

**SUBDIVISION AGREEMENT
(PRE-SERVICING)**

THIS AGREEMENT made on the _____ day of _____, ____.

B E T W E E N:

hereinafter called the “**Developer**”)

OF THE FIRST PART

- and -

THE CORPORATION OF THE COUNTY OF BRANT

hereinafter called the “**Municipality**”

OF THE SECOND PART

WHEREAS the Developer is the owner of certain lands, hereinafter called the “**Lands**”, described in Schedule “A” to this Agreement, and proposes to subdivide the Lands or a portion of them, by means of a registered plan or plans of subdivision for the purpose of selling, conveying or leasing the lots or blocks on the registered plan or plans of subdivision;

AND WHEREAS the Municipality or the Ontario Municipal Board (“OMB”) has approved the draft plan of subdivision pursuant to Municipal or OMB File _____ (the “**Plan**”) for the Lands;

AND WHEREAS it is the intention of the parties to enter into a County of Brant Agreement (the “**Subdivision Agreement**”) as a condition for the final approval and registration of any of the Lands for subdivision purposes;

AND WHEREAS the Developer wishes to alter the existing grade and pre-service the Lands in accordance with the constructions drawings described in Schedule “B” attached hereto at its own risk to facilitate the development of the said Lands;

AND WHEREAS the Municipality requires the Developer to enter into an Agreement to satisfy all conditions financial or otherwise with respect to the proposed grade alteration and pre-servicing works for the Lands;

AND WHEREAS the Developer warrants that all encumbrances, including but not limited to the Mortgagee/Chargee as shown on the title to the Lands, namely, _____, will execute a Postponement of interest on title so that this Agreement herein will have priority to the registered encumbrances;

AND WHEREAS it is the desire of the parties that the Developer be permitted to pre-grade and pre-service the Lands, at its sole risk, provided certain conditions are met and securities provided by the Developer;

NOW THEREFORE in consideration of the mutual promises and covenants contained herein, as well as other good and valuable consideration contained herein, this Agreement witnesses as follows:

1. **RECITALS**

The parties confirm the foregoing recitals are true and incorporate same as terms of this Agreement.

2. **SCHEDULES**

It is understood and agreed that the following Schedules are attached hereto and form part of this Agreement:

- (a) Schedule "A:" – Description of the Lands;
- (b) Schedule "B: - List of Engineering and Other Servicing Drawings and Reports.

3. **DEVELOPER'S RISK AND OBLIGATIONS**

The parties agree that the Developer shall be entitled to proceed to excavate material, process and stockpile fill, water mains, utilities and roadways and all activity related thereto ("the Pre-Servicing Works"), subject to the terms of this Agreement and the previously executed Grading and Earthworks Agreement. In consideration thereof, the Developer acknowledges, covenants and agrees as follows:

- (a) The construction of the Pre-Servicing Works shall be entirely at the risk, expense and cost of the Developer without any claim or recourse whatsoever against the Municipality by virtue of the Developer undertaking the Pre-Servicing Works prior to final approval and registration of any plan or plans of subdivision for the Lands;
- (b) The Pre-Servicing Works shall be carried out and installed in accordance with the specifications contained in Schedule "B" attached hereto, which documents may be, from time to time, amended and updated to the satisfaction of the Municipality;
- (c) No Pre-Servicing Works shall be constructed on the Lands that would interfere with the existing drainage of the adjoining Lands;
- (d) The Pre-Servicing Works shall be installed in a good and workmanlike manner to the satisfaction of the Municipality and in accordance with its standards from time to time in force and effect, it being acknowledged that it is the sole responsibility

of the Developer to ensure that the Pre-Servicing Works are installed to a standard that will permit acceptance by the Municipality prior to the registration of any plan or plans of subdivision for the Lands, and in accordance with the requirements of the Subdivision Agreement to be entered into; and

- (e) All obligations under this Agreement are deemed to be at the expense of the Developer.

4. **DEVELOPER'S PRE-CONSTRUCTION OBLIGATIONS**

The Developer further covenants and agrees that prior to commencing the construction of the Pre-Servicing Works, the Developer shall have:

- (a) Appointed a qualified Consulting Engineer acceptable to the Municipality who shall be responsible for the design, construction, installation, supervision and certification of the Pre-Servicing Works and whose professional engineering services shall include, but not be limited to, the following:
 - (i) Preparing, certifying and providing to the Municipality all necessary engineering drawings;
 - (ii) Obtaining all necessary agency approvals;
 - (iii) Providing contract administration including full-time construction supervision and review and approval of the filed layout;
 - (iv) Maintaining all records of construction and providing "as constructed" data in a form satisfactory to the Municipality;
 - (v) Providing certificates for progress payments and certificates for substantial performance under the *Construction Lien Act*;
 - (vi) Providing copies of the contractor's construction scheduling to the Municipality and coordinating same with the Municipality;
 - (vii) Correcting, as may be required from time to time, any errors in the construction drawings and reports set out in Schedule "B" including any corrective or remedial work required to bring the constructed Pre-Servicing Works into conformity; and
 - (viii) Ensuring that the design and implementation of the Pre-Servicing Works will meet all of the servicing requirements of the Municipality in order to permit the development of the Lands in accordance with the draft plan conditions for the Plan.
- (b) Applying for and receiving the applicable Environmental Compliance Approval for the Pre-Servicing Works from the Ministry of Environment and Climate Change (MOECC) for storm water drainage, the water distribution system and the sewage collection system;

- (c) Resolving all necessary off-site matters as well as obtained clearances for the servicing from all appropriate authorities and government agencies including the Grand River Conservation Authority (GRCA) as well as applicable utility operators;
- (d) Installing all necessary tree preservation, fencing, access control measures, property signage, and appropriate erosion and siltation control devices and structures;
- (e) Designing in writing a contact person or persons who shall authority to make decisions and respond to complaints and/or concerns in relation to the construction of the Pre-Servicing Works and such contact person shall be available at all times at the emergency contact numbers provided;
- (f) Providing a protocol for emergency contacts indicating the order of precedence of contact names for such instances where specific individuals are unreachable;
- (g) Arranging and completing a pre-construction meeting, or meetings, with the Municipality to satisfy the Municipality as to the pre-servicing process and procedures;
- (h) Giving to the Municipality a minimum of forty-eight (48) hours written notice after the completion of any pre-construction meeting(s) of its intention to commence the construction of any of the Pre-Servicing Works;
- (i) Meeting the Archaeological requirements of the Ministry of Tourism, Culture & Sport; and
- (j) Meeting all Federal and Provincial legal requirements.

5. **DEVELOPER'S CONSTRUCTION OBLIGATIONS**

In addition to the foregoing, the Developer covenants and agrees that during the course of the construction of the Pre-Servicing Works, the Developer shall:

- (a) Continue to maintain the erosion and siltation control devices and structures, fencing, and access control;
- (b) Put and keep in place measures to control ponding, weeds, dust and mud as well as erosion, siltation and slippage conditions;
- (c) Continuously keep all roads and sidewalks used for access to the Lands as well as streets and sidewalks surrounding the Lands in good condition, free from mud and dust during construction;
- (d) Maintain all parking spaces and driveways with a stable surface so as to prevent the raising of dust;
- (e) Continue to maintain tree preservation and protection for existing trees;

- (f) Supply and install, at its cost, all traffic control signs and devices and prior to roadways being used, to erect signs a minimum of 1.2 metres by 1.5 metres to read as follows: "ROAD NOT ASSUMED BY MUNICIPALITY – USE AT YOUR OWN RISK";
- (g) Prior to any construction, provide construction access to the Lands including all necessary signage, whether temporary or permanent, and which approved access will be the only access to the Lands until otherwise authorized by the Municipality with the temporary access to be removed by the Developer when directed by the Municipality;
- (h) Construct all Pre-Servicing Works to that they will conform to the road, lot and building block pattern of the draft plan of subdivision;
- (i) Permit, at all times, access to the Lands by the Municipality, its employees, agents and designates to inspect and otherwise observe the progress of construction, and if necessary, to effect emergency repairs to take remedial action;
- (j) Maintain all access roads in good repair;
- (k) Not interfere with or obstruct the use of sidewalks and roadways outside the limits of the Lands without the consent of the Municipality;
- (l) Maintain an unobstructed emergency route at all times with a minimum width of six (6) metres constructed of granular and with sufficient compaction to provide access for all emergency vehicles;
- (m) Be responsible for any damage caused to any existing utility, road, street, structure or plan;
- (n) Ensure that there are no hazardous conditions on the Lands;
- (o) Dispose of all construction refuse and debris in an orderly and sanitary fashion off the Lands;
- (p) Not engage in any blasting operations without the consent of the Municipality and providing appropriate insurance coverage for such operations;
- (q) Maintain the Pre-Servicing Works after construction is completed until a Subdivision Agreement is executed with the Municipality;
- (r) Provide written notice of any change in relation to the Pre-Servicing Works;
- (s) Not change either its Consulting Engineer or any Contractor approved for the Pre-Servicing Works without having provided reasonable notice to the Municipality and having obtained the consent of the Municipality, which consent will not unreasonably withheld; and

- (t) Cease construction immediately upon receipt of written direction from the Municipality which direction to cease construction shall be issued at the sole discretion of the Municipality acting reasonably, and return the Lands to a safe and tidy condition with free drainage, prior to demobilizing.

The obligations of the Developer set out herein shall be performed at all times to the satisfaction of the Municipality.

6. **COMPLETION OF WORKS**

The Pre-Servicing Works shall be installed expeditiously and continuously. In the event that the Developer fails to complete the Pre-Servicing works, or a portion of them, as required, or to complete any of the other requirements under this Agreement within twelve (12) months from the date of execution, any permission provide herein shall expire and the Municipality shall be entitled to take such steps as it considers necessary to rectify any deficiency, or to return the Lands to a safe and tidy condition.

7. **SECURITY**

Prior to commencing construction of the Pre-Servicing Works, the Developer shall deposit with the Municipality cash or an irrevocable standby letter of credit from a Schedule 1, Canadian Chartered Bank issued in accordance with the policy of the Municipality respecting letters of credit in the amount of \$_____ to cover the faithful performance of all of the obligations arising under this Agreement. This amount has been calculated as the total required to cover the securities for both the internal and any external works. The internal works have been calculated as ten percent (10%) of the construction cost for all works plus fifteen percent (15%) Contingencies and Engineering, and rounded up to the next thousand dollar figure. Any external works have been secured at one hundred percent (100%) of cost, plus fifteen percent (15%) Contingencies and Engineering, and rounded up to the next thousand dollar figure. This letter of credit will be in addition to any letter of credit already provided under previous Agreements. The Developer acknowledges that there will be no reductions permitted in the security lodged under this Agreement and there will be a requirement for further security at such time as the Subdivision Agreement is entered into.

8. **USE OF SECURITY**

If, under the terms of this Agreement, the Municipality finds it necessary to draw on any of the securities posted, or the Developer fails to renew any securities or provide additional ones where required, then the Municipality shall have the right to treat the Developer as being in breach of this Agreement and, in addition to any other rights under this Agreement, the Municipality shall be entitled to prohibit any further Pre-Servicing Works being carried out on the Lands until the securities have been restored, renewed or increased as required. Further, the Developer acknowledges that irrespective of the manner in which the amount of the security was calculated, the cash or letter of credit has been lodged to secure all obligations of the Developer and the security may be used to complete any aspect of the Pre-Servicing Works to the exclusion of any other aspect thereof, to return the Lands to their pre-construction state

if deemed appropriate, or to fulfill any other obligation under this Agreement, irrespective of the manner in which the original value was calculated or the obligation described.

9. **INSURANCE**

The Developer shall insure in respect of liability all property damage and personal injury or claims for such damage or injury with an insurance company satisfactory to the Municipality. Such policy or policies shall be issued in the joint name of the Developer and the Municipality, or have the Municipality as an additional named insured, with the form and content to be subject to the approval of the Municipality. A copy of the policy shall be lodged with the Municipality and have minimum limits of five million dollars (\$5,000,000.00) all inclusive of any one accident or occurrence. The policy shall be in effect for the period of this Agreement including any maintenance periods that will be required for the Pre-Servicing Works installed.

10. **DEVELOPER'S DEFAULT**

In the event that the Developer fails to properly install services, correct deficient work, or complete any part of the Pre-Servicing Works, then the Municipality may give notice to the Developer of any such deficiency or failure. In the event the Developer fails, within seven (7) days of such notice, to rectify the deficiency to the satisfaction of the Municipality, then the Municipality will be entitled to enter the Lands and correct the problem, or conduct any other remedial work, as it sees fit at the expense of the Developer. In the event of an emergency, the Municipality will be entitled to enter the Lands forthwith without notice to the Developer in order to secure the site and rectify the emergency situation, at the expense of the Developer. In the event the Developer fails to pay any costs or expenses without thirty (30) days of notice from the Municipality, then the Municipality will be entitled to realize upon the securities lodged in addition to any other rights or remedies the Municipality may have, including the right to add the costs or expenses to the tax roll of the Lands pursuant to the provisions of the *Municipal Act* whereupon such amount shall be conclusively deemed to be tax arrears and may be collected in the same manner as tax arrears. The Developer shall be responsible for any and all costs for enforcement of this Agreement for rectification of deficient work, including legal costs. Any costs or expenses incurred by the Municipality will constitute a lien against the Lands. Any entry onto the Lands by the Municipality to enforce its rights or to rectify deficient work will be as agent of the Developer only and shall not be construed as acceptance or assumption of any of the Pre-Servicing Works by the Municipality.

11. **FILL MANAGEMENT**

To the extent that the Lands require the import or export of fill and/or topsoil, the Development will be required to obtain the approval of the Municipality for the source site of imported fill, the destination site for exported fill, the quality of the fill material being imported or exported, and the haul route. Further, to the extent materials are used from the development Lands, the Developer will provide in the Grading Plans details sufficient to satisfy the Municipality that the Lands will be left in a safe, tidy and free draining condition.

12. **FINISHED GRADE**

The Developer shall ensure that the finished grade surface is protected by sod, turf, seeding for grass, greenery, or other means, either singly or in combination, to the satisfaction of the Municipality. All disturbed areas outside of the limits of the Subdivision shall be stabilized within seven (7) days of the completion of the grading process in that area. No disturbed area shall be exposed for more than thirty (30) days without proper stabilization, and within seven (7) days of written notice by the Municipality, the Developer shall undertake to stabilize all disturbed areas in the manner noted above. If the Developer fails to undertake the above-noted works within the time allotted, the Municipality, at the Developer's expense, may do the work. The Developer shall reimburse the Municipality within thirty (30) days of demand and if payment is not made, the Municipality may recover the costs as outlined in this Agreement.

13. **SUBDIVISION AGREEMENT**

The purpose of this Agreement is to allow the Developer to commence Pre-Servicing Works on the Lands as a preliminary step in the development of the Plan Lands prior to the registration of the M-Plan for subdivision of the Lands. Notwithstanding, the Developer acknowledges that the Municipality will not approve the release of the Lands for the registration of a plan of subdivision, or for any phase thereof, until such time as the Developer has entered into a Subdivision Agreement which, in addition to other matters, will address all remaining conditions of the draft plan approval and the completing of the Pre-Servicing Works.

14. **INDEMNITY**

The Developer shall indemnify and save harmless the Municipality from all actions, causes of action, suits, claims, costs and demands whatsoever which may arise either directly or indirectly by reason of the Developer undertaking the construction of the Pre-Servicing Works, or taking any other action or obligation which may be associated with this Agreement including any and all legal costs incurred by the Municipality. Further, the Municipality may, but is not required to, use any securities posted under this Agreement in order to satisfy, pay, discharge, vacate or release any lien, charge or claims arising from any obligation under this Agreement including indemnification for all costs incurred by the Municipality, including any and all of its legal costs. Without limiting the generality of the foregoing, such indemnification shall extend to the following:

- (a) all engineering and planning costs, disbursements and related expenses as a result of the services required to be performed for the Municipality in connection with this Agreement, the Lands, the pre-servicing of the Lands, or the Plan or any other matter or thing in connection herewith or pertaining thereto;
- (b) all legal fees and disbursements as a result of legal services rendered to the Municipality in connection with this Agreement, the Lands, the pre-servicing of the Lands, the Plan or any other matter or thing in connection herewith or pertaining thereto;
- (c) any costs and damages suffered by third parties as a result of the negligence of the Developer or the default of the Developer pursuant to the terms of this

Agreement or the contravention of any Laws, notwithstanding the fact that such third parties have not claimed or are not entitled to claim against the Municipality for such damages or costs;

- (d) the reasonable cost of all Services and the employment of all persons, firms and corporations in connection with this Agreement or referred to herein.

15. **REGISTRATION**

The parties agree that this Agreement shall be registered against the title of the Lands at the option of the Municipality and at the Developer's expense. Upon registration, this Agreement shall be deemed to run with the Lands.

16. **MORTGAGE**

The Developer warrants that any Mortgagee/Chargee or any other encumbrancer has consented to this Agreement being registered in priority and shall obtain and register such Postponement or Interest as is required by the Municipality to give effect to the priority of this Agreement. Any Mortgagee/Chargee shall be deemed to agree that in the event of it assigning, or transferring the mortgage/charge on the subject Lands, or any interest thereunder, the assignment or transfer shall be subject to the terms hereof in the same manner as if the assignee or transferee had executed this Agreement.

17. **NOTICE**

Any notice required to be given to the Developer pursuant to this Agreement may be given by delivering same directly to the Developer, the engineer or solicitor, or in the alternative, may be given by registered mail, facsimile transmission and/or e-mail, addressed to the Developer, its engineer or solicitor at the principal place of business for the Developer, its engineer or solicitor, as the case may be, with such notice being deemed to have been received on the date of the delivery, or in the event of being sent by registered mail, on the fifth (5th) day after the date of the deposit thereof in the post office or in the further event of facsimile transmission or e-mail, on the same day if before 4:00 p.m. on a business day, otherwise, on the first business day after the transmission or such facsimile or e-mail. Unless otherwise advised, the address for the Developer will be deemed to be: 26 Park Ave, Burford, ON N0E 1A0, Fax No.: _____, E-mail: _____. Any notice required to be given to the Municipality will be given to c/o The Clerk, The Corporation of the County of Brant, _____, Fax No.: (519) _____, E-mail: _____.

18. **INTERPRETATION OF AGREEMENT**

The following rules of interpretation apply to this Agreement and the Schedules attached:

- (a) Words and terms not defined shall have the customary meanings.

- (b) The part numbers and headings, sub-headings and section, sub-section, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
 - (c) The word "Developer" includes an individual, an association, a partnership, or a corporation and similarly, wherever the context requires, the singular shall be construed as including the plural, and the masculine gender, the feminine or neuter genders.
 - (d) This Agreement shall be construed with all changes in number and gender as may be required by the context;
 - (e) 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;
 - (f) All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants;
 - (g) Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list 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;
 - (h) Nothing in this Agreement shall relieve the Developer from compliance with all applicable Municipal By-Laws and Regulations, or the laws and regulations established by any other governmental body or authority which may have jurisdiction over the Lands and the development of same; and
19. The parties agree that all covenants and conditions contained in this Agreement shall be severable and if any of the provisions of this Agreement or the application thereof to any circumstances shall be held to be invalid or unenforceable, then the remaining provisions of this Agreement or the application thereof to other circumstances shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

20. **WAIVER AND TIME**

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

Time shall be of the essence of this Agreement. Any time limit specified may be extended on the consent of the parties, but no such extension of time will 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.

21. **AGREEMENT BINDING**

This Agreement shall be governed by the laws of the Province of Ontario and be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns, as the case may be.

IN WITNESS WHEREOF the Corporate Parties have hereunto affixed their corporate seals or asserted binding authority as attested by their proper signing officers in that behalf, and the individuals have hereunto set their hands as witnessed.

**THE CORPORATION OF THE
COUNTY OF BRANT**

Per: _____
Mayor -

Per: _____
Clerk -

We have authority to bind the corporation

COMPANY NAME

Per: _____
Name: Name

Title: Title

I have the authority to bind the corporation