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VIA EMAIL (lisa.campion@erin.ca)

October 16, 2023

Mayor Michael Dehn and Members of Council
Town of Erin
5684 Trafalgar Road
Hillsburgh, Ontario
N0B 1Z0

Dear Mr. Mayor and Members of Council,

**RE: Site Alteration Agreement
EC (Erin) GP Inc. (“Empire Communities”)
5525 Eighth Line, Erin (“Subject Property”)**

I am writing to seek direction from Council with respect to the negotiation, finalization, and execution of a Site Alteration Agreement between the Town and Empire Communities to facilitate proposed site alteration activities on the Subject Property in connection with a site alteration permit issued pursuant to the Town of Erin’s Site Alteration By-law #16-30.

Overview

The Town of Erin’s Site Alteration By-law #16-30 prohibits and regulates the removal of topsoil, the placing or dumping of fill and the alteration of the grade of lands within Erin (i.e. site alteration). The applicant has submitted a Site Alteration Application to obtain permission for the following works to take place this year:

- Vegetation removal, tree removal, clearing, and grubbing; and,
- Installation of required erosion and sediment controls

A public meeting was required, and held on June 8, 2023 to consider the application. The application requirements as per By-law #16-30 were met, and the application was circulated to internal Town staff (Planning, Building, Engineering, Fire), the County of Wellington (Planning, Roads), Conservation Authority and School Board for review and approval.

Through meetings held with representatives from Empire Communities, Town staff, legal counsel, and the Town’s external peer review engineers additional details regarding the proposed site alteration activities were requested and updated reports and plans were



provided to the Town.

The applicant is requesting that the Town allow them to begin site alteration later this year once the Erin Heights Golf Course ceases operation on September 30, 2023. This will allow for vegetation and tree removal outside of the bird nesting season, as required by the Migratory Birds Conventions Act. Tree removal is also prohibited prior to November 1, 2023 due to the potential that trees on the Subject Lands could provide roosting habitat for endangered bat species.

Proposal

Empire Communities has submitted applications for Draft Plan of Subdivision (23T-22002) and Zoning By-law Amendment (Z22-02) to facilitate a residential subdivision consisting of 288 residential units, a park and stormwater management facilities.

The subject site is legally described as Part of Lot 16, RCP 686; parts 6 to 12 on RP 61R-7462 in the Town of Erin, municipally known as 5525 Eighth Line. It is located on the east side of Eighth Line, north of Erin Heights Drive, south of Sideroad 17, within the Erin Urban Area.

A Statutory Public Meeting was held on September 22, 2022 to provide present the proposal and to provide the public with an opportunity to provide comments to Council. The applicant is currently preparing a second submission to address all Town staff, agency, Council and Public comments/questions. Staff anticipate to receive the second submission shortly.

Requirements within Site Alteration By-law #16-30

The Town's Site Alteration By-law identifies submission requirements for site alteration applications. If an applicant proposes to place or dump or removal fill and alter the grade involving more than 1,000 cubic metres of fill or where the elevation of the site will increase or decrease by more than 1 metre at any point on the site, it is considered a large scale site alteration permit. By-law #16-30 outlines submission requirements for large scale site alteration applications, including the requirement for a Site Alteration Agreement. Any permit issued pursuant to this by-law shall be valid for a period of one year from the date of issuance unless revoked in accordance with By-law #16-30.

The proposed Site Alteration Agreement attached hereto as Attachment "1" ("Agreement") will govern the activities permitted to be undertaken pursuant to the Site Alteration Permit to be granted to Empire Communities. The Agreement will ensure that these activities are undertaken with the supervision of the Town and its engineer in accordance with the recommendations of the proponent's arborist and ecologist. The Agreement will also ensure that any site alteration activities are undertaken in a manner that will not result in erosion, sedimentation, or stormwater impacts, dust impacts, noise impacts, or dirt/debris accumulating on adjacent public highways. The agreement also ensures that temporary construction access is provided to the satisfaction of the Town.



Although development of this property will ultimately require a substantial amount of fill to be imported to facilitate the grading of the entire property, the applicant has indicated that no fill will be brought onto the site prior to draft plan approval and therefore is not part of this site alteration application. At this stage, no grading activities of any kind will be undertaken pursuant to the proposed permit and associated draft Agreement and works will be limited to vegetation removal, tree removal, clearing, and grubbing.

Earthworks are not proposed at this time or permitted pursuant to the draft Agreement and will be subject to a separate permit and new Site Alteration Agreement with the Town. Town staff are recommending this staged approach to the site alteration permitted on the property, which will allow for vegetation and tree clearing to proceed while details regarding the proposed grading and overall redevelopment of the Subject Lands are considered further.

Public and Agency Comments

The following comments were received from the County, Town Staff, the Town's peer review engineers, and commenting agencies. These will be secured through the Site Alteration Agreement or addressed through the Draft Plan of Subdivision process.

Ainley & Associates on behalf of the Town of Erin:

- As outlined in Attachment "2" Ainley & Associates proposed a phased approach to the site alteration activities and requested that Empire Communities provide additional details and reports that will be incorporated into the Site Alteration Agreement.

County:

- It is suggested that trees that back onto the existing homes should try to be preserved.

No other commenting agencies, or members of the public have indicated concerns with the application.

Recommendations

1. That the Town Solicitor, along with such staff and external consultants as may be necessary, be authorized to negotiate and finalize the Site Alteration Agreement substantially in the form as attached as **Attachment "1"**, subject to such revisions as may be necessary to the satisfaction of the Director of Planning & Development and/or the Director of Infrastructure & Engineering Services.
2. That the Mayor and Clerk are hereby authorized to do such things, take such steps of actions and execute such documents as may be necessary to give effect to #1 above.



3. That the Mayor and Clerk are hereby authorized to execute the Site Alteration Agreement once it is in its final form.

I trust this is satisfactory, however, should you have any questions please don't hesitate to contact me.

Yours truly,

LOOPSTRA NIXON LLP

Per: Quinto M. Annibale

QMA/br

ATTACHMENT "1"

SITE ALTERATION AGREEMENT

THIS AGREEMENT MADE this 15 day of May, 2023

BETWEEN:

EC (ERIN) GP INC. (the "Owner")

and

THE CORPORATION OF THE TOWN OF ERIN (the "Town")

WHEREAS the Owner warrants and represents that it is the owner of the lands and premises municipally known as 5525 Eighth Line, Village of Erin and legally described in Schedule "A" attached hereto (hereinafter called the "Lands") located in the Town of Erin;

AND WHEREAS the Owner has submitted an application for Zoning By-law Amendment (Z22-02) and Draft Plan of Subdivision (23T-22002) approval pursuant to the *Planning Act* with respect to the Lands to facilitate the residential development of the Lands with a total of 288 residential units, a park and stormwater management facilities. These applications are still being processed and considered by the Town and the County of Wellington;

AND WHEREAS the Owner wishes to proceed expeditiously with the clearing of vegetation and trees from the Lands before obtaining approval with respect to the proposed development so that the clearing can occur prior to March 15, 2024 in accordance with the requirements of the *Migratory Birds Convention Act*, 1994 (S.C. 1994, c. 22);

AND WHEREAS on May 15, 2023 the Owner applied for a site alteration permit (the "Permit") from the Town (the "Application") pursuant to By-law #16-30 (the "By-law");

AND WHEREAS the Town wishes to secure the performance of the obligations imposed by the conditions associated with the Permit through a legal agreement and financial security in accordance with section 21 of the By-law;

NOW THEREFORE, in consideration of the payment by each Party to the other Party of the sum of two dollars (\$2.00), the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The Recitals above are true.
2. The following is a list of the Schedules to this Agreement which shall form part of this Agreement:
 - (a) Schedule "A": Legal Description of the Lands
 - (b) Schedule "B": Tree Clearing and Preservation Plan
 - (c) Schedule "C": Erosion and Sediment Control Plan
 - (d) Schedule "D": Temporary Construction Access Plan
 - (e) Schedule "E": Environmental Impact Study
 - (f) Schedule "F": Arborist Report

Conditions

3. The Owner shall not be permitted to import any fill to or undertake any earthworks (including but not limited to grading, re-grading, and cut and fill operations) on the Lands pursuant to the Permit or this Agreement. Permitted activities under this Agreement and the associated Permit shall be limited to:
 - (a) Vegetation removal, tree removal, tree preservation, clearing, and grubbing **which activities shall only be permitted to occur on the Lands between November 1 and March 15;**
 - (b) Installation and maintenance of temporary construction access(es); and,
 - (c) Installation and maintenance of required erosion and sediment controls (including silt fencing, swales, etc.)

4. The Owner agrees that tree clearing on the Lands pursuant to the Permit and this Agreement shall occur only in the area identified on the Tree Clearing Plan attached hereto as Schedule "B". The Owner shall protect and/or transplant all trees as shown on Schedule "B" to the satisfaction of the Town. Any of the trees which are identified on the Schedule "B" to be preserved or transplanted shall be reviewed following 1 year after installation. All dead trees shall be replaced.
5. The Owner acknowledges that the removal of any boundary trees, including Trees No. N56-N61 on Schedule "B" is prohibited without the prior written authorization of the adjacent property owner(s).
6. The Owner agrees to install heavy duty silt fencing and any other required sediment, siltation, and erosion controls on the Lands prior to the clearing of any trees in accordance with the plans and specifications in Schedule "C".
7. The Owner agrees that temporary construction access to the Lands shall be provided and maintained in accordance with the plans and specifications in Schedule "D".
8. The Owner agrees that all site alteration, including without limitation any vegetation removal and tree clearing on the Lands, pursuant to the Permit and this Agreement shall be undertaken in accordance with the recommendations of the Environmental Impact Study attached hereto as Schedule "E" and the Arborist Report attached hereto as Schedule "F".
9. The Owner agrees to obtain the approval of all governmental agencies, where required, including but not limited to, the Ministry of the Environment, Conservation and Parks the County of Wellington (the "County"), the Grand River Conservation Authority or Credit Valley Conservation Authority ("Conservation Authority"), prior to commencing vegetation, tree removal, or grubbing on the Lands;
10. The Owner shall not allow any construction equipment or vehicles outside the limits of the Lands without the Owner providing the Town with written

authorizations, as approved by the Town, between the Owner and the affected landowner(s).

11. The Owner agrees to control dust on the Lands, on adjacent lands and on construction access roads, to the satisfaction of the Town. Without limiting any other remedies provided by this Agreement, if the dust from the Lands is not maintained to the satisfaction of the Town in its sole discretion, the Town may, after two week's notice, complete work to control the dust and invoice the Owner for the costs thereof. Without limiting any other remedies provided by this Agreement, if the Owner does not pay the invoice within thirty (30) days the Town may draw upon the letter of credit or collect such costs and expenses in a like manner as municipal taxes as provided for in section 16 of this Agreement.
12. The Owner shall maintain the Lands in a tidy condition and free from the accumulation of waste products and debris (including any waste products and debris on the Lands caused by third parties) and shall cut all grasses and weeds at any time and from time to time to prevent growth in excess of thirty (30) centimetres in height. Without limiting any other remedies provided by this Agreement, if the Lands are not maintained to the satisfaction of the Town in its sole discretion, the Town may, after two week's notice, complete the work and invoice the Owner for the costs thereof. Without limiting any other remedies provided by this Agreement, if the Owner does not pay the invoice within thirty (30) days the Town may draw upon the letter of credit or collect such costs and expenses in a like manner as municipal taxes as provided for in section 16 of this Agreement.
13. The Owner acknowledges that any site alteration or other activities undertaken pursuant to the Permit and/or this Agreement shall comply with County of Wellington Noise By-law 5001-05.
14. The Owner acknowledges that fires may not be set on the Lands. Should an illegal fire be set, the Owner hereby agrees to pay any costs which may be incurred as a result of the illegal fire and the Town will invoice the Owner to recover such costs. The Owner shall ensure that all requirements of the Erin Fire

Chief are complied with. Without limiting any other remedies provided by this Agreement, if the Owner does not pay the invoice within thirty (30) days the Town may draw upon the letter of credit or collect such cost and expenses in a like manner as municipal taxes as provided for in section 16 of this Agreement.

15. The Owner agrees to allow the Town, its employees, servants, agents and consultants to enter the Lands at all reasonable times and for all reasonable purposes, including and without limiting the generality of the foregoing, for inspecting any of the site alteration works undertaken pursuant to the Permit and this Agreement and to correct any problems with same and any drainage problems with the Lands, including any problems which require corrective erosion and siltation control measures, and to correct or eliminate any other nuisance such as dust, garbage, debris or excavations and the cost incurred by the Town in so doing shall be paid by the Owner.
16. The Owner agrees to reimburse the Town for all its reasonable costs incurred in preparing and registering this Agreement on title and in carrying out any of the provisions hereof.
17. Upon execution of this Agreement, the Owner shall post security in the amount of \$250,000 which amount shall secure all of the Owner's obligations pursuant to this Agreement. If in the opinion of the Town at any time and from time to time, such amounts are insufficient, such amounts may be increased, and the Owner shall pay such additional sum as may be required as a result of such increase. In determining the sufficiency of the amount, the Town shall have regard to the total cost of satisfying all of the obligations of the Owner pursuant to any of the provisions of this Agreement. The Town may use any portion, or all of the security to satisfy any obligation set out in the Agreement. The Town may accept an irrevocable letter of credit drawn on a chartered bank of Canada acceptable to the Town in lieu of cash and such additional amounts as determined by the Town, provided such letter of credit shall be in a form acceptable to the Town Solicitor and contain the following provisions:

- (a) the letter of credit shall be security for any obligations of the Owner pursuant to the provisions of this Agreement, without any limitations whatsoever;
- (b) drawings on the letter of credit shall be permitted upon presentation of a letter from the Town to the bank claiming default by the Owner under the terms of this Agreement, and such default shall not be limited to the actions of the Owner;
- (c) partial drawings shall be permitted;
- (d) if the Town has not determined the extent of the default or the amount required to rectify the default or compensate the Town or third parties as a result thereof, the Town may draw on the full amount of the Letter of Credit without any requirement to justify the amount of the draw;
- (e) if the letter of credit is not renewed at least thirty (30) days prior to the date of expiry by an irrevocable letter of renewal or replacement letter of credit in such form and on such terms acceptable to the Town Solicitor, the Town may be permitted to draw on up to 100 percent of the letter of credit on or before the date of expiry;
- (f) All reductions on the letter of credit shall be in the sole discretion of the Town and the Town shall not be obligated to reduce the letter of credit by any amounts based on actual work performed by the Owner.

In the event the Owner fails to provide sufficient cash or a letter of credit as required pursuant to the provisions of this Agreement, such failure shall be deemed to be a substantial default pursuant to provisions of this Agreement and such default shall enable the Town to realize on all or a part of the Lands secured by this Agreement in the same manner as if the Town was enforcing its rights as a mortgagee against such lands.

18. Prior to the commencement of any site alteration activities permitted pursuant to the Permit and this Agreement on the Lands, the Owner shall obtain and

maintain commercial general liability insurance, and continue to maintain such insurance (until insurance is posted pursuant to an executed Subdivision Agreement) against all damages or claims for damage, with an insurance company licensed to do business in Ontario with a financial strength rating of at least AM Best A-. Such policy or policies shall include the Town as an additional insured and a certificate of insurance shall be delivered to the Town and be in full force and effect until a policy is provided pursuant to an executed Subdivision Agreement by the Town of such activities pursuant to an executed Subdivision Agreement. Such certificate of insurance shall provide:

- (a) that the minimum limits shall be not less than \$5,000,000.00 for any single occurrence;
- (b) that it includes a cross-liability and completed operations coverage;
- (c) that it shall not contain an exclusion for blasting, shoring, underpinning raising or demolition of any building or structure, collapse of any structure or subsidence of any structure or land from any cause;
- (d) that the insurance premium has been prepaid for a period of not less than one year; and
- (e) that the Owner shall provide at least thirty (30) days' notice to the Town prior to cancelling the policy.
- (f) Where a subcontractor is retained for work where Professional Liability coverage is a contract requirement, the Owner must ensure that the Professional Liability insurance is in an amount not less than two million dollars (\$2,000,000) per claim.

19. The Owner hereby agrees to defend, indemnify and save the Town completely harmless with respect to any alleged or actual claims, demands, costs, actions, causes of action, suits, proceedings, debts, damages or costs whatsoever, at law or in equity, suffered or incurred by the Town, whether directly or indirectly, as a result of this Agreement, the Lands, any site alteration activities undertaken

pursuant to the Permit and/or this Agreement, or as a result of any other matter or thing in connection therewith or pertaining thereto, including any default by the Owner pursuant to the terms of this Agreement, or by reason of any negligence or wrongful act of the Owner, its servants, contractors, agent or representatives, and without limiting the generality of the foregoing, such indemnification shall extend to the following:

- (a) all reasonable engineering fees, disbursements and related expenses of the Town Engineer as a result of his services required to be performed for the Town in connection with this Agreement, the Lands, or any other matter or thing in connection herewith or pertaining thereto;
- (b) all reasonable legal fees and disbursements as a result of legal services rendered to the Town in connection with this Agreement, the Lands, the site alteration activities undertaken on the Lands pursuant to the Permit and/or this Agreement, or any other matter or thing in connection herewith or pertaining thereto;
- (c) any costs and damages suffered by third parties as a result of the negligence of the Owner or the default of the Owner pursuant to the terms of this Agreement or the contravention of any laws, notwithstanding the fact that such third parties have not claimed or are not entitled to claim against the Town for such damages or costs;
- (d) the reasonable cost of the employment of all persons, firms and corporations in connection with this Agreement or referred to herein; and
- (e) any costs arising directly or indirectly as a result of the Owner entering into this Agreement and undertaking any of the work contemplated hereunder without having first become the registered owner of the Lands.

The Owner shall pay promptly any and all accounts rendered by the Town to the Owner pursuant to any provision of this Agreement, and all accounts shall be due and payable upon the date that the same are rendered. Failure to pay such

accounts within fifteen (15) days from the date thereof shall result in interest being added thereto at the rate of one and a half (1.5%) percent per month until payment in full has been received. The Town shall be entitled to draw down on the security posted in accordance with section 16 in the event that payment is not provided within thirty (30) days of being rendered to the Owner.

20. The Owner agrees to engage the services of a qualified engineering firm or company (the "Consulting Engineer") to provide inspection for all works undertaken on the Lands and to carry out all periodic field layout verification and contract administration whenever a contractor undertaking any of the site alteration activities permitted pursuant to the Permit and/or this Agreement is on the Lands. The Owner shall provide the Town Engineer with a copy of the contract between the Consulting Engineer and the Owner.
21. The Owner agrees that it shall, upon the request of the Town, make, do, execute or cause to be made, done or executed all such further and other lawful acts, deeds, things, devices and assurances whatsoever to ensure the full implementation of the terms, provisions and conditions of this Agreement, and to satisfy the intentions of the parties as set out herein.
22. The Owner agrees to comply with every direction issued or given by the Town Engineer during the course of grading and pre-servicing, including, without limiting the generality of the foregoing, the cessation of work, the installation or carrying out of additional works (whether within or beyond the limits of the proposed Plan), the phasing of works or any other matter which the Town Engineer deems to be in the interest of the proper development of the Lands and surrounding lands. The Owner acknowledges that the Town Engineer may for any reason require the cessation of work and agrees to comply with such direction. In the event the Town Engineer requires a cessation of work, then the Owner has no redress, claim, demand, right of action whatsoever against the Town.
23. The Owner acknowledges and agrees that the Town approving the site alteration activities permitted pursuant to the Permit and/or this Agreement in advance of

the approval of either its Zoning By-law Amendment Application or Draft Plan of Subdivision Application in no way commits the Town to the granting of any further approvals related to the Lands and in no way guarantees that the Town will approve the Owner's planning applications.

24. The Owner agrees that the Town may draw on the letter of credit deposited in accordance with section 16 above for the completion of any works considered necessary by the Town Engineer in connection with this Agreement in his sole discretion and other works such as rectification of drainage problems and clean-up of existing roads, or for the purposes of restoring the Lands to its original condition if, in the sole opinion and discretion of the Town Engineer, reasonable progress in completion of the site alteration activities permitted pursuant to the Permit and/or this Agreement has not been made.
25. The Owner agrees that he shall maintain and keep any required approvals of all government agencies referred to in section 9 above and that it shall comply with all the requirements of those agencies from time to time.
26. Permitted work under this Agreement shall continue at the discretion of the Town and the Town may terminate this Agreement at any time by giving to the Owner written notice of termination.
27. The parties agree that this Agreement shall terminate upon the earliest of:
 - (a) **November 1, 2024**, being one year from the date the Permit was issued;
 - (b) the termination of this Agreement by the Town pursuant to section 25;
 - (c) the registration of a Subdivision Agreement between the Owner and the Town for the Lands;
 - (d) the date of any default by the Owner pursuant to any of the terms of this Agreement.

28. Upon termination of the Agreement, if in the sole opinion of the Town the vegetation removal, tree clearing, and installation of erosion and sediment control measures on the Lands has not been completed to the satisfaction of the Town, the Town may require the Owner to restore the Lands to their original condition or may do so itself using securities posted pursuant to section 16 of this Agreement.
29. The Owner and Mortgagee hereby consent to the registration of this Agreement upon the Lands and hereby acknowledge that the same constitutes a first lien upon the Lands (not subject to any other liens or encumbrances) as security for any obligation of the Owner pursuant to this Agreement. The said lien shall be enforceable upon a judgment or order of any court and all or any part of the Lands may be realized as security for such lien in the same manner as if the Town was enforcing its rights as a mortgagee under a mortgage.
30. The Owner hereby agrees not to assign this Agreement without the express consent, to be obtained in writing, from the Town. Such consent may be refused by the Town at its sole and unfettered discretion and shall in no circumstances be granted unless:
 - (a) the proposed assignee has executed an assumption agreement acceptable to the Town Solicitor;
 - (b) the Consulting Engineer has agreed to be employed by the proposed assignee and continue on to act as Consulting Engineer as required by this Agreement;
 - (c) the Mortgagee has consented to the assignment; and
 - (d) the Owner is not in default under any of the terms of this Agreement.
31. Subject to the restrictions on assignment hereof by the Owner, this Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of each of the parties hereto. If a party hereto is a person, this agreement shall further be binding upon the respective heirs, executors, legal

representatives and administrators of such person. "Successors and assigns" shall include any successor in title to the Owner as if such successor in title had entered into this Agreement in the place and stead of the Owner, and in the event of more than one successor in title to the Owner, or successors in title to part of the Lands, all of such parties collectively shall be deemed to be the Owner pursuant to the terms of this Agreement. For greater certainty, it is intended that the obligations of the Owner shall also be binding upon all of the successors in title to the Owner of the Lands save and except any Lands conveyed to the Town, but no conveyance to any successor in title shall relieve the Owner of its obligations pursuant to this Agreement.

Notice

32. Any notice required by this Agreement shall be sent by registered mail or email to:

Owner at:

EC (Erin) GP Inc.

•

The Town of Erin at:

Town of Erin
5684 Trafalgar Road
Hillsburgh, Ontario
N0B 1Z0

Attention: Director of Planning & Development

Email: •

With a copy to Loopstra Nixon LLP at:

600-135 Queens Plate Drive
Toronto, Ontario M9W 6V7

Attention: Quinto Annibale / Brendan Ruddick
gannibale@loonix.com / bruddick@loonix.com

General

33. The Schedules attached hereto form part of this Agreement and have the same force and effect as if the information on them were contained in the body of this Agreement.
34. If any of the provisions of this Agreement are found by a court of competent jurisdiction to be unenforceable it will not affect the enforceability of each and every other clause contained herein.
35. This Agreement will be governed by and has been construed in accordance with the laws of the Province of Ontario and treated in all respects as an Ontario contract.
36. Nothing in this Agreement will relieve the Owner from compliance with all applicable municipal by-laws, laws and/or regulations or laws and/regulations established by any other governmental body which may have jurisdiction over the Lands.
37. The Parties agree that they are contractually bound to the terms of this Agreement, and that the obligations and benefits thereof are immediately enforceable by civil action should a Party be in breach of them.
38. This Agreement shall be binding and enure to the benefit of the Parties, their successors and assigns.
39. Subject to applicable law, the Parties shall execute diligently and expeditiously such further documents and take such further action as may be reasonably required in order to implement and give full legal force and effect to the terms of this Agreement.
40. The Parties agree to act reasonably and with good faith in respect of all dealings between the Parties pursuant to this Agreement.
41. Any amendment to or waiver of any provision of this Agreement must be in writing and signed by the Parties.

42. If any provision of this Agreement is deemed illegal, invalid or unenforceable, by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.
43. This Agreement may be executed in one or more counterparts, which together shall constitute a complete set of this Agreement, and executed counterparts may be delivered by e-mail or facsimile transmission.
44. Headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement.

[Remainder of page left blank intentionally. Signature page follows.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date(s) indicated below:

EC (ERIN) GP INC.

Date:

Name:

Title:

I have authority to bind the Corporation.

**THE CORPORATION OF THE TOWN OF
ERIN**

Date:

Name:

Title:

I have authority to bind the Corporation.

Date:

Name:

Title:

I have authority to bind the Corporation.

Schedule "A"

Legal Description of the Lands

PIN: 71152-0213

PT LT 19 RCP 686 ERIN, DESIGNATED AS PART 4, PLAN 61R-21828; S/T
ROS211740; ERIN

Schedule "B"

Tree Clearing and Preservation Plan

Schedule "C"

Erosion and Sediment Control Plan

Schedule "D"

Temporary Construction Access Plan

Schedule "D"

Temporary Construction Access Plan

Schedule "E"

Environmental Impact Study

Schedule "F"

Arborist Report

ATTACHMENT "2"

VIA EMAIL

September 29, 2023

File No. 221086

Town of Erin
5684 Trafalgar Rd.
Hillsburgh, ON
N0B 1Z0

Attn: Jack Krubnik, MCIP, RPP, MLA
Director of Planning & Development

Ref: **Empire Communities Subdivision
Site Alteration Permit Application – 1st Submission
Engineering Peer Review Comments**

Dear Mr. Krubnik:

We reviewed the 1st submission of reports and documentation submitted to the Town in support of a Site Alteration Permit Application, including tree removals, for the proposed Empire Communities Subdivision and provide the following comments.

The following is the list of the reports and documents reviewed:

1. Cover Letter – Empire (May 15, 2023)
2. Application Form – Urbantech Consulting (Urbantech) (May 15, 2023)
3. Planning Justification Report – Armstrong (May 18, 2022)
4. Preliminary Geotechnical Investigation - DS Consultants Ltd. (May 5, 2021)
5. Hydrogeological Assessment, Water Balance Assessment and Source Water Protection Analysis – Terra-Dynamics Consulting Inc. (May 18, 2022)
6. Scoped Environmental Impact Study (EIS) Report – WSP Canada Inc. (WSP) (May 2022)
7. Phase One Environmental Site Assessment (ESA) - DS Consultants Ltd (Jun 16, 2021)
8. Phase Two Environmental Site Assessment (ESA) - DS Consultants Ltd (June 16, 2021)
9. Tree Protection Plan (Drawing TPP-1) – Canopy (March 22, 2022)
10. Preliminary Grading Plan – Urbantech (March 2022)
11. Proposed Retaining Wall Height – Urbantech (January 2023)
12. Post-Development Storm Drainage Plan (March 2022)
13. Tree Protection and Removals/Erosion Control Plan Drawings TP-1 to TP-4, TPD-1 – Alexander Budrevics (August 2, 2023).

During the Sept. 11, 2023 meeting with the Town and the Developer to discuss the application for Site Alteration, the Developer requested that they be allowed to move forward with Tree Removal over the coming months and that they are agreeable to not proceeding with the Earthworks component of the Site Alteration works until additional reports, identified below, are submitted and

deemed satisfactory by the Town. As such it is understood that the Site Alteration would proceed in the following staged manner:

1. Site Alteration Stage 1A - Allow the Tree Removal within the site, as per the drawings and reports noted below, during the timing window from November 1 through March 15.
2. Site Alteration Stage 1B – Allow the Earthworks (cut and fill operations) to proceed to prepare the site for matching the proposed grades (i.e., match the proposed sub-grades not the final grades).

We have completed a comprehensive review of the documents and provide the following peer review comments with respect to engineering matters. Please note that some of these comments are applicable to multiple reports or plans.

Site Alteration Stage 1A - Tree Removal

Subject to the following items being addressed, we have no objection to the Town entering into a Site Alteration Stage 1A Agreement with the Developer, to permit Tree Removals proceeding over the next few months.

Tree Protection Plan – Canopy

Tree Protection and Removals/Erosion Control Plan Drawings – Alexander Budrevics

1. The Tree Protection Plan, Drawing TPP-1, provided addresses the concern in the previous set of comments requesting a drawing that the reader can zoom in to more clearly read detailed information.
2. Constraints for tree removal described in the EIS Report prepared by WSP should be included in the report (e.g., removing trees can occur only from November 1 through to March 15).
3. As noted in the Arborist report previously submitted, authorization from the Town and neighbor is required prior to the removal of Trees No. N56-N61, totalling eight (8) trees.
4. The Tree Protection and Removals/Erosion Control Plan Drawings should include notes that
 - 4.1. construction staging notes for erosion and sedimentation control
 - 4.2. construction timing notes
 - 4.3. CVC Standard erosion and sedimentation control drawing notes
 - 4.4. Site-specific notes that, for example, reflect the constraints, buffers and requirements for protecting the environment, protecting natural heritage, protecting trees to be maintained, and trees scheduled for removal as described in the EIS and Arborist Report specific to this development.
5. The drawing should show the location of the temporary construction access(es) and a detail per the Engineering Standards (i.e., Erin SD. 120, Temporary Construction Access Detail).

Site Alteration Stage 1B - Earth Works

The following items need to be addressed to the satisfaction of the Town and applicable agencies before the Site Alteration Stage 1B Agreement is entered into with the Developer to permit Earthworks proceeding.

General

6. An Erosion and Sedimentation Control (ESC) Report, as per By-Law 16-30, should be submitted. The ESC Report will describe and illustrate details such as, but not limited to, sediment traps, cut-off swales, temporary sediment pond(s), construction entrance mat(s).
7. An updated Stormwater Management Plan should be submitted addressing the previous set of Peer Review Comments related to the Draft Plan Submission. The Report should provide sufficient details relating to the acceptable outlets, infiltration cell(s) within SWM Ponds, SWM Pond maintenance access, and appropriately sized drying areas.
8. A Construction Impact Mitigation Plan report should be submitted in support of the application providing guidance and strategies to identify and mitigate any potential impact during the proposed site alteration construction.
9. A Fill Management Plan should be submitted per By-Law 16-30, Site Alteration By-law. This application is intended to alter the site by stripping and stockpiling topsoil on the site, and performing a cut and fill operation with soil that is only on site. The Fill Management Plan should identify the planned limits of the cut and fill that occurs with the material on site.
10. The Phase 1 and 2 ESA identified that there are contaminated soils on the site in the vicinity of the existing above ground gasoline storage tanks, salvage yard, and maintenance shop. The report concludes:
 - 10.1. Additional site characterization will be required to laterally and vertically delineate the soil impacts identified. This data will be required for future Record of Site Condition (RSC) filing purposes and to provide an estimate the volume of impacted soil present.
 - 10.2. As the proposed redevelopment will result in a more sensitive property use, an RSC will be required. It is anticipated that the impacted soils may be managed through remedial excavation and off-site disposal at the time of site redevelopment. Confirmatory soil sampling will be required at the time of excavation to confirm that the impacted soils have been successfully removed from the Phase Two Property. Additional site characterization is required to confirm the recommended approach for obtaining an RSC.
 - 10.3. All monitoring wells should be decommissioned in accordance with O.Reg. 903 when no longer required.
11. The Town should be provided a copy of the permit issued by CVC for the Site Alteration.

Preliminary Geotechnical Investigation - DS Consultants Ltd.

12. An updated Preliminary Geotechnical Investigation addressing the previous set of Peer Review Comments related to the Draft Plan Submission should be submitted. This should also provide an opinion on the need for a settlement monitoring program in areas requiring fill material, especially for areas within the proposed rights-of-way.

Scoped Environmental Impact Study (EIS) Report – WSP

13. The “development – natural area” interface with adjacent natural areas described in the EIS report (as shown on Figure 3 of the report) should be reflected in the ESC report. The CVC should advise on appropriate fencing required to protect the natural areas.
14. The “during-construction” monitoring (e.g., ESC / vegetation protection fencing inspections) described in the report should be reflected in the ESC report and drawings.

Preliminary Grading Plan – Urbantech (March 2022)

Proposed Retaining Wall Height – Urbantech (January 2023)

Post-Development Storm Drainage Plan (March 2022)

15. The Peer Review comments from the 1st Draft Plan Submission regarding the grading and retaining wall heights (Comment 35) need to be resolved before moving forward with Earthworks.

If you have any questions or require further assistance with this matter, please feel free to contact the undersigned.

Yours truly,

AINLEY & ASSOCIATES LIMITED



J. A. Mullan, P.Eng.
President & CEO

\\221086\Correspondence\Letters\221086 Empire Site Alteration Submission - Eng Peer Review Comments (Sep 29 2023).docx

cc: Michelle Baya – Town of Erin