Township, acting reasonably.

### **3.6 Existing Capacity Allocation and Reservation for Future Capacity**

The Township agrees that it shall make the allocation of Existing Capacity and the reservation of Future Capacity available to the Developers in accordance with the prepaid SDE contributions as more particularly shown on Schedule "B".

The Parties acknowledge and agree that the release of access to Existing Capacity and Future Capacity allocation is subject to the normal development approval processes of the Township as they relate to the Developers Lands. The release of access shall depend on the practical availability of water servicing capacity including Future Capacity to any specific location at any specific time and subject to the Developer's obligation to remit all Development Charges that are not the subject of the DC Pre-payment being made pursuant to this Agreement.

The Township will undertake reasonable best efforts to pursue a servicing plan that will result in the timely delivery of the infrastructure that is required in order to permit the Developer's Lands to connect to the Project once completed, it being acknowledged that the private development community will be required to construct some portions of the infrastructure required to complete connections to the Project as part of the normal development approval process.

### **3.7 Final Cost Adjustment**

The DC Prepayment shall be subject to readjustment between the Township and the Developer to the extent that the actual costs of construction of the Project differs from the estimated cost of the Project which forms the basis upon which the DC Pre-payment has been established pursuant to this Agreement, provided that:

- a) Prior to the Developer having to remit any readjustment payment to the Township pursuant to this Section, the Township shall provide a report from its consultant engineer that contains an updated cost calculation for the actual cost and capacity of the Project. The Developers shall be entitled to complete an independent peer review of the assessed capacity of the individual components of the system as set out in the report from the Township's consultant engineer upon completion of the Project at their cost. Should the independent peer review determine that the actual capacity generated by the Project is greater than what was assessed by the Township's consulting engineer, the actual assessed capacity shall be adjusted for the purpose of any adjustments required pursuant to this section 3.7. Further, in the event that it is determined by the Developers peer reviewer that with the addition of certain monies the capacity of the well could be substantially increased by building additional related works, either now or at some point in the future, the Developer or Developer(s) at their sole option shall have the ability to advance funds to pay for such works and the assessed capacity shall be adjusted accordingly.
- b) Upon determination of the actual cost to complete and the additional capacity made available through the Project, the Township shall issue a statement of the additional DC Pre-payment adjustment required and the Developer shall remit any further amount owing to the Township in the manner provided for in this Agreement within thirty (30) days of the delivery of a certificate from the Township's consultant engineer confirming the actual costs and capacity of the Project. In the event that the actual cost to complete the Project is less than the estimate or the residential share of the total Future Capacity is greater than 4,250 SDE units, the Township shall repay or credit the Developer (through additional DC Credits and additional allocation of water treatment capacity, which allocation and associated DC Credits may be transferred as outlined in Section 3.5) for its share of the overpayment of the total costs.
- c) The cost adjustment payable by the Developer to the Township to reflect actual cost of the Project shall be limited to its proportionate share (to be calculated based on the units allocated in Schedule "B" out of the total residential Future Capacity (currently estimated to be 4,250 SDE units)) of a maximum ten per cent (10%) increase in total cost of the Project, being an amount no greater than a ten per cent (10%) increase over and above the total DC Pre-payment set out in Schedule "B". In the unlikely situation that the total cost of the Project exceeds the ten percent (10%) variance cap, the increased cost shall be incorporated into a subsequent DC By-law and be attributable to DC charges for the Project and shall not be paid by the Developers. For clarity, the DC Pre-payments provided by the Developers pursuant to this agreement (subject to a maximum increase of ten per cent (10%) as contemplated this Section 3.7c)) shall represent the full and final payment of the Water Supply Component portion of the Development Charges paid to the Township under the DC By-law for the prepaid SDE Units notwithstanding any increase in the Water Supply Component portion that may be required to account for increased costs of the Project. The Township agrees that those additional costs shall not be borne by the Developers with respect to the prepaid SDE Units and shall be paid through development charges applicable to the Water Supply Component for acquisition of SDE Units for which no pre-payment has been made.

### **3.8 Consideration of Additional SDE Unit Allocations**

The Township will consider an allocation of Future Capacity for additional SDE Units not otherwise provided for in this Agreement, however, any additional allocation shall be paid for by the Developer at the Development Charge rate applicable at the time the additional allocation is purchased.

### **3.9 Security for Cash Flow DC Pre-payments**

The Developers shall deliver to the Township, upon approval of the Grant funding by and the execution of an associated agreement with the Province and the fulfilment of the Conditions set out in Section 2.2 of this Agreement, a Surety Bond or Surety Bonds in form and from a Surety acceptable to the Township to secure the cash flow DC Pre-payment obligations of each of the Developers with respect to the Project in accordance with the Terms of this Agreement. The Surety Bond shall be irrevocable and permit partial or full draw downs by the Township and be payable by the Surety within (15) days of receipt of written demand by

the Township without delay or dispute. The Township agrees to provide at least forty-five (45) days prior written notice to the Developer of any cash call required to be paid in accordance with Section 3.1 and Schedule “B-2.” In the event of a default of a cash payment required under Section 3.1 and Schedule “B-2”, the Township agrees to provide at least fifteen (15) business days prior written notice to the Developer of any proposed drawdown of the Surety Bond or Surety Bonds posted under this section to cure such default and the Developer shall have the option of remitting cash payment in lieu of the drawdown following receipt of said notice to avoid the Township calling upon the Surety Bond. Following receipt of cash payments to meet a Developer’s DC Pre-payment obligations in accordance with Section 3.1 and Schedule “B-2”, the Township agrees to request and/or consent to a corresponding reduction in the Surety Bond(s) posted by the Developer, which reductions shall be permitted on a quarterly basis as cash is advanced to the Township.

#### **Article 4 REPRESENTATIONS AND WARRANTIES**

##### **4.1 Township’s representations and warranties**

The Township represents and warrants, as of the date of this Agreement, that:

- (a) it is a municipal corporation duly established and organized under the laws of the Province of Ontario;
- (b) it has all necessary legal capacity, power and authority to enter into this Agreement and, subject only to the qualifications expressly provided in this Agreement, to carry out the provisions of this Agreement.
- (c) this Agreement has been duly authorized by a by-law enacted by the Council of the Township and all necessary steps have been taken to authorize the Township to execute and deliver this Agreement;
- (d) upon execution of this Agreement by the undersigned on behalf of the Township this Agreement will be valid and binding and enforceable in accordance with its terms;
- (e) neither the execution and delivery of this agreement nor the fulfilment of or compliance with the terms and conditions hereof:
  - (i) conflicts with or will conflict with or result in a breach of any of the terms, conditions or provisions of or constitute a default under the constating documentation of the Township; and
  - (ii) conflicts in a material respect with or will conflict in a material respect with, or result in a material breach of any of the terms, conditions or provisions of or constitute material default under any material agreement, licence or other instrument to which the Township is a party or by which it is bound; and
- (f) to its knowledge after due inquiry, there are no actions, suits or proceedings pending or threatened against the Township which could reasonably be anticipated to materially adversely affect its ability to perform its obligations under this Agreement.

##### **4.2 Developers representations and warranties**

The Developers each individually represent and warrant, as of the date of this Agreement, that:

- (a) it is duly incorporated, organized and subsisting under the laws of the Province of Ontario;
- (b) it is the sole registered, beneficial, or equitable owner of the Developer’s Lands as more particularly defined and Schedule “A” to this Agreement;
- (c) it has all necessary capacity, power and authority to enter into and to carry out the provisions of this Agreement;

- (d) it has voluntarily entered into this Agreement and has sought independent legal advice with respect to all aspects of this Agreement;
- (e) neither the execution and delivery of this Agreement nor the fulfilment of or compliance with the terms and conditions hereof:
  - (i) conflicts with or will conflict with or result in a breach of any of the terms, conditions or provisions of or constitute a default under the constating documentation of the Developer; and
  - (ii) conflicts in a material respect with or will conflict in a material respect with or result in a material breach of any of the terms, conditions or provisions of or constitute a material default under any agreement, licence or other instrument to which the Developer is a party or by which it is bound; and
- (f) to its knowledge after due inquiry, there are no actions, suits or proceedings pending or threatened against the Developer which could reasonably be expected to materially adversely affect its ability to perform its obligations under this Agreement.

## **Article 5 GENERAL PROVISIONS**

### **5.1 Force majeure**

In the event that any party shall be delayed or hindered in or prevented from the performance of any act required by such party under this Agreement by reason of acts of God, unavailability of materials, failure of power, prohibitive governmental laws or regulations, riots, insurrections, the act or failure to act of the other party, adverse weather conditions preventing the performance of work, war or other reason beyond such party's control, then the time for performance of such act shall be extended for a period equivalent to the period of such delay. Lack of adequate funds or financial inability to perform shall not be deemed to be a cause beyond the control of such party.

### **5.2 Other agreements**

Nothing in this Agreement shall prevent the parties from entering into other agreements under the DC Act with respect to any lands in the Township that are owned by the Developer.

### **5.3 No complaint**

As the Developer is participating in this Agreement upon its own accord, the Developer shall not make any complaint with respect to the DC Pre-payment and Top Up Contribution payment pursuant to the DC By-law or the DC Act, or otherwise challenge or dispute such payment as established pursuant to this Agreement.

### **5.4 Further documents**

The Township and the Developer agree to execute such further documents and cause the doing of such acts and cause the execution of such further documents as are within their power as the Township or the Developer to reasonably request be done or executed, in order to give full effect to the provisions of this Agreement.

### **5.5 Execution in counterpart and Facsimile or Electronic Transmission**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and taken together shall constitute one and the same agreement. Counterparts may be executed in either original or by electronic means, including, without limitation, by facsimile transmission, e-signature and by electronic delivery in portable document format (".pdf") or tagged image file format (".tif") and the parties shall adopt any signatures received by electronic means as original signatures of the parties.

### **5.6 Entire Agreement**

This Agreement, the schedules referred to herein constitute the entire agreement between the parties hereto and supersede all prior agreements, representations, reports, recommendations, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter of this Agreement. None of the parties hereto shall be bound by or charged with any oral or written agreements, representations, reports, recommendations, warranties, statements, promises, information, arrangements or understandings not specifically set forth in this Agreement or in the schedules, documents and instruments to be delivered on or before the execution of this Agreement. There is no collateral agreement, condition or term applicable thereto, other than as expressed or referred to herein in writing.

#### **5.7 Severability**

If any provision of this Agreement is determined by a Court of competent jurisdiction to be illegal or beyond the power, jurisdiction, or capacity of any party bound hereby, such provision shall be severed from this Agreement and the remainder of this Agreement shall continue in full force and effect and in such case the parties agree to negotiate in good faith to amend this Agreement in order to implement the intentions as set out herein. The parties agree that they shall not question the legality of any portion of this Agreement, nor question the legality of any obligation created hereunder. The parties, their successors and assigns are and shall be estopped from contending otherwise in any proceeding before a Court of competent jurisdiction or any administrative tribunal.

#### **5.8 Defence of Agreement**

If the legality, validity or enforceability of this Agreement or the capacity and authority of the Township to enter into this Agreement and carry out or enforce its provisions is called into question or challenged in any way whatsoever in any action, appeal, review or proceeding of any kind whatsoever before a Court of competent jurisdiction or any administrative tribunal by any person, the Township shall defend and support the legality, validity or enforceability of this agreement and the capacity and authority of the Township to enter into this agreement and carry out or enforce its provisions provided the Developer indemnifies and save harmless the Township in such defence and support as the Township may reasonably require including, without limiting the generality of the foregoing, becoming a party at the Developer's sole cost and expense in any such action, appeal, review or proceeding. The Developer and the Township shall be and are hereby estopped from asserting in any proceeding at any time and in any forum that the Township does not or did not have lawful authority to enter into this Agreement, or that any of the terms of this Agreement are not within the jurisdiction or capacity of the Township to enter into.

#### **5.9 No Development Rights Conferred**

A prepayment by the Developer does not confer upon the Developer, either collectively or individually, any development rights not otherwise existing. Nor does a prepayment by a Developer fetter in any way the Township's exercise of its jurisdiction pursuant to the *Planning Act* or any other legislation with respect to any application, without limiting the generality of the foregoing including an application for an official plan amendment, zoning bylaw amendment, subdivision approval, or development approval.

#### **5.10 Amendments**

The parties hereto may only amend this Agreement by further agreement in writing executed by all parties hereto.

#### **5.11 Notices**

Any notices to be given under the terms of this Agreement shall be in writing and shall be given to the applicable party by regular mail, facsimile transmission or email at the address, facsimile number or email address as follows:

To 863195:

863194 Ontario Limited and 863195 Ontario Limited.

2800 Highway 7 West  
Suite 301  
Vaughan, Ontario  
L4K 1W8  
Attention: Mario Cortellucci, President  
Email: [Mario.cortellucci@cortelgroup.com](mailto:Mario.cortellucci@cortelgroup.com) & [nicole.s@cortelgroup.com](mailto:nicole.s@cortelgroup.com)  
Phone: 905-695-0800  
Fax: 905-695-0801

*With a copy to their solicitors:*

Loopstra Nixon LLP  
100 New Park Place  
Suite 303  
Vaughan, ON  
L4K 0H9  
Attention: Quinto Annibale  
Attention: Brendan Ruddick

Email: [Qannibale@loonix.com](mailto:Qannibale@loonix.com)  
Email: [bruddick@LN.Law](mailto:bruddick@LN.Law)

To MacPherson:

The Estates of Clearview Inc. and  
MacPherson Builders (Clearview) Limited  
5525 Eglinton Avenue West, Suite 128  
Toronto, ON  
M9C 5K5  
Attention: Joseph Mirabella  
Email: [joseph@macphersonbuilders.com](mailto:joseph@macphersonbuilders.com)

Attention: Russell Higgins  
Email: [russell@macphersonbuilders.com](mailto:russell@macphersonbuilders.com)

*With a copy to their solicitors:*

Loopstra Nixon LLP  
100 New Park Place  
Suite 303  
Vaughan, ON  
L4K 0H9  
Attention: Quinto Annibale  
Attention: Brendan Ruddick

Email: [Qannibale@loonix.com](mailto:Qannibale@loonix.com)  
Email: [bruddick@LN.Law](mailto:bruddick@LN.Law)

To [Kingsmen Group]:

**[Kingsmen Group]**  
105B Winges Road  
Woodbridge, ON L4L 6C2  
Attention: Matthew Castelli  
Email: [mcastelli@thekingsmen.ca](mailto:mcastelli@thekingsmen.ca)

*With a copy to their solicitors:*

Schneider Ruggiero Spencer Milburn LLP  
Suite 302  
610 Applewood Crescent

Concord, ON L4K 0E3  
Attention: David Spencer  
Email: [dspencer@srllawpractice.com](mailto:dspencer@srllawpractice.com)

To the Township:

The Corporation of the Township of Clearview  
217 Gideon Street  
Stayner, ON L0M 1S0  
Attention: Township Clerk  
Email: [shelmkay@clearview.ca](mailto:shelmkay@clearview.ca)  
Fax: 705-428-0288

provided that, where mailed, it shall be deemed to be received on the fifth Business Day following the date of mailing, and where delivery is by facsimile or e-mail after 5 p.m. EST, on the next Business Day.

**5.12 Successors and assigns**

This Agreement shall be enforceable by and against the parties, their heirs, executors, administrators, successors and assigns.

**5.13 Governing law**

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable thereto and shall be treated in all respects as an Ontario contract.

**5.14 Time of the essence**

Time shall be of the essence of this Agreement and every part thereof.

**5.15 Currency**

All references to currency in this agreement shall be references to Canadian Dollars.

**5.16 Recitals**

The parties hereby acknowledge that the Recitals to this Agreement are true and correct and form part of this Agreement.

**5.17 Singular and plural**

Words importing the singular include the plural and vice versa.

**5.18 Articles and section numbers**

The captions and headings contained herein are for reference only and in no way affect this Agreement or its interpretation.

**5.19 Calculation of time periods**

In the event that any date specified or any date contemplated in this Agreement shall fall upon a day other than a Business Day, then such date shall be deemed to be the next following Business Day.

**Execution page continued on following page .....**



**IN WITNESS WHEREOF** the parties hereto have hereunto executed this Agreement and the other parties have hereunto set their hands and seals as of the day, month and year first above written.

**863195 ONTARIO LIMITED**

Per: \_\_\_\_\_  
Name: Mario Cortellucci  
Title: President  
I/we have the authority to bind the Corporation.

**863194 ONTARIO LIMITED**

Per: \_\_\_\_\_  
Name: Mario Cortellucci  
Title: President  
I/we have the authority to bind the Corporation.

**THE ESTATES OF CLEARVIEW INC.**

Per: \_\_\_\_\_  
Name: Danny Sanita  
Title: President  
I/we have the authority to bind the Corporation.

**MACPHERSON BUILDERS (CLEARVIEW) LIMITED**

Per: \_\_\_\_\_  
Name: Russell Higgins  
Title: ASO  
I/we have the authority to bind the Corporation.

**[KINGSMEN GROUP]**

Per:  
Name: Matthew Castelli

Title: President

**THE CORPORATION OF THE TOWNSHIP OF  
CLEARVIEW**

Per: \_\_\_\_\_  
Name: Doug Measures  
Title: Mayor

Per: \_\_\_\_\_  
Name: Sasha Helmkey  
Title: Clerk  
We have the authority to bind the Township

**SCHEDULE “A”  
LEGAL DESCRIPTION OF DEVELOPERS LANDS**

**[Note to Draft – Legal Description to be Completed]**

**SCHEDULE “B”**  
**Existing Capacity & Future Capacity Allocation of SDE Units, DC Pre-payments and DC**  
**Credit Conversion Rate**

**SCHEDULE “B-1”**

**SDE Equivalency Calculation Conversion Table**

**SCHEDULE “B-2”**

**Cash Flow Payment Allocation Table**

## **SCHEDULE “C”**

### **Description of the Works**

The Works as referred to this Agreement includes

Development Name	Anticipated Units as Part of Prepayment	Total \$ Provided †	Existing Capacity Allocation ‡	Borrowed Capacity Allocation
			January 1, 2025 to September 30, 2026	October 1, 2026 to Completion of Works
Cortel	1,058	\$ 10,077,450	83	67
Dancor/MacPherson	1,058	\$ 10,077,450	83	67
Kingsman	1,058	\$ 10,077,450	83	67
Township	501	\$ 4,772,025		
<b>Total</b>	<b>3,675</b>	<b>35,004,375</b>	<b>249</b>	<b>201</b>

†Subject to readjustment in accordance with Section 3.7

‡Subject to reallocation in accordance with Section 3.6



Residential DC Unit Type	Persons Per Unit (based on 2024 DC Background Study)	Equivalent SDE	Estimated Unit DC Component Cost, As of October 23, 2024	
Single and Semi-Detached Dwelling	2.960	1.00	\$ 9,525	Per Unit
Multiples	2.399	0.81	\$ 7,720	Per Unit
Apartments - 2 Bedrooms +	1.813	0.61	\$ 5,834	Per Unit
Apartments - Studio and 1 Bedroom	1.197	0.40	\$ 3,852	Per Unit
Special Care/Special Dwelling Units	1.100	0.37	\$ 3,540	Per Unit

Total Project Cost	2025				2026				2027
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1
70,000,000	-	8,355,691	13,620,571	13,048,447	13,045,089	5,483,353	5,483,353	5,483,353	5,480,143
Net of Grant									
35,000,000		4,177,846	6,810,285	6,524,223	6,522,544	2,741,677	2,741,677	2,741,677	2,740,071