

November 22, 2023

City of Vaughan  
Development Planning Department  
2141 Major Mackenzie Drive  
Vaughan, ON L6A 1T1

VIA E-MAIL

Attention: Michael Torres, Planner

Dear Sir:

**RE: PINE VALLEY KLEINBURG HOMES LTD.  
OUR FILE NO.: 88265**

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Please be advised that I am the solicitor for Pine Valley Kleinburg Homes Ltd. ("Pine Valley"). I am making this submission on the behalf of Pine Valley with respect to the Rutherford Heights Inc./Caliber Condominium File 19CDM-18V004 and Site Development File DA.21.044 ("Rutherford") development which neighbour's Pine Valley's.

We are requesting that the Committee of the Whole impose upon the Rutherford development a condition in Rutherford's draft plan of condominium that Rutherford must grant to Pine Valley (both the common element corporation and the owners of the lots in that development) an easement in favour of Pine Valley for the purposes servicing and for motor vehicle and pedestrian access, ingress and egress. Please find below draft language that Pine Valley implemented when granting a similar easement to Rutherford:

*RESERVING in favour of the owners of Part of Block 1, Plan 65M-4719; being Parts 112, 113, 114, 115, 116, 117, 118, 119, 120, 151, 166, 167, 168 AND 169 ON PLAN 65R-40444 (being all of PIN 03318-0428(LT)) a non- exclusive easement in perpetuity, in common with all others entitled thereto, across, over, upon and along Block 1, Plan 65M-4755 (P.I.N. 03318-0306 (LT)), for the purpose of pedestrian and motor vehicle ingress and egress on foot or by vehicle and for every such purpose and for all purposes necessary or incidental to the exercise of the rights hereby created, together with any related appurtenances, for the benefit of all owners of Part of Block 1, Plan 65M-4719; being Parts 112, 113, 114, 115, 116, 117, 118, 119, 120, 151, 166, 167, 168 AND 169 ON PLAN 65R-40444 time to time and their respective successors in title.*

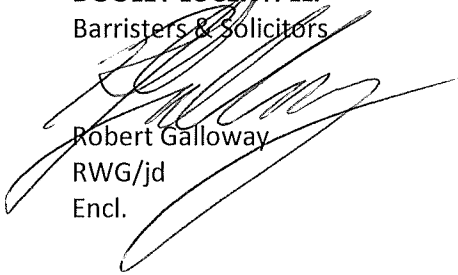
*RESERVING an easement in the nature of a right of ways or rights in the nature of easements, in favour of the owners of Part of Block 1, Plan 65M-4719; being Parts 112, 113, 114, 115, 116, 117, 118, 119, 120, 151, 166, 167, 168 AND 169 ON PLAN 65R-40444 (being all of PIN 03318-0428(LT)) in, over, through, along and upon part of Block 1, Plan 65M-4755 (P.I.N. 03318-0306 (LT)) for the purpose of installation and maintenance of various services and utilities, together with all appurtenances thereto as may be necessary to convenient from time to time to provide for such services and utilities to any parts of the Pine Valley Kleinburg Homes Ltd. lands, provided that same does not cause any material interference with the construction, location, and use of the buildings and lands of the Block 1, Plan 65M-4755 (P.I.N. 03318-0306 (LT)).*

The basis for our request stems from a Front Ending/Cost Sharing Agreement executed between Pine Valley and Rutherford, with a copy of the relevant language included as part of this submission for your review. This agreement includes sections whereby Pine Valley and Rutherford provide the other with certain easements for pedestrian and vehicular access.

A similar easement has been incorporated into Pine Valley's draft plan with the City of Vaughan and the Regional Municipality of York, and Pine Valley intends to register such easement in favour of Rutherford. We would ask that a mutual easement be imposed upon Rutherford.

Yours very truly,

**DOOLEY LUCENTI LLP**  
Barristers & Solicitors



Robert Galloway  
RWG/jd  
Encl.

- (g) For clarity, the foregoing provisions of this Section 3.8 shall also be applicable, *mutatis mutandis*, to the construction of the PV/DB Common Roads and Services by Pine Valley/Gemini.

#### ARTICLE 4

### **CONSTRUCTION AND ACCESS TO PV/DB COMMON ROADS AND SERVICES**

#### 4.1 Construction, Connection and Access to PV/DB Common Roads and Services

- (a) The parties agree that the PV/DB Common Roads and Services shall be constructed by Pine Valley and Gemini, in accordance with the provisions of Section 3.8 hereinabove.
- (b) Subject to and in accordance with this Agreement, Rutherford Heights shall be entitled to vehicular, pedestrian and servicing access on, over, under and across the PV/DB Common Roads and Services located on Pine Valley's Owner's Lands for the purposes set out in Schedule "E".
- (c) Subject to and in accordance with this Agreement, Pine Valley shall be entitled to vehicular and pedestrian access on, over and across the PV/DB Common Roads and Services located on Rutherford Heights' Owner's Lands for the purposes set out in Schedule "E".
- (d) Subject to and in accordance with this Agreement, Rutherford Heights shall be entitled to enter over, along and upon and to utilize those portions of the Local Roads and services within Pine Valley's Owner's Lands as may be required for the purposes of: (i) connecting the Local Roads within Rutherford Heights' Owner's Lands thereto by Rutherford Heights and its agents, contractors employees, successors and assigns in conjunction with the development of the Rutherford Heights' Owner's Lands; and (ii) the servicing of Rutherford Heights' Owner's Lands by Rutherford Heights and its agents, contractors, employees, successors and assigns in conjunction with the development of Rutherford Heights' Owner's Lands.
- (e) Subject to and in accordance with this Agreement, any condominium corporation with respect to any Condominium on Rutherford Heights' Owner's Lands shall be entitled to ingress and egress, by owners, tenants and invitees of individual dwelling units situate on Rutherford Heights' Owner's Lands from time to time over, along and upon and those portions of the Local Roads (and including without limitation, the right to utilize the services [sanitary sewers (and appurtenances), storm sewers (and appurtenances), watermains (and appurtenances) and hydro services (and appurtenances)] therein or appurtenant thereto) which are intended to service the Rutherford Heights' Owner's Lands within Pine Valley's Owner's Lands.
- (f) Subject to and in accordance with this Agreement, Pine Valley shall be entitled to enter over, along and upon and to utilize those portions of the Local Roads within Rutherford Heights' Owner's Lands as may be required for the purposes of: (i)

connecting the Local Roads within Pine Valley's Owner's Lands thereto by Pine Valley and its agents, contractors employees, successors and assigns in conjunction with the development of the Pine Valley's Owner's Lands; and (ii) the servicing of Pine Valley's Owner's Lands by Pine Valley and its agents, contractors, employees, successors and assigns in conjunction with the development of Pine Valley's Owner's Lands.

- (g) Subject to and in accordance with this Agreement, any condominium corporation with respect to any Condominium on Pine Valley's Owner's Lands shall be entitled to ingress and egress by owners, tenants and invitees of individual dwelling units situate on Pine Valley's Owner's Lands from time to time over, along and upon those portions of the Local Roads (and including without limitation, the right to utilize the services therein or appurtenant thereto which are intended to service the Pine Valley's Owner's Lands) within Rutherford Heights' Owner's Lands.
- (h) The use and operation of the PV/DB Common Roads and Services shall also be subject to the provisions of Schedule "E" attached hereto.

#### 4.2 PV/DB Common Roads and Services Located within Condominium Lands

- (a) The parties acknowledge that certain of the PV/DB Common Roads and Services are or will be located within lands which will form part of one or more condominiums to be registered against or within the Pine Valley's Owner's Lands or Rutherford Heights' Owner's Lands as the case may be (the "**Condominium(s)**").
- (b) Pine Valley shall be solely responsible for obtaining and registering, where applicable, in scope, form and content satisfactory to Rutherford Heights acting reasonably, all permissions, easements, consents and approvals from or by Pine Valley and/or the Condominium(s), as applicable, which may be necessary or advisable in order for Rutherford Heights, and its agents, contractors, employees, successors and assigns and owners, tenants and invitees of individual dwelling units therein as applicable to access the Local Roads within Pine Valley's Owner's Lands for the purposes set out in Sections 4.1(a), (d) and 4.1(e) and for causing the Condominiums within Pine Valley's Owner's Lands to take such steps and to perform the matters described in Section 4.2(d) hereof. Pine Valley shall indemnify and hold Rutherford Heights harmless from and against any losses, damages, claims, actions, costs, liabilities and obligations which may arise from its failure to obtain any of the foregoing.
- (c) Rutherford Heights shall be solely responsible for obtaining and registering, where applicable, in scope, form and content satisfactory to Pine Valley, acting reasonably, all permissions, easements, consents and approvals from or by Rutherford Heights and/or the Condominium(s) which may be necessary or advisable in order for Pine Valley, and its agents, contractors, employees, successors and assigns and owners, tenants and invitees of individual dwelling

units therein as applicable to access the Local Roads within Rutherford Heights' Owner's Lands for the purposes of Sections 4.1(c), (f) and 4.1(g) and for causing the Condominiums within Rutherford Heights' Owner's Lands to take such steps and to perform the matters described in Section 4.2(d) hereof. Rutherford Heights shall indemnify and hold Pine Valley harmless from and against any losses, damages, claims, actions, costs, liabilities and obligations which may arise from its failure to obtain any of the foregoing.

- (d) Without limiting the foregoing, Pine Valley and Rutherford Heights each hereby confirms to the other that in the event either such Owner develops its lands by means of the creation of a condominium and registration of one or more condominium plans, such Owner (the "**Condominium Owner**") agrees as follows:
- (i) the Condominium Owner shall cause the applicable condominium corporation to take all steps as may be required in order to assume the applicable obligations as set out in this Article 4 and Schedule "E" to this Agreement insofar as they relate to the right to access over the Local Roads and services located within the Condominium's lands and to ensure that same will continue to be binding upon the condominium corporation;
  - (ii) the Condominium Owner shall cause the applicable condominium corporation to enter into and deliver an assignment and assumption agreement (with respect to the lands within the Condominium) in accordance with subparagraph 4.2(d)(ii) immediately upon registration of such condominium plan and prior to turnover of the condominium to the purchasers of units therein. The failure of the Condominium Owner to obtain the execution of the assignment and assumption agreement shall lead to the suspension of the requirement for the other Owner to make its contribution towards the Community Construction Costs (to the extent that such Community Construction Costs are then payable) until such agreement has been obtained, subject to Section 4.4 hereinbelow;
  - (iii) the Condominium Owner shall cause the applicable condominium corporation to pass a bylaw authorizing the condominium corporation to enter into the assignment and assumption agreement as aforesaid, and shall provide a copy of such by-law to the other Owner;
  - (iv) the Condominium Owner shall cause the applicable condominium corporation to include and set aside a reasonable and sufficient amount in its reserve fund to cover maintenance and repairs, and other items related to the PV/DB Common Roads and Services within the Condominium Lands (costs which for clarity do not include Community Construction Costs);
  - (v) the Condominium Owner shall ensure that the disclosure statement for the applicable Condominium project shall clearly and adequately disclose the

applicable provisions of Article 4 and Schedule “E” of this Agreement and attach a copy hereof;

- (vi) from and after the assignment to and assumption by the condominium corporation, all references in this Agreement, and all Schedules thereto, to the Condominium Owner in connection with the mutual maintenance, operating and cost sharing arrangements with respect to the PV/DB Common Roads and Services (as per Schedule “E”) shall be deemed to refer to the applicable condominium corporation in respect of the lands which are the subject of such condominium and the Owner shall be relieved of all obligations with respect to the Local Roads situate within the Condominium Lands, and save and except that Pine Valley shall continue to be responsible for all obligations related to the construction of the Shared Works as set out in this Agreement.

#### 4.3 Separate Agreement

Pine Valley and Rutherford Heights agree to enter into a separate agreement reflecting the terms of this Article 4 and Schedule "E", with respect to the PV/DB Common Roads and Services. Notwithstanding the foregoing, or any other provision contained in this Agreement and/or the schedules attached hereto and regardless of whether or not the parties enter into such further agreement as above, the rights and easements granted to and in favour of Rutherford Heights and the Rutherford Heights’ Owner’s Lands in this Agreement shall be effective immediately and shall be and remain in full force and effect, and Rutherford Heights shall be entitled to exercise such rights and easements and utilize the roads and services on the other Owners’ Lands for purposes of vehicular and pedestrian access to, and servicing of, the Rutherford Heights Owner’s Lands, prior to assumption and dedication thereof by the City (if applicable), and each of the other Owners hereby grants to Rutherford Heights permission to enter, easements and rights in the nature of easements over their respective Lands for the purposes of the foregoing. Such entry shall be subject to the terms set out in Article 4 hereinabove and Schedule “E”, *mutatis mutandis*.

#### 4.4 Granting of Easements as Condition of Payment

- (a) Notwithstanding any other provision contained in this Agreement (including without limitation, the Schedules attached hereto), Rutherford Heights shall not be required to pay any portion of the Community Construction Costs and/or any other amounts payable under this Agreement, until the permissions, easements, consents and approvals as contemplated in this Article, as well as the Rutherford Heights Roadway Easements contemplated in Schedule “E” attached hereto, are in place (including without limitation, registration on title to the Pine Valley’s Owner’s Lands) to Rutherford Heights’ reasonable satisfaction.
- (b) For clarity with respect to the foregoing:
  - (i) any Community Construction Costs which are due and payable prior to the registration of a Condominium will be payable provided that the rights and easements contemplated in this Article, as well as the Rutherford Heights

Roadway Easements contemplated in Schedule “E” attached hereto, are in place (including without limitation, registration on title to the Pine Valley’s Owner’s Lands) to Rutherford Heights’ reasonable satisfaction, and provided that Pine Valley is in good standing of its obligations under this Agreement; and Pine Valley shall continue to be responsible to obtain the permissions, easements, consents, approvals, assumptions and other documentation from the Condominium as required pursuant to Section 4.2(d) hereinabove;

- (ii) Rutherford Heights shall not be required to pay any Community Construction Costs which are due and payable following registration of a Condominium until the permissions, easements, consents, approvals, assumptions and other documentation from the Condominium as required pursuant to Section 4.2(d), as well as the Rutherford Heights Roadway Easements contemplated in Schedule “E” attached hereto, are in place (including without limitation, registration on title to the Condominium Lands) to Rutherford Heights’ reasonable satisfaction, and provided that Pine Valley is in good standing of its obligations under this Agreement.

## **ARTICLE 5**

### **GENERAL PROVISIONS**

#### 5.1 Permission to Enter

- (a) Each Owner agrees to permit the adjacent Owner to access his lands to ensure municipal noise berm and barrier construction requirements will be met for the adjacent Owner, subject to the provisions set out hereinbelow.
- (b) With the exception of the continuous railway berm and barrier (continuous stringent noise fence) construction described in Section 5.1(a), the Owners do not anticipate that any interim entry and/or encroachment beyond their respective property limits will be required to facilitate construction on their respective lands. Should this be required to satisfy subdivision or site plan obligations to the Municipality, the Owner entering or encroaching upon another Owner's Lands agree to restoring any interim encroachment to pre-mobilization conditions or to mutual agreement at its own expense. Pre-mobilization deficiencies to be documented to meet the requirements of Cost-Sharing Engineer for all Owners. Deficiency repair costs to be assessed to the party responsible for the deficiencies. Costs set out in this clause (b) shall not be Community Construction Costs.
- (c) Should an internal water, storm, sanitary and/or hydro connection be required by Rutherford Heights from services or infrastructure located within the Shared Local Road within Pine Valley’s Owner’s Lands to service the Rutherford Heights’ Owner's Lands, subject to review and approval by Rutherford Heights and its consultant of the plans and specifications related thereto, the appropriate connecting pipe and/or sewer (and related appurtenances) will be constructed by Pine Valley, as directed to do so by Rutherford Heights, from the Shared Local

## SCHEDULE "E"

### TERMS RE: USE AND OPERATION OF PV/DB COMMON ROADS AND SERVICES

1. Grant of Easements by Pine Valley over Pine Valley's PV/DB Common Roads and Services
  - a. Pine Valley hereby covenants and agrees to grant and convey to Rutherford Heights for the benefit of the Rutherford Heights' Owner's Lands, an easement and right in the nature of a temporary easement in favour of Rutherford Heights, its employees, contractors, agents, subcontractors, successors and assigns, and the Rutherford Heights' Owner's Lands, over, along and upon the PV/DB Common Roads and Services to the extent located on Pine Valley's Owner's Lands by vehicles and pedestrians for the purpose of the servicing of the development of the Rutherford Heights' Owner's Lands and connecting the Local Roads and services within the Rutherford Heights' Owner's Lands to the Local Roads and services within the Pine Valley's Owner's Lands subject to and in accordance with the terms hereinafter set out.
  - b. Pine Valley hereby further covenants and agrees to grant to Rutherford Heights for the benefit of the Rutherford Heights' Owner's Lands, an easement and right in the nature of an easement in perpetuity in favour of Rutherford Heights and the Rutherford Heights' Owner's Lands, and any condominium corporation with respect to a Condominium located on Rutherford Heights' Owner's Lands, as well as all owners, tenants, occupants and invitees from time to time of dwelling units within the development to be constructed by Rutherford Heights within Rutherford Heights' Owner's Lands, over, along and upon the PV/DB Common Roads and Services to the extent located on Pine Valley's Owner's Lands for the purpose of ingress, egress and passage by vehicles and pedestrians to and from the Rutherford Heights' Owner's Lands, and the servicing of the Rutherford Heights' Owner's Lands, subject to and in accordance with the terms of this Agreement.
  - c. The easements as set out in subparagraphs 1(a) and (b) hereinabove shall be referred to as the "**Rutherford Heights Roadway Easements**").
  - d. The Rutherford Heights Roadway Easements shall be granted (and registered) as soon as possible following the construction of all of the PV/DB Common Roads and Services within Pine Valley's Owner's Lands to and including the completion of base course asphalt thereon and following the inspection of and determination of any defects or deficiencies therein. For clarity, the Rutherford Heights Roadway Easements shall be granted by Pine Valley, to the extent that it is then the Owner of the Pine Valley Owner's Lands (or any portion thereof) and/or by the applicable Condominiums, to the extent that it is then the Owner of the Pine Valley's Owner's Lands (or any portion thereof), as may be the case at the time of granting of such easements. The parties further agree that, notwithstanding any other provision contained in this Schedule and/or the Agreement to which this Schedule is attached, Rutherford Heights shall not be required to pay any portion



of the Community Construction Costs, and/or any other amounts payable under this Agreement, until the rights and easements contemplated in this Schedule (and Article 4 of the Agreement to which this Schedule is attached) are in place (including without limitation, registration on title to the Pine Valley Owner's Lands), to Rutherford Heights' reasonable satisfaction, subject to Section 4.4.

- e. The easement to be granted in accordance with paragraph 1(a) shall be a temporary easement which will terminate upon completion of the initial servicing of the Rutherford Heights' Owner's Lands and the completion of connections of the Local Roads within the Rutherford Heights' Owner's Lands to the Local Roads within the Pine Valley's Owner's Lands.
- f. Pine Valley shall be responsible for applying for and obtaining all consents required pursuant to the *Planning Act (Ontario)* with respect to the granting of the Rutherford Heights Roadway Easements, and satisfying all conditions of the approval for such consents, as well as for preparing all of the requisite transfers of easements to be conveyed to Rutherford Heights. The reasonable costs of the reference plans required for the Rutherford Heights Roadway Easements and obtaining such consents and preparing and registering the requisite Transfer(s) of Easement shall be included in the Community Construction Costs related to the Shared Local Road and Pine Valley shall be responsible for arranging for the preparation and deposit of such reference plans. The transfers of the Rutherford Heights Roadway Easements by Pine Valley shall be completed prior to, and as a pre-condition of, payment by Rutherford Heights of its Proportionate Share of the Community Construction Costs. If there are any registered charges on title to the Pine Valley Owner's Lands, then Pine Valley shall be obliged to obtain a postponement of the charge or charges to the Rutherford Heights Roadway Easements by the time that such easements are granted to Rutherford Heights. The costs of obtaining the postponements shall be borne by Pine Valley.
- g. No barriers or other obstacles shall be erected on or in respect of the PV/DB Common Roads and Services except as required by the Municipality or by law.
- h. The easements to be granted in this paragraph 1 are not intended nor shall they be construed as creating any rights in or for the benefit of the general public nor shall it affect any real property outside of the Pine Valley Owner's Lands.

2. Grant of Easements by Rutherford Heights over Rutherford Heights' PV/DB Lands

- a. Rutherford Heights hereby covenants and agrees to grant and convey to Pine Valley for the benefit of the Pine Valley Owner's Lands, a temporary easement and right in the nature of an easement in favour of Pine Valley, its employees, contractors, agents, subcontractors, successors and assigns over, along and upon the PV/DB Common Roads and Services to the extent located on Rutherford Heights' Owner's Lands by vehicles and pedestrians for the purpose of the initial servicing of the development of the Pine Valley's Owner's Lands and connecting the Local Roads within the Pine Valley's Owner's Lands to the Local Roads

within the Rutherford Heights' Owner's Lands subject to and in accordance with the terms hereinafter set out.

- b. Rutherford Heights hereby covenants and agrees to grant to Pine Valley for the benefit of the Pine Valley's Owner's Lands an easement and right in the nature of an easement in perpetuity in favour of any condominium corporation with respect to a condominium located on Pine Valley's Owner's Lands and all the owners, tenants, occupants and invitees from time to time of dwelling units within the development to be constructed by Pine Valley within Pine Valley's Owner's Lands over, along and upon the PV/DB Common Roads and Services to the extent located on Rutherford Heights' Owner's Lands for the purpose of ingress, egress and passage by vehicles and pedestrians to and from the Pine Valley Owner's Lands subject to and in accordance with the terms of this Agreement.
- c. The easements as set out in subparagraphs 2(a) and (b) hereinabove shall be referred to as the "**Pine Valley Roadway Easements**").
- d. The Pine Valley Roadway Easements shall be granted (and registered) as soon as possible following completion of all of the PV/DB Common Roads and Services within Rutherford Heights' Owner's Lands to and including the completion of base course asphalt thereon and following the inspection of and determination of any defects or deficiencies therein.
- e. The easement to be granted in accordance with paragraph 2(a) shall be a temporary easement which will terminate upon completion of the initial servicing of the Pine Valley's Owner's Lands and the completion of connections of the Local Roads within the Pine Valley Owner's Lands to the Local Roads within the Rutherford Heights' Owner's Lands.
- f. Rutherford Heights shall be responsible for applying for and obtaining all consents required pursuant to the *Planning Act (Ontario)* with respect to the granting of the Pine Valley Roadway Easements, and satisfying all conditions of the approval for such consents, as well as for preparing all of the requisite transfers of easements to be conveyed to Pine Valley. The reasonable costs of the reference plans required for the Pine Valley Roadway Easements and obtaining such consents and preparing and registering the requisite Transfer(s) of Easement shall be included in the Community Construction Costs related to the Shared Local Road and Rutherford Heights shall be responsible for arranging for the preparation and deposit of such reference plans. The transfers of the Pine Valley Roadway Easements by Rutherford Heights shall be completed prior to, and as a pre-condition of the Community Construction Costs. If there are any registered charges on title to the Rutherford Heights' Owner's Lands, then Rutherford Heights shall be obliged to obtain a postponement of the charge or charges to the Pine Valley Roadway Easements by the time that such easements are granted to Pine Valley. The costs of obtaining the postponements shall be borne by Rutherford Heights.

- g. No barriers or other obstacles shall be erected on or in respect of the PV/DB Common Roads and Services except as required by the Municipality or by law.
- h. The easements to be granted in this paragraph 2 are not intended nor shall they be construed as creating any rights in or for the benefit of the general public nor shall it affect any real property outside of the Rutherford Heights' Owner's Lands.

3. **Alterations by Pine Valley to Pine Valley's PV/DB Common Roads and Services**

- a. Once completed, Pine Valley shall not make any alterations or additions to (including demolition and reconstruction on or adjacent to the PV/DB Common Roads and Services) or relocate the PV/DB Common Roads and Services situate on the Pine Valley Owner's Lands, without prior written notice to Rutherford Heights and provided that:
  - i. such alterations, additions or relocation, after they are completed, shall not diminish in any material manner the benefits having been enjoyed by Rutherford Heights from such easements or rights prior to this alteration or relocation; and
  - ii. such alterations, additions, or relocation shall in the interim, during the time such alterations, additions or relocation are being constructed, minimize the interference with the Rutherford Heights Roadway Easements.
- b. Pine Valley shall use its best efforts to ensure that all work done pursuant to this Section 2 shall be done in an expeditious manner.
- c. If at any time during the term of this Agreement, Pine Valley proposes to either make such alterations, additions or relocation to the PV/DB Common Roads and Services located on its Owner's Lands which will lead to a relocation of or otherwise affect any easement or right granted to Rutherford Heights, then, before commencing such alterations or additions, Pine Valley shall give to Rutherford Heights a copy of plans and specifications showing the proposed alterations. If Rutherford Heights, having reviewed such plans, shall not, within thirty (30) days after delivery of said plans and specifications, give written notice advising that it does not consent to such proposed alterations or additions on the basis that same do not comply with the foregoing provisions of this Section, then Rutherford Heights shall be conclusively deemed to have agreed to such alterations, additions or relocation (subject to compliance with the foregoing). If Rutherford Heights does not consent to such proposed alterations or additions or relocation as aforesaid, and if the parties cannot resolve their claims within fifteen (15) days after the giving of notice that it does not consent to the proposed alterations or additions or relocation as aforesaid or after the expiry of the thirty (30) day period as aforesaid, then Pine Valley shall not commence any such alterations or additions until such dispute has been resolved in accordance with Section 5 of this Agreement.

- d. Pine Valley in making all alterations, additions or relocations shall comply with all laws, rules, orders, ordinances, regulations and requirements of any government, municipality or any governmental agency thereof having jurisdiction over the PV/DB Common Roads and Services. Pine Valley shall complete the alterations, additions or relocation as expeditiously as possible so as to minimize any noise or vibration or other interruption which would disturb any users or occupants of the Rutherford Heights' Owner's Lands.

4. **Alterations by Rutherford Heights to Rutherford Heights' PV/DB Common Roads and Services**

- a. Once completed, Rutherford Heights shall not make any alterations or additions to (including demolition and reconstruction on or adjacent to the PV/DB Common Roads and Services) or relocate the PV/DB Common Roads and Services situate on the Rutherford Heights' Owner's Lands, without prior written notice to and provided that:
  - i. such alterations, additions or relocation, after they are completed, shall not diminish in any material manner the benefits having been enjoyed by Pine Valley from such easements or rights prior to this alteration or relocation; and
  - ii. such alterations, additions, or relocation shall in the interim, during the time such alterations, additions or relocation are being constructed, minimize the interference with the Pine Valley Roadway Easements.
- b. Rutherford Heights shall use its best efforts to ensure that all work done pursuant to this Section 2 shall be done in an expeditious manner.
- c. If at any time during the term of this Agreement, Rutherford Heights proposes to either make such alterations, additions or relocation to the PV/DB Common Roads and Services located on its Owner's Lands which will lead to a relocation of or otherwise affect any easement or right granted to Pine Valley, then, before commencing such alterations or additions, Rutherford Heights shall give to Pine Valley a copy of plans and specifications showing the proposed alterations. If Pine Valley, having reviewed such plans, shall not, within thirty (30) days after delivery of said plans and specifications, give written notice advising that it does not consent to such proposed alterations or additions on the basis that same do not comply with the foregoing provisions of this Section, then Pine Valley shall be conclusively deemed to have agreed to such alterations, additions or relocation (subject to compliance with the foregoing). If Pine Valley does not consent to such proposed alterations or additions or relocation as aforesaid, and if the parties cannot resolve their claims within fifteen (15) days after the giving of notice that it does not consent to the proposed alterations or additions or relocation as aforesaid or after the expiry of the thirty (30) day period as aforesaid, then Rutherford Heights shall not commence any such alterations or additions until

such dispute has been resolved in accordance with Section 5.11 of this Agreement.

- d. Rutherford Heights in making all alterations, additions or relocations shall comply with all laws, rules, orders, ordinances, regulations and requirements of any government, municipality or any governmental agency thereof having jurisdiction over the PV/DB Common Roads and Services. Rutherford Heights shall complete the alterations, additions or relocation as expeditiously as possible so as to minimize any noise or vibration or other interruption which would disturb any users or occupants of the Pine Valley Owner's Lands.

#### **5. Conveyance of Lands for PV/DB Common Roads and Services**

Pine Valley and Rutherford Heights shall convey to the Municipality, as and when required to do so by the Municipality, and without cost, such lands and/or easements as may be required by the Municipality in connection with the PV/DB Common Roads and Services, free of liens, charges and other encumbrances save and except any agreement with the Municipality or other encumbrances that the Municipality will accept on title.

#### **6. Maintenance and Repair**

- a. Pine Valley shall be exclusively responsible, at its sole cost, for arranging, supervising and carrying out the maintenance, operation, repair, replacement and inspection of the PV/DB Common Roads and Services on its Owner's Lands to and including the date referred to in paragraph 3.1(i) of the Agreement (excluding such costs related to the apron constructed upon Pine Valley's Owner's Lands by Rutherford Heights to connect the Local Roads within Rutherford Heights' Owner's Lands to the Local Roads with Pine Valley's Owner's Lands and the cost of deficiencies caused by Rutherford Heights, its employees, contractors, agents, subcontractors, successors and assigns, all of which shall be borne by Rutherford Heights) and as such, to engage all requisite contractors, servicemen and other assistance and/or services as may be required to do so, provided that in the event that Pine Valley fails to maintain, repair and replace the PV/DB Common Roads and Services on its Owner's Lands in accordance with the foregoing, then Rutherford Heights shall be entitled, upon ten (10) business days prior written notice to Pine Valley (or no notice in the event of emergency), to perform and complete such maintenance, repair and replacement work (and shall be entitled to enter onto the Pine Valley Owner's Lands for the purposes thereof), and the cost of same shall be paid by Pine Valley within ten (10) days of written demand therefor.
- b. Pine Valley shall also obtain, at no cost to Rutherford Heights, the agreement by the Condominium to maintain, operate, repair, replace and inspect the portion of the PV/DB Common Roads and Services located on, in or under the Condominium Lands, in the manner set out in paragraph 6(a) and otherwise on and in accordance with the terms set out in this Agreement.

- c. Rutherford Heights shall be exclusively responsible, at its sole cost, for arranging, supervising and carrying out the maintenance, operation, repair, replacement and inspection of the PV/DB Common Roads and Services on its Owner's Lands to and including the date referred to in paragraph 3.1(i) of the Agreement (excluding such costs related to the apron constructed upon Rutherford Heights' Owner's Lands by Pine Valley, if any, to connect the Local Roads within Pine Valley's Owner's Lands to the Local Roads with Rutherford Heights' Owner's Lands and the cost of deficiencies caused by Pine Valley, its employees, contractors, agents, subcontractors, successors and assigns, all of which shall be borne by Pine Valley) and as such, to engage all requisite contractors, servicemen and other assistance and/or services as may be required to do so, provided that in the event that Rutherford Heights fails to maintain, repair and replace the PV/DB Common Roads and Services on its Owner's Lands in accordance with the foregoing, then Pine Valley shall be entitled, upon ten (10) business days prior written notice to Rutherford Heights (or no notice in the event of emergency), to perform and complete such maintenance, repair and replacement work (and shall be entitled to enter onto the Rutherford Heights' Owner's Lands for the purposes thereof), and the cost of same shall be paid by Rutherford Heights within ten (10) days of written demand therefor.
  
- d. Rutherford Heights shall also obtain, at no cost to Pine Valley, the agreement by the Condominium to maintain, operate, repair, replace and inspect the portion of the PV/DB Common Roads and Services located on, in or under the Condominium Lands in the manner set out in paragraph 6(c) and otherwise in accordance with the terms set out in this Agreement.