

The Corporation of the Municipality of Brockton



By-Law 2024-032

Being a By-Law to Authorize Entering Into a Landowner Agreement with the Landowner(s) and Walker Hill Development Inc.

Whereas the *Municipal Act S.O. 2001, c 25, Section 5(3)*, as amended provides that a municipal power, including a municipality's capacity rights, powers and privileges under section 9, shall be exercised by By-Law;

And Whereas Section 51(26) of the *Planning Act, R.S.O. 1990* provides that a municipality or approval authority, or both, may enter into agreements imposed as a condition to the approval of a plan of subdivision and the agreements may be registered against the land to which it applies and the municipality or the approval authority, as the case may be, is entitled to enforce the provisions of it against the owner and, subject to the Registry Act and the Land Titles Act, any and all subsequent owners of the land;

And Whereas the Landowner(s) and Walker Hill Development Inc. wishes to enter into a Landowner Agreement with the Municipality of Brockton for the lands more particularly identified on Schedule "A" of the attached agreement(s);

Now Therefore the Council of The Corporation of the Municipality of Brockton enacts as follows:

- 1.0 That the Council for The Corporation of the Municipality of Brockton hereby authorizes the entering into Landowner Agreement(s) with the Landowner(s) and Walker Hill Development Inc., copies of which are attached as Schedule "A" hereto and form part of this By-Law.
- 2.0 That the Mayor and Director of Legislative and Legal Services (Clerk) are hereby authorized and directed to execute the Landowner Agreement(s) which are attached hereto and form part of this By-law, and are further authorized to sign the transfers, and/or any other such related documents as may be required to complete the transfer of the lands described on Schedule "A" of the Agreement(s), and to affix the Corporate Seal on all necessary documentation.
- 3.0 This By-Law shall come into full force and effect upon final passage.
- 4.0 This By-Law may be cited as the "Walker Hill Development Inc. Landowner Agreement By-Law".

Read, Enacted, Signed and Sealed this 9th day of April, 2024.

Mayor – Chris Peabody

Director of Legislative and Legal Services (Clerk)
– Fiona Hamilton

AGREEMENT

THIS AGREEMENT made this 9th day of April, 2024 (“**Agreement**”).

B E T W E E N:

ROZI ABELL and NICHOLAS ABELL
(hereinafter referred to as the "**Buyer**")

- and -

WALKER HILL DEVELOPMENT INC.
(hereinafter referred to as the "**Seller**")

- and –

THE CORPORATION OF THE MUNICIPALITY OF BROCKTON
(hereinafter referred to as the "**Municipality**")

(each a "**Party**" and, collectively, the "**Parties**")

WHEREAS Seller is the registered owner of the lands identified as part of Block 49 on Draft Plan of Subdivision Walker Hill Development dated April 11, 2022 (“**Draft Plan**”), being part of the lands legally described as Part Lot 32, Concession 1 North of Old Durham Road; Municipality of Brockton; being part of PIN 33196-0614 (LT); LRO #3, and more particularly identified as Parts 5 and 6 on the attached draft plan of survey prepared by D. Culbert Ltd., Ontario Land Surveyor, File No. BRA-01N-32-1, included as Schedule “A” (the “**Lands**”);

AND WHEREAS Buyer is the registered owner of the lands and premises legally described as PT LT 32 CON 1 NDR BRANT AS IN R380251 S/T R115524; S/T R33059, R34232, R34363; MUNICIPALITY OF BROCKTON; being all of PIN 33196-0283 (LT); LRO #3 (the “**Abutting Lands**”);

AND WHEREAS Seller and Buyer have entered into an agreement of purchase and sale, dated November 8, 2019, (the “**APS**”) with respect to the Lands, and have thereafter made a number of amendments to the APS;

AND WHEREAS the APS is conditional upon Seller obtaining at the Seller’s expense a consent to sever and re-zone the Lands to an R1-4 zoning designation on closing;

AND WHEREAS Seller has received a conditional draft approval dated April 13, 2022 from the County of Bruce in File Number S-2021-003 with respect to the Draft Plan pursuant to Section 51 of the *Planning Act, 1990*. The Draft Plan, a copy of which is attached as Schedule “B”, is in respect of certain lands legally described as Part of Park Lot 48 Registered Plan No. 162; Part of

Lot 32 Concession 1 North Durham Road; Municipality of Brockton, forming the proposed Walker Hill development (the “**Walker Hill Development**”);

AND WHEREAS final approval of the Draft Plan is conditional upon, *inter alia*, the Seller ensuring that Blocks 45-49, inclusive, as identified on the Draft Plan, are transferred to the registered owners of the abutting parcels of land and merge pursuant to the *Planning Act, 1990* (“**Condition**”);

AND WHEREAS in order to assist the Seller in satisfying the Condition, the Municipality has agreed to be party to the transaction between Seller and Buyer for the Lands, specifically as the transferee of the legal interest to the Lands as from the Seller and immediately thereafter as transferor of the legal interest to the Lands as to the Buyer;

AND WHEREAS the re-zoning condition contained in the APS is no longer required;

AND WHEREAS the Parties acknowledge and agree that the Municipality is only a party to the transactions contemplated herein for the purpose of facilitating the transfer of legal interest in the Lands from the Seller to the Buyer to assist the Seller with satisfying the Condition;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of \$10.00 paid by each Party to the others and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party, and the mutual covenants herein contained, the Parties hereto hereby agree as follows:

1. The Parties acknowledge and agree that the above noted recitals are true in substance and in fact and shall form a part of this Agreement.
2. Except as otherwise provided for herein, the Parties hereto acknowledge and agree that the APS, as amended from time to time, shall remain as only between the Seller and Buyer without any obligations, rights or liabilities being provided to, assigned to, or assumed by the Municipality.
3. The Parties acknowledge and agree that the APS, as amended from time to time, save and except any amendments referred to herein, shall remain in full force and effect, and if there is conflict between this Agreement and the APS, the terms of this Agreement will prevail.
4. The Seller and Buyer covenant and agree that a breach, including but not limited to an anticipatory, actual, and potential breach or the non-performance, of any condition, term, provision, representation, warranty or covenant contained in the APS, as amended from time to time, by Seller or Buyer shall not entitle either of them to make a claim, seek damages or demand specific performance from the Municipality with respect to any such anticipatory, actual and potential breach or the non-performance of any condition, term, provision, representation, warranty or covenant or any other dispute or default related to

the APS. Buyer and Seller agree that this covenant shall survive and not merge on closing of the transaction contemplated by the APS (“**Closing**”), as amended from time to time.

5. The Parties hereto acknowledge and agree that prior to title in the Lands being transferred as contemplated herein, the Seller shall obtain, at its sole expense, a reference plan prepared by a qualified Ontario Land Surveyor identifying the Lands to be transferred to the Buyer and the Reserve (as defined in Schedule “A”), which shall be approved by all Parties acting reasonably (“**Reference Plan**”). All costs related to the Reference Plan, including the cost of depositing the Reference Plan in the Land Registry System, shall be paid for by the Seller.
6. For the sole purpose of facilitating the transaction contemplated by the APS without obtaining a formal severance for the Lands, the Parties acknowledge and agree that the Lands will be conveyed to the Buyer as follows:
 - a. registration of a Transfer/Deed from the Seller in favour of the Municipality in respect of the Lands (“**Transfer No. 1**”); and
 - b. registration of a Transfer/Deed from the Municipality in favour of the Buyer in respect of the Lands (“**Transfer No. 2**” and together with Transfer No. 1, the “**Registrations**”).
7. The Parties acknowledge, confirm, and agree that Transfer No.1 shall occur in immediate succession to Transfer No. 2, with no intervening registrations.
8. The Parties hereto acknowledge and agree that it is the Parties’ intention for the Buyer become the sole registered owner of the Lands as of a result of the Registrations on Closing.
9. The Parties further acknowledge, confirm, and agree that the Registrations shall only be completed, provided that the Lands and the Abutting Lands will merge in title upon registration of Transfer No. 2.
10. The Parties covenant and agree to cause their respective solicitors to enter into a document registration agreement (the “**DRA**”), the form of which shall be in the form of the most current DRA recommended from time to time by the Law Society of Ontario, together with any such additional requirements as may be required by the Municipality’s solicitor acting reasonably, and to ensure in their sole and absolute discretion, that the Lands and the Abutting Lands will merge in title upon registration of Transfer No. 2. For clarity, and subject to the foregoing requirement, the DRA shall also outline or establish the procedures and timing for completing all registrations electronically and provide for all closing documents and closing funds to be held in escrow pending the submission of the

Registrations to the Land Registry Office at the time of Closing and its acceptance by virtue of being assigned a registration number. The DRA shall also provide that if the Teraview electronic registration system does not allow the Parties to electronically register all registration documents on Closing, Closing shall be deemed to be extended until the next day when the said system is accessible and operating for the applicable Land Registry Office applicable to the Lands.

11. On or before Closing, the Parties shall exchange all documents and deliverables necessary to complete the transactions contemplated herein, which shall be held in escrow pursuant to the terms of the DRA.
12. On or before the Closing Date (as defined herein), subject to the provisions of this Agreement, the Seller shall execute and deliver, or cause to be delivered, to the Municipality's solicitors:
 - a. a registrable Transfer/Deed of the Lands for nominal consideration, free and clear of all encumbrances other than Permitted Encumbrances;
 - b. a non-merger certificate relating to this Agreement;
 - c. a statutory declaration confirming that the Seller is not a non-resident within the meaning of the *Income Tax Act* (Canada), that the Lands nor any part thereof has ever been occupied by any shareholder of the Seller or his/her spouse as a matrimonial home within the meaning of the *Family Law Act* (Ontario), and that no one is entitled to claim a lien against the Lands nor any part thereof under the *Construction Act* (Ontario);
 - d. a receipt and acknowledgment in respect of the purchase price payable under the APS having been paid by the Buyer to the Seller ("**Purchase Price**");
 - e. if any Harmonized Sales Tax ("HST") is payable on the Purchase Price, and is paid by the Buyer directly to the Seller on Closing, (i) a receipt and acknowledgement in respect of the HST payable on the Purchase Price, (ii) a statutory declaration confirming that the Seller is a registrant for purposes of the Excise Tax Act (Canada) and the Seller's registration number for HST purposes, (iii) an undertaking by the Seller to remit the HST payable and file the prescribed form and pay all applicable HST and, (iv) an indemnity executed by the Seller indemnifying the Municipality with respect to all HST payable in connection with this transaction. This paragraph shall survive and not merge on completion of the transaction contemplated in the APS or this Agreement, as amended from time to time;
 - f. an undertaking to pay the entire amount of the Municipality's legal costs and capital gains amount in connection with the transactions contemplated by this Agreement, once assessed;
 - g. the DRA, which for clarity, shall be executed by the Seller's solicitor;
 - h. all other documents relating to the completion of the transactions contemplated by this Agreement as the Municipality's solicitor may require, acting reasonably.

For the purpose of this Section 12, Permitted Encumbrances shall mean:

- (i) any registered municipal agreements and registered agreements with publicly regulated utilities providing that such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from an authorized representative of the municipality or regulated utility;
- (ii) any minor easements for the supply of domestic utility or telephone services to the respective properties or adjacent properties;
- (iii) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the proposed use of the Lands; and
- (iv) Instrument Nos. R34232, R35700, R369428, R376688, BR142414, 3R10756, BR195396; and
- (v) the Reference Plan.

13. On or before the Closing Date, subject to the terms and conditions of this Agreement, the Buyer shall execute and shall deliver or cause to be delivered, to the Municipality's solicitor the following:
 - a. a direction as to title;
 - b. a non-merger certificate relating to this Agreement;
 - c. an acknowledgment in respect of the Purchase Price having been paid by the Buyer to the Seller;
 - d. a statutory declaration confirming that the Buyer is a registrant for purposes of the *Excise Tax Act* (Canada) and the Buyer's registration number for harmonized sale tax ("HST") purposes, an undertaking by the Buyer to pay all applicable HST and an indemnity executed by the Buyer indemnifying the Municipality with respect to all HST payable in connection with this transaction;
 - e. if any HST is payable on the Purchase Price and is not paid by the Buyer directly to the Seller on Closing,
 - (i) a statutory declaration confirming that the Buyer is a registrant for purposes of the *Excise Tax Act* (Canada) and the Buyer's registration number for HST purposes,
 - (ii) an undertaking by the Buyer to self-assess and remit the HST payable and file the prescribed form and pay all applicable HST and,
 - (iii) an indemnity executed by the Buyer indemnifying the Municipality with respect to all HST payable in connection with this transaction. This paragraph shall survive and not merge on completion of the transaction contemplated in the APS or this Agreement, as amended from time to time;
 - f. the DRA, which for clarity, shall be executed by the Buyer's solicitor; and
 - g. all other documents relating to the completion of the transactions contemplated by this Agreement as the Municipality's solicitor may require, acting reasonably.
14. On or before the Closing Date, subject to the terms and conditions of this Agreement, the Municipality shall execute and deliver, or cause to be delivered, to the Seller's solicitors:
 - a. a direction as to title; and
 - b. the DRA, which for clarity, shall be executed by the Municipality's solicitor.

15. On or before the Closing Date, subject to the terms and conditions of this Agreement, the Municipality shall execute and deliver, or cause to be delivered, to the Buyer's solicitors:
 - a. a registrable Transfer/Deed of the Lands for the Purchase Price free and clear of all encumbrances other than Permitted Encumbrances; and
 - b. the DRA, which for clarity, shall be executed by the Municipality's solicitor.

16. On or before the Closing Date, subject to the terms and conditions of this Agreement, the Seller shall execute and deliver, or cause to be delivered, to the Buyer's solicitors:
 - a. a direction as to the balance of the Purchase Price under the APS;
 - b. a statement of adjustments;
 - c. an undertaking to re adjust;
 - d. statutory declaration confirming that the Seller is not a non-resident within the meaning of the *Income Tax Act* (Canada), that the Lands nor any part thereof has ever been occupied by any shareholder of the Seller or his/her spouse as a matrimonial home within the meaning of the *Family Law Act* (Ontario), and that no one is entitled to claim a lien against the Lands nor any part thereof under the *Construction Act* (Ontario);
 - e. the DRA, which for clarity, shall be executed by the Seller's solicitor;
 - f. all other documents mutually agreed to by the Parties which the Buyer's solicitor reasonably requests to give effect to the transactions contemplated by this Agreement.

17. On or before the Closing Date, subject to the terms and conditions of this Agreement, the Buyer shall execute and deliver, or cause to be delivered, to the Seller's solicitors:
 - a. balance of the Purchase Price under the APS, payable by wire transfer, certified cheque, or wire transfer of immediately available payable funds to the Seller's solicitors;
 - b. an undertaking to re adjust;
 - c. any HST payable on the Purchase Price under the APS. The Seller will not collect HST if the Buyer provides to the Seller a statutory declaration confirming that the Buyer is a registrant for purposes of the *Excise Tax Act* (Canada) and the Buyer's registration number for HST purposes, an undertaking by the Buyer to self-assess and remit the HST payable and file the prescribed form and shall pay all applicable HST and an indemnity executed by the Buyer indemnifying the Seller with respect to all HST payable in connection with this transaction. This paragraph shall survive and not merge on the completion of the transaction contemplated in the APS or this Agreement, as amended from time to time.
 - d. the DRA, which for clarity, shall be executed by the Buyer's solicitor; and
 - e. all other documents mutually agreed to by the Parties which the Seller's solicitor reasonably requests to give effect to the transactions contemplated by this Agreement.

18. The Buyer shall be liable for any and all costs associated with Registrations, including but not limited to payment of fees and land transfer tax payable in connection therewith.
19. For clarity, the Parties acknowledge confirm and agree, that notwithstanding the Municipality's involvement with the Registrations, the Purchase Price shall be paid directly to the Seller by the Buyer in connection with Closing and pursuant to the terms of DRA.
20. Prior to any conveyance of the Lands, the Seller shall first grade the Lands in accordance with the approved Lot Grading Plan for the Walker Hill Development ("**Grading**") to the satisfaction of the Municipality, and the Buyer shall accept the Property as graded to the satisfaction of the Municipality. The Parties acknowledge and agree that notwithstanding anything contained in the APS to the contrary, the date of Closing ("**Closing Date**") shall be that day which is thirty (30) days after:

- a. completion of the Grading to the satisfaction of the Municipality; and
- b. the deposit of the Reference Plan.

In the event a Buyer sells his/her/their property ("Sale Transaction") prior to the registration of Transfer No. 2, the Buyer shall, in writing, disclose this Agreement to the new buyer(s) of the property, wherein the new buyer(s) shall be bound by this Agreement, and that the parties shall on or before the closing date of the Sale Transaction enter into an assignment agreement of this Agreement and the APS, to be executed by the Buyer, the Seller, the Municipality, and the new buyer(s), as applicable.

21. Notwithstanding anything contained in the APS to the contrary, the Municipality and the Buyer shall each be allowed until 5:00 p.m. (Toronto time) on the day that is ten (10) days prior to the Closing Date to examine title to the Lands at its own expense and if, within that time, any valid objection to title is made in writing to the Seller, which the Seller is unable or unwilling to remove and which the Municipality or the Buyer (as the case may be) will not waive, then this Agreement shall, notwithstanding any intermediate act or negotiations with respect to such objections, be null and void and any deposit under the APS, shall be returned to the Buyer without deduction.
22. Seller covenants and agrees to pay all the Municipality's legal costs related to the preparation of this Agreement and the completion of the transactions contemplated by the Agreement ("**Municipal Costs**"). For clarity, this shall include but not be limited to any HST payable in connection with such Municipal Costs, and any disbursements incurred by the Municipality, or its solicitors, in connection with the transactions contemplated by this Agreement.

23. The Seller and Buyer, jointly and severally, covenant and agree to forever fully indemnify and hold the Municipality, its councillors, officers, employees, agents, insurers, contractors, and representatives, harmless from and against any and all liability, actions, loss, injury, causes of action, suits, claims, damages, non-performance, demands, expenses, and costs of whatsoever character, whether or not known, suspected or claimed, arising directly or indirectly out of this Agreement or the APS, as both may amended from time to time. This covenant shall survive and not merge on completion of the transaction contemplated in the APS or this Agreement, as amended from time to time.
24. The Seller and Buyer, each for themselves and on behalf of their successors and assigns, hereby release, remise, and discharge the Municipality and all of its councillors, officers, employees, agents, insurers, contractors, and representatives (hereinafter collectively referred to as the “**Releasees**”), from any and all actions, causes of action, contracts, (whether express or implied), claims and demands for damages, loss or injury, suits, debts, sums of money, indemnity, expenses, interest, costs and claims of any kind and nature whatsoever, at law or in which against the Releasees each party ever had, now, or can hereafter by reason of this Agreement or the APS.
25. Except as otherwise set out herein, the Buyer agrees to accept the Lands from the Municipality on Closing as it exists as of the date of this Agreement, and the Buyer acknowledges and agrees that the Municipality has not made, does not make and shall not be required to provide any representation or warranty with respect to the condition of the Lands (environmental, physical or otherwise), and the Municipality shall have no liability or obligation with respect to the value, state or condition of the Lands, any deficiencies therein or any work required thereto, environmental or otherwise. The Buyer acknowledges and agrees that it has relied and will continue to rely solely upon its own inspections, investigations and other due diligence with respect to the Lands. The Municipality shall have no obligation or responsibility to the Buyer after Closing with respect to any matter relating to the Lands or the condition thereof. The Buyer hereby expressly waives any and all rights against the Municipality relating to the condition of the Lands, environmental, physical or otherwise. The Buyer further acknowledges that the Purchase Price reflects the current status of the Lands.
26. Time shall in all respects be of the essence hereof provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by all Parties hereto or by their respective solicitors who are hereby expressly appointed in this regard.
27. This Agreement including any and all schedules hereto shall constitute the entire agreement between the Parties. There is no representation, warranty, collateral agreement or condition,

whether direct or collateral, or expressed or implied, which induced any Party hereto to enter into this Agreement or on which reliance is placed by any such Party, or which affects this Agreement, or the Lands herein being conveyed or supported hereby, other than as expressed herein.

28. The invalidity or unenforceability of any provision in this Agreement shall effect the validity and enforceability of such provision or covenant only and any such invalid provision shall be deemed to be severable from the balance of this Agreement, which shall be enforced to the greatest extent permitted by law.
29. This Agreement shall be read with all changes of gender or number required by the context.
30. This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable thereto and shall be treated in all respects as an Ontario contract.
31. Each Party agrees to execute such further documents and assurances as may be required to give effect to this Agreement.
32. Unless and only to the extent expressly amended or replaced by this Agreement, all other provisions of the APS between Buyer and Seller remain in full force and effect.
33. This Agreement shall enure to the benefit of and be binding also on the heirs, executors, administrators and assigns of the Parties hereto respectively.
34. This Agreement may be executed in any number of counterparts and all of which taken together will constitute one and the same instrument. The Parties agree that this Agreement may be transmitted by telecopier or electronic transmission via email and that the reproduction of signatures by way of telecopier or electronic transmission via email of executed originals will be treated as though such reproduction were executed originals and each Party undertakes to provide the others with a copy of this Agreement bearing original signatures within a reasonable time after written request therefor.
35. None of the provisions of this Agreement shall merge on the Closing of the transaction contemplated herein, except as specifically provided in this Agreement.

[INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the Parties have hereunto executed this Agreement personally or by their duly authorized signing officers in that respect on the date above written.

THE CORPORATION OF THE MUNICIPALITY OF BROCKTON

Per: _____
Name: Chris Peabody
Title: Mayor

Per: _____
Name: Fiona Hamilton
Title: Clerk

We have authority to bind the Municipality.

WALKER HILL DEVELOPMENT INC.

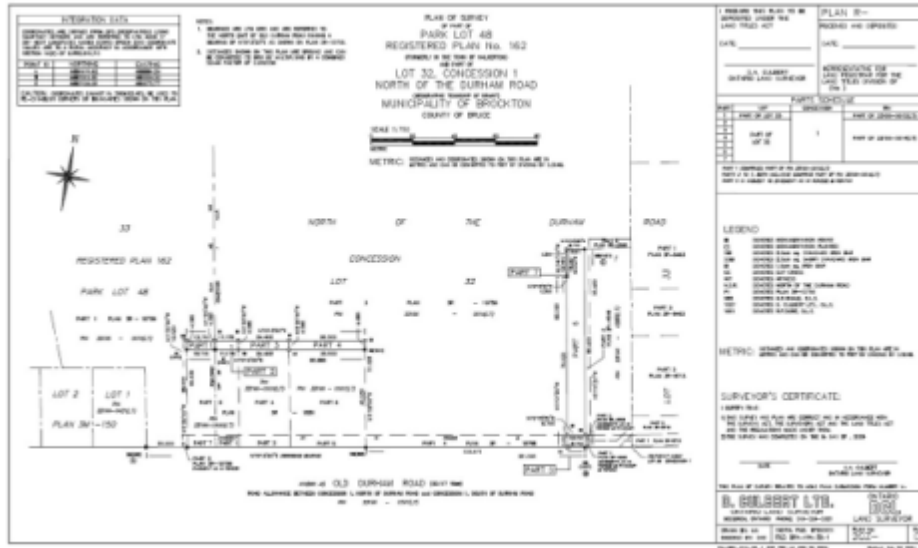
Per: _____
Name: Himansu Shah
Title: President

I have authority to bind the corporation.

Rozi Abell

Nicholas Abell

SCHEDULE “A”



Notwithstanding anything contained herein to the contrary, the Buyer acknowledges and agrees that there shall be a 0.3 metre reserve along the westerly limit of Block 49 between Block 33 and Lot 6 as identified on the Draft Plan (“**Reserve**”), which shall not form part of the Lands for the purpose of this Agreement or the APS. Such Reserve shall be conveyed by Seller to the Municipality, free and clear of any and all encumbrances, upon further direction from the Municipality’s solicitor.

