

## SUBDIVISION PRE-SERVICING AGREEMENT

**THIS AGREEMENT** made on the 25<sup>th</sup> day of September, 2018

B E T W E E N:

**BROOKFIELD RESIDENTIAL (ONTARIO) LIMITED**

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 PL130478, PL130479 and PL130480 (the “**Plan**”) for the **Lands**;

**AND WHEREAS** it is the intention of the parties to enter into a Subdivision Pre-Servicing Agreement (the “**Agreement**”) for the **Lands**.

**AND WHEREAS** it is the intention of the parties to enter into an (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) install the infrastructure for servicing the **Lands** in accordance with the construction drawings described in Schedule “B” attached hereto at its own risk to facilitate the development of the said **Lands**;

**AND WHEREAS Pre-Servicing** the **Lands** will be solely at the cost and risk of the **Developer**;

**AND WHEREAS** the **Municipality** requires the **Developer** to enter into an Agreement to satisfy all conditions financial or otherwise with respect to the proposed 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**, 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-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, construct water infrastructure, sanitary sewer infrastructure, stormwater infrastructure, utilities and roadways and all activity on the **Lands** related thereto ("**the Pre-Servicing Works**"), subject to the terms of this **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) **The Pre-Servicing Works** shall be installed on the **Lands** without expectation of connection to Municipal services prior to the entering into with the **Municipality** of the **Subdivision Agreement** unless connection of such services are expressly shown in the documents listed in Schedule B;
- (d) No **Pre-Servicing Works** shall be constructed on the **Lands** that would interfere with the existing drainage of the adjoining **Lands**;
- (e) **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
- (f) 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, and any subsequent modifications to the schedule, 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 Conservation and Parks (MOECP) for storm water drainage and the sewage collection system;
  - (c) Applying for and receiving a Form 1 – Record of Watermains Authorized as Future Alterations, initiated by the **Developer** and completed by the County’s Director of Water;
  - (d) Resolving all necessary off-site matters as well as obtaining clearances for the servicing from all appropriate authorities and government agencies including the Grand River Conservation Authority (GRCA) as well as applicable utility operators;
  - (e) Installing all necessary tree preservation, fencing, access control measures, property signage, and appropriate erosion and siltation control devices and structures;
  - (f) Designating in writing a contact person or persons who shall have the 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;
  - (g) Providing a protocol for emergency contacts indicating the order of precedence of contact names for such instances where specific individuals are unreachable;
  - (h) Preparing and issuing to the **Municipality** detailed minutes of the pre-construction meeting or meetings no later than three (3) working days after the date of each meeting.
  - (i) Arranging and completing a pre-construction meeting, or meetings, with the **Municipality** to satisfy the **Municipality** as to the pre-servicing process and procedures;
  - (j) 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**;
  - (k) Meeting the Archaeological requirements of the Ministry of Tourism, Culture & Sport;
  - (l) Meeting all Federal and Provincial legal requirements;
  - (m) Submission of the following information:

- (i) water infrastructure construction, disinfection and commissioning plan in accordance with the Municipality's Guidance Document GD-03 – Guide for the Development of a Disinfection and Commissioning Procedure for Municipal Drinking Water Infrastructure Private Water Service Connections and Fire Lines 50 mm or Greater;
  - (ii) evidence of successful completion of training of staff involved in the water infrastructure construction, disinfection and commissioning provided by the **Municipality**; and
  - (iii) plan to maintain water infrastructure after construction, prior to the final connection of the private infrastructure to the municipal water distribution system.
- (n) Attendance at pre-construction meeting specific to water infrastructure, construction, disinfection and commissioning plan.

## 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, dust, construction equipment/vehicles, materials and debris 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** in accordance with the documents listed in **Schedule 'B'**, as amended from time to time, so 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** and the **Works** 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 timely written notice of any change in relation to **the Pre-Servicing Works**;
- (s) Maintain records to produce complete and accurate records (as-constructed drawings);
- (t) Arrange complete construction progress meetings with the **Municipality** to satisfy the **Municipality** as to the **Pre-Servicing** progress, process and procedures;
- (u) Prepare and issue to the **Municipality** detailed notes of the progress meetings, no later than three (3) working days after the date of each meeting;
- (v) Not change either its Consulting Engineer or any Contractor 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
- (w) 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 provided 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 at the **Developer's** expense.

## 7. **MAINTENANCE OF WORKS**

- (a) It is the Developer's responsibility to maintain the Works in good order at all times;
- (b) If the Works are completed prior to registration of the plan of subdivision and subdivision agreement, the **Developer's Engineer** shall provide to the **Municipality**:
  - (i) a statement describing that all **Works** were constructed satisfactorily in accordance with the documents described in **Schedule 'B'**, best practices, and all applicable codes and regulations; and
  - (ii) a plan for maintaining the **Works** in good order, satisfactory to the **Municipality**.

8. **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 **\$ 354,000.00** 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.

9. **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.

10. **INSURANCE**

Prior to the registration of the Plan of Subdivision and the execution of this Subdivision Agreement, the **Developer** shall purchase and maintain insurance against all damages or claims for damage with a financially sound and reputable insurance company satisfactory to The Corporation of the County of Brant and continue to maintain such insurance until an Assumption By-law has been passed by The Corporation of the County of Brant. The **Developer** shall provide a Certificate of Insurance to The Corporation of the County of Brant evidencing the insurance coverage required prior to the registration of the Plan of Subdivision and the execution of this Agreement and hereafter annually on the insurance renewal date.

The **Developer's** insurance shall be primary.

The insurance premium for the required insurance must be prepaid for a period of not less than one (1) year. The insurance policy must provide that it is not cancellable unless prior notice by mail has been received by The Corporation of the County of Brant from the insurer not less than thirty (30) days prior to the cancellation date.

All parties must agree to immediately notify the other parties of any occurrence, incident, or event which may reasonably be expected to expose any of the parties to liability of any kind in relation to the development of the Subdivision.

The issuance of such insurance policy or policies shall not be construed as relieving the **Developer** from responsibility for any other or larger claims in excess of such policy or policies, if any, for which the **Developer** may be held responsible. Such insurance policy or policies shall be in a form acceptable to the County and, without limiting the generality of the foregoing, shall provide:

a. **COMMERCIAL GENERAL LIABILITY INSURANCE**

Commercial General Liability, underwritten by an insurer licensed to conduct business in the Province of Ontario, for a limit of not less than \$5,000,000.00 per occurrence, an

aggregate limit of not less than \$10,000,000.00 within any policy year, with respect to completed operations and a deductible of not more than \$100,000.00. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy including SEF 94 and SEF 96 with minimum limits of \$2,000,000.00 per occurrence. This policy shall name "The Corporation of the County of Brant" as an additional insured and shall include but not be limited to coverage as follows:

- (a) Cross-liability and severability of interest
- (b) Blanket Contractual
- (c) Products and Completed Operations
- (d) Premises and Operations Liability
- (e) Personal Injury Liability
- (f) Contingent Employers Liability
- (g) Owners and Contractors Protective
- (h) Broad Form Property Damage
- (i) The policy shall include 30 days' notice of cancellation.

**b. EXPLOSION, COLLAPSE OR UNDERGROUND ENDORSEMENT**

Where the description of the project, supply or work involves the use of explosives for blasting or vibration from pile driving or caisson work or underpinning; The removal or weakening of support of such property, building or land, whether such support be natural or otherwise, Explosion, Collapse or Underground (XCU) coverage's must be added by endorsement.

"The Corporation of the County of Brant" shall be added as an additional insured to the above policies.

**c. AUTOMOBILE LIABILITY INSURANCE**

Automobile Liability insurance covering third party property damage and bodily injury, including accident benefits as may be required by applicable laws arising out of any licensed vehicle owned or leased by the **Developer** in connection with this agreement with an inclusive limit of liability of two million dollars (\$2,000,000.00).

**d. PROFESSIONAL LIABILITY INSURANCE**

The **Developer** shall ensure that any Professionals hired shall carry Professional Liability Insurance in the amount not less than \$2,000,000.00 providing coverage for acts, errors and omissions arising from their professional services performed under this Agreement. The policy SIR/deductible shall not exceed \$100,000 per claim and if the policy has an aggregate limit, the amount of the annual aggregate shall be in an amount of not less than \$4,000,000.00. The policy shall be underwritten by an insurer licensed to conduct business in the Province of Ontario and acceptable to The Corporation of the County of Brant. The policy shall be renewed for 3 years after **Agreement** termination. A certificate of insurance evidencing renewal is to be provided each and every year. If the policy is to be cancelled or not renewed for any reason, 30 days notice of said cancellation or non-renewal must be provided to The Corporation of the County of Brant. The Corporation of the County of Brant has the right to request that an Extended Reporting Endorsement be purchased by the (Professional) at the (Professional's) sole expense.

**e. ENVIRONMENTAL LIABILITY**

- f. Environmental Liability Insurance with a minimum limit of \$5,000,000.00 per occurrence, to cover injury to or physical damage to tangible property including loss of use of tangible property, or the prevention, control, repair, cleanup or restoration of environmental impairment of lands, the atmosphere or any water course or body of

water on a sudden and accidental basis and on a gradual release. The policy shall include bodily injury, including sickness, disease, shock, mental anguish, and mental injury. The policy is to be renewed for 3 years after project completion and a Certificate of Insurance evidencing renewal shall be filed with the County. If the policy is to be cancelled or non-renewed for any reason, 30 days notice of said cancellation or non-renewal must be provided to the County. The County has the right to request that an Extended Reporting Endorsement be purchased by the **Developer** at the **Developer's** sole expense.

**g. PRIMARY COVERAGE**

The **Developer's** insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the **County**.

**h. CERTIFICATE OF INSURANCE**

The **Developer** shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to **Agreement** commencement and annually thereafter for the entire duration of the agreement.

**i. INDEMNIFICATION**

The **Developer** shall defend, indemnify and save harmless THE CORPORATION OF THE COUNTY OF BRANT its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, including but not limited to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from, arising out of or allegedly attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the (insert "hereinafter" name of developer), its directors, officers, employees, agents, contractors and subcontractors, or any of them, in connection with or in any way related to the delivery or performance of this **Agreement**. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the **Developer** in accordance with this **Agreement**, and shall survive this **Agreement**.

The **Developer** agrees to defend, indemnify and save harmless THE CORPORATION OF THE COUNTY OF BRANT from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever arising out of or related to the (insert "hereinafter" name of developer) status with WSIB. This indemnity shall be in addition to and not in lieu of any proof of WSIB status and compliance to be provided by the (insert "hereinafter" name of developer) in accordance with this **Agreement**, and shall survive this **Agreement**.

**11. 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**.

12. **SITE ALTERATION PERMIT**

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.

13. **GRADE SURFACE**

The **Developer** shall ensure that the 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.

14. **PURPOSE OF 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 **Subdivision Agreement** on 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**.

To be clear, the purpose of this **Agreement** is to advance the schedule for the development by permitting the construction of certain infrastructure on the **Lands** prior to the registration of the plan of subdivision and the subdivision agreement. It is intended that both parties will work diligently toward the plan of subdivision and **Subdivision Agreement** being registered prior to the **Pre-serving Works** being complete.

This agreement does not permit the construction of service connections on the proposed building lots.

Further, this agreement does not permit the connection of the **Pre-serving Works** constructed on the **Lands** to any municipal infrastructure not on the lands, save and except for sanitary sewer infrastructure and stormwater infrastructure and unless expressly described in the documents of Schedule B. It is intended that terms and conditions for connection of the **Pre-serving Works** constructed on the **Lands** to municipal infrastructure not on the lands will be contained in the **Subdivision Agreement**. Should, in the future, the Developer and Municipality agree that it is beneficial for the connection of **Pre-serving Works** constructed on the **Lands** to municipal infrastructure not on the lands not covered by this **Agreement** or the **Subdivision Agreement**, a separate agreement regarding said connection shall be executed by both parties prior to the connection being made.

15. **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.

16. **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**.

17. **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 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**.

18. **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 (5<sup>th</sup>) 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: 100-7303 Warden Avenue, Markham, ON L3R 5Y6, Fax No.: (905) 477-9001, E-mail: c/o David Murphy [david.murphy@brookfieldrp.com](mailto:david.murphy@brookfieldrp.com). Any notice required to be given to the Municipality will be given c/o The Clerk, The Corporation of the County of Brant, 26 Park Ave, Burford, ON N0E 1A0 Fax No.: (519) 449-2454, E-mail: [heather.boyd@brant.ca](mailto:heather.boyd@brant.ca)

19. **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

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 ensure 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

**BROOKFIELD RESIDENTIAL (ONTARIO) LIMITED**

Per: \_\_\_\_\_  
Name:  
Title:  
I have the authority to bind the corporation

Per: \_\_\_\_\_  
Name:  
Title:  
I have the authority to bind the corporation

**SCHEDULE "A"**

**DESCRIPTION OF LANDS**

The subject lands affected by this Agreement are composed of PIN 32040-0533 (LT) and described as:

PART OF LOT 31, CONCESSION 2, SOUTH DUMFRIES, AND PART OF THE ROAD ALLOWANCE BETWEEN LOTS 30 & 31, CONCESSION 2, SOUTH DUMFRIES, STOPPED UP AND CLOSED BY BY-LAW A148716, DESIGNATED AS PART 1, 2R-7434, COUNTY OF BRANT

**SCHEDULE "B"**

to the

SUBDIVISION(PRE-SERVICING AGREEMENT

dated September 25<sup>th</sup>, 2018

BETWEEN

**BROOKFIELD RESIDENTIAL (ONTARIO) LIMITED**

OF THE FIRST PART

- and -

**THE CORPORATION OF THE COUNTY OF BRANT**

OF THE SECOND PART

**List of Engineering and Other Service Drawings and Reports**

For the purpose of this Pre-Servicing Agreement the Drawings shall constitute the following items:

1. Storm Sewer Design Sheet (March 29, 2017) SCS Consulting Group Ltd.
2. Storm Sewer Design Sheet – 5 yr Storm, Watts Pond Rd (March 29, 2017) SCS Consulting Group.
3. Sanitary Sewer Design Sheet (March 29, 2017) SCS Consulting Group Ltd.
4. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Cover Page
5. SCS Project No. 1065. (Rev. 12; December 20, 2017) – General Notes and Orientation Plan (drawing # 100).
6. SCS Project No. 1065. (Rev. 12; December 20, 2017) – General Plan 1 (drawing #101).
7. SCS Project No. 1065. (Rev. 12; December 20, 2017) – General Plan 2 (drawing #102).
8. SCS Project No. 1065. (Rev. 12; December 20, 2017) – General Plan 3 (drawing #103).
9. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Storm Drainage Plan 1 (drawing #201)
10. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Storm Drainage Plan 2 (drawing #202)
11. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Storm Drainage Plan 3 (drawing #203)
12. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Sanitary Drainage Plan 1 (drawing #301)
13. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Sanitary Drainage Plan 2 (drawing #302)
14. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Sanitary Drainage Plan 3 (drawing #303)
15. SCS Project No. 1065. (Rev. 12; December 20, 2017) – External Sanitary Drainage Plan (drawing #304)
16. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Hartley Avenue STA. 0+650 to 0+850 (drawing #401)
17. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Hartley Avenue STA. 0+850 to 1+100 (drawing #402)
18. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Hartley Avenue STA. 1+100 to 1+340 (drawing #403)
19. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Woodslee Avenue STA. 1+050 to 1+160 (drawing #408)

20. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Oak Avenue STA. 1+080 to 1+320 (drawing #409)
21. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Drake Avenue STA. 0+000 to 0+220 (drawing #410)
22. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Drake Avenue/Oldham Avenue STA. 0+220 to 0+440 (drawing #411)
23. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Attleberry Crescent 0+000 to 0+230 (drawing #418)
24. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Block C1 & G1 Inlet Sewers (drawing #419)
25. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Block 101 Pond C1 Sewer Inlet (drawing #420)
26. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Grading Plan 3 (drawing #503)
27. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Grading Plan 4 (drawing #504)
28. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Grading Plan 5 (drawing #505)
29. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Grading Plan 6 (drawing #506)
30. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Grading Plan 7 (drawing #507)
31. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Grading Plan 8 (drawing #508)
32. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Grading Plan 8 (drawing #509)
33. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Grading Details (drawing #510)
34. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Curb Line Grade Details (drawing #512)
35. SCS Project No. 1065. (Rev. 12; December 20, 2017) – SWM Pond C1 (drawing #604)
36. SCS Project No. 1065. (Rev. 12; December 20, 2017) – SWM Pond C1 – Details 1 (drawing #605)
37. SCS Project No. 1065. (Rev. 12; December 20, 2017) – SWM Pond C1 – Details 2 (drawing #606)
38. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Site Alteration Plan Stage 1 – Topsoil Stripping (drawing #701)
39. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Site Alteration Plan Stage 2 – Earthworks (drawing #702)
40. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Site Alteration Plan Stage 3 & 4 – Servicing, Road & House Construction (drawing #703)
41. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Erosion And Sediment Control Details (drawing #705)
42. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Right-of-Way Cross Sections & Miscellaneous Detail (drawing #901)
43. SCS Project No. 1065. (Rev. 12; December 20, 2017) – County of Brant Standard Drawings (drawing #903)
44. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Ontario Provincial Standard Drawings (drawing #904)
45. SCS Project No. 1065. (Rev. 12; December 20, 2017) – Cross Sections (drawing #1101)

The drawings can be viewed at the County of Brant office located at 66 Grand River Street North, Paris ON N3L 2M2.