

**Document General**

**Pre-Servicing Agreement**

**Between**

\_\_\_\_\_

**and**

**The Corporation of the City of Kawartha Lakes**

\_\_\_\_\_ -

**16T- \_\_\_\_\_**

**Dated as of \_\_\_\_\_**

**CITY OF KAWARTHA LAKES**  
**PRE-SERVICING AGREEMENT**

THIS AGREEMENT made in quadruplicate this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

BETWEEN:

\_\_\_\_\_  
Hereinafter called the "OWNER"

OF THE FIRST PART

and

**THE CORPORATION OF THE CITY OF KAWARTHA LAKES**

Hereinafter called the "CITY"

OF THE SECOND PART

WHEREAS:

1. The Owner is the owner of land within the City of Kawartha Lakes legally described as, \_\_\_\_\_, now in the City of Kawartha Lakes.

2. The Owner has made application for a plan of subdivision, known as \_\_\_\_\_, filed with the City as 16T-\_\_\_\_\_ in respect of the Land;

3. The Owner wishes to commence installation of certain works on or in the Land (the "Works") within the proposed plan of development prior to execution of the Subdivision Agreement, including: (TO BE CONFIRMED BY CONSULTING ENGINEER, ie Earthworks & Grading/Tree Removal/ Underground Servicing/Model Home construction/Other), as more particularly set out in Schedule "A" attached hereto; and

4. The City is prepared to permit the Owner to commence installation of the Works, as requested, in accordance with the following terms and conditions;

5. The Owner acknowledges that the City is under no legal obligation to assume or accept the services referred to herein as the Works.

The provisions of the Pre-Servicing Agreement shall prevail until the registration of the plan of subdivision against the lands, after which the subdivision agreement shall supersede this Agreement. In the event that the Draft Plan Approval for the plan of subdivision lapses, the Pre-Servicing Agreement is null and void.

In consideration of the City granting the Owner permission to commence installation of the Works on or in the Land within the plan of development 16T-\_\_\_\_\_ prior to the execution of the Subdivision Agreement and the mutual covenants contained herein, the parties agree and acknowledge as follows:

**1. Permission**

The City hereby grants permission for the Owner to commence installation of certain Works on or in the Land, within the plan of subdivision prior to execution of the Subdivision Agreement. Permission is granted for certain Works based on the engineering design drawings approved for pre-servicing by the City and listed within Schedule "A" of this agreement. The City has received the following

documentation pertaining to the clearance from the Ministry of Tourism, Culture, and Sport, the Ministry of Environment and Climate Change and required Environmental Compliance Approvals, the Conservation Authority and required permits, and all approving agencies:\_\_\_\_\_

A copy of the detailed construction schedule and two complete copies of "Issued for Pre-Servicing" sets of engineering drawings are attached to this agreement. All payments pursuant to By-Law 2007-132 for Engineering Activities have been confirmed.

## **2. Acknowledgment of Owner**

(1) The Owner acknowledges that:

- (a) proceeding with the Works in advance of execution of the Subdivision Agreement is totally at his or her own risk;
- (b) electing to proceed with the Works in advance of execution of the Subdivision Agreement is not based upon any representation from the City as to when any remaining site servicing for the subdivision may be provided;
- (c) in granting this permission, the City makes no representation that the Owner is not required to comply fully with all applicable conditions of approval of the development prior to receipt of final approval and tender for registration of the subdivision.

(2) The Owner agrees that no work, including the installation of any services will be permitted on any public right of way, including any public highways, easements or reserves, prior to the execution of the Subdivision Agreement and receipt by the City of the cash and securities required thereunder.

(3) The Owner agrees that the site servicing within the Land will not be permitted to be connected to any existing sewers on any public right of way, prior to the execution of the Subdivision Agreement and receipt by the City of the cash and securities required thereunder.

## **3. Compliance with By-laws, Rules and Regulations**

The Owner agrees to comply with all federal, provincial and municipal laws, rules, regulations and by-laws.

## **4. Hours of Installation**

(1) The Owner agrees that no work will be conducted on Sundays or Statutory Holidays, and that no work requiring inspection and/or certification will be conducted on Saturdays, except in the case of an emergency.

(2) The Owner's Contractor(s) shall, as far as possible, refrain from work on days which are legal holidays in the City. In case the Owner desires to work on any such holiday, he or she shall notify the Director, in writing, at least four (4) working days in advance of any such holiday that he or she desires to work, stating those phases where work will be conducted. If the Contractor fails to give such notice, such failure shall be considered as an indication that no work requiring the presence of a Director or Inspector is to be done by the Contractor on such a holiday.

## **5. Construction Management**

The Owner agrees that prior to any work commencing, there will be a mandatory pre-construction meeting with all parties involved including the City, Owner or Owner's representative/agent, Owner's Engineer and the contractor performing the work. A detailed Construction Management Plan must be provided to the City and include:

- Project team & contact information
- Construction schedule, demonstrating all tasks and sequence of proposed works and in a time frame that is acceptable to the City.
- Measure for minimizing construction dust, debris, noise and other off-site impacts, including regular maintenance of adjacent streets.

- Construction access, traffic & safety plan, site security & signage and City ROW maintenance.

## **6. Tree Removal and Clearing**

The Owner agrees that tree clearing or removal to facilitate servicing the Lands will be identified on a Removals Plan and will be submitted with an appropriate Sediment and Erosion Control Plan for the proposed removals.

The Owner agrees to provide continuous and careful control of dust from the Land. Where the Owner is notified of a dust problem and takes no action to resolve the dust problem to the satisfaction of the City, the Owner agrees to pay the actual costs incurred by the City, plus administration fee, to control dust on the Land. Reasonable mitigation measures may include, but are not limited to, spraying the Land with mulch, seeding or watering of the land to hold down dust or promote vegetation.

The Owner agrees to provide a copy of all applicable Conservation Authority permits.

## **7. Early Construction Homes, Model Homes**

**Early Construction Home** means a single detached dwelling, semi-detached dwelling or townhouse block to promote the sale of residential units and provide for early start construction for areas of high consumer demand within a draft approved plan of subdivision, proposed for registration.

**Model Home** means a single detached dwelling, semi-detached dwelling or townhouse block used in the interim for the sole purpose of an office and/or show room and/or sales centre to promote the sale of residential units within a draft approved plan of subdivision proposed for registration.

The Owner is permitted to commence construction of unoccupied Early Construction Homes and Model Homes on the Lands, up to 10% of the building lots, to a maximum of 10 Early Construction Homes and/or Model Home Permits prior to the Registration of the Subdivision Agreement and M-Plan, to facilitate marketing of the development. Model Home Permits will only be issued to the Owner.

The Owner acknowledges that no occupancy of an Early Construction Home or Model Home is permitted.

The Owner acknowledges and agrees that in requesting building permits to permit the construction of Early Construction Homes and Model Homes and prior to the execution of the subdivision agreement and registration of the plan of subdivision, the Owner agree to the conditions of the building permit(s) and to indemnify and save harmless the City from and against all loss, cost, charges, damages, expenses, claims, and demands whatsoever, to which the City may be put or which it may suffer or sustain or for which it may be liable by reason of anything done or omitted to be done in the construction of the Early Construction Home(s) or Model Home(s) authorized by the building permit.

The Owner acknowledges that the issuance of Early Construction Home or Model Home permits does not obligate the City to release any conditions of draft approval of the plan of subdivision herein nor does it constitute the City's approval of the engineering design plans and drawings and further that the Owner is proceeding with the construction of model homes entirely at their own risk and shall be fully responsible for any modifications to or demolition of any model home which may become necessary as a result of final approval of the draft plan of subdivision or the engineering design of the subdivision or the lack of final approval thereof.

The Owner must identify the location of the proposed unoccupied Early Construction Home or Model Home on the Pre-Servicing engineering drawing submission, listed in Schedule A, and include at a minimum:

The Owner shall have constructed a minimum 7 metre wide access road from an open public road to the lot upon which the model home is to be constructed. The access shall be paved to the base course asphalt stage with full curb and gutter.

- (1) The Owner shall construct a gravel turning circle, or approved equivalent, at the end of any such access road, in accordance with the Building Code Act.
- (2) An in-service fire hydrant shall be located within 90 metres of the Early Construction Home or Model Home, based on vehicular travel distance.
- (3) At the time of commencement of construction of an Early Construction Home or Model Home, no portion of a model home shall be constructed within 15.0 metres of any other building with an unfinished exterior, other than another Early Construction Home or Model Home.
- (4) Water services shall not be turned on and sanitary lateral shall not be connected.
- (5) The Owner shall maintain, at its sole cost, the access road and turning circle, including snow ploughing, until the City of Kawartha Lakes Engineering & Corporate Assets confirmation of Acceptance of Public Services and subsequent issuance of the first Occupancy Permit.
- (6) The Owner covenants and agrees that no Early Construction Home or Model Home shall be occupied for residential purposes prior to the registration of the Subdivision Agreement and the City of Kawartha Lakes Engineering & Corporate Assets confirmation of Acceptance of Public Services.
- (7) The Owner's Consulting Engineer must provide the City a confirmation letter indicating the above conditions are met, prior to the issuance of Early Construction Home or Model Home Permits.
- (8) The Owner's Consulting Engineering must provide a Lot Grading and Drainage Plan for each Early Construction Home or Model Home Permit applied for, with the Consulting Engineer's certification, as per the City of Kawartha Lakes requirements. The Lot Grading and Drainage Plan must also identify onsite parking, and Model homes used as sales offices shall have a barrier free path of travel to the building entrance.
- (9) The Owner undertake and agree that construction of an Early Construction Home or Model Home shall meet the requirements under the Ontario Building Code, as amended.
- (10) In order to secure the Owner's obligations herein, the Owner agrees that the City shall be entitled to draw upon any performance security filed by the Owner in the amount as noted in Schedule XX and any other agreement that is related to the development of the lands herein, including but not limited to any performance security filed pursuant to the Subdivision Agreement.
- (11) In the event the City should perform any work the cost of which is to be paid by the Owner pursuant to this undertaking, the City's costs of undertaking such work may be charged to the Letter of Credit as specified in Schedule XX deposited with the City by the Owner and further that such costs may be collected in like manner as municipal taxes.

#### 8. Record of Site Condition

The Owner confirms that a Ministry of the Environment and Climate Change (MOECC) Record of Site Condition (if required) has been filed on the MOECC Environmental Site Registry. The MOECC Confirmation of Filing Number is

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## 9. Right of Entry

(1) The Owner agrees to allow the City, its employees, and agents, to enter the Land within the proposed plan of subdivision at all reasonable times and for all reasonable purposes, including and without limiting the generality of the foregoing, for all necessary inspections, to correct any deficiencies and to eliminate any nuisances arising from or relating to the installation of the Works.

(2) The Owner shall forthwith, upon demand, pay the City for all costs incurred by the City, including its reasonable administrative overhead, in undertaking any of the aforesaid actions.

## 10. Indemnification and Security

(1) The Owner shall and does hereby indemnify and save harmless the City and its agents and employees from all damages, actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly by reason of the installation of the Public Works within the Land by the Owner, including, without limitation, damages to existing municipal infrastructure, and the costs to rectify deficiencies and eliminate any nuisances (including the clean-up of existing roads).

(2) Prior to commencing any work hereunder, the Owner agrees to provide the City with security in the amount of 50% of the estimate of total cost of engineering works in accordance with the proposed works identified for pre-servicing and outlined in the engineering drawing set listed in Schedule "A" attached and as per Schedule "B" attached ("the Deposit") to secure and guarantee its obligations under this Agreement. For this purpose, the decision of the Director of Engineering and Corporate Assets, as to whether damage has been done, or whether rectification or cleanup is required as a result of the installation of the Works, shall be final and binding. The City shall be entitled to draw upon the said security for the above purposes at any time.

(3) The Owner shall insure against all damages or claims for damage with an insurance company satisfactory to the Insurance Risk Management Coordinator. Such policy (or policies) shall be provided to the City prior to the execution of this Agreement and be issued in the joint names of the Owner and the City, and the form and content shall be subject to the approval of the Manager of Financial Services. The insurance policy shall remain in the custody of the City during the life of this Agreement. The minimum limit of such policy shall be \$5,000,000.00 all inclusive, but the City shall have the right to set higher amounts.

(4) Upon completion of the installation of works and the execution of a Subdivision Agreement, the Owner on behalf of themselves, their heirs, executors, administrators, assigns and successors in title, hereby covenant to indemnify and save harmless the said City from all actions, causes of actions, suits, claims and demands whatsoever which may arise either directly or indirectly by reason of the installation of any works permitted under this agreement, or the failure of the Owner to complete the contemplated installation.

## 11. Withdrawal of Permission

(1) The City may withdraw its permission for the installation of the Works at any time if the Director of Engineering and Corporate Assets, in his or her sole opinion, deems it to be in the best interests of the City. Upon such withdrawal, the Owner shall forthwith cease further work with respect to the Works on or in the Land within the plan of development.

(2) When, pursuant to subsection (1), the City has withdrawn its permission the Owner agrees that it shall have no claim whatsoever against the City with respect to this agreement, the permission granted or any installation of the Works performed prior to said withdrawal of permission.

**12. Revocation of Grant**

In any event, upon the execution by both the Owner and the City of the Subdivision Agreement contemplated herein and the posting of such payments and securities by the Owner as may be required thereunder, this Agreement, along with the grant of permission accorded herein, shall be automatically revoked, and any unexpended portion of the Deposit shall be returned to the Owner forthwith.

**13. . Notice**

If any notice is required to be given by the City to the Owner with respect to this agreement, such notice shall be delivered personally, mailed, emailed, or sent by facsimile transmission to the address or fax number indicated below (or to such other address and/or fax number as the Owner may hereafter give to the City's Clerk) in writing, and any such notice delivered, mailed by prepaid first class mail or sent by facsimile transmission, shall be deemed good and sufficient notice under the terms of this agreement and to have been given upon such delivery, receipt or transmission.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**14. . Successors**

The Owner shall require this agreement to be assumed by any successor in title, to the effect that the obligations and covenants herein shall be binding upon the executors, administrators, successors and assigns.

**15. . Number and Gender**

Words importing the singular shall include the plural and vice versa. Words importing gender shall include all genders.

IN WITNESS WHEREOF the Corporate Seal of the City and of the Owner is hereunto affixed under the hands of its proper officers in that behalf.

<b>THE CORPORATION OF THE CITY OF KAWARTHA LAKES</b>	
X	_____
Name: Juan Rojas	
Title: <b>Director, Engineering and Corporate Assets</b>	
_____	_____
Name: _____	
Title: _____	
X	_____
I/We have authority to bind the Corporation.	

## SCHEDULE "A"

**SCHEDULE "A" WORKS TO BE COVERED UNDER THE PRE-SERVICING AGREEMENT BETWEEN \_\_\_\_\_ AND THE CORPORATION OF THE CITY OF KAWARTHA LAKES.**

### **Municipal Services to be Constructed by Owner**

All works are to be constructed in accordance with drawings prepared by \_\_\_\_\_ as reviewed and accepted by the City of Kawartha Lakes.

The following works are to be constructed as part of the Pre-Servicing agreement.

*(CONSULTING ENGINEER TO CONFIRM SCOPE OF WORK APPLICABLE TO PRE-SERVICING REQUEST)*

1. Install and Maintain erosion control features
2. Tree Removal and Clearing
3. Strip and stockpile topsoil
4. Excavate earth and pre-grade road for installation of Municipal Services
5. Installation of Municipal Services as per approved plans
6. Road Works to base asphalt
7. Early Construction Home(s) and/or Model Home(s)

Note – No work to be conducted on municipal property or right-of-ways, save as explicitly provided-for herein. All work to be completed on owner's property only

The Construction Management Plan will be maintained by the Owner and Consulting Engineer for the purpose of outlining the construction schedule, measures for minimizing construction debris, construction traffic plan and routing, and the contact list for any and all issues that may arise.

*The drawings are to be listed below – titles, project number, dates, and consultant.*





\$0.00 \$0.00  
 \$0.00 \$0.00

**Subtotal: Road Work \$0.00**

**5.0 Miscellaneous Work**

eg. Legal per lot \$0.00 \$0.00  
 Fencing \$0.00 \$0.00  
 \$0.00 \$0.00  
 \$0.00 \$0.00  
 \$0.00 \$0.00  
 \$0.00 \$0.00  
 \$0.00 \$0.00  
 \$0.00 \$0.00  
 \$0.00 \$0.00

**Subtotal: Miscellaneous \$0.00**

**Subtotal (Items 1.0 - 5.0) \$0.00**

**6.0 Engineering and Contingency**

5% Contingency \$0.00  
 7% Engineering \$0.00

**\*Subtotal \$0.00**

H.S.T - 13% \$0.00

**Total Construction Costs \$0.00**

**7.0 Security**

Security inclusive of H.S.T. \$0.00

**Total of Security \$0.00**

Note: Release of any security will require signoff from all other involved parties certifying all works are completed as per the subdivision agreement (i.e. City of Kawartha Lakes Building Division, Parks Canada, Conservation Authority, and so forth).

Upon completion of the site works, the Engineering department will require as-built information, certification, a statutory declaration, and Details regarding the cleaning of the stormwater management facility as well as installation certification prior to any inspection for security reduction.