

PRE-SERVICING AGREEMENT

OCT 10 2007

DRAFT

THIS AGREEMENT dated the day of 200 .

B E T W E E N:

[*NAME OF OWNER*]

(hereinafter called the "Owner")

- and -

THE CORPORATION OF THE TOWN OF MARKHAM

(hereinafter called the "Town")

WHEREAS the Owner is the registered owner of lands described in Schedule "A" (the "Lands");

AND WHEREAS the Owner proposes to develop the Lands pursuant to a (plan of subdivision/site plan control application*) and has received (draft approval of plan of subdivision/site plan endorsement in principle*) on [*date*];

AND WHEREAS it is the intention of the Owner to enter into a (subdivision/site plan*) agreement which will be a successor to this agreement governing the installation of services until assumption;

AND WHEREAS the Owner wishes to commence the installation, construction and provision of certain works on the Lands or within the public right-of-way adjacent to the Lands prior to the execution of the (subdivision/site plan*) agreement with the Town, such works being more particularly set out in Schedule "B" (the "Works");

* delete where not applicable

AND WHEREAS the Town has agreed to permit the Owner to install, construct and provide the Works as requested on the following terms and conditions;

AND WHEREAS the parties to this Agreement declare that the recitals herein are true.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of other good and valuable consideration, the parties hereto hereby covenant, promise and agree with each other as follows:

1. Permission to Construct

The Town grants permission to the Owner to commence construction and installation of the Works, as more particularly set out in Schedule “B”, on the Lands or within the public right-of-way adjacent to the Lands, prior to the execution of a (subdivision/site plan*) agreement between the Owner and the Town, subject to the provisions of this Agreement.

2. Construction of Works

a) The Owner covenants and agrees to retain a competent consulting engineer experienced in the municipal engineering field, to the satisfaction of the Director of Engineering, who will carry out all necessary engineering requirements associated with the construction and installation of the Works. The Owner further covenants and agrees that the Works will be constructed and installed in a good and workmanlike manner and in accordance with all of the Town’s standards and practices and only in accordance with the approved plans for the Works.

* delete where not applicable

b) The Owner covenants and agrees that it will not undertake any construction or installation of the Works beyond the hours of [*specific date and time limitations*] or such other dates and times as may be established by the Town from time to time.

c) The Owner covenants and agrees that it will not undertake work on any existing public right-of-way, which includes any public highways and easements located on lands other than the Lands, unless permission has been granted by the Director of Engineering, prior to the execution of the required (subdivision/site plan*) agreement.

3. Acknowledgment

The Owner acknowledges and agrees that:

- a) By proceeding with the Works in advance of execution of the (subdivision/site plan*) agreement, it is doing so at its sole and absolute risk;
- b) Its decision to proceed with the Works in advance of execution of the (subdivision/site plan*) agreement is not based upon any representation from the Town as to when any remaining site servicing for the development may be provided;
- c) It is bound by the terms and conditions of the conditions of (draft approval/site plan endorsement in principle*) and the (subdivision/site plan*) agreement when executed and that nothing contained in this Agreement or in the Town's grant of the permission to proceed with the installation and construction of the Works will prevent the Town from imposing or enforcing any of its standard conditions and requirements pertaining to the installation of public works or from enforcing its authority to require the Owner to fully comply with all applicable conditions;
- d) It shall comply with every direction issued or given by the Director of Engineering or its designate during the course of pre-servicing, in the event that, in the opinion of the Director of Engineering, work is not being carried out in accordance with the approved plans, or because an adjustment is required to suit actual conditions not known at the

* delete where not applicable

time of approval of the approved plans, or the work is being performed in a manner that may result in a completed installation that would not be satisfactory to the Town acting reasonably, or if the work has been commenced without the Town's approval, including without limiting the generality of the foregoing, the cessation of work, the installation or carrying out of additional works (whether within or beyond the limits of the proposed site), the phasing of works, restoration of the site or any other matter which the Director of Engineering deems to be in the interest of the proper development of the lands and surrounding lands.

4. Inspection and Right of Entry

The Owner covenants and agrees that the Town and any of its employees, servants or agents may enter onto the Lands at all reasonable times and for all reasonable purposes in order to make all necessary inspections and to correct any deficiencies, remedy any other defects or eliminate any nuisances arising from or relating to the construction and installation of the Works. The Owner shall, forthwith on demand, pay the Town for all costs incurred by the Town in undertaking any of the aforesaid actions.

5. Erosion, Seimentation, Mud Tracking and Dust Control

The Owner covenants and agrees to implement an erosion, sedimentation and dust control plan prior to the commencement of any site work in accordance with the approved Site Alteration Plan, in order to effectively reduce site erosion, minimize the transport of silt, minimize standing water, control dust and to minimize and manage mud tracking onto adjacent roads.

6. Compliance with All Laws and Regulations

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

7. Liability Insurance

- a) Before commencing any of the Works, the Owner shall provide the Town and keep in force a liability insurance policy in the amount of not less than \$ 5.0 million in a form satisfactory to the Town, in respect of injury to or death of one or more persons or damage to property.
- b) All insurance shall be effected with insurers and upon terms and conditions satisfactory to the Town.
- c) The Owner shall promptly furnish to the Town copies of insurance policies and other evidence satisfactory to the Town as to such insurance and any renewals thereof.
- d) In the event that the Owner fails to insure as required or fails to promptly furnish the Town with satisfactory evidence of such insurance or of the renewal thereof prior to its expiration, the Town may, from time to time, effect such insurance for the benefit of the Owner or the Town or both of them for a period not exceeding one year and any premium paid by the Town shall be recoverable by the Town from the Owner forthwith.

8. Indemnification and Release

The Owner covenants and agrees to indemnify and save the Town, its servants, agents and employees, harmless from and against all actions, suits, claims or demands which may arise either directly or indirectly by reason of the permission granted hereunder and the construction and installation of the Works on the Lands or by reason of the maintenance or lack of maintenance of the Works or by reason of any defect in workmanship or material, including without limitation, damages to existing municipal infrastructure, and the costs to rectify deficiencies, repair any defects and eliminate any nuisances. The Owner further covenants and agrees to release and forever discharge the Town from and against any and all actions, suits, claims or demands which may arise either directly or indirectly by reason

of the permission granted hereunder and the construction and installation of the Works on the Lands in advance of the execution of the subdivision agreement.

9. Fees

The Owner covenants and agrees to pay to the Town, upon execution of this Agreement, the following fees and levies:

- (a) A legal fee in the amount of _____ for the preparation of this Agreement; and
- (c) An engineering fee in the amount _____.

10. Security

- a) In order to guarantee compliance with all of the conditions contained herein, the Owner covenants and agrees deposit with the Town, upon execution of this Agreement, a letter of credit, as security, in the amount of \$ _____. The letter of credit shall be in a form approved by the Town. The Owner acknowledges and agrees that should there be a default of any of the Owner's obligations in this Agreement, including deficiency in or failure to carry out any work or matter required by any clause of this Agreement and the Owner fails to comply within ten (10) business days written notice with a direction to carry out such work or matter, the Town may draw on the security and enter onto the Lands and complete all outstanding works or matters, and pay all costs and expenses incurred thereby or owing to the Town from the proceeds so drawn. For this purpose the decision of the Director of Engineering as to whether a default has occurred shall be final and binding.
- b) In lieu of a letter of credit, the Owner may deposit cash or a certified cheque to be cashed, in an amount equal to the total security required and such deposit shall be held

by the Town as security for the Owner's obligations in this Agreement provided that no interest shall be payable on any such deposit.

- c) The Owner acknowledges that upon the transfer of ownership of any of the subject lands, the Town will not return any security required under this Agreement until the new Owner(s) files substitute security in the required amounts.

11. Withdrawal of Permission

- a) The Owner acknowledges and agrees that the Town may withdraw its permission granted herein for the installation and construction of the Works if it is determined, in the sole and absolute discretion of the Director of Engineering, that such withdrawal is in the best interests of the Town. Upon notification of such withdrawal of permission, the Owner covenants and agrees to immediately cease any further work in respect of the Works with the exception of restoration, regrading, top soiling and seeding the Lands to the satisfaction of the Director of Engineering and taking such other remedial steps as are required by the Director of Engineering to remove or render safe the Works and the Lands.
- b) When, pursuant to clause (a) above, the Town has withdrawn its permission, the Owner acknowledges and agrees that it shall have no claim whatsoever against the Town with respect to this Agreement, the permission granted or any installation of the Works performed prior to withdrawal of the permission.

12. Transfer of Ownership

The Owner covenants and agrees that in the event it transfers or conveys the Lands to a third party prior to the execution of the (subdivision/site plan*) agreement, it shall, prior to completing the transfer, provide the Town with an executed assignment of this Agreement from the third party in a form satisfactory to the Town whereby the third party, for itself, its

* delete where not applicable

heirs, executors, administrators, successors and assigns agrees to be bound by the terms of this Agreement.

13. Notice

- (a) If any notice is required to be given by the Town to the Owner with respect to this Agreement, such notice shall be mailed, delivered or sent by facsimile transmission to:

[name of Owner, contact person and address, telephone and fax number]

or such other address of which the Owner has notified the Clerk, in writing, and any such notice mailed or delivered shall be deemed good and sufficient notice under the terms of this Agreement on the day mailed, delivered or transmitted.

- (b) If any notice is required to be given by the Owner to the Town with respect to this Agreement, such notice shall be mailed, delivered or sent by facsimile transmission to:

Name of Contact Person

101 Town Centre Boulevard

Markham, Ontario

L3R 9W3

Phone:

Fax:

or such other address of which the Town has notified the Owner, in writing, and any such notice mailed or delivered shall be deemed good and sufficient notice under the terms of this Agreement on the day mailed, delivered or transmitted.

14. Termination of Agreement

The Owner covenants and agrees that it will proceed diligently with installation and constructions of the Works. If the Works proposed to be installed or constructed pursuant to this Agreement are not commenced or if installation or construction is interrupted for a period in excess of six (6) months or if a (subdivision/site plan*) agreement relating to the Lands has not been executed between the Owner and the Town within twelve (12) months from the date of execution of this Agreement, the Town may, at its option and on thirty (30) days notice to the Owner, declare this Agreement null and void and of no further effect and the Owner shall restore, regrade, top soil and seed the property to the satisfaction of the Director of Engineering and shall take such other remedial steps as are required by the Director of Engineering to remove the Works or render safe the Works and the Lands.

15. Transfer of Obligation:

The Owner covenants and agrees that upon execution of the required (Subdivision/Site Plan*) Agreement for the Lands, the obligations contained in this Agreement will be transferred to the (Subdivision /Site Plan*) Agreement.

16. Registration of Agreement

The Owner covenants and agrees that this Agreement and any schedules attached hereto may be registered upon the title to the lands and that such registration shall be at the instance of the Town and at its sole and absolute discretion. The Owner further covenants and agrees to pay all costs associated with the preparation and registration of this

* delete where not applicable

Agreement, as well as all other costs incurred by the Town as a result of the registration of any other documents pertaining to this Agreement, including but not limited to, any amendment thereto.

17. Applicable Law

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

18. Successors and Assigns

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

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

SIGNED, SEALED & DELIVERED

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) [*NAME OF OWNER*]

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)

)

) _____
Name:

) Title:

(
)

) _____ c/s

) Name:

) Title:

)

) I/We have authority to bind the corporation.

)

) **THE CORPORATION OF THE TOWN OF**

) **MARKHAM**

)

) _____

) ALAN BROWN,

) DIRECTOR OF ENGINEERING

SCHEDULE "A"

LEGAL DESCRIPTION OF LANDS

SCHEDULE "B"

WORKS TO BE CONSTRUCTED

SCHEDULE "C"

SUMMARY OF FINANCIAL PAYMENTS TO THE TOWN

SCHEDULE "D"

LETTERS OF CREDIT