

THE RURAL MUNICIPALITY OF WHITEMOUTH

BY-LAW NO. 672/17

BEING A BY-LAW OF THE RURAL MUNICIPALITY OF WHITEMOUTH TO AUTHORIZE THE ENTERING INTO AND EXECUTION OF A DEVELOPMENT AGREEMENT WITH ZULU ENTERPRISES INC.

WHEREAS Section 250(2) of Part 8, Division 1 of The Municipal Act provides in part as follows:

250(2) Without limiting the generality of subsection (1), a municipality may for municipal purposes do the following in part:

- (d) enter into an agreement with one or more of the following regarding anything the municipality has power to do within the municipality: a person, with an agency of the Government of Manitoba or the Government of Canada, or with another municipality, including a municipality in another province, to do with or on behalf of the municipality anything the municipality has the power to do within the municipality;

AND WHEREAS Council has reviewed the Development Agreement between the Rural Municipality of Whitemouth and Zulu Enterprises Inc. for subdivision and development of Pt. N ½ 9-13-11 EPM;

AND WHEREAS the municipal solicitor has reviewed the Development Agreement;

THEREFORE BE IT RESOLVED THAT the Reeve and CAO be hereby authorized to sign the Development Agreement;

AND BE IT RESOLVED THAT the Development Agreement be registered by Caveat against all subdivided titles to the subject lands.

DONE AND PASSED by the Council of The Rural Municipality of Whitemouth in regular session assembled, this 14th day of June, A.D., 2017.



Reeve



Chief Administrative Officer

Read a first time this 24th day of May, A.D., 2017

Read a second time this 24th day of May, A.D., 2017

Read a third time this 14th day of June, A.D., 2017

BETWEEN

RURAL MUNICIPALITY OF WHITEMOUTH
(hereinafter referred to as "the Municipality")

AND

ZULU ENTERPRISES INC.
(hereinafter referred to as "the Developer")

DEVELOPMENT AND SERVICING AGREEMENT

DD West LLP
2200 – One Lombard Place
Winnipeg, MB R3B 0X7

ORVEL L. CURRIE/JENNIFER S. HANSON
Phone: (204) 957-6401
Email: ocurrie@ddwestllp.com
File No. 123330-0017

THIS AGREEMENT made in triplicate this 14th day of June A.D. 2017

BETWEEN

THE RURAL MUNICIPALITY OF WHITEMOUTH
(hereinafter called "the Municipality")

- and -

ZULU ENTERPRISES INC.
(hereinafter called "the Developer")

WITNESSETH THAT:

WHEREAS the lands affected by this Development and Servicing Agreement are situated within the boundaries of the Municipality as described in Schedule "A" and shown outlined on a plan attached as Schedule "B" (hereinafter called the Planned Area);

AND WHEREAS the Developer is the owner or the beneficial owner of the Planned Area;

AND WHEREAS the Developer desires to develop the Planned Area described above for rural residential development purposes (3 new lots and residual parcel);

AND WHEREAS the Developer requires the approval and co-operation of the Municipality to proceed with the development of the Planned Area;

AND WHEREAS the Municipality has the general power and jurisdiction to enter into contracts and agreements with respect to the development of land within its municipal boundaries pursuant to The Municipal Act of Manitoba and has specific power and jurisdiction upon applications for subdivision approval pursuant to the provisions of The Planning Act of Manitoba and requires as part of its approval process minimum standards of construction and design to provide a desired level of amenity and environmental quality;

AND WHEREAS to meet the Municipality's requirements the Developer will have to make pertinent financial and legal arrangements to comply with this Development and Servicing Agreement;

AND WHEREAS the Municipality has approved development of the Planned Area in principle and in conformance with all applicable planning district and or municipal planning by-laws;

AND WHEREAS the Municipality has given its consent to the application for subdivision on the condition that a Development and Servicing Agreement (hereinafter called "Agreement") be entered into between the Municipality and the Developers;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, and of the covenants and Agreements hereinafter set forth and contained, the parties hereto covenant and agree as follows:

ARTICLE 1: PREAMBLE

- 1.1 The Preamble to this Development and Servicing Agreement shall form a part of this Development and Servicing Agreement and the representations therein contained shall constitute the representations of the parties hereto and shall be binding upon them.

ARTICLE 1: DEFINITIONS

- 2.1 For the purposes of this Development and Servicing Agreement, the following definitions shall apply:
 - 2.1.1 "**Approving Authority**" shall mean the Authority that has statutory or legal responsibility for the regulation of construction of any Service.
 - 2.1.2 "**Approved Standards**" shall mean as a minimum, any standards established and set forth in any plans and specifications referenced herein, or subsequently prepared with reference hereto as determined by the Designated Officer.
 - 2.1.3 "**Developer**" where used in this Development and Servicing Agreement, and in addition to its accepted meaning, means and includes an individual, an association, a partnership, or an incorporated company.
 - 2.1.4 "**Designated Officer**" shall mean the Chief Administrative Officer or Development Officer of the Municipality.
 - 2.1.5 "**Engineer and Municipal Engineer**" shall mean the engineer nominated or appointed from time to time by the Municipality or an engineering firm or duly authorized representatives of such firm, nominated or appointed by the Municipality as the consulting engineer or engineers for the purpose of this Development and Servicing Agreement and for the purposes of inspecting and approving the standards of construction set forth herein and the certification of completed work.
 - 2.1.6 "**Engineering Designs and Specifications**" shall mean the plans and specifications referred to in the Schedules hereto and forming part of the within Agreement.
 - 2.1.7 "**Owner**" where used in this Development and Servicing Agreement, and in addition to its accepted meaning, means and includes an individual, an association, a co-operative, a partnership, or an incorporated company.
 - 2.1.8 "**Planned Area**" means all the land identified for development purposes described in Schedule "A" and shown on Schedule "B".
 - 2.1.9 "**Private Services**" shall mean all permanent construction and works built within the Planned Area including but not limited to: culverts, and other utility services, but not including temporary structures created by the Developer in the process of construction and marketing of the Planned Area.

ARTICLE 1: CONTRACT DOCUMENTS

- 3.1 This Development and Servicing Agreement shall consist of the following:
 - 3.1.1 This Development and Servicing Agreement.
 - 3.1.2 Schedule A: Description of the Planned Area.
 - 3.1.3 Schedule B: A plan drawing indicating the Planned Area and intended development as demonstrated deposit plan no. _____.
 - 3.1.4 Schedule C: Drainage plan/s

Any written variation, amendment or addition of or to this Development and Servicing Agreement or any of the Schedules signed by the Developer and the Municipality pursuant to and in accordance with any authority delegated by the Municipality all of which are and shall be binding upon the parties hereto as fully and to the same extent as if set out herein which shall be kept available for inspection in the offices of the Municipality and the Developer.

ARTICLE 1: APPROVAL OF DEVELOPMENT

- 4.1 AGREEMENT TO DEVELOP
 - 4.1.1 The Municipality agrees to allow development of the Planned Area, subject to the provisions contained in this Development and Servicing Agreement.
 - 4.1.2 It is further understood and agreed between the parties hereto that upon the Municipality entering into this Development and Servicing Agreement; it shall not be liable in any manner whatsoever to the Developer in dealing with any aspect relating to the development of the Planned Area other than as set out herein.
 - 4.1.3 It is agreed that this Development and Servicing Agreement shall apply to the entire of the Planned Area unless otherwise stated.
- 4.2 DEVELOPER CONDITIONS PRECEDENT
 - 4.2.1 The following conditions must be satisfied prior to the development of the Planned Area proceeding further:
 - 4.2.1.1 Confirmation is obtained from the Chief Administrative Officer of the Municipality that taxes on the land to be subdivided, for the current year plus any arrears, have been paid or an arrangement satisfactory to Council of the Municipality as been made;
 - 4.2.1.2 Any variance orders required be obtained as necessary to ensure compliance with the Zoning By-law 633/15.
 - 4.2.1.3 The Developer enter into a right-of-way agreement with MTS Inc. with respect to existing and/or future facilities associated with the subdivision as required by MTS Inc.

- 4.2.1.4 The Developer enter into an easement agreement with Manitoba Hydro with respect to existing and/or future facilities associated with the subdivision and provide a plan of right-of-way for easement purposes as required under the Real Property Act.
- 4.2.1.5 The Developer acknowledges that any removal or relocation of Manitoba Hydro or MTS Inc. equipment as a result of the proposed subdivision will be at the expense of the Developer/Owner.
- 4.2.2 No building construction is to commence until all of the following conditions are met, to the satisfaction of the Municipality, by the Developer:
 - 4.2.2.1 The proposed development is serviced by municipal water and private wastewater, and the required fees and levies have been paid by the Developer and/or Owner of the land prior to the issuance of a building permit;
 - 4.2.2.2 Obtain confirmation from the Office of Drinking Water that approval has been obtained for the water infrastructure pursuant to The Drinking Water Safety Act.
 - 4.2.2.3 Manitoba Conservation must be contacted prior to installation of any septic system to ensure compliance with the Manitoba Onsite Wastewater Management System Regulation No. 83/2003.
 - 4.2.2.4 That any riverbank protection measures be consistent with Provincial Land Use Policies 5.1.3(c) and 5.1.4.
- 4.3 GENERAL INSTRUCTIONS
 - 4.3.1 The Developer acknowledges that before commencing any development or work related to the development of the Planned Area, it shall familiarize itself with any and all the Engineering Designs and Specifications, and agrees that all materials and workmanship installed or to be performed by the Developer under this Development and Servicing Agreement shall conform to the latest Municipal and/or Approved Standards and to the satisfaction of the Municipal Engineer and Designated Officer and/or Approving Authority.
 - 4.3.2 The Developer shall obtain all necessary approvals, permits, licenses and consents from each and every Approving Authority having jurisdiction in regard to the development of the Planned Area.
- 4.4 PLAN OF SUBDIVISION
 - 4.4.1 The Developer shall be responsible for all costs and proceedings required to prepare and secure approval and registration of the plan of subdivision.
 - 4.4.2 Nothing herein contained shall constitute the approval by the Municipality or the Province to any plan or plans of subdivision, or any future zoning change or variance desired by the Developer.

4.5 CAVEAT

- 4.5.1 The Developer shall register this Development and Servicing Agreement as a caveat against the Planned Area and provide evidence to the Municipality that this Development and Servicing Agreement has been registered in sequence with the Plan of Subdivision, prior to the issuance of any permits within the Planned Area.
- 4.5.2 Pursuant to Section 151(1) of the Planning Act of Manitoba this Development and Servicing Agreement shall run with the land and binds the Owner(s) of the land affected by it, and the Owner's heirs, executors, administrators, successors and assigns.

ARTICLE 1: SERVICES

- 5.1 The Municipal Engineer/Designated Officer may make regular site inspections to oversee the site preparation and construction work being undertaken and to ensure the conditions of the Development and Servicing Agreement are implemented. The Developer may at their discretion be present during any such inspections. It shall be the responsibility of the Developer to pay the fees and expenses of its own engineer and also the fees and expenses of the Municipal Engineer:
- 5.2 The Developer shall grant to the Municipal Engineer, Designated Officer and their delegates free and uninterrupted access to any and all parts of the Planned Area for the purpose of making inspections. If any material, design or installation does not conform to this Development and Servicing Agreement or to the requirements of the Municipal Engineer or Designated Officer they may stop any further work and order the removal and replacement of the unsatisfactory works.
- 5.3 The Developer undertakes and agrees to replace any defective work or materials as demanded by the Municipal Engineer or designate.

ARTICLE 1: SURVEY MONUMENTS

- 6.1 The Developer shall pay the full cost of installing and maintaining all survey monuments within the Planned Area, to the satisfaction of the Municipal Engineer and the Designated Officer, and in cases where the survey monuments have been disturbed, moved, covered or mutilated in any manner, or destroyed, the Developer shall cause the monuments to be replaced at its expense by a Manitoba Land Surveyor, to the satisfaction of the Municipal Engineer and the Designated Officer.
- 6.2 Prior to issuing the Final Acceptance Certificate, the Developer shall cause to be prepared, at its own cost and expense, a sworn certificate by a Manitoba Land Surveyor attesting that he has rechecked the location of all survey monuments within the Planned Area and that such survey monuments are all located in the proper location.

ARTICLE 1: MUNICIPAL SERVICES

7.1 INSTALLATION OF MUNICIPAL SERVICES

- 7.1.1 The Owner undertakes at its own expense, the construction and completion of the following municipal services in the Planned Area in accordance with this Development and Servicing Agreement and the specifications attached to and forming part of this Development and Servicing Agreement and which have been approved by the Municipality's Designated Officer or Municipal Engineer:

Water

- 7.1.1.1 The Owner shall, at no expense to the Municipality, install and construct a water service connection for Municipal Water to all lots created, constructed to Approved Standards and Municipal Standards, to serve the Planned Area. The Developer shall obtain approval for the water infrastructure from the Office of Drinking Water pursuant to The Drinking Water Safety Act.
- 7.1.1.2 The Owner shall be responsible to maintain the water service connections within the Planned Area in accordance with the Approved Standards and that no wells shall be installed or used within the Planned Area.
- 7.1.1.3 The Owner acknowledges that in providing a water service connection within the Planned Area that it shall be responsible for all costs associated with the construction fees and connection fees to the existing water system of the Municipality

Driveways/Access

- 7.1.1.4 Any access/driveways to permit access to the Lots within the Planned Area may be installed by the Municipality and shall be constructed in accordance with the directions and specifications of the Municipality along with culverts to be installed so as not to impede drainage. The Owner shall be required to pay the standard permit fee if applicable.
- 7.1.1.5 All approaches shall be surfaced as determined and approved by the Designated Officer in accordance with the Municipal Standards.

Drainage

- 7.1.1.6 The Developer undertakes and agrees to prepare a lot drainage plan including the design of drainage swales and site gradients in relationship to adjacent drains and roadside ditches. Once the Municipal Engineer has received a plan in satisfactory form to the Municipal Engineer, he shall approve the said plan, which shall be and form part of this Development and Servicing Agreement as an attachment referred to as Schedule "C". Prior to the commencement of any drainage works within or external to the Planned Area the Municipal Engineer and Designated Officer shall be notified of the said drainage work.

- 7.1.1.7 The Owner shall, at no expense to the Municipality, install surface water drains as set out in the approved plans to serve the Planned Area and adjacent lands. The Developer or subsequent Owner shall construct all necessary swales, drains and/or ditches within the Planned Area that would affect the lot prior to the issuance of any building permits for the lot within the Planned Area.
- 7.1.1.8 The Owner shall construct drainage ditches, or improve existing drainage ditches including the re-grading of the ditches external to the development, and setting of culverts, as well as any and all other construction or reconstruction as may be included in this Development and Servicing Agreement or attached schedule, or as required by the Municipal Engineer, at the cost of the Developer or subsequent Owners, which responsibility shall be discharged in a good and workmanlike manner in accordance with the concept plans as approved by the Designated Officer and attached as a schedule to this Development and Servicing Agreement in order that the drainage system both within and external to the Planned Area shall comply with the said specifications to the satisfaction and approval of the Municipal Engineer.
- 7.1.1.9 The Owner shall, at no expense to the Municipality, install and construct any required water control works (drains, culverts, dykes, dams, etc.) to Approved Standards and/or Municipal Standards as the case may be. The Developer or subsequent Owner shall obtain approval and licenses for the water control works as required under the Water Rights Act.

7.2 PRIVATE SERVICES CONSTRUCTION

- 7.2.1 Following final approval and the registration of the plan of subdivision in the Winnipeg Land Titles Office, the Developer shall construct at its sole expense, required Private Services in accordance with the Approved Standards, Municipal Standards and Environmental Standards and to the satisfaction of the Designated Officer and any applicable Approving Authority as the case may be.
- 7.2.2 Wastewater
 - 7.2.2.1 The Developer or subsequent Owners of any Lot in the Planned Area, shall, at no expense to the Municipality, install and maintain a private on-site wastewater service for that individual Lot;
 - 7.2.2.2 The installation, construction and operation of such private sewage disposal system will be as determined by Manitoba Conservation and in accordance with the Manitoba Onsite Wastewater Management System Regulation No. 83/2003;
 - 7.2.2.3 The Developer undertakes and agrees to inform prospective purchasers that all sites within the Planned Area shall be serviced with a private sewage disposal system as determined by Manitoba Conservation and in accordance with the Manitoba Onsite Wastewater Management System Regulation No.

83/2003;

7.2.2.4 The Owners shall be responsible for all costs associated with the installation and the maintenance of the private sewage disposal system.

7.2.3 Wells

The Developer shall, if required by the Designated Officer, at no expense to the Municipality, cap any existing abandoned well or temporary well located within the Planned Area and the well shall be sealed by a licensed well water driller following provincial guidelines and a copy of the abandonment well report shall be delivered to the Designated Officer in the Planning and Development Department prior to the issuance of any building or development permits for the Planned Area.

7.2.4 Hydro and Telephone (Utility or Utilities)

The Developer or subsequent Owner shall, at no expense to the Municipality, cause to be installed, all hydro and telephone services to the Planned Area in accordance with the instructions and directions of the Approving Authority for the utility and to the satisfaction of the Designated Officer.

7.3 CONTROLS OVER INSTALLATION OF MUNICIPAL SERVICES

- 7.3.1 The Developer agrees that where in executing municipal services and works provided for in this Development and Servicing Agreement any of such improvements, services and works which are to be maintained by the Municipality, will be installed across lands owned by the Developer, the Developer shall, at its sole cost and expense, at the request of the Municipality obtain and provide the Municipality with easements in a form satisfactory to the Designated Officer, to enable the Municipality to enter upon said lands and service, repair and otherwise deal with, as and when necessary, such municipal services, improvements or works as may be located on, through or under the said lands.
- 7.3.2 The Developer or any future owner of any lot in the Planned Area covenants and agrees not to permit occupancy of any building erected on any lot in the Planned Area until such building lot has been developed in accordance with this Development and Servicing Agreement and is satisfactory to the Engineers and the Municipality.
- 7.3.3 No building, structure, fixture or erection of any kind shall be erected, located, moved on any lot within the Planned Area unless the plans, specifications and locations thereof as indicated by a site plan, including the distances from the front, side and rear yards shall have been first submitted to, and the approval in writing by the Designated Officer has been obtained, and no such building or other erection shall be constructed or placed on a lot otherwise than in conformity with such plans, specifications and site plans. No building permit shall be issued until such time as the Designated Officer or Municipal Engineer has certified that the drainage, and

any other required services as determined by the Municipality have been installed and are acceptable for service.

- 7.3.4 The Developer shall not proceed with the installation of any of the municipal services or buildings to be constructed within the Planned Area until:
 - 7.3.4.1 The relevant plan of subdivision has been approved by the Municipality and registered in the appropriate Land Titles Office.
 - 7.3.4.2 All lands which require a variance have in fact received the proper variance.
 - 7.3.4.3 Detailed engineering plans and specification of the municipal services and improvements to be constructed within the Planned Area as required by this Development and Servicing Agreement have been approved by the Designated Officer and accepted by the Developer.
 - 7.3.4.4 The Developer has paid to the Municipality the required fees, levies and deposits as provided herein.
- 7.3.5 The Developer undertakes to provide the Designated Officer with five (5) days notice prior to commencing any construction work in the Planned Area and to provide notice forty-eight (48) hours prior to the recommencement of construction in the Planned Area if said construction work has been interrupted by a period of fourteen (14) days or longer.
- 7.3.6 The Designated Officer shall be notified forty-eight (48) hours prior to final inspection of works being conducted by the Municipality's Engineers and the Municipality has a right to have a representative present at such final inspection.

7.4 CONNECTION TO MUNICIPAL SERVICES

In order to enable the Developer to carry out and perform the work provided for in this Development and Servicing Agreement, the Municipality covenants and agrees, provided that the Developer pays all costs in connection therewith, to permit the Developer to tie into and use the Municipality's water system for the Planned Area.

7.5 OWNERSHIP OF MUNICIPAL SERVICES

All Municipal Services and local improvements that the Developer is responsible for, installing pursuant to this Development and Servicing Agreement, shall be installed by the Developer at its sole cost and expense. The Municipality acknowledges that the costs of such Municipal Services, to be installed by the Developer under this Development and Servicing Agreement, are being paid in effect as a prepayment of local improvement taxes which would otherwise be levied for such services; provided that the Developer hereby covenants and agrees that upon the completion of such Municipal Services and at the request of the Municipality, the Developer shall convey, set over and assign unto the Municipality, or the Municipality's nominee, free and clear in perpetuity, title to such local improvements and Municipal Services so installed without any cost to the Municipality, except any Private Services which must remain as constructed in accordance with the approved plans and specifications and as approved by the Designated Officer and shall remain the responsibility of the Developer or each individual lot owner, and the Developer shall have no

further claim or right thereto other than such claim or right as accrues to the Developer as an owner of land abutting on streets. However, the parties covenant and agree that the Developer's obligation to repair and maintain same, shall remain in full force and effect during the terms provided in this Development and Servicing Agreement.

7.6 QUALITY OF INSTALLATION OF SERVICE

7.6.1 The Developer agrees that all Municipal Services installed pursuant to the terms of this Development and Servicing Agreement shall be to the satisfaction of the Designated Officer.

7.6.2 If, after the Developer has commenced development of the lots on the Planned Area, but before the Municipal services have been assumed by the Municipality, any of the Municipal services provided by the Developer do not function properly and, in the opinion of the Designated Officer, if emergency repairs are necessary to be made to prevent damage or hardship to any persons or any property, the Municipality shall make whatever repairs it deems necessary and the Developer shall pay to the Municipality, upon demand, the cost of work and materials required in respect of the repairs.

7.7 MAINTENANCE

7.7.1 The Developer agrees to maintain to the satisfaction of the Designated Officer and at its own expense, all of the Municipal Services together with any other installations which have been installed pursuant to this Development and Servicing Agreement. Such maintenance shall continue from the date of installation of such Municipal Service until approved in writing by the Designated Officer or until a final completion certificate under this Development and Servicing Agreement.

7.7.2 The Developer shall be responsible for the ongoing maintenance of any existing roads or drainages affected by the development during the construction period and also all new infrastructures as set out in this Development and Servicing Agreement.

7.7.3 The Municipality will carry out repairs, maintenance or cleanup to streets, or land drainage system at the Developer's expense if such repairs, maintenance or cleanup are not carried out by the Developer within a sufficient timeframe or in the event of an emergency, both of which are at the discretion of the Designated Officer.

ARTICLE 1: DEVELOPMENT OF PLANNED AREA

8.1 PLANNED AND ORDERLY DEVELOPMENT OF THE PLANNED AREA

8.1.1 In order to ensure orderly development of the Planned Area, the Developer agrees to proceed with the installation of the municipal services in an orderly sequence and as directed by the Designated Officer and the Municipal Engineer.

8.1.2 The said lands described in Schedule "A" will be registered as a single Plan of Subdivision.

8.1.3 The Developer covenants and agrees that it or any person claiming title through or from it, or under its authority will not apply for one or more building permits to

construct buildings and related accessory buildings on any lots in the subdivision until all fees and outstanding invoices relating to the subdivision are paid in full and all utilities and infrastructure is installed to create a serviceable building site to the satisfaction of the Designated Officer.

8.2 SALE OF LOTS

8.2.1 The Developer agrees that lots in the Planned Area may not be sold, transferred or otherwise conveyed before the lots are serviceable by telephone and hydro.

ARTICLE 1: RESTRICTIONS AND REGULATIONS

9.1 It is understood and agreed that the following land use restrictions and regulations shall apply to the lots established within the Planned Area:

- 9.1.1 any future development or building construction is limited to development to outside the flood risk areas;
- 9.1.2 any future building construction or development of all and any permanent structures is undertaken with the full knowledge of the flood hazard and potential erosion and/or embankment instability hazards, and in strict accordance with the Hazard and Flood Risk Policies of the Whitemouth Reynolds Planning District Development Plan;
- 9.1.3 the developer and subsequent owners acknowledge that the Municipality has a large and active agricultural sector and activities carried out in accordance with the Farm Practices Guidelines for Manitoba and may from time to time create inconveniences such as dust, noise, odour, and other such similar inconveniences and such inconveniences will not be considered a nuisance;
- 9.1.4 No dwellings, buildings or structures shall be established, erected, located or moved onto the lot within the Planned Area and no building permit shall be issued for any building or structure unless and until plans, specifications and proposed location on site have been submitted to and approved by the Municipal Development Officer or his designate, with consideration being given that as a minimum all new permanent structures should be constructed in an area which was not flooded during the 1997 spring flood as indicated in the 1997 aerial photograph and
- 9.1.5 The Developer and any subsequent owners acknowledge that the removal of the existing trees and vegetative cover along the river bank is prohibited and riverbank protection measures are to be utilized and be consistent with Provincial Land Use Policies 5.1.3(c) and 5.1.4; Existing tree and vegetative cover should be preserved to reduce erosion and maintain bank stability;
- 9.1.6 The Developer covenants and agrees to comply with all current zoning and building by-laws, statutes, building codes, regulations, and agreements governing zoning and building in the Municipality and in the Planned Area;
- 9.1.7 The Developer/Owner shall comply with the laws of the Province of Manitoba and the regulations enacted pertaining to any aspect of development and shall obtain all approvals required there under;

- 9.1.8 At no time shall the Developer, contractors or an Owner impede any provincial or municipal road with any construction materials. The Municipality shall give reasonable notice (not less than 2 hours) and thereafter if the road remains impeded the Municipality shall remove the impediment and all the costs associated for the removal shall be borne by the Developer or Owner of the lot;
- 9.1.9 The Developer, contractors or an Owner shall be responsible to control and to initiate clean-up of the litter and refuse generated by the contractors for this development during installation of the Municipal Services and the Private Services until completion of all construction including building construction. The clean-up of litter and refuse shall be done on a regular basis as determined by the Designated Officer. This shall include initiating action and assuming any costs in remedying the situation to the satisfaction of the Designated Officer.
- 9.1.10 No building waste or other material of any kind shall be dumped or stored on any lot within the Planned Area except clean earth for the purpose of leveling in connection with the erection of a building thereon or the immediate improvement of the grounds;
- 9.1.11 The Developer and/or Owner shall not remove any topsoil from the Planned Area without prior approval by the Designated Officer of the Municipality;
- 9.1.12 No work or development, including excavations or landscape improvements, shall take place within the Planned Area without application, being made to the Designated Officer and his written approval to proceed being obtained.

ARTICLE 10: PERFORMANCE AND GUARANTEES

- 10.1 The Developer shall indemnify and save harmless the Municipality from and against all claims for damages arising from the installation of all works and infrastructure referred to in the within Agreement. It shall be the obligation of the Developer to guarantee the quality of workmanship and material to the Municipality.
- 10.2 The Developer shall, and does hereby agree to, indemnify and save the Municipality harmless from and against all loss, claims, costs (including court costs), expenses and professional fees paid or incurred by the Municipality arising out of or related to any duty or obligation imposed on the Municipality by The Builders' Liens Act , The Workers Compensation Act and The Workplace Safety and Health Act in respect of any work carried out by or on behalf of the Developer pursuant to this Development and Servicing Agreement, or any work carried out by or on behalf of the Developer within and to serve the Planned Area.
- 10.3 Nothing herein contained shall be construed so as to make the Developer the agent of the Municipality, it being distinctly understood and agreed that the Developer shall execute, carry out and implement the improvements, works and services referred to in this

Development and Servicing Agreement on its own behalf in a safe and prudent manner. Accordingly, the Developer hereby agrees to and does indemnify and save harmless the Municipality from and against all claims, demands, actions, sums, liabilities, obligations, losses or suits of any nature or kind whatsoever, whether at law or equity arising at any time during the currency of this Development and Servicing Agreement out of any matter or thing provided to be done or permitted to be done by the Developer under the terms of this Development and Servicing Agreement, provided that nothing shall extend this indemnity to any act or thing done by the Municipality or omitted to be done by the Municipality.

ARTICLE 10: FEES AND LEVIES

- 11.1 The Developer agrees to pay the Municipality the Administration Fee and the Capital Water Levy (connection fee) as may be required by by-law (the "Fees"). Such payments are made in lieu of any requirements, which the Municipality might have placed on the Developer, over and above the requirements of the Developer set forth herein. These Fees shall be paid in accordance with paragraph 7.2 as follows:

Administration Fee: \$200.00 / per lot of the Planned Area

Shall be paid by the Developer upon execution of this Development and Servicing Agreement.

Capital Water Levy: \$10,000.00/ per lot of the Planned Area

Shall be paid by the Developer or Owner upon completion of installation and hook-up to the municipal water services.

- 11.2 The Developer shall be responsible to reimburse to the Municipality any costs incurred by the Municipality for professional and legal services rendered that relate to this development.

ARTICLE 10: EXPENSES OF THE MUNICIPALITY

- 12.1 The Developer, contractor and/or Owner shall be responsible for all costs, including but not limited to professional fees, consultant fees, registrations, incurred by the Municipality in regard to it ensuring the proper development of the Planned Area including without limitation, the costs of the Municipality incurred relative to the preparation and performance of the terms of this Development and Servicing Agreement including the cost of any action, hearing, court or arbitration proceeding on behalf of the Municipality for the purposes of enforcing the terms of this Development and Servicing Agreement hereof, or to defend the position of the Municipality, whether or not the Municipality is successful in the action or proceeding, with one exception that being where the action or proceeding is against the Developer and the Developer is successful in its defense or the action or proceeding.
- 12.2 The Developer, contractor and/or Owner shall be responsible for all costs of the Municipality related to the amendment or attempted amendment of any and all zoning by-laws, development plans, or matters of similar nature within the jurisdiction of the

Municipality following the execution of this Development and Servicing Agreement and for this purpose Section 16 shall also apply to this clause.

- 12.3 The Developer hereby further covenants, warrants, undertakes and agrees:
- 12.3.1 during the term of this Development and Servicing Agreement, to indemnify and save harmless the Municipality from and against all public liability and property damage claims and personal damage claims arising in respect of construction, installation or manner or method of such construction or installation of any improvement or Private Service or Municipal Service and work to be constructed by the Developer hereunder, or in respect of any defect therein or thereby, together with all costs, charges and expenses arising by reason of or in connection with any such claims, and the Developer hereby agrees to procure and maintain at its own expense, or if the Municipality consents, to cause any contractor installing any such improvement, work or service to procure and maintain at its own expense, a policy of public liability and property damage insurance in an amount satisfactory to the Municipality, and to furnish to the Municipality a copy of each policy, showing loss payable thereunder to the Developer, and/or the sub-contractor, and/or the Municipality as their respective interests may appear; provided that nothing in any other clause herein shall extend the indemnity to any act, matter or thing done, or omitted to be done by the Municipality, or its agents, servants or employees, or invitees, provided that nothing in this Development and Servicing Agreement shall deem the Developer or any agent, employee, or servant of the Developer to be an agent, servant, employee or invitee of the Municipality.
- 12.4 Nothing herein contained shall be construed so as to make the Developer the agent of the Municipality, it being distinctly understood and agreed that the Developer shall execute, carry out and implement the improvements, works and services referred to in this Development and Servicing Agreement on its own behalf in a safe and prudent manner. Accordingly, the Developer hereby agrees to and does indemnify and save harmless the Municipality from and against all claims, demands, actions, sums, liabilities, obligations, losses or suits of any nature or kind whatsoever, whether at law or equity arising at any time during the currency of this Development and Servicing Agreement out of any matter or thing provided to be done or permitted to be done by the Developer under the terms of this Development and Servicing Agreement, provided that nothing shall extend this indemnity to any act or thing done by the Municipality or omitted to be done by the Municipality.

ARTICLE 10: DEFAULT

- 13.1 The Developer covenants and agrees that should it be in default of any of the payments required to be made to the Municipality, pursuant to the terms of this Development and Servicing Agreement, then the Developer shall pay interest to the Municipality at a rate of 5% per annum, calculated semi-annually from the date upon which payment is invoiced by the Municipality to the Developer until the date of payment by the Developer to the

Municipality.

- 13.2 In addition to the remedies set forth in the preceding paragraph, if the Developer fails to comply with any of the terms of this Development and Servicing Agreement, then the Municipality may at its discretion, provide the Developer with a written notice that if such obligation is not rectified in 30 days from the date of notice, including the date of receipt and the 30th day, then the Municipality shall be at liberty to do any, all or any combination of the following:
 - 13.2.1 enter upon the Planned Area and complete such obligations and any expenses relating thereto, which may be incurred by the Municipality by either payment to third parties or by its own employees, shall be billed by the Municipality to the Developer and it shall be the responsibility of the Developer to make payment of same.
 - 13.2.2 collect such amounts owing to the Municipality in the same manner as a tax may be added, collected or enforced under *The Municipal Act* and add amounts owing to the Owner's property taxes.

ARTICLE 10: ARBITRATION

- 14.1 Any and all differences, disputes, claims or controversies arising out of or in any way connected with this Development and Servicing Agreement and including, without limitation, its negotiation, execution, delivery, enforceability, performance, breach, discharge, interpretation and construction, existence, validity and any damages resulting there from or the rights, privileges, duties and obligations of the parties under or in relation to this Development and Servicing Agreement other than the design and specification of Municipal Services or any enforcement or default of the Agreement, which cannot be resolved by the parties acting in good faith to do so, shall be referred to arbitration under the Arbitration Act (Manitoba) or any successor legislation in effect at the time of the arbitration.

ARTICLE 15: GENERAL CONDITIONS

- 15.1 It shall be the Developer's responsibility to pay all municipal taxes which have been levied against the Planned Area at the time of registration of the Plan.
- 15.2 The Developer undertakes to provide the Municipality with five (5) days notice prior to commencing any construction work in the Planned Area and to provide said notice forty-eight (48) hours prior to the recommencement of construction in the Planned Area if said construction work has been interrupted by a period of fourteen (14) days or longer.
- 15.3 The Municipality shall be notified forty-eight (48) hours prior to the final inspection being conducted and the Municipality has a right to have a representative present at such final inspection.
- 15.4 Prior to the Developer receiving final written approval from the Designated Officer for the Planned Area, it must provide the Municipality with all inspection and approval certificates, test reports, warranties, maintenance manuals, operating instructions, as-built

drawings and other requirements as specifically required by the contract documents, and as such materials must be to the Municipality's satisfaction.

- 15.5 If any notice is required to be given by the Municipality to the Developer or by the Developer to the Municipality with respect to this Development and Servicing Agreement, such notice shall be mailed or delivered to:

As to the Municipality:

The Rural Municipality of Whitemouth
(Attn: Chief Administrative Officer)
Box 248
Whitemouth, MB R0E 2G0

As to the Developer:

Zulu Enterprises Inc.
Attn: Kevin and Nicola Hughes
Box 46 Grp 2 RR1
Anola, MB R0E 0A0

or such other address as the Developer has supplied to the Designated Officer in writing, and any such notice mailed or delivered shall be deemed good and sufficient notice under the terms of this Development and Servicing Agreement. Such notice shall be deemed to have been given: in the case of personal delivery on the date of delivery; where given by post, on the third business day following the posting thereof; and, where sent by facsimile transmission, the date of transmission if the transmission occurs prior to 4:00 p.m. on a business day and on the business day next following the date of transmission in any other case. It is understood that in the event of a threatened or actual disruption in the postal service in the postal area through which such notice must be sent, notice must be given personally or by facsimile transmission.

ARTICLE 10: MISCELLANEOUS PROVISIONS

- 16.1 The Developer hereby covenants and agrees for itself and its successors and assigns, that it will not, in any way, attempt to impeach the validity of this Development and Servicing Agreement, or any part hereof, or in any way challenge or attempt to impeach the capacity of the Municipality to enter into this Development and Servicing Agreement, and all the provisions herein contained, provided that nothing herein shall prevent either party hereto from litigating their respective rights under this Development and Servicing Agreement.
- 16.2 In the event that any provision of this Development and Servicing Agreement shall ever be found by a court of competent jurisdiction to be void, invalid or unenforceable it shall be severable from the rest of the Development and Servicing Agreement, and the rest and remaining portion of the Development and Servicing Agreement shall be valid and shall remain in full force and effect.
- 16.3 Time shall be the essence of this Development and Servicing Agreement.
- 16.4 The headings of the paragraphs contained in this Development and Servicing Agreement are hereby stated to be inserted only for convenience and in no way shall define, limit or restrict, or describe the scope or intent, nor effect in any way whatsoever, the terms and

SCHEDULE "A" to BY-LAW NO. 672/17

Description of Planned Area

Roll Number: 154400

Subdivision File No.: 4203-16-7287

Legal Description: ALL THAT PORTION OF THE N ½ OF SECTION 9-13-11 EPM LYING NORTH AND WEST OF THE WHITEMOUTH RIVER WHICH LIES SOUTH AND EAST OF THE SOUTHEASTERN AND EASTERN LIMITS OF ROAD PLAN 2402 WLTO EXC OUT OF THE NW ¼ OF SAID SECTION, FIRSTLY: THE SLY 210 FEET PERP SECONDLY: PLAN 17655 WLTO AND THIRDLY: PUBLIC ROAD PLAN 8810 WLTO AND EXC OUT OF THE NE ¼ OF SAID SECTION: ROAD PLANS 2970 AND 8810 WLTO ALL OF THE LAND ABOVE DESCRIBED BEING SUBJECT TO THE RESERVATIONS AND PROVISIOES CONTAINED IN THE GRANT FROM THE CROWN

Civic Address: Not Applicable

Certificate of Title: 2823492/1

Acreage: +/- 77.24 acres

Registered Owners:
Zulu Enterprises Inc
Box 46, Group 2, RR1
Anola, MB R0E

SCHEDULE "B" to BY-LAW NO. 672/17

A plan drawing indicating the Planned Area and intended for development as demonstrated deposit plan no. _____.

Part of the N Half of 9-13-11 EPM

Legend

- Assessment Parcels
- Title Boundary
- Proposed Subdivision

File Number: 4203-16-7287 **Date:** May-02-17

Applicant: Zulu Enterprises Inc.

Notes:

Existing Parcel:

- CT No. 2823492
- Roll No. 154400
- Total Area = 77.24 acres

Proposed Subdivision:

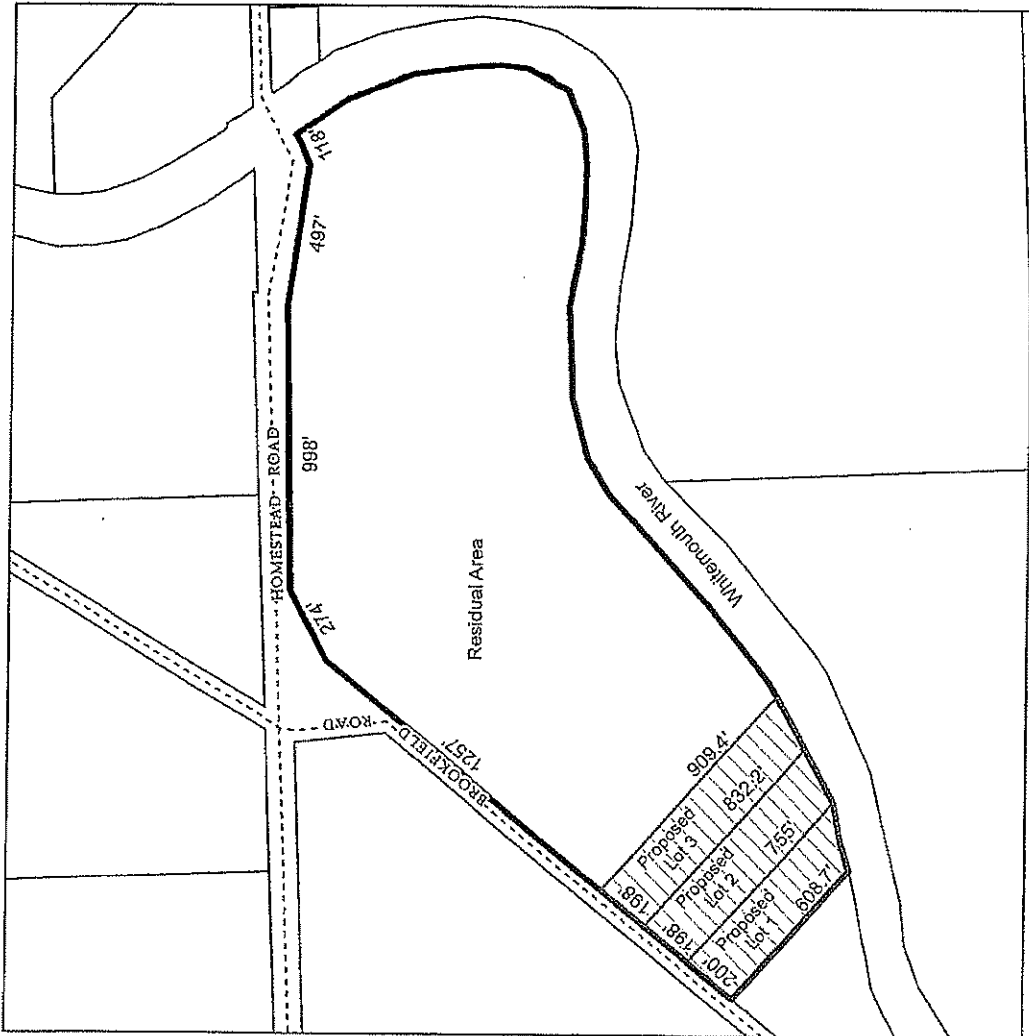
- Lot 1 = 3.1 acres
- Lot 2 = 3.61 acres
- Lot 3 = 3.95 acres
- Residual Area = 60.58 acres

Zoning By-Law: "RM1" Rural/Resort Mixed Zone

Development Plan: Rural Mixed Use Corridor 1 Policy Area

Approving Authority: *[Signature]* **Date:** _____

Proposed Subdivision- RM of Whittemouth



Map Not to Scale

For Discussion Purposes Only



provisions of this Development and Servicing Agreement.

- 16.5 Wherever the singular and masculine are used throughout this Development and Servicing Agreement, the same means plural, feminine, or neuter as the context requires.
- 16.6 The terms of this Development and Servicing Agreement shall be from the date of the signing hereof until the covenants of the Developer have been performed unless sooner terminated as provided herein, providing however this Development and Servicing Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, successors and assigns or subsequent Owners of each of the parcels in the Planned Area.
- 16.7 No assignment of all or any part hereof by the Developer shall be made except with the written approval of the Municipality. It is agreed that the said approval shall not be unreasonably withheld.

IN WITNESS WHEREOF THE RURAL MUNICIPALITY OF WHITEMOUTH has caused its Corporate Seal to be affixed hereto and attested by the proper officers in that behalf, this 14th day of June, A.D. 2017.

RURAL MUNICIPALITY OF WHITEMOUTH

Per:

[Signature]
Reeve

Per:

Colleen Johnson
Colleen Johnson, C.A.O.

IN WITNESS WHEREOF ZULU ENTERPRISES INC. has caused its Corporate Seal to be affixed hereto and attested by the proper officers, this 14th day of June A.D. 2017.

ZULU ENTERPRISES INC.

Per:

[Signature]

Per:

N. Hughes

Margaret Skndt
Witness