



NESTINGS

LUXURY BUNGALOW LIVING  
SIMCOE • ONTARIO

A PROPOSED  
VACANT LAND CONDOMINIUM PLAN  
BY WARREN D. SINCLAIR CONSTRUCTION LTD.

# **PROPOSED INDEMNITY AGREEMENT**

Version July 2021

***This draft document may be modified from time to time to correct typographical or formatting errors, and to ensure compliance and consistency with legislative changes and updates as well as on account of any changes to the proposed condominium development that are relevant to the provisions hereof. Purchasers might not be notified of all changes other than material changes. Notification of a change does not imply or mean that such change is material.***

**INDEMNITY AGREEMENT**

Agreement dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Between:

NORFOLK VACANT LAND CONDOMINIUM CORPORATION NO. \_\_\_\_\_  
(the "Condominium")

and

WARREN D. SINCLAIR CONSTRUCTION LTD.  
(the "Declarant")

Whereas:

- A. the Declarant has registered Norfolk Vacant Land Condominium Plan No. \_\_\_\_\_ (the "Condominium Plan") that created the Condominium;
- B. the Condominium Plan is a vacant land condominium plan pursuant to Part XII of the *Condominium Act, 1998* (the "Act");
- C. the Declarant and/or any one or more of its predecessors in title has/have entered into one or more registered agreements with local or regional municipal governments and authorities and/or the condominium Approving Authority including pursuant to either or both of Sections 41 and 51 of the *Planning Act, R.S.O. 1990, c. P13* (collectively the "Municipal Agreements");
- D. the Declarant and/or any one or more its predecessors in title has/have entered into one or more registered easement and access agreements for the supply of gas, electricity, telephone, cable and other services to the Condominium (collectively the "Utility Supplier Agreements");
- E. the Municipal Agreements and the Utility Supplier Agreements are collectively referred to hereafter as the "Agreements",
- F. as there may be or have been insufficient funds in place or paid at the time of the registration of the Condominium Plan to pay such expense as the Condominium's initial insurance premium, bank charges, and/or other initial expenses for the Corporation (collectively, the "Initial Expenses"), the Declarant has, will or may pay certain of the same;
- G. the Declarant has, will or may provide one or more letters of credit or other security to the local, county and/or regional governments and it is possible that any one or more of such municipalities may draw against any such letter of credit or other security on account of acts or omissions of the Condominium including, without limiting the generality of the foregoing, lack of maintenance and repair of the common elements and or/units which are the obligation of the Condominium to perform; and
- H. the Condominium has agreed to provide the Declarant from time to time on written request by the Declarant with such of the following as the Declarant considers necessary in the Declarant's sole and absolute discretion current and proposed budget figures, details and related financial and other information and documents for and in respect of, the Condominium as required by the Declarant from time to time.

NOW THEREFORE, in consideration of the payment of One Dollar by the Declarant to the Condominium and One Dollar by the Condominium to the Declarant (the receipt and sufficiency of which is hereby acknowledged by the each), the parties hereto agree as follow:

- 1. The recitals hereof are true in substance and in fact.
- 2. The Condominium hereby assumes all obligations and liabilities of the Declarant directly or indirectly on account of the Agreements, other than on account of actions or omissions which have occurred up to and including the date of the registration of the Condominium and agrees to comply with all provisions of the Agreements, from the date or registration of the Condominium forward.

3. Anything to be completed in respect of, or required to be or not to be done to comply with, the Agreements from time to time, shall be completed or done or not done by the Condominium at its sole expense in a timely and good and workmanlike manner in accordance with the requirements and specifications of the Agreements.
4. If any municipality (be it local, county or regional) should draw upon or otherwise realize against any security provided by the Declarant, including, without limiting the generality of the foregoing, any letter of credit provided by the Declarant, because of or otherwise on account of any act or omission of the Condominium, including, without limiting the generality of the foregoing the lack of maintenance and repair of common elements and or/units which are the obligation of the Condominium to perform then, the Condominium shall forthwith upon written demand being made of it by the Declarant, immediately pay the Declarant such amount of money as is necessary to completely indemnify and save the Declarant harmless on account of any such draw or claim against the security or the realization of any part thereof by any municipality.
5. The Condominium shall and does hereby indemnify and hold and save the Declarant harmless from and against all damages , losses, costs and liability whatsoever which the Declarant may suffer or be required to pay as a result of the Condominium's failure to complete, to do or not do as required by, and/or to comply with, the Agreements, (the "Condominium's Non-Compliance") other than on account of actions or omissions which have occurred up to and including the date of the registration of the Condominium Plan, and from and against any and all actual or threatened claims, actions, suits, applications, litigation, charges, complaints, prosecutions assessments reassessments, investigations or other proceedings of any nature or kind whatsoever (a "Claim") that may be made or asserted against the Declarant in respect of the Condominium's Non-Compliance.
6. The Condominium hereby covenants and agrees to reimburse the Declarant the full amount of any Initial Expenses paid by the Declarant for which the Declarant is not otherwise fully reimbursed by the unit owners of the Condominium or otherwise, and shall pay the same within thirty (30) days of any demand therefor delivered in writing by the Declarant.
7. If a Claim is made or brought against the Declarant in connection with the Condominium's Non-Compliance, (including any claim against any security posted by the Declarant as set out in paragraph 4 hereof), upon written notice to the Condominium, the Condominium shall, at its expense and in a timely manner, complete any item to be completed, refrain from doing anything prohibited by the Agreements, contest and defend against any Claims, and reimburse the Declarant for all costs incurred by it including legal costs on a substantial indemnity basis, and take all such other steps as may be necessary or proper therein to prevent the resolution thereof in a manner adverse to the Declarant. If the undersigned does not, in a timely manner, take steps to deal with any such Claim, the Declarant may undertake steps that the Declarant, in its sole discretion, deems appropriate to address such Claim at the sole risk and expense of the Condominium.
8. The Condominium covenants and agrees that for the first years following the registration of the condominium plan that gave rise to the Condominium and for any periods thereafter that the Declarant has any potential liability to the Condominium pursuant to Section 75 of the Condominium Act, 1998:
  - (a) not to undertake any service not covered in the budget statement that formed part of the Declarant's disclosure statement package;
  - (b) not to increase the level or frequency of any service from that shown in the said budget so as to increase the costs beyond what is shown in the said budget;
  - (c) not to hire anyone not specifically referred to as being hired in the budget statement, nor engage any professional not specifically budgeted for in the budget statement, nor replace any employee or contractor or other service provider referred to in the said budget with a higher priced employee or contractor or other service provider.
9. The Condominium covenants and agrees to provide and deliver to the Declarant from time to time within ten (10) consecutive calendar days of written request of the Condominium by the Declarant without charge to or payment from the Declarant all of the following which are requested in writing by the Declarant from time to time:
  - (a) the date of the fiscal year end for the Condominium;
  - (b) a copy of the Condominium's budget for the then current fiscal year with particulars of the following for such fiscal year and, in addition, if the next fiscal year of the Condominium is to commence within two months of the date of the request by the Declarant, a copy of the Condominium's Budget or proposed Budget for the next fiscal year with particulars of the following for such fiscal year:
    - (i) the fees or charges, if any, that the Condominium is required to pay to the Declarant or another person;

- (ii) a statement of the common expenses of the Condominium;
  - (iii) a statement of the proposed amount of each expense of the Condominium, including the cost of:
    - (A) any reserve fund study required for the year;
    - (B) any performance audit under section 44 of the Act due in the year;
    - (C) preparing audited financial statements if subsection 43 (7) requires them within the year; and
    - (D) the cost of preparing the annual audited financial statements for the year;
  - (iv) particulars and details of the type, frequency and level of the services to be provided;
  - (v) a statement of the projected monthly common expense contribution for each type of unit;
  - (vi) the portion of the common expenses to be paid into the reserve fund;
- (c) the status of all pending lawsuits material to the property;
- (d) the amounts of all current or expected fees, charges, rents or other revenue to be paid to or by the Corporation or by any of the owners for the use of the common elements or other facilities related to the property;
- (e) all services not included in the budget that are provided to the Condominium and expenses that others other than the Condominium pay and that might reasonably be expected to become, at any subsequent time, a common expense and the projected common expense contribution attributable to each of those services or expenses for each type of unit;
- (f) the projected amounts in all reserve funds at the end of the current fiscal year;
- (g) a summary of the most recent reserve fund study;
- (h) such other information as the Act and its Regulations require the Declarant to provide to purchasers;
- (i) copies of all audited financial statements, all performance Audits of the Condominium and all Reserve Fund Studies of the Condominium;
- (j) particulars of any expected and/or proposed increases to common expenses and particulars of any expected and/or proposed special assessments;
- (k) particulars of any action and/or demands being contemplated by the Condominium against or of the Declarant; and
- (l) any and all information and documentation that is required to be contained in or delivered with a status certificate pursuant to Section 76(1) of the Act.
10. The Condominium shall and does hereby indemnify and hold and save the Declarant harmless from and against all costs and liability whatsoever which the Declarant may suffer or be required to pay as a result of the Condominium's failure to provide from time to time within ten (10) consecutive calendar days full and accurate information and documentation as set out and required in the above paragraph 8 and/or as a result of the Condominium omitting to supply any of such information and documentation.
11. This agreement shall in all respects be governed by and construed in accordance with the laws of the Province of Ontario, Canada, and all disputes, claims or matters arising out of or under it shall be governed by such laws.
12. Any monies owing by the Condominium to the Declarant on account of the indemnities herein shall be deemed to be a debt owing by the Condominium to the Declarant. Any such debt shall bear interest calculated monthly at a variable rate set on the first day of each month to be calculated, equal to twice the Prime Rate as of the first day of the month in which such interest is to be calculated.<sup>1</sup>

---

<sup>1</sup> "Prime Rate" in this paragraph means the rate of interest per annum established and reported by Royal Bank of Canada to the Bank of Canada from time to time as a reference rate of interest for the determination of interest rates that Royal Bank of Canada charges to customers of varying degrees of credit worthiness in Canada for Canadian dollar loans made by Royal Bank of Canada

- 13. The use of the masculine gender in this agreement shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include plural wherever the context so requires and vice versa.
- 14. The invalidity of any part of this agreement shall not impair or affect in any manner the validity and enforceability or effect of the balance thereof.
- 15. No obligation or provision contained in this agreement shall be deemed to have been abrogated or waived because of any failure by the Declarant to enforce the same.
- 16. This agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, successors and assigns.

IN WITNESS WHEREOF this Agreement has been signed by each of the undersigned effective as of the day and date first written above.

**Norfolk Vacant Land Condominium Corporation No. \_\_\_\_\_**

Per:

\_\_\_\_\_

Title: President

Name:

Per:

\_\_\_\_\_

Title: Secretary

Name:

We have authority to bind the Corporation.

**Warren D. Sinclair Construction Ltd.**

Per:

\_\_\_\_\_

Title:

Name:

I have authority to bind the Corporation