

THE CORPORATION OF THE CITY OF KENORA

BY-LAW NO. 39 - 2004

A BY-LAW TO ENTER INTO A DEVELOPMENT AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF KENORA AND DANIEL AND LORETTA WILLIAMS

WHEREAS Consent to create one residential lot was given to Daniel and Loretta Williams by the Kenora Planning Advisory Committee on April 15, 2003, and,

WHEREAS in order to create new lots, frontage must be provided to a publicly owned and maintained road; and

WHEREAS the Williams Road requires upgrading to meet the City of Kenora rural road standard;

NOW THEREFORE, the Council of the City of Kenora enacts as follows:

- 1. THAT** the Mayor and Clerk of the Corporation of the City of Kenora are hereby authorized to execute a development agreement between The Corporation of the City of Kenora and Daniel and Loretta Williams, in accordance with the terms and conditions therein and affix the Seal of the Corporation thereto.
- 2. THAT** this by-law shall come into force and be in effect from and after the final passing thereof.
- 3. THAT** Schedule A attached hereto is hereby made part of this By-Law as fully and to all intents and purposes as though cited in full herein.

THAT this By-Law shall come into force and thereupon shall be effective from the date of its final passing.

BY-LAW read a FIRST & SECOND Time this 13^h day of April, 2004
BY-LAW read a THIRD & FINAL Time this 13th day of April, 2004

THE CORPORATION OF THE CITY OF KENORA:

Per _____ **D. Canfield, MAYOR**

Per _____ **J. McMillin, CLERK**

DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF KENORA
(Hereinafter called "The City")

OF THE FIRST PART

- AND -

DANIEL WILLIAMS
(Hereinafter called "The Owner")

OF THE SECOND PART

THIS AGREEMENT, made in quintuplicate this 13th day of April, 2004

BETWEEN: **THE CORPORATION OF THE CITY OF KENORA**
of the first part

-and- **DANIEL WILLIAMS**
of the second part

WITNESS THAT:

WHEREAS: the lands affected by this Agreement, which are described in Schedule "A" hereto, are hereinafter called the "said lands" and comprise a portion of the Williams Road;

AND WHEREAS the Owner warrants that it has applied to the City for approval to sever and develop said lands pursuant to an application for consent number B04/03, a copy of the resolution for approval of which is appended hereto as Schedule "B";

AND WHEREAS, in order to comply with the City's conditions for such approval, the Owner has consented to enter into this Agreement with the City;

AND WHEREAS in this Agreement, "Owner" includes an Individual, an Association, a Partnership or a Corporation, wherever the singular is used herein, it shall be construed as including the plural;

NOW THEREFORE, in consideration of the mutual agreements and covenants and promises herein contained, and other good and valuable consideration, the Parties hereto agree as follows:

Approval of Survey Required:

1. The Owner shall, prior to final approval of aforesaid consent application, have received the approval of the City of Kenora of the reference plan or plans, in accordance with the Consent Application.

Dedication of Lands

2. The Owner shall, before final approval of consent application B04/03, execute and deliver to the City the deeds of conveyance, sufficient to vest in the City absolute title in fee simple, free and clear of all liens, charges, encumbrances and easements, all lands as set out in Part 1 of Reference Plan 23R-10240.

Registration of Deeds and Grants of Easement

3. The aforementioned deeds and grants of easement shall be prepared and registered at the Owner's expense.

Works Required

4. The Owner shall be responsible for the construction, installation and maintenance of certain services and facilities, the ownership of which, upon the issuance of a Certificate of Acceptance, as provided herein, will rest in the City and the Owner shall have no right or claim thereto. Such services and facilities shall be set out in Schedule "C" hereto and hereinafter called the "Works".

Approval of Cost Estimates:

5. The Owner agrees that, prior to the issuance of any Authorization to Commence Works, as provided herein, the estimated cost of construction

and installation of all of the Works, hereinafter called the “Works Cost Estimate”, shall be approved by the Road Supervisor and entered into Schedule “E” hereto.

Performance Guarantee

6. The Owner agrees to complete the roads in the development as set out in section 5 and Schedule “E” of this Agreement to the satisfaction of the Road Supervisor. A performance guarantee is required in the amount equal to the “Works Cost Estimate” before an “Authorization to Commence Works” will be issued by the Road Supervisor. The Performance Guarantee shall consist of cash or an irrevocable Letter of Credit.

Indemnification of City of Kenora

7. The Owner shall, prior to the issuance of any Authorization to Commence Works as provided herein, indemnify the City against all actions, causes for action, suites, claims and demands whatsoever, which may arise wither directly or indirectly by reason of the Owner undertaking the development of the said lands, together with any or all of the Works, Regional Works, Utilities and Private Works pertaining thereto. The Owner agrees to so indemnify the City until the issuance of the Certificate of Release as provided herein.

Entrance Permits Required

8. The Owner shall, at his own cost, obtain an Entrance Permit from the City for each of the lots for which consent has been applied. The work required on the lot access entrances will be at the expense of the Owner and in accordance with authorization of the Road Supervisor. The Owner shall complete the work prior to final approval of consent no. B04/03.

Payment of Municipal Costs

9. Every provision of this Agreement by which the Owner is obligated in any way shall be deemed to include the words “at the expense of the Owner” unless the context otherwise requires. The Owner shall reimburse the City for all administrative, planning, legal, engineering and inspection costs incurred by the City or any of its agents, in connection with the development of said lands.
The City will endeavour to inform the Owner of any costs which it expects the Owner to pay. Failure of the City to notify the owner of the aforementioned costs does not negate the Owner’s obligation to pay said costs.

Letter from an Ontario Land Surveyor Required

10. The Owner shall, prior to final approval of consent application B04/03, obtain from an Ontario Land Surveyor (OLS) and provide to the City, a letter indicating that all of the roads on the lands for which consent has been applied are located entirely within the road allowance indicated on the reference plan.

Requirements for Sale of Lands

11. The Owner agrees not to sell any or all of the said lands until:

- (i) The Owner has inserted, in all agreements of purchase and sale entered into with prospective purchasers, notice that the surface water of Black Sturgeon Lake should not be used for human consumption unless treated to the standards of the Ministry of Environment and Energy.

Requirements for Authorization to Occupy

- 12. The Owner shall not permit any building on the said lands to be occupied without the written permission of the City, referred to herein as an "Authorization to Occupy". In addition to any other requirements contained herein, no "Authorization to Occupy" shall be issued for any building until:
 - (i) all of the roads, which are required to be constructed under this Agreement and will provide access to such building, have been completely constructed, and
 - (ii) final approval has been given to consent no. B04/03.

Completion Time for Construction and Installation

- 13. The Owner shall, after issuance of an Authorization to Commence Works, complete the construction and installation of all of the Works to the satisfaction of the Road Supervisor.

Requirements for Certificate of Completion

- 14. The Owner agrees that the construction and installation of any of the Works authorized in an "Authorization to Commence Works" shall not be deemed to be completed for the purposes of this Agreement until the Road Supervisor has provided the Owner with written confirmation thereof, referred to herein as a "Certificate of Completion". In addition to any other requirements contained herein, no Certificate of Completion shall be issued until:
 - (i) all of the Works authorized by such Authorization to Commence Works have been inspected by the Road Supervisor to ensure that all such Works have been constructed and installed in accordance with the latest versions of the City of Kenora Rural Road Specifications, which have been approved by the Road Supervisor; and
 - (ii) all of the roads authorized by such Authorization to Commence Works have been inspected by the Road Supervisor and have been approved.

Period of Required Maintenance of Works

- 15. The Owner shall, from the date of issuance of a Certificate of Completion, maintain the works for a period of two (2) years.

Maintenance Guarantee

- 16. In order to guarantee that all defects in the Works, which become apparent after the issuance of the Certificate of Completion for such Works, and prior to the issuance of a Certificate of Acceptance of such Works as provided herein, will be properly replaced or repaired, the Owner shall lodge with the City a "Maintenance Guarantee" in an amount not less than Ten Percent (10%) of the Works Cost Estimate and approved by the Road Supervisor. The Maintenance Guarantee shall be subject to the approval of the Municipal Solicitor and the Municipal Treasurer.

Use of Maintenance Guarantee

17. The Owner agrees that the City may at any time, by resolution of City Council, authorize the use of all or part of any Maintenance Guarantee if the Owner fails to pay any costs, payable by the Owner to the City under this agreement, by the due date of the invoice for such costs.

Registration of Agreement

18. The Owner hereby consents to the registration of this agreement and shall effect registration hereby against all of the said lands prior to final approval of the aforesaid consent application.

Cancellation of Agreement

19. In the event that the aforementioned consent application expires prior to final approval then the City may, at its option of written notice to the Owner, declare this agreement null and void.

Successors

22. This Agreement shall endure to the benefit of, and be binding upon all of the Parties hereto and its, his or her respective heirs, executors, administrators, successors and assigns.

SCHEDULE "A"

LEGAL DESCRIPTION OF SAID LANDS

The said lands are described as follows:

Concession 3 of Melick, Part 1 of Reference Plan 23R-10240, now in the City of Kenora,
District of Kenora

THIS SCHEDULE is Schedule "A" to the Agreement which has been authorized and
approved by By-law No. 39-2004 of the Corporation of the City of Kenora enacted
and passed the 13th day of April , 2004

THE CORPORATION OF THE CITY OF KENORA

MAYOR DAVID CANFIELD

CLERK JOANNE MCMILLIN (SEAL)

- AND -

OWNER: DANIEL WILLIAMS

SCHEDULE "B"

RESOLUTION OF APPROVAL FOR CONSENT B04/03

THIS SCHEDULE is Schedule "B" to the Agreement which has been authorized and approved by By-law No. 39-2004 of the Corporation of the City of Kenora enacted and passed the 13th day of April, 2004

THE CORPORATION OF THE CITY OF KENORA

MAYOR DAVID CANFIELD

CLERK JOANNE MCMILLIN (SEAL)

- AND -

OWNER: DANIEL WILLIAMS

SCHEDULE "C"

WORKS REQUIRED

Roads

The Owner shall construct and install complete roads, in accordance to the Municipal Standards approved by the Road Supervisor. The location of the entrance for the access road to the proposed lots must be satisfactory to the Road Supervisor.

The Standards to be: Year round, rural residential road

TERRAIN	FLAT OR GENTLY ROLLING	STEEPLY ROLLING and/or ROCKY
Right of way	20.0 m	20.0 m
Minimum Width of Clearing Surface	18.0 m	18.0 m
a) Width	6 m	6 m
b) Depth	150 mm Gran "A" 450 mm Gran "B"	150 mm Gran "A" 450 mm Gran "B"
Shoulder Width (including rounding)	1.0 m (each side)	1.0 m (each side)
Depth of Granular Base	As determined by consideration of sub-grade material.	
Ditches	Minimum depth from crown of road to bottom of ditch 0.5m All ditches to be carried to sufficient outlet	
Culverts	CSP Minimum 400 mm diameter, larger as required	
Geometrics	Such that maintenance equipment can work effectively. 20m turning area to be provided at the terminus of street.	

THIS SCHEDULE is Schedule "C" to the Agreement which has been authorized and approved by By-law No. 39-2004 of the Corporation of the City of Kenora enacted and passed the 13th day of April, 2004

THE CORPORATION OF THE CITY OF KENORA

MAYOR DAVID CANFIELD

CLERK JOANNE MCMILLIN (SEAL)

- AND -

OWNER: DANIEL WILLIAMS

SCHEDULE "D"

PRIVATE WORKS REQUIRED

1. Lot Access Entrances and Culverts

The Owners shall, at their own expense, construct lot access entrances and install lot access entrance culverts as required, in accordance with Municipal standards and to the satisfaction of the Road Supervisor for the lot access entrances to each of the lots for which consent has been applied.

THIS SCHEDULE is Schedule "D" to the Agreement which has been authorized and approved by By-law No. 39-2004 of the Corporation of the City of Kenora enacted and passed the 13th day of April, 2004

HE CORPORATION OF THE CITY OF KENORA

MAYOR DAVID CANFIELD

CLERK JOANNE MCMILLIN (SEAL)

- AND -

OWNER: DANIEL WILLIAMS

SCHEDULE "E"

COST ESTIMATES

1. WORK COST ESTIMATE
The Works cost estimate (road), as approved by the Road Supervisor shall be Two Thousand Seven Hundred and Twenty Eight Dollars and Fifty Cents (\$2,728.50).

2. MAINTENANCE GUARANTEE
The maintenance guarantee (10% of work cost estimate), as approved by the Municipal Solicitor and Municipal Treasurer shall be Two Hundred and Seventy Two Dollars (\$272.00).

THIS SCHEDULE is Schedule "E" to the Agreement which has been authorized and approved by By-law No. 39-2004 of the Corporation of the City of Kenora enacted and passed the 13th day of April, 2004

HE CORPORATION OF THE CITY OF KENORA

MAYOR DAVID CANFIELD

CLERK JOANNE MCMILLIN (SEAL)

- AND -

OWNER: DANIEL WILLIAMS
