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**PRE-SERVICING AGREEMENT**

**THIS AGREEMENT** made this 29 day of August 2022

BETWEEN:

**PARKBRIDGE LIFESTYLE COMMUNITIES INC.**

(hereinafter referred to as the "Developer")

- and -

**THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS**

(hereinafter referred to as the "Town")

**WHEREAS** the Developer warrants that it is the registered owner of Lands;

**AND WHEREAS** the Local Planning Appeal Tribunal by a decision dated April 24, 2020 has given approval to Draft Plan of Subdivision 42T-2016-10 to provide for the development and servicing of the Lands in accordance with the Conditions;

**AND WHEREAS** the purpose of this Agreement is to provide for the installation of the Pre-Servicing Works on the Lands in advance of the execution of a Subdivision/Condominium Agreement and the Town giving Final Approval or Assuming the Works

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the covenants hereinafter expressed, other good and valuable consideration and the sum of TEN DOLLARS (\$10.00) of lawful money of Canada now paid by each of the Parties hereto to each of the other Parties hereto, the receipt whereof is hereby acknowledged, the Parties hereto hereby covenant and agree with each other as follows:

**PART I**

**DEFINITIONS AND BASIS OF AGREEMENT**

**1.1 Definitions**

In this Agreement, including the recitals, the following terms shall have the meanings set out below, unless otherwise redefined or where the subject matter or context requires another meaning to be ascribed:

"Accepted Plans" means all the studies, reports, designs, plans, drawings and specifications for the installation of the Pre-Servicing Works, the originals of which have been signed and stamped in red ink "Accepted for Construction-Pre-Servicing Only" by the Town and are described in Schedule "B". Where the subject matter or context of a section of this Agreement requires reference to an individual Accepted Plan, it may be referred to by its individual name;

"Agreement" means this agreement;

"Applicable Laws" means all statutes, laws, by-laws, regulations, ordinances, orders and requirements, including the Engineering Standards, of the Town and all Government Authorities, at any time or from time to time in force as applicable to the Lands or the design, installation, maintenance and repair of any part of the Works or the erection of buildings or structures on the Lands;

"Approval Authority" means the County of Grey;

"Assumption" means the passing of an Assumption By-law by the Town after which the Town shall assume all ownership and responsibility over the Public Works, in accordance with the Subdivision Agreement;

"Business Day" means any day other than Saturday, Sunday or any statutory or civic holiday in Ontario;

"CBO" means the person holding the title of Chief Building Official for the Town or his designate;

"Composite Utility Plan" is as defined in the Engineering Standards;

"Conditions" means the conditions described in Schedule "A" imposed by the Approval Authority in accordance with the provisions of the Planning Act with respect to the approval of the Draft Plan;

"Consultants" has the meaning ascribed to it in Section 2.2;

"County" means the County of Grey;

"Daylight" means to excavate or expose underground infrastructure or Works such that said infrastructure or Works can be inspected and evaluated.

"Default" means any default by the Developer in the performance of its obligations under this Agreement;

"Director" means the person holding the title of Director of Planning and Development Services for the Town or his designate;

"Draft Plan" means the draft approved plan as described in Schedule "A" and in the Conditions;

"Engineer" means a professional engineer who holds a Certificate of Authorization for municipal engineering applications from the Association of Professional Engineers of Ontario;

"Engineering Standards" means the Town's approved design criteria, design standards, specifications, maintenance standards and procedures for the design, installation and maintenance of the Works in effect on the date of this Agreement;

"Final Approval" means the release by the Town of the final plan of subdivision to the Approval Authority for final approval and registration under the Planning Act;

"Government Authority" means any government authority or agency, including conservation authorities and the Niagara Escarpment Commission that are specifically referred to in the Conditions or have jurisdiction over the Lands or the design, installation or maintenance of any part of the Pre-Servicing Works;

"Highway" means a highway as described in the *Municipal Act 2001*, SO 2001, c. 25, and being under the jurisdiction of the Town and includes a highway under the jurisdiction of the Town which has not been assumed for public use by a by-law of the Town;

"install" shall also mean do, provide, construct, reinstall or reconstruct;

"Lands" shall mean the lands described in Schedule "A";

"Landscape Architect" means a landscape architect registered with the Ontario Association of Landscape Architects;

"lot" or "Lot" means a lot or block shown on a Plan;

"Notice" means any written letter, notice, demand, request, direction or instructions given and received in accordance with the provisions of Section 6.3;

"OBC" means the Building Code Act, 1992, S.O.1992 c.23 and all regulations thereto;

"Parties" mean the Developer and the Town;

"Person" includes a corporation and the successors, assigns, heirs, executors, administrators and other legal representatives of a person;

"Plan" means the final plan of subdivision which the Developer proposes to register in accordance with the provisions of the Planning Act for the purpose of subdividing the Lands;

"Planning Act" means the *Planning Act*, R.S.O. 1990, c. P.13, as amended or any successor statute;

"Power Utility" means Hydro One Networks Inc. or EPCOR Electricity Distribution Ontario Inc., whichever has jurisdiction to supply electric power to the Lands;

"Pre-Servicing Certificate" has the meaning ascribed to it in Section 3.11;

"Pre-Servicing Works" means the part of the Works shown on the Accepted Plans described in Schedule "B" and subject to any limitations itemized in Schedule "C";

"Private Works" are those services or Works which will be installed, maintained and owned by the Developer or their successor, in perpetuity;

"Public Works" means those Works which are to be owned, operated and maintained by the Town following Assumption in accordance with the Subdivision Agreement;

"Security" has the meaning ascribed to it in Section 4.2;

"Street Lighting System" means a minimum standard for street lighting which shall be LED lighting set on 9 m sectional steel or concrete poles. Each light must be controlled by a dusk to dawn photoelectric cell. Power feed shall be completely underground. The lights shall generally be placed on the south or east side of the road. Particular care shall be taken to adequately illuminate the intersections. Under no circumstances shall street light poles be located in the front slope or centreline of ditches. Architectural style luminaries and poles will be considered on a case by case basis. The Town reserves the right to limit the number of alternative styles and types within the Town.

"Subdivision Agreement" has the meaning ascribed to it in Section 2.1;

"Town Lands" means all lands and easements owned by the Town, including Highways under the jurisdiction of the Town;

"Treasurer" means the person holding the title of Director of Financial and Information Services (Treasurer) for the Town or his designate;

"Utility Services" means all of the utility services required for the servicing of the Lands including hydro-electric, gas, telephone, cable television and telecommunication, but does not include the Street Lighting System or other lighting included in the Public Works and the Private Works;

"Works" means all of the works, grading and drainage, services, facilities, landscaping, fencing, matters and things shown on the Accepted Plans or referred to in this Agreement, including but not limited to the Pre-Servicing Works, the Public Works, the Street Lighting System, and the Utility Services, which works are required by the Town, the utility corporations, including the Power Utilities and all Government Authorities to be designed, installed and done by the Developer for the subdivision, development and servicing of the Lands, and includes the Public Works. Where the subject matter or context of a section

of this Agreement requires reference to an individual component of the Works, it may be referred to by its individual name;

"Works Fee" is the fee to be paid by the Developer to the Town in accordance with the Town's Fees and Charges By-law, as amended, and as outlined in Schedule "D" hereto;

All other capitalized terms shall have the meanings ascribed to them in this Agreement.

## **1.2 Interpretation of Agreement**

- (a) The part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (b) Unless the context otherwise requires, in this Agreement words importing the singular include the plural and vice versa and words importing a gender include all genders.
- (c) Every provision of this Agreement by which the Developer is obligated in any way shall be deemed to include the words "at the expense of the Developer" unless the context otherwise requires.
- (d) References herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto.
- (e) All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants.
- (f) Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference.
- (g) The Parties agree that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.
- (h) All references to parts, sections, clauses, paragraphs and schedules unless otherwise specified are references to parts, sections, clauses, paragraphs and schedules of this Agreement.
- (i) The Conditions, the Engineering Standards and the Accepted Plans are incorporated into and form part this Agreement and shall have the same force and effect as if the information shown on them were contained in the body of this Agreement.

## **1.3 Administration of Agreement**

- (a) This Agreement shall be administered on behalf of the Town by the Director, unless another Town official is specifically referred to in this Agreement for such purposes. Where under the terms of this Agreement, decisions, approvals, Notices and certificates are to be made, given or issued by the Town, such decisions, approvals, Notices and certificates shall be made, given or issued by the Director or other Town official, in their sole and absolute discretion, acting reasonably.
- (b) Where the Town corresponds with the Consultants with respect to any matter arising out of this Agreement and provides a copy of such correspondence to the Developer, such correspondence shall be deemed to be correspondence received by the Developer.
- (c) The Parties acknowledge that Parts I to VI of this Agreement constitute the Town's Standard Form of Pre-Servicing Agreement and that some provisions of Parts I to VI may not apply to the installation of the Pre-Servicing Works shown on the Accepted Plans. This Agreement shall be

administered by the Town on the understanding that the terms contained herein will only be given such force and effect as relate to the Pre-Servicing Works and that, with respect to any other matter, such provisions will not apply and the parties shall not be required to amend this Agreement in order to delete the non- applicable provision.

- (d) Notwithstanding any other term contained herein, the provisions of this Agreement shall apply only insofar as they relate to the Pre-Servicing Works. For certainty, notwithstanding as may otherwise be set out herein, the parties expressly acknowledge and agree that this Agreement does not apply to any of the Works which are not the Pre-Servicing Works.
- (e) Where the provisions of this Agreement provide the Town the right or obligation to take steps to remediate, protect, construct, or otherwise step into the shoes of the Developer upon the Developer having done or failed to do something required by this Agreement, including an event of Default, then such provision shall be read so as to be contingent upon the Town first giving Notice to the Developer of such failure, and requiring the Developer to rectify the failure within twenty (20) Business Days from receipt of such Notice. This paragraph 1.3(e) shall not apply in cases of emergencies where a real and imminent threat to health or safety exists.

#### **1.4 Lands Affected**

This Agreement applies to Lands to the extent that they are subject to the Pre-Servicing Works.

#### **1.5 Joint Authors**

Each Party acknowledges and agrees that it has participated in the drafting of this Agreement and that no portion of this Agreement shall be interpreted less favorably to either Party because that Party or its legal counsel was primarily responsible for the drafting of that portion.

#### **1.6 Recitals**

The Parties agree that the recitals herein are true and accurate and form part of this Agreement.

#### **1.7 Scope of Agreement**

- (a) This Agreement is an agreement within the meaning of and authorized by section 51(26) of the Planning Act and imposed by the Approval Authority as one of the Conditions. This Agreement shall define the obligations and duties of the Developer with respect to the design, installation, repair and maintenance of the Pre-Servicing Works and payments required to be made to the Town and such other matters as may be more specifically set out herein.
- (b) The Developer acknowledges that the only work or construction which may proceed on the Lands is such work or construction as shown on the Accepted Plans. Any additional pre-servicing works which the Developer wishes to install after the execution of this Agreement shall not be installed until the plans and specifications for these additional pre-servicing works have been stamped "Accepted for Construction - Pre-Servicing Only".
- (c) In the event that, after the execution of this Agreement, the Developer wishes to install additional pre-servicing works, then the plans and specifications for these works shall, once stamped "Accepted for Construction-Pre-Servicing Only" by the Town, be incorporated into and form part this Agreement as Accepted Plans and shall have the same force and effect as if the information shown on them were contained in the body of this Agreement and all of the provisions of this Agreement shall apply to them.

**PART II**  
**GENERAL SERVICING REQUIREMENTS**

**2.1 Subdivision Agreement**

- (a) The Developer agrees that prior to Final Approval, the Developer shall enter into a subdivision and/or condominium agreement with the Town, in a form satisfactory to the Town to satisfy all the Conditions and without limitation to satisfy all of the financial, legal, servicing, engineering, landscaping and other requirements of the Town for the subdivision, development and servicing of the Lands (the "Subdivision Agreement"). The Parties agree that the Subdivision Agreement, when executed, shall supersede and replace this Agreement to the extent of any conflict with this Pre-Servicing Agreement. The Parties further agree that where a Site Plan Agreement related to the Lands or any portion thereof has been executed, the Site Plan Agreement shall prevail to the extent of any conflict with this Pre-Servicing Agreement. In all other respects, this Pre-Servicing Agreement shall continue to apply to the Lands.
- (b) The Developer agrees and acknowledges that the Town shall not assume ownership of, or responsibility for, any of the Pre-Servicing Works except as set out in a Subdivision Agreement.
- (c) If the Parties do not execute a Subdivision Agreement prior to the lapsing of the draft approval of the Draft Plan, the Town may, at its option and on twenty (20) Business Days' Notice to the Developer, declare this Agreement null and void and of no further effect. Any Security held at the time of nullification of this Agreement shall be returned forthwith to the Developer, less any amounts drawn by the Town from the Security to remedy any Defaults occurring before the nullification of this Agreement and drawn to pay any costs incurred by the Town to return the Lands to a safe and presentable condition. The refund of any fees, levies or other charges paid by the Developer pursuant to this Agreement shall be in the sole discretion of the Town but the Developer acknowledges that under no circumstances will interest be paid on any refund.

**2.2 Consultants**

- (a) The Developer shall, as applicable to the Pre-Servicing Works, retain one or more Engineers and one or more Landscape Architects (respectively the "Engineering Consultant" and the "Landscaping Consultant" and collectively the "Consultants") to carry out all the necessary engineering and landscaping requirements for the subdivision, development and servicing of the Lands in accordance with this Agreement. The Town, may upon pre-qualification of such, accept the use of other qualified professionals for certain components of the design, inspection and certification processes of the Pre-Servicing Works.
- (b) To the extent applicable to the Pre-Servicing Works, all the engineering requirements set out in this Agreement, including the issuing of certificates for the engineering Works, if any, shall be the responsibility of the Engineering Consultant and all the landscaping requirements set out in this Agreement, including the issuing of certificates for the landscaping Works, if any, shall be the responsibility of the Landscaping Consultant.
- (c) If applicable, the Consultants shall be retained at all times until all of the requirements of this Agreement have been complied with to the satisfaction of the Town, or the termination of this Agreement, whichever occurs first. In the event that, for whatever reason, a Consultant ceases to provide the consulting services required by this Agreement to the Developer, the Developer shall immediately cease all operations which that Consultant was responsible for until the Developer retains a replacement Consultant.
- (d) The Developer shall provide an executed copy of this Agreement and a copy of the Engineering Standards to each of the Consultants, if any, and obtain and provide to the Town a written acknowledgement from each of the Consultants that they have received copies of these documents.



(e) The Developer's agreements or contracts with the Consultants, if any, shall require the Consultants to provide the following consulting services, as applicable to the Pre-Servicing Works to the satisfaction of the Town the allocation of which services as between the Consultants shall be at the sole discretion of the Developer in consultation with such Consultants:

- i. Act as the Developer's technical representative in all matters pertaining to the design, installation and maintenance the Pre-Servicing Works.
- ii. Prepare all studies, investigations, environmental site assessments and reports required by the Town for the Pre-Servicing Works and the Lands, design the Pre-Servicing Works in strict conformity to the Engineering Standards, and prepare, sign, and seal all required plans, drawings and specifications for the Pre-Servicing Works which shall include a certificate from the Landscaping Consultant to the effect that all required plans, drawings and specifications for the landscape Works, if any, are in conformity with the Accepted Plans.
- iii. Prepare, when applicable, all necessary tender documents and contracts for the installation of the Pre-Servicing Works.
- iv. Obtain, in conjunction with the Town or its agents, the necessary approvals for the installation of the Pre-Servicing Works from any required Government Authority.
- v. Provide, to the satisfaction of the Town, full time resident field inspection at the Lands by an Engineer or other qualified person, contract administration and certification of installation of the Pre-Servicing Works. The Town may, where reasonably necessary, require, the Developer to provide an additional full-time resident Engineer or other qualified person at the Lands in furtherance of the Developer's obligation aforesaid.
- vi. Obtain all records of construction of the Pre-Servicing Works, deposit with the Town signed and sealed "as recorded" plans of all the Pre-Servicing Works, including lot grading and street lighting plans depicting the location of ducts, wires, power connection points to the Power Utility's system poles and pedestals and an electronic version of these same "as recorded" plans all in accordance with the Engineering Standards, for the review and approval of the Town.
- vii. Provide to the Town the following contract documentation:
  - I. Contract schedule of unit quantity and prices including mobilization/de-mobilization costs;
  - II. certificates of the substantial performance given pursuant to the provisions of the *Construction Act*, RSO 1990, c.C.30, as may be amended; and
  - III. particulars of publication of the certificate of the substantial performance.
- viii. Certify to the Town that there are no lien claims relating to any of the completed Pre-Servicing Works as and when the Developer requests the Town to reduce the Security or accept or assume the Pre-Servicing Works.
- ix. Provide to the Town all the other certificates required to be provided by this Agreement.

### **2.3 Applicable Laws and the Engineering Standards**

All Pre-Servicing Works required pursuant to this Agreement shall be designed, installed, provided and maintained in strict accordance with this Agreement, all Applicable Laws and the Engineering Standards. All submissions to the Town shall be made in accordance with the Applicable Laws and the Engineering Standards. Nothing in this Agreement shall relieve the Developer from compliance with all Applicable Laws.

## **2.4 Changes to Applicable Laws**

- (a) Despite anything contained in this Agreement, including the acceptance of the Accepted Plans, if the Town or any Government Authority changes or causes changes to any of the Applicable Laws and/or the Engineering Standards for any of the Pre-Servicing Works which the Developer is required to install before the particular Pre-Servicing Works are installed, the Developer shall, at its own expense, if required by Notice given by the Town redesign and install the particular Pre-Servicing Works referred to in the Notice in accordance with the new Applicable Laws and/or the revised engineering standards.

## **2.5 Utility Services**

- (a) The Developer shall, to the extent applicable to the Pre-Servicing Works, install the Utility Services (except the internal street lighting poles and fixtures) as underground infrastructure, at no cost to the Town and with no obligation of the Town to install the Utility Services. The location of the Utility Services and the detailed plans and specifications for the street lighting system shall be shown on the Accepted Plans described in this Agreement and the Subdivision Agreement. The detailed plans and specifications for the Utility Services shall form part of the agreements between the Developer and the utility providers for the installation of the Utility Services.
- (b) The Developer shall install and energize the Street Lighting System for the Plan prior to the occupancy of any dwellings located on the Lands.
- (c) The Developer is responsible for informing all applicable utility providers of its intention to commence any construction on the Lands.
- (d) The Developer shall include in all agreements of purchase and sale for lots within the Plan, a statement advising the purchaser of the Utility Services which will be provided to the lot by the utility providers and advising the purchaser that it is the obligation of the utility providers to install the Utility Services and not the Town's.

## **2.6 Highways**

The Developer shall, to the extent applicable to the Pre-Servicing Works:

- (a) Install all the underground services prior to installing the granular and stone bases for municipal services on all Highways and laying the base course of asphalt.
- (b) Install Utility Services road crossings prior to laying base course asphalt.
- (c) Obtain the approval of the geotechnical engineering Consultant pursuant to a review satisfactory to the Town for the sub-grade prior to placing the granular materials on all the Highways.
- (d) Obtain the approval of the Consultant Geotechnical Engineer with a review satisfactory to the Town for the granular and stone bases for municipal services on all Highways prior to laying the base course of asphalt.
- (e) Receive the authorization of the Town prior to laying base course asphalt.

## **2.7 Grading and Drainage**

The Developer shall, to the extent applicable to the Pre-Servicing Works:

- (a) Be responsible for all grading and drainage of the Lands in accordance with the Accepted Plans and in accordance with the Engineering Standards and accepted engineering practice.
- (b) Correct or rectify any drainage problems identified prior to Final Approval by altering the grade of or by constructing catch basins, swales, retaining walls or other structures as may be necessary to

correct or rectify such problems, if, in the opinion of the Town, such problems occur due to improper grading design or due to non-compliance with the Accepted Plans.

- (c) Correct or rectify any grading deficiencies identified prior to Final Approval to the satisfaction of the Town within three (3) weeks, weather permitting, of being given Notice by the Town to do so.
- (d) Not alter the grading or change the elevation or contour of the land shown on the Accepted Plans except in accordance with amended grading and drainage plans accepted by the Town.

## **2.8 Tree Preservation and Landscaping Requirements**

The Developer shall, to the extent applicable to the Pre-Servicing Works:

- (a) Preserve the existing trees and vegetation shown on the Accepted Plans to be preserved.
- (b) Install the tree protection fencing shown on the Accepted Plans to the satisfaction of the Town prior to the start of any construction activity on the Lands, which fencing shall remain in place until all grading and construction activity of any kind is completed.
- (c) Not remove any trees or vegetation shown as being preserved on Accepted Plans without the prior written approval of the Town except such trees and vegetation that are diseased or dead or such trees and vegetation that are designated for removal on the Accepted Plans, or otherwise as may be permitted by Applicable Laws.
- (d) Require the landscape Consultant, if any, to supervise and approve the installation of the tree protection fencing and ensure that the tree protection fencing remains in place during the entire period of construction activity of any kind on the lot related to the Pre-Servicing Works, and that the landscape Consultant will notify the Town that this fencing has been installed in accordance with Accepted Plans.
- (e) Undertake every precaution necessary to prevent damage to existing trees and vegetated areas indicated on the Accepted Plans as being preserved, including the following:
  - a. areas within the tree protection fencing shall remain undisturbed and shall not be used for the storage of surplus soil, debris and building materials or equipment;
  - b. no contaminants will be dumped or flushed where feeder roots of vegetation are known or may be reasonably expected to exist;
  - c. no vegetation or tree limbs shall be removed, pruned or otherwise damaged during construction except where shown on the Accepted Plans, or as otherwise may be permitted by law or approved by applicable Government Authorities; and
  - d. no rigging cables shall be wrapped around or installed in trees indicated on Accepted Plans as to be preserved.
- (f) Replace, to the satisfaction of the Town, any existing trees and vegetation shown on the Accepted Plans as to be preserved which are removed without prior written approval of the Town except such trees and vegetation that are diseased or dead.

The Developer acknowledges that the Town, in addition to any other remedy it may have under this Agreement and at law, shall also be entitled to enforce this Section in accordance with the Town's Tree Preservation By-law No. 2010-68 as amended from time to time or any successor or replacement by-law thereto.

## **2.9 Siltation and Erosion Control Works**

To the extent applicable to the Pre-Servicing Works, the Developer shall install the siltation and erosion control works shown on the Accepted Plans to the satisfaction of the Town prior to the start of any construction activity on the Lands. These siltation and erosion control works shall remain in place and be maintained by the Developer until: a) all grading, construction activity of any kind, and landscape Works on the Lands are completed, b) the Town is satisfied that the parts of the Lands requiring the siltation

and erosion control works are fully vegetated, c) there is no reasonable expectation of future erosion on the Lands, and d) the Town has advised the Developer by notice that these siltation and erosion control works may be removed.

### **2.10 Accepted Plans**

The "Acceptance for Pre-Servicing Construction" of the Accepted Plans by the Town shall not absolve the Developer and the Consultants of the responsibility for errors in, or omissions from, the Accepted Plans.

## **PART III PRE-SERVICING REQUIREMENTS**

### **3.1 Installation of Pre-Servicing Works**

- (a) The Developer may commence the installation of the Pre-Servicing Works shown on the Accepted Plans prior to execution of the Subdivision Agreement and the Developer acknowledges that, by proceeding with the installation of the Pre-Servicing Works prior to obtaining all of the necessary approvals for the installation of the Pre-Servicing Works from all required Government Authorities, and prior to execution of the Subdivision Agreement it is doing so entirely at its sole and absolute risk, and further agrees to leave the Pre-Servicing Works and the Lands in a safe condition should active development of the Lands come to an end for any reason. All the provisions of Part II of this Agreement shall apply to the design, installation and maintenance of the Pre-Servicing Works.
- (b) The Developer agrees that it will be bound by the terms and conditions of the Subdivision Agreement and that nothing contained in this Agreement or in the Town's grant of the permission to proceed with the installation and construction of the Pre-Servicing Works will estop the Town from imposing any of its standard conditions and requirements pertaining to the installation of Public Works or from enforcing its authority to require the Developer to fully comply with all applicable conditions of approval of the plan of subdivision.
- (c) The Developer agrees that it may be required to modify, alter, Daylight, relocate, and reconstruct the Pre-Servicing Works based on the final plans, drawings, standards, and specifications as set out in the Subdivision Agreement.
- (d) The Developer shall, at its own expense, unless otherwise provided in this Agreement, design, pay for, install and complete in a good and workmanlike manner and maintain and keep in a proper state of repair all of the Pre-Servicing Works in strict accordance with the OBC, Engineering Standards, the Accepted Plans and the requirements of this Agreement to the satisfaction of the Town and all Government Authorities.
- (e) The Developer shall be permitted to commence Pre-Servicing Works once:
  - (i) The Developer has obtained all the necessary approvals for the installation of the Pre-Servicing Works from all required Government Authorities, provided that, if the Developer decides to install any of the Pre-Servicing Works in advance of obtaining all the necessary approvals from all required Government Authorities, it is doing so at its sole and absolute risk.
  - (ii) The Developer has obtained all necessary permits from the CBO for the Pre-Servicing Works shown on the Accepted Plans that are governed by the OBC.
  - (iii) The Developer has provided the Security and evidence of compliance with the insurance requirements to the Town in accordance with Section 4.4 of this Agreement; and
  - (iv) The Town has given Notice to the Developer authorizing the Developer to commence installation of the Pre-Servicing Works and the Developer has given the Town five (5) Business Days' Notice of the date upon which installation of the Pre-Servicing Works is scheduled to commence.

- (f) The Developer agrees that, prior to proceeding with the placement of paving on any proposed road as part of the Pre-Servicing Works, the Developer shall obtain approval from the Town of the Composite Utility Plan and the Street Lighting Plan, as defined in the Engineering Standards.
- (g) The Developer agrees that if installation of the Pre-Servicing Works has not been completed within two (2) years of the date of this Agreement, then the Town may by Notice require the Developer to fill any excavations and to grade and to reinstate the Lands to a safe condition.
- (h) The Developer agrees that if the Pre-Servicing Works are installed and the development of the Lands does not proceed within three (3) years of the execution of this Agreement, the Developer must satisfy the Town that the Pre-Servicing Works are in an acceptable standard to the Town and that it is at the sole discretion of the Town whether to accept any Pre-Servicing Works that are not in a condition satisfactory to the Town.
- (i) The Developer shall not connect the Pre-Servicing Works, as applicable, to the Town's sanitary sewer system, water distribution system, storm drainage system or public highway system or conduct any works on Town Lands until Final Approval and/or the Town has provided written authorization for such connections and work.
- (j) The Developer agrees that any commissioning, inspection and testing procedures undertaken by the Developer for any of the Pre-Servicing Works, as applicable, including the sanitary sewer system, water distribution system and storm water drainage system is completed for the sole benefit of the Developer satisfying itself that the Pre-Servicing Works have been installed in accordance with the requirements of this Agreement and that the Town at its sole discretion will require further commissioning, inspection and testing procedures prior to the Town issuing a Certificate of Preliminary Acceptance of the Basic Services pursuant to the Subdivision Agreement.
- (k) The Developer agrees to maintain all of the Works in a good, safe, and workmanlike manner, at the Developers sole expense and to the satisfaction of the Town until Assumption and as outlined in the Subdivision Agreement.
- (l) The Developer agrees that the Town is under no obligation whatsoever to complete all or any portion of the Pre-Servicing Works if the Developer is in Default and fails to complete them but that, notwithstanding the foregoing, the Town shall, at its sole and absolute discretion, be entitled to enter onto the Lands and complete all or any portion of the Pre-Servicing Works and take any action it deems necessary, provided that such actions are only taken by the Town, or its agents, employees or contractors, to safeguard and protect the property, health and safety of its residents all at the Developer's sole cost and expense.

Despite anything contained in this Agreement the Developer shall, with respect to the Pre-Servicing Works shown on the Accepted Plans that are governed by the OBC, comply with all the requirements of the OBC to the satisfaction of the CBO. In the event of a conflict between any provision of the OBC and any provision of this Agreement, the OBC shall prevail to the extent of the conflict.

### **3.2 Amendments to the Accepted Plans**

All the Pre-Servicing Works shall be installed and maintained in accordance with the Accepted Plans, except where the Town consents in writing to an amendment to the Accepted Plans.

In the event any Accepted Plan is subsequently amended such plans, when signed and stamped "Accepted for Construction-Pre-Servicing Only" by the Town, shall be deemed to be Accepted Plans within the meaning of this Agreement and all the provisions of this Agreement shall apply to them.

### **3.3 Existing Services**

The Developer shall repair any damage to any existing Town, County or provincial services, works or facilities, whether assumed by the Town or otherwise and whether within the Lands or external thereto, to the extent caused by the installation of the Pre-Servicing Works or otherwise caused by the development of the Lands by the Developer. Without limiting the generality of the foregoing or limiting the liability of the Developer, should there be a breach of this provision, the Developer shall repair the existing municipal services upon being given Notice by the Town to do so, to the extent caused by the Developer. A failure by the Developer to repair or rectify such damage to existing municipal services constitutes a Default.

### **3.4 Limited Means of Access**

The Developer agrees that all construction traffic shall enter and leave the Lands using only the Highways and other access points designated in the Accepted Plans by the Town for this use as per the drawings stamped "Accepted For Construction – Pre-Servicing Only". The Developer shall, when required by the Town, install barricades at the end of other Highways providing access to the Lands to prevent these Highways from being used for construction traffic. The Developer shall maintain these barricades in place until the Town instructs the Developer to remove them. The Developer agrees that the Town may, at its discretion, issue a Stop Work Order to the Developer if they fail to abide by the construction access parameters as set by the Town.

### **3.5 Inspection by Town**

- (a) The Town may inspect the installation of the Pre-Servicing Works and shall have the power to stop any work and require its correction in the event that in its professional opinion the work is not being performed in accordance with the requirements of this Agreement or being performed in a manner that may result in a completed installation or construction that would not be satisfactory to the Town, to the extent necessary to procure compliance with the provisions of this Agreement.
- (b) The Developer agrees that the Town, its employees, agents and contractors or any other authorized persons may enter upon the Lands in compliance with the Developer's health and safety procedures and inspect the construction under any contract, but such inspection shall in no way relieve the Developer from its responsibility to inspect the said construction itself. If the installation of the Pre-Servicing Works is not, in the professional opinion of the Town being carried out in accordance with the provisions of this Agreement or in accordance with accepted engineering or landscaping practices, the Town may issue instructions to the Developer and/or to the Consultants to take such steps as may be deemed necessary to procure compliance with the provisions of this Agreement. Such instructions may be given by Notice or may be verbal, in which case the Town shall confirm them by Notice to the Developer within forty-eight (48) hours. In the event that neither the Developer nor the Consultants is present at the site of the Works to receive such verbal instructions, the Town may instruct the contractor(s) to cease work forthwith and then proceed to serve the Developer with Notice containing such instructions.

### **3.6 Additional Tests**

The Developer acknowledges and agrees that the Town may conduct or require the Developer to conduct, at the expense of the Developer, any tests that the Town considers necessary to satisfy itself as to the proper installation of the Pre-Servicing Works.

### **3.7 Town May Repair Works**

In the event that the Developer fails to keep any of the Pre-Servicing Works in a proper state of repair as required by this Agreement, the Town may upon five (5) Business Days' Notice, enter upon the Lands and make such repairs as are necessary at the Developer's expense. The Developer shall pay to the Town, within twenty (20) Business Days of receipt by the Developer of a Notice demanding payment, all costs of the work incurred in making the said repairs as determined by the Town.

### **3.8 Emergency Repairs**

If any of the Pre-Servicing Works do not function or do not function properly in the professional opinion of the Town as determined by the Manager of Development Engineering, or require necessary immediate repairs to prevent damage to any persons or to any property, the Town may enter upon the Lands and make whatever repairs may be deemed necessary at the expense of the Developer. The Developer shall pay to the Town, within twenty (20) Business Days of receipt by the Developer of a Notice demanding payment, all costs of the work incurred in making the said repairs as determined by the Town. The Town shall advise the Developer forthwith by Notice of the nature and extent of the emergency and repairs which were necessary. Such undertaking to repair shall not be deemed an acceptance of the Pre-Servicing Works by the Town or an acceptance by the Town of any liability in connection therewith and shall not release the Developer from any of its obligations under this Agreement.

### **3.9 Damage and Debris**

The Developer covenants and agrees:

- (a) That all Town Lands that may be used by the Developer or parties employed by the Developer or others during the installation and maintenance of the Pre-Servicing Works, as well as all buildings and structures on the Lands, shall be kept in a good and usable repair and condition and if, in the sole opinion of the Town, such Town Lands and buildings and structures are damaged in any way by the Developer or parties employed by the Developer, such Town Lands and buildings and structures, will be repaired or restored immediately by the Developer to the satisfaction of the Town.
- (b) Not to unreasonably foul any public highways outside the limits of the Lands, including tracking of mud or other materials thereon and further agrees to provide the necessary persons and equipment to be available on reasonable notice at all times, and as reasonably required by the Town, to keep such highways clean and that all trucks making deliveries to or taking materials from the Lands shall be adequately covered and reasonably loaded so as not to scatter refuse, rubbish, or debris on the abutting highways and streets.
- (c) To apply dust suppressant or other mitigating measures to any soil, fill, roads, stockpiles, or lands from which dust is emanating in connection with the development of the Lands in order to reasonably mitigate any unreasonable impact on people and property, to the satisfaction of the Town.
- (d) Not to allow and to restrain, insofar as it is able to do so, all others, from depositing junk, debris, or other materials on the Town Lands and any private land not owned by the Developer.
- (e) To clear excessive debris and garbage from the Lands if so requested by Notice given by the Town and that the Town shall have the authority to remove such debris and garbage at the cost of the Developer if the Developer fails to do so within forty-eight (48) hours of being advised to do so.
- (f) That, if in the opinion of the Town, the requirements of this Section 3.9 are not complied with, the Town will do the work as required by the Town at the Developer's expense. The Developer shall pay to the Town, within twenty (20) Business Days of receipt by the Developer of a Notice demanding payment, all costs of the work incurred by the Town as determined by the Town.

### **3.10 Special Provisions**

The Parties covenant and agree to comply with all of the Special Provisions set out in Schedule "C". All of the works, services, facilities, matters and things required by the Town, the County and Government Authorities for the subdivision, development and servicing of the Lands referred to in the Special Provisions set out in Schedule "C" shall be deemed to be Pre-Servicing Works within the meaning of this Agreement.

### 3.11 Pre-Servicing Certificate

- (a) Prior to preparation of the Subdivision Agreement by the Town, the Consultants shall provide to the Town a certificate (the "Pre-Servicing Certificate"), for approval by the Town, describing the Pre-Servicing Works that have been completed, stating that the completed Pre-Servicing Works have been installed in strict accordance with the Engineering Standards, the Accepted Plans and the requirements of this Agreement, setting out the actual costs of installing the completed Pre-Servicing Works and setting out the current estimated costs, as of the date of the certificate, of installing the balance of the Pre-Servicing Works required for the development and servicing of the Lands.
- (b) The Developer acknowledges and agrees that the Town will use the approved Pre-Servicing Certificate as the basis for preparing Schedule "E" - Estimated Cost of the Works and Security Required - to the Subdivision Agreement and deciding, in its sole discretion, the amount of the Security the Developer is required to provide to the Town prior to the Town executing the Subdivision Agreement.
- (c) The Developer acknowledges and agrees that the Town will not approve the Pre-Servicing Certificate until such time as the Town has inspected the completed Pre-Servicing Works described in the Pre-Servicing Certificate and the Developer has rectified and repaired to the satisfaction of the Town all defects and deficiencies in these Pre-Servicing Works found by this inspection, unless otherwise agreed in writing with the Town.
- (d) The Developer acknowledges and agrees that the approval of a Pre-Servicing Certificate by the Town does not constitute acceptance of the Pre-Servicing Works described therein by the Town and that a Certificate of Preliminary Acceptance of the Basic Services issued pursuant to the Subdivision Agreement is required for this purpose.

### 3.12 Communications Plan

The Developer covenants and agrees to abide by a "Communications Plan", as described in Schedule C hereto, as submitted by the Developer and approved by the Town, acting reasonably. The Developer further agrees that if the Communications Plan requires that Notice or communications be given before any step is taken, the Developer shall not take such step until such Notice or communication is given. In the event the Developer fails to give Notice or facilitate required communication, the Town may issue a Stop Work Order and the Developer shall cease all work on the lands related to the failure to give Notice until proper Notice or communication is given or made.

### 3.13 Topsoil Screening and Stockpiling

- a) The Developer shall ensure that any screening or processing of topsoil shall be completed and cease no later than July 1 of a calendar year. In the event that screening or processing is not complete by July 1, the Developer agrees to shape and hydroseed any topsoil stockpile and shall not be entitled to re-commence screening or processing until October 1 of the same calendar year.
- b) If the Developer wishes to undertake any screening or processing of topsoil between July 1 and October 1 of any calendar year, it shall only do so with the written consent of the Town and on such terms as set out by the Town with respect to dirt and dust mitigation.
- c) The Developer shall adopt reasonable dust mitigation protocols to minimize the impact of dust on the surrounding lands. The Developer agrees to use and implement all reasonable dust mitigation measures and techniques when requested by the Town.
- d) The Developer shall ensure that all necessary Ministry of the Environment, Conservation and Parks permissions, permits and approvals, as applicable for topsoil screening, are in place prior to the commencement of any such topsoil screening.



### 3.14 Site Access

The Developer shall at all times abide by the "Site Coordination and Construction Access Plan" as attached at Schedule "E". The Developer further covenants and agrees that they shall not use any open Town owned roads (whether assumed or unassumed) for any construction related vehicles without prior written permission of the Town.

### 3.16 Stop Work Order

- (a) A "Stop Work Order" shall mean an order, issued by the Town, which requires the Developer or their contractors, agents, employees or assigns, to immediately cease the activity, work or works as outlined in the Stop Work Order. The Stop Work Order shall set out the remedial actions required by the Developer.
- (b) Nothing in a Stop Work Order shall prohibit the Developer or their contractors, agents, employees or assigns from continuing work or works for the sole purpose of securing the Lands or preventing damage to person or property.
- (c) The Town agrees to forthwith rescind a Stop Work Order once the remedial action as outlined in the Stop Work Order has been fulfilled, at the Town's discretion, acting reasonably.
- (d) A Stop Work Order may only be issued by the Town in the following circumstances:
  - a. The continuation of the work on the Lands poses a threat to person or property or is deemed an emergency by the Town;
  - b. The work on the Lands is not approved by this Agreement or another agreement with the Town where one is required or is in contravention of this Agreement.
- (e) The Developer covenants and agrees that the Town shall not be responsible or liable for any damages or losses incurred by the Developer or its contractors, agents, employees or assigns, as a result of the issuance of any Stop Work Order by the Town, unless said Stop Work Order was issued unreasonably, maliciously, negligently, or in bad faith.
- (f) The failure of the Developer or their contractors, agents, employees or assigns to comply with a Stop Work Order shall constitute a Default.

## PART VI FINANCIAL ARRANGEMENTS AND INSURANCE

### 4.1 Fees and Charges

The Developer shall pay to the Town, upon execution of this Agreement, the payments, fees, charges and rates as set out in Schedule "D" in accordance with Town By-law 2019-15 as amended from time to time.

### 4.2 Security

- (a) In order to guarantee performance of this Agreement by the Developer, the Developer shall provide to the Town, upon execution of this Agreement, an irrevocable letter of credit in the amount of \$50,000.00 (the "Security"). The letter of credit shall be from an Ontario branch of a Canadian Chartered Bank, Trust Company or Credit Union and in a form approved by the Treasurer. The Developer covenants and agrees that the letter of credit shall be kept in full force and effect until the Town has approved the Pre-Servicing Certificate, and that it will pay all premiums on the letter(s) of credit as they become due until such time as the Town returns the letter of credit.

- (b) Wherever in this Agreement a letter of credit is required to be filed with the Town, the Developer may instead deposit cash or a certified cheque to be cashed, in an amount equal to the letter of credit and such deposit shall be held by the Town as Security in accordance with this Agreement provided that no interest shall be payable on any such Security.
- (c) The Developer acknowledges that upon the transfer of ownership of any of the Lands, the Town will not return any letter of credit or cash deposit required under this Agreement until the new owner files a substitute letter of credit or deposits cash or a certified cheque to be cashed in the required amounts with the Town, or the Town otherwise agrees in writing.

#### 4.3 Developer in Default

- (a) The Developer agrees that the Treasurer shall be entitled to draw upon and use all or a part of the Security to rectify any Default.
- (b) If the Developer fails to make any payment demanded by the Town pursuant to the provisions of this Agreement within twenty (20) Business Days from the date of receipt by the Developer of a Notice demanding payment, such failure constitutes a Default and the Treasurer shall be entitled to draw upon and use all or a part the Security to rectify the Default and make the payment, to the Town.
- (c) If, in the sole and absolute opinion of the Town, the Developer is in Default, other than a Default referred to in Subsection 4.3(b), the Town, except in cases of emergencies, shall give Notice to the Developer of the Default and require the Developer to rectify the Default. If the Default is not rectified within twenty (20) Business Days after receipt by the Developer of such Notice or within such time period as may be designated in the Notice by the Town, then
  - (i) the Town shall have full authority and power immediately to purchase or rent, whichever is most cost-effective, such materials, tools and machinery and to employ such contractors or workmen as in the opinion of the Town are required for the proper rectification of the Default, to enter upon the Lands and to do all such work and things, including the installation of Pre-Servicing Works, as are necessary to rectify the Default to the satisfaction of the Town, at the cost and expense of the Developer. In cases of emergencies, such work may be done without prior Notice, but the Developer shall be notified forthwith. The cost of such work will be calculated by the Town, whose decision shall be final. It is understood and agreed that such costs shall include a management fee of fifteen per cent (15%) of the cost of the labour, materials, tools, machinery, and applicable taxes; and
  - (ii) the Treasurer may, at any time draw on and use all or part of the Security to pay the cost, as calculated by the Town, of any works or things, including the installation of Pre-Servicing Works, done by the Town pursuant to the provisions of this section to rectify the Default.
- (d) The Developer agrees that any entry on the Lands and any work done by the Town pursuant to the provisions of this section shall not be a preliminary acceptance or Final Acceptance of the Works in accordance with the Subdivision Agreement by the Town and the acceptance of any liability in connection therewith nor a release of the Developer from any of its obligations under this Agreement.
- (e) Upon the execution of the Subdivision Agreement and the provision to the Town of the security required by the Subdivision Agreement, the Town shall release the unused balance of the Security to the Developer. or at the Developer's direction include the unused balance of the Security as part of the security required by the Subdivision Agreement.

#### 4.4 Insurance

(a) Prior to the execution of this Agreement and commencing any work on the Lands, the Developer shall take out and keep in full force and effect until Final Acceptance of all the Pre-Servicing Works, at its sole cost and expense, the following minimum insurance:

- (i) Commercial General Liability insurance applying to all operations of the Developer which shall include coverage for bodily injury liability, property damage liability, products and completed operations liability, contractor's protective liability, contractual liability, and non-- owned automobile liability, contingent employers liability and employees as additional insureds.

This policy shall contain no exclusions for damage or loss from blasting, vibration, pile driving, the removal or weakening of support, shoring, and underpinning or from any other activity or work that may be done in connection with the development of the Lands.

This policy shall be written with limits of not less than FIVE MILLION DOLLARS (\$5,000,000) exclusive of interest or costs, per occurrence and shall include the Town as an additional insured;

This policy shall provide primary insurance coverage and not excess to any other insurance available to the Town; and

- (ii) Automobile Liability (Owned and/or Leased Vehicles) insurance with an inclusive limit of liability of not less than TWO MILLION DOLLARS (\$2,000,000) exclusive of interest or costs, per occurrence for loss or damage resulting from bodily injury to or death of one or more persons and for loss or damage to property. This policy must cover all vehicles owned, leased or operated by or on behalf of the insured; and
- (iii) Environmental Pollution Liability insurance to cover third party bodily injury and property damage claims arising out of sudden and accidental pollution, including but not limited to unexpected and unintentional spill, discharge, emission, dispersal, leakage, migration, release or escape of pollutants. The coverage cannot be limited to hostile fire only.

This policy shall be written with a limit of not less than FIVE MILLION DOLLARS (\$5,000,000) exclusive of interest or costs, on a claims-made basis, or such other limit as the Town may reasonably require.

- (b) The premiums on these policies must be paid initially for a period of one year and the policies shall be renewed for further one-year periods until all the Pre-Servicing Works required under this Agreement are installed and assumed by the Town. If required by the Town, the Developer shall prove to the satisfaction of the Town that all premiums on these policies have been paid and that all insurance is in full force and effect.
- (c) The Developer shall deliver with this Agreement (if not previously delivered) certified copies of these policies of insurance or a certificate of insurance setting out the essential terms and conditions of insurance, the form and content of which shall be satisfactory to the Town.
- (d) The Developer shall file a renewal certificate with the Town not later than one (1) month before the expiry date of any policy provided pursuant to this Agreement, until the Town has indicated in writing that the policy need not continue in force any longer. In the event that such renewal certificate is not received, the Town shall be entitled to either renew the policy at the expense of the Developer or to order that all work on the Lands cease until the policy is renewed.
- (e) These policies shall provide for cross-liability and severability of interest protecting the Town against claims by the Developer as it were separately insured and providing that the Town shall be insured notwithstanding any breach of any condition in the policy by any other insured.

- (f) If these policies contain deductible clauses, the Developer agrees to deposit a certified cheque or such Security as may be acceptable to the Town in the deductible amounts, as a deposit, together with a letter from the Developer authorizing the Town to appoint an independent adjuster and to investigate claims less than the deductible amount and authorizing the Town to pay such claims determined to be valid by the adjuster out of the said deposit. The Developer is responsible for all adjustment service costs and shall maintain the deposits in the amount of the deductible.

#### **4.5 No Relief**

The issuance of such policies of insurance shall not be construed as relieving the Developer from responsibility for other or larger claims, if any, for which the Developer is or may be liable under this Agreement or at law.

#### **4.6 Notice of Cancellation**

If the Town receives notice from the insurer that it has cancelled or refused to renew the insurance, or that it intends to do so, or if the Town otherwise becomes aware that the insurance has lapsed or is about to lapse without renewal or replacement, the Town may, on prior Notice to the Developer and at the sole cost and expense of the Developer, obtain insurance in accordance with this section. In such circumstances, the Town shall be entitled to obtain new insurance or add the necessary insurance coverage to the Town's blanket insurance. The Developer shall forthwith, upon receipt of Notice thereof from the Town, reimburse the Town for the cost of such insurance payable as noted above. In addition, the Town shall, at its sole discretion and option, be entitled to draw upon any Security posted under this Agreement to cover the costs of the insurance.

### **PART V [NOT USED]**

### **PART VI ADMINISTRATION**

#### **6.1 Indemnity and Release**

The Developer shall indemnify the Town and its elected officials, officers, agents, contractors and employees from and against all actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly or in any way connected with a Default, the design, installation or operation of any of the Pre-Servicing Works required under this Agreement, the maintenance and repair or lack of maintenance and repair of such Pre-Servicing Works by the Developer pursuant to the terms of this Agreement or any defect in workmanship or material until Final Approval.

The Developer hereby releases the Town and its elected officials, officers, agents, contractors and employees from all actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly or in any way connected with the installation of the Pre-Servicing Works, except where any actions, causes of action, suits, claims and demands are as a direct result of negligence, including gross negligence, of the Town, its elected officials, officers, agents, contractors or employees.

#### **6.2 Transfer of Lands**

In the event the Developer transfers the Lands to a third party prior to execution of the Subdivision Agreement, the Developer shall prior to completing this transfer provide the Town with an agreement from the new owner in a form satisfactory to the Town in which the new owner agrees to be bound by the terms of this Agreement.

### 6.3 Notices

1. Any notice to be given by the Town to the Developer with respect to this Agreement shall be given in writing and may be mailed by postage prepaid mail, personally delivered or sent by email transmission to the address shown on Schedule "A" or such other address of which the Developer has by Notice notified the Municipal Clerk and any such Notice mailed or delivered shall be deemed good and sufficient Notice under the terms of this Agreement.
2. Any notice to be given by the Developer to the Town with respect to this Agreement shall be given in writing and may be mailed by postage prepaid mail, personally delivered or sent by email transmission to or delivered to:

**The Town of The Blue Mountains**  
**32 Mill Street, Box 310 Thornbury, ON, NOH 2P0**  
**Attention: Director of Planning and Development Services**  
**Email: directorpds@thebluemountains.ca**

or such other address of which the Town has by Notice given the Developer and any such Notice mailed or delivered shall be deemed good and sufficient Notice under the terms of this Agreement.

3. Any Notice shall be deemed to have been given to and received by the party to which it is addressed:
  - (i) if delivered personally, on the date of delivery;
  - (ii) if mailed, on the fifth day after mailing thereof; or
  - (iii) if emailed, on the date of email if within business hours of that day, or otherwise the next business day, subject to evidence of failure of delivery.

### 6.4 Waiver

The failure of the Town at any time to require performance by the Developer of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Town of the performance of any obligation hereunder be taken or be held to be a waiver of the performance of the same or any other obligation hereunder at any later time. The Town shall specifically retain its rights at law to enforce this Agreement.

### 6.5 Extension of Time

Any time limits specified in this Agreement may be extended with the consent in writing of both the Developer and the Town, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit.

### 6.6 Enforcement

The Developer acknowledges that the Town, in addition to any other remedy it may have at law, shall also be entitled to enforce this Agreement and recover any amounts or costs owing to it in accordance with the provisions of the *Municipal Act, 2001*, SO 2001, c.25, as amended, and in accordance with the Town's Property Standards By-law 2002-18 as amended from time to time or any successor or replacement by-law thereto.

### 6.7 Governing Law

This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.

### **6.8 Registration of Agreement**

The Developer agrees that this Agreement may be registered upon the title to the Lands at the Developer's expense and the Developer agrees, at its own expense to obtain and register such documentation from its mortgagees or encumbrances as may be deemed necessary by the Town to postpone and subordinate their interests in the Lands to the Town to the extent of this Agreement.

### **6.9 Successors & Assigns**

It is hereby agreed by and between the Parties hereto that this Agreement shall be enforceable by and against the Parties hereto, their heirs, executors, administrators, successors and assigns and that the Agreement and all the covenants by the Developer herein contained shall run with the Lands.

### **6.10 No Fettering of Discretion**

Despite any other provisions of this Agreement, the Parties hereto agree with each other that none of the provisions of this Agreement (including a provision stating the Parties' intention) is intended to operate, nor shall have the effect of operating in any way to fetter either the Town Council which authorized the execution of this Agreement or any of its successor councils in the exercise of any of Council's discretionary powers, duties or authorities. The Developer hereby acknowledges that it will not obtain any advantageous planning or other consideration or treatment by virtue of it having entered into this Agreement or by virtue of the existence of this Agreement.

### **6.11 Public Disclosure**

The Developer covenants and agrees that this Agreement and all schedules or attachments hereto, including the Accepted Plans, may be made publicly available and may be posted on the Town's website or otherwise made freely available to all members of the public, and the Developer hereby consents to such disclosure.

### **6.12 Counterparts**

The Parties agree that this Agreement may be executed in any number of counterparts (including counterparts by email or facsimile) and all such counterparts taken together shall be deemed to constitute one and the same instrument.

### **6.13 Electronic Signatures**

The Parties consent and agree to the use of electronic signatures pursuant to the *Electronic Commerce Act 2000*, SO 2000, c17 as amended from time to time, with respect to this Agreement.

## **SCHEDULES**

The following schedules are attached hereto and form part of this Agreement:

- "SCHEDULE A" being a description of the Lands;
- "SCHEDULE B" being a description of the Accepted Plans for the Pre-Servicing Works
- "SCHEDULE C" being a list of Special Provisions
- "SCHEDULE D" being a list of Fees and Securities
- "SCHEDULE E" being a Site Coordination and Construction Access Plan

*SIGNATURE PAGE TO FOLLOW*

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

**PARKBRIDGE LIFESTYLE COMMUNITIES INC.**

U

\_\_\_\_\_  
Name: Jeff Marshall  
Title: Vice President, Development  
I have authority to bind the corporation.

**THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS**

~ ~ ~ ~ ~  
*Alar Soever*  
\_\_\_\_\_  
Mayor - Alar Soever

*Corrina Giles*  
\_\_\_\_\_  
Clerk - Corrina Giles

**SCHEDULE "A"**

**This Schedule forms part of a Pre-Servicing Agreement between the Developer and  
The Corporation of the Town of The Blue Mountains**

**DESCRIPTION OF THE LANDS**

Lot 21, Concession 2, The Blue Mountains

PLAN 529 LOT 172 PT LOTS 161; AND 173 AND RP 16R6640 PART;2

**ADDRESS OF THE DEVELOPER FOR SERVICE**

70 Huron Street  
Collingwood, ON L9Y 4L4  
Attn: Jeff Marshall  
Email:

**DESCRIPTION OF THE DRAFT PLAN AND CONDITIONS**

**1.1 Draft Plan of Subdivision**

Local Planning Appeal Tribunal by a decision dated April 24, 2020 has given approval to Draft Plan of Subdivision 42T-2016-10.

**1.2 Description of the Conditions**

The Draft Plan Conditions are set out in the Decision.

(The Draft Plan and Conditions are on file with the Town Clerks Office and may be viewed during normal office hours.)



**SCHEDULE "B"**

**This Schedule forms part of a Pre-Servicing Agreement between the Developer and  
The Corporation of the Town of The Blue Mountains**

**ACCEPTED PLANS FOR THE PRE-SERVICING WORKS**

All the studies, reports, designs, plans, drawings, and specifications for the installation of the Pre-Servicing Works which have been signed and stamped "Accepted for Construction-Pre-Servicing Only" by the Town.

Where the subject matter or context of a section of this Agreement requires reference to an individual Accepted Plan, it may be referred to by its individual name.

All the Accepted Plans have been delivered to the Consultants, as applicable, and are on file with the Town Clerks Office and may be viewed during normal office hours.

**Accepted Plans - Pre-Servicing Works**

The following drawings, prepared by Crozier Consulting Engineers for Project 1046-4031, issued for 4<sup>th</sup> Submission on 03/23/2022, and marked Accepted for Construction by the Town on August 25, 2022:

- Sediment and Erosion Control Plans: C110A, C110B, C110C, C110D
- Site Preparation & Protection Plan: C111
- Construction Notes & Standard Details Drawing: C112B

Once said drawings are marked "Accepted for Construction – Pre Servicing Only" by the Town, they shall be deemed to be the "Accepted Plans".

## SCHEDULE "C"

### This Schedule forms part of a Pre-Servicing Agreement between the Developer and The Corporation of the Town of The Blue Mountains

#### SPECIAL PROVISIONS

##### 1. Communications Plan

The Consultant shall provide a Communications Plan to the satisfaction of the Town intended to guide communication with area residents of significant site alteration and construction activities to the satisfaction of the Town.

At a minimum the Communications Plan should provide:

1. Installation of a Project Notification Sign, 1.2 m x 2.4 m minimum, to Town template, at each construction access to the Lands and visually obvious to the public, at least forty-eight (48) hours' before the start date of any site alteration and/or construction and maintained for full duration of construction of the Pre-Servicing Works.
2. Notification of the site alteration and construction project to proximate property owners as deemed appropriate in consultation with the Town's Development Engineering Division via hand/mail delivery.
3. Schedules of intended site activities updated routinely (typically, weekly to bi-weekly) and posted on a publicly accessible website (which may be copied or duplicated on the Town's website) and/or physical location adjacent to the Lands.
4. A minimum of two-weeks' notice to the public via publicly accessible website following Town approval and prior to commencement of:
  - (i) Significant site activities such as site alteration works e.g. tree clearing & grubbing, commencement of site servicing/grading, placement of asphalt, concrete curbs and sidewalk, and landscaping.
  - (ii) Off-site works on Town-owned lands/roads following receipt of a "Municipal Land Use Permit" (MLUP).

##### 2. Works Provisions

1. The Developer agrees to maintain and protect existing vegetation (established trees and shrubs) on the periphery of the Lands to a minimum depth of ten (10) meters from the edge of the Lands, for the duration of construction or until a Landscape Plan is approved in accordance with Condition 20(i) of the Conditions. Nothing in this provision shall prevent the Developer from removing dead, diseased, or hazardous trees, or trees removed under a permit issued by any Government Authority.
2. The Developer shall, prior to site grading, excavation, tree clearing or construction on the lands, consult with the Saugeen Obijwe Nation (SON) on the proposed site activities.
3. The Developer acknowledges that off-site regional stormwater works under the *Drainage Act* are required for the ultimate servicing of the Lands, and such works will be the subject of a future development agreement.



**SCHEDULE "D"**

**This Schedule forms part of a Pre-Servicing Agreement between the Developer and  
The Corporation of the Town of The Blue Mountains**

**FEES AND SECURITIES****Fees**

Agreement Preparation Fee:	\$4,842.50
Development Engineering Pre-Servicing Works Fee(*)(**):	\$
Total:	\$

\*To be paid at the time of Agreement execution by the Developer

\*\* The Pre-Servicing Works Fee is based on 0.7% of the Cost Estimate of the Pre-Servicing Works, being \$                      prepared by Crozier and Associates. The Parties agree that the Cost Estimate may be revised prior to the execution of a Subdivision Agreement and the Pre-Servicing Works fee may be revised accordingly, and any such revision shall be incorporated into the Subdivision Agreement, or an amendment to this Agreement.

**Securities**

Pre-Servicing Security	\$50,000.00
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**SCHEDULE "E"**

**This Schedule forms part of a Pre-Servicing Agreement between the Developer and  
The Corporation of the Town of The Blue Mountains**

**Site Coordination and Construction Access Plan**

(See next page)



**LEGEND**

- RESTRICTED AREA
- CONSTRUCTION ACCESS ROUTE
- REGIONAL FLOODLINE
- EXISTING BUTTERNUT TREE 6"/4" 20m AND 50m SETBACKS (OPEN SPACE) (FOR BUTTERNUTS, BLUE FOR PEASE SURVEY)

THIS SHADING IS THE EXCLUSIVE PROPERTY OF C.F. CROZIER & ASSOCIATES INC. AND THE REPRODUCTION OF ANY PART WITHOUT PRIOR WRITTEN PERMISSION IS STRICTLY PROHIBITED. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS, LEVELS, AND DATUMS ON SITE AND REPORT ANY DISCREPANCIES OR OMISSIONS TO THE OFFICE IMMEDIATELY.

- THIS SHADING IS TO BE READ AND UNDERSTOOD IN CONJUNCTION WITH ALL OTHER PLANS AND DOCUMENTS APPLICABLE TO THIS PROJECT.
- ALL EXISTING UNDERGROUND UTILITIES TO BE LOCATED IN THE FIELD BY THE CONTRACTOR PRIOR TO CONSTRUCTION.

**TEMPORARY BENCHMARKS**

TEMP - ELEVATIONS HEREON ARE GEODETIC AND ARE REFERRED TO A SPIKE IN IRVING POLE ON GREY ROAD TO SOUTH OF CRAIGLEITH ROAD HAVING AN ELEVATION OF 212.69 METERS.

TOPOGRAPHIC SURVEY COMPLETED BY ZUBER, DAC, PATTEN AND THOMSON LTD. O.L.S., DATED MARCH 2008

No.	ISSUE	DATE
0	ISSUED FOR 1 <sup>ST</sup> SUBMISSION	10/05/2018
1	ISSUED FOR 2 <sup>ND</sup> SUBMISSION	09/17/2020
2	ISSUED FOR 3 <sup>RD</sup> SUBMISSION	05/14/2021
3	ISSUED FOR 4 <sup>TH</sup> SUBMISSION	05/14/2021
4	ISSUED FOR CLIENT DISCUSSIONS	05/12/2022

**DRAFT**  
FOR DISCUSSION PURPOSES ONLY

Project: **PARKBRIDGE CRAIGLEITH**  
**THE TOWN OF THE BLUE MOUNTAINS**

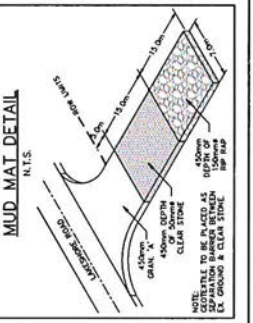
Drawing: **CONSTRUCTION ACCESS PLAN**

**CROZIER**  
CONSULTING ENGINEERS

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Croydon, Victoria 3114  
753-444-3310  
753-444-3320 F  
www.crozier.com.au

Drawn By	L.H.	Checked By	J.P.
Date By	R.H.	Issue	1:1500

1046-4031  
C118



**NOTES:**

**MAINTENANCE & OPERATIONS OF SEDIMENT CONTROLS**

**MUD MAT**

- INSPECT MUD MAT WEEKLY TO ASSESS CONDITION AND ENSURE OPERATION EFFICIENCY.
- RAP MATERIAL AS SPECIFIED BY SHEET 1999.
- MUD MAT TO REMAIN IN PLACE UNTIL SITE IS STABILIZED BY AS DIRECTED BY SITE ENGINEER.