

## **APPENDIX 1**

**Without Prejudice**

### **DEVELOPMENT CHARGE CREDIT AGREEMENT**

THIS AGREEMENT made this 22 day of JANUARY, 2009.

BETWEEN:

**KREADAR ENTERPRISES LIMITED**  
(hereinafter referred to as the “Owner”)

and

**CITY OF TORONTO**  
(hereinafter referred to as the “City”)

**WHEREAS** The Owner is the registered owner of certain lands and premises situated in the City of Toronto, in the Province of Ontario, located on the north side of McNicoll Avenue and west of Midland Avenue known municipally as 3700 Midland Avenue and ( hereinafter called the “Lands”) and more particularly described in Schedule “A” attached hereto:

**AND WHEREAS** the Owner applied for approval of an Official Plan amendment, Zoning By-law amendment and Consent to Sever to permit development of the Lands for commercial purposes in 2001;

**AND WHEREAS** as a condition of approving the above development applications the City requested the Owner to extend the construction of Silver Star Boulevard as a fully serviced municipal road together with sewers and a water main for a distance of approximately 375 meters from McNicoll Avenue to the northern boundary of the Lands (hereinafter called the “Road”) although the Owner only needed approximately 185m of Road to service its Lands;

**AND WHEREAS** the Owner, as a condition of a consent to sever and develop its Lands, agreed to construct the additional 190m extension;

**AND WHEREAS** the extension of the Road will serve the lands to the north of the Kreadar Lands;

**AND WHEREAS** Silver Star Boulevard is a partially constructed Collector Road running from north of Steeles Avenue in the Town of Markham to Midland Avenue, 400 m North of Finch Avenue with traffic signals planned/installed at every intersection and is described as a Collector Road in the City’s Preliminary and Final Planning Reports and is, therefore, not a local road servicing only the Lands;

**AND WHEREAS** the services within the full extension of the Road requested by the City are described as “trunk services” in the City Planning Preliminary and Final Reports and are of benefit to and are required for development of other lands;

**AND WHEREAS** the City’s previous Development Charge By-law (“Previous DC By-law”) did not apply to the development of the Lands as the proposed commercial development was exempt from payment of Development Charges (“DCs”) under the Previous DC By-law at the time the City requested the Owner to install the Road;

**AND WHEREAS** part of the Road which the Owner was requested to install by the City is listed in the City’s Development Charge Background Study 476-1999, and in addition, is listed in the Background Studies of the predecessor Development Charges By-laws 23285 (1991) and 24630 (1995) of the City of Scarborough;

**AND WHEREAS** the Owner enquired of the City as to the availability of a Development Charge Credit for the cost of the Road, when agreeing to construct the full extension, but was advised that no such credit was available because commercial development was exempt from the Previous DC By-law;

**AND WHEREAS** in 2003 the Owner commenced and completed construction of the Works, excepting only topcoat asphaltting, to the City’s specifications;

**AND WHEREAS** subsequent to the installation of the Road by the Owner, the City passed Development Charge By-law 547-2004 (the “Current DC By-law”) which imposed a development charge against commercial development;

**AND WHEREAS** the Owner was required to pay \$400,922.22 in development charges under the Current DC By-law and made such payment under protest in order to receive Building Permits 07 251149 and 07-251152;

**AND WHEREAS** the Lands are zoned for, and the Owner expects to construct, additional commercial development on the Lands, the commercial component of which is subject to a development charge under the Current DC By-law;

**AND WHEREAS** Section 415-9 of the Current DC By-law authorizes Council to enter into agreements to provide a credit to an owner against all or part of the development charge payable in respect of a particular development by the provision of work,

**AND WHEREAS** Schedule B to the Current DC By-law provides that up to a maximum 69% of the development charge applicable to commercial development is attributable to roads, sewers, water mains, and stormwater management;

**AND WHEREAS** in view of the unusual and unique circumstances described above, both parties agree that the granting of a development charge credit in this case does not constitute a policy change on the part of the City and does not constitute a precedent for any other development in Toronto;

**NOW THEREFORE IN CONSIDERATION OF** the foregoing the parties hereto agree as follows:

## **1. AUTHORITY FOR CREDIT AGREEMENT**

1.1 This Agreement is a credit agreement under Section 38 of the Act in relation to the design and construction of Silver Star Boulevard as a Collector Road and the municipal services thereunder and the City has the authority to enter into it. By entering into this agreement the Owner becomes entitled only to credits against development charges as provided for in the Act and Section 415-9 of the By-law. The City and the Owner hereby covenant and agree that they will not challenge the validity of this Agreement in any legal proceeding.

1.2 The Road provided by the Owner is at a standard that is not greater than the standard for the equivalent road and servicing for which a development charge is payable under Bylaw 547-2004 or its successor.

## **2. CREDITS**

2.1 The Owner has substantially completed construction of the Road at a cost of \$895,012.60, excepting only top coat asphaltting of the road, which is estimated to cost an additional \$147,223.17. The Owner hereby covenants and agrees to complete the top coat of asphaltting of the Road within 24 months of the date of execution of this Agreement, such that the total cost of the Road is estimated to be \$1,042,235.77.

2.2 Construction of the Road for an additional distance of approximately 190 meters north of McNicoll Avenue, representing approximately 51% of the total cost of the Road, constitutes a benefit to the City.

2.3 The City and the Owner have agreed as to the method of calculating the cost to the Owner of constructing the extension of the Road, and the resulting credit to the Owner against development charges payable. These calculations are shown on Schedule "B" attached to this agreement.

2.4 The City hereby grants to the Owner a credit against development charges ("the DC credit") payable with respect to development on the lands described in Schedule "A", as follows:

(a) the Owner is entitled to a DC credit in the amount of \$280,180.84 in respect of Items 1 through 5, inclusive, in Schedule "B";

(b) the Owner is entitled to a further DC credit in an amount which is the sum of:

- (i) 50.67% of the actual cost of completing the Road; and
- (ii) 15% of such actual cost, which represents payment for all design, engineering, supervision and inspection costs.

2.5 Upon completion of the top coat of asphalt of Road, the Owner will provide to the City all such documentation, including payment certificates, as may reasonably be necessary for the City to determine the actual cost of completing the Road. The Owner shall not be entitled to the DC credit described in section 2.4(b) until it has provided such information.

2.6 Forthwith upon execution of this agreement, the City will reimburse the owner \$276,636.33, being 69% of the development charge paid under protest by the Owner respecting Building Permits 07-251149 and 07-251152, and which comprises the Roads, Sanitary Sewer, Storm Water Management and Water components of the current DC. In exchange for and concurrent with the delivery of this refund payment, the Owner will deliver , in writing, its withdrawal of the section 20 complaint dated January 3, 2008.

2.7 The Owner may apply any DC credit remaining under section 2.4(a) and any DC credit pursuant to Section 2.4(b) against DCs payable on any future development on the Lands until such time as the DC credit is fully applied. The DC credit will be applied only against the following service components of the DC by-law in effect at the time of such further DC payment:

- (a) Roads
- (b) Sanitary Sewer
- (c) Storm Water Management
- (d) Water.

2.8 In consideration of the DC credit to be paid to the Owner under the terms of this agreement, the Owner hereby covenants and agrees that:

a) with respect to Building Permit Nos. 07 251149 and 07 251152, the Owner hereby releases and forever discharges the City from all section 20 complaints, refunds, repayments, costs, interest, causes of action or claims of any other kind arising from or relating to the payment of DCs pursuant to the issuance of said building permits; and

b) the Owner will not make any other claims for compensation or repayment from the City or any third parties arising from the services installed by the Owner pursuant to the Servicing Agreement between the parties dated October 9, 2002.

### **3. TRANSFER OF CREDITS**

The City agrees that any credits given hereunder may be transferred to a successor in title to the Owner, in the event that title to the Lands or a part thereof is transferred prior to the provision of all or part of the credits contemplated under this Agreement, provided that the City is given notice in writing of the transfer prior to receipt of the credit by the transferee.

### **4. REGISTRATION ON TITLE**

This Agreement and any schedules attached hereto may be registered upon title to the Lands at the expense of the Owner.

## **5. REMOVAL OF AGREEMENT FROM TITLE**

That upon satisfying all provisions of this Agreement by the completion of the services required, the City shall not unreasonably withhold its consent to the removal from title of this Agreement and shall execute such documents as may be required to effect such removal from title.

## **6. COMMENCEMENT**

This agreement commences on the date of its execution and delivery by the Parties.

## **7. NOTICES**

Any notice, demand, acceptance or request required to be given hereunder in writing shall be deemed to be given if either personally delivered or mailed by registered mail, postage prepaid, or by facsimile transmission (at any time other than during a general discontinuance of postal , lockout or otherwise) and addressed to the Owner as follows:

### **KREADAR ENTERPRISES LIMITED**

Care of Mr. Jason Arbuck  
Cassels Brock & Blackwell LLP  
2100-40 King St. W  
Toronto, ON M5H 3C2

or such change of address or fax number as the Owner has by written notification forwarded to the City; and to the City as follows:

City Solicitor  
City of Toronto  
55 John Street  
26th Floor, Metro Hall  
Toronto, Ontario M5V 3C6  
Fax: 416.397.5624

or such change of address as the City has by written notification forwarded to the Owner.

Any notice shall be deemed to have been given to and received by the party to which it is addressed:

- (a) if delivered, on the date of delivery;
- (b) if mailed, then on the fifth day after the mailing thereof; or
- (c) if faxed, on the date of faxing provided an original receipt confirmation can be provided.

**8. WARRANTY**

The Owner represents and warrants to the City as follows:

- (a) the Owner is a corporation validly subsisting under the laws of Ontario and has full corporate power and capacity to enter into this Agreement and any documents arising from this Agreement;
- (b) all necessary corporate action has been taken by the Owner to authorize the execution and delivery of this Agreement.

**IN WITNESS WHEREOF** the Parties hereto have affixed their corporate seals duly attested by the hands of their proper signing officers in that behalf.

**SIGNED SEALED AND DELIVERED**

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**KREADAR ENTERPRISES LIMITED**

**CITY OF TORONTO**

Per: \_\_\_\_\_

Name: Cam Weldon  
 Title: Acting/Deputy City Manager  
 and Chief Financial Officer

Per: \_\_\_\_\_

Name: Ulli S. Watkiss  
 City Clerk

**APPROVED AS TO FORM**

.....  
 For Anna Kinastowski  
 City Solicitor

## SCHEDULE "A"

The lands north of McNicoll and west of Midland legally described and identified as follows (the "Kreadar Lands"):

PIN 06019-0130(LT): Part of Lot 86, Registrars Compiled Plan Number 9828, designated as Parts 3 and 4 on Plan 66R-23640, City of Toronto ( formerly City of Scarborough)

PIN 06019-0127 Part of Lot 86, Registrars Compiled Plan Number 9828, designated as Part 1 on Plan 66R-19597, City of Toronto ( formerly City of Scarborough)

## SCHEDULE "B"

### Summary for the construction of Silver Star Boulevard from McNicoll north

A	B Item	C Total Constructed Length m	D Length required for development m	E Difference m	F Total Construction Cost including 7% GST \$	G Service Connections \$	H Total Main Cost (F-G) \$	I City cost (E/C)*H \$	J Potential DC Credits \$
1	Pregrading of road	375	185	190	\$ 89,233.93		\$ 89,233.93	\$ 45,211.86	\$ 45,211.86
2	Watermain	365	190	175	\$ 119,682.08	\$ 47,597.86	\$ 72,084.22	\$ 34,560.93	\$ 34,560.93
3	Sanitary Sewer	360	185	175	\$ 98,299.21	\$ 40,225.18	\$ 58,074.03	\$ 28,230.43	\$ 28,230.43
4	Storm Sewer	301	147	154	\$ 254,372.40	\$ 52,306.57	\$ 202,065.83	\$ 103,382.52	\$ 25,845.63
5	Road	375	185	190	\$ 216,684.20		\$ 216,684.20	\$ 109,786.66	\$ 109,786.66
	<b>Sub-total</b>				<b>\$ 778,271.82</b>	<b>\$ 140,129.61</b>	<b>\$ 638,142.21</b>	<b>\$ 321,172.40</b>	<b>\$ 243,635.51</b>
	Engineering & Inspection 15%				\$ 116,740.77	\$ 21,019.44	\$ 95,721.33	\$ 48,175.86	\$ 36,545.33
	<b>Total of work done</b>				<b>\$ 895,012.60</b>	<b>\$ 161,149.05</b>	<b>\$ 733,863.55</b>	<b>\$ 369,348.26</b>	<b>\$ 280,180.84</b>
	<b>FUTURE</b>								
6	Road to complete	375	185	190	\$ 128,020.15		\$ 128,020.15	\$ 64,863.54	\$ 64,863.54
	Engineering & Inspection 15%				\$ 19,203.02	\$ -	\$ 19,203.02	\$ 9,729.53	\$ 9,729.53
	<b>Total of work to be done</b>				<b>\$ 147,223.17</b>	<b>\$ -</b>	<b>\$ 147,223.17</b>	<b>\$ 74,593.07</b>	<b>\$ 74,593.07</b>
	<b>TOTAL COST</b>				<b>\$ 1,042,235.77</b>	<b>\$ 161,149.05</b>	<b>\$ 881,086.72</b>	<b>\$ 443,941.33</b>	<b>\$ 354,773.91</b>

- Note: 1. GST has been added to items # 2 to 6 at a rate of 7%  
 2. GST was already added to the value received for item # 1  
 3. The only item that is to be completed is item # 6 all the remainder are complete.  
 4. Siltation control added to item # 5 Road