

The Corporation of the Municipality of Brockton



By-Law 2024-102

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Being a By-Law to Authorize the Corporation of the Municipality of Brockton to Enter Into a Development Agreement With 5053745 Ontario Inc.

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**Whereas** the *Municipal Act, 2001*, 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

**And Whereas** pursuant to Section 41, Subsection (7) of the *Planning Act* R.S.O 1990, c. P.13 as amended, authorizes the Corporation to require the owner of subject lands to enter into an agreement with the Corporation formalizing the nature, scope and details of the development on said subject lands; and

**And Whereas** the Council of the Corporation of the Municipality of Brockton has been approached by 5053745 Ontario Inc. to develop property at 37 Yonge Street within the limits of the former Town of Walkerton for purposes of erecting buildings;

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

- 1.0 That the Corporation of the Municipality of Brockton enter into a Development Agreement which shall detail certain terms and conditions of the proposed development by 5053745 Ontario Inc. and this agreement, shall be attached hereto and marked as Schedule "A" and shall form an integral part of this by-law.
- 2.0 That the Mayor and Clerk are authorized to sign and execute the attached Development Agreement, as well as any other related documentation on behalf of the Corporation, including the Acknowledgment & Direction required to register the Development Agreement.
- 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 "37 Yonge Street Development Agreement By-Law".

**Read, Enacted, Signed and Sealed this 26th day of November, 2024.**

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Mayor – Chris Peabody

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

Schedule "G"

The Corporation Of The Municipality Of Brockton

**Development Agreement**

Between

**5053745 Ontario Inc.**

- and -

**The Corporation Of The Municipality Of Brockton**

Dated \_\_\_\_\_, 2024

The Corporation of the Municipality of Brockton

Address: 100 Scott Street  
Walkerton, Ontario  
N0G 2V0

# The Corporation Of The Municipality Of Brockton

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## Municipality Of Brockton Development Agreement

This Agreement made in triplicate on the \_\_\_\_\_ day of \_\_\_\_\_, 2024 A.D.  
Between:

**5053745 Ontario Inc.**

hereinafter called the "Developer" of the First Part

- and -

**The Corporation Of The Municipality Of Brockton**

hereinafter called the "Municipality" of the Second Part

Whereas the Developer is the registered owner of the Lands described in Schedule "A" (hereinafter called the "Lands") to this Development Agreement (hereinafter called the "Agreement") and proposes to Develop it for the purpose of selling, conveying, or leasing residential units under a site plan agreement with the Municipality.

And Whereas the Developer declares that it is the registered owner of the Lands and has applied to the Municipality for Site Plan approval (such Site Plan hereinafter called the "Plan").

And Whereas as a condition of the Site Plan Agreement for the Lands, the Developer and the Municipality are desirous of entering into this Development Agreement to construct and install certain municipal services as hereinafter provided and herein referred to as the "Works" set out in Schedule "C" and to make financial arrangements with the Municipality for the installation and construction of required Works.

And Whereas the word "Developer" where used in this Agreement includes an individual, an Association, a Partnership, or a Corporation and wherever the singular is used herein, it shall be construed as including the plural as required in the grammatical context.

Now Therefore This Agreement Witnesseth that in consideration of other good and valuable consideration and the sum of One Dollar (\$1.00) of lawful money of Canada, now paid by each of the parties hereto to each of the other parties hereto, (the receipt whereof is hereby acknowledged), the parties hereto hereby covenant, promise and agree with each other as follows:

### **Section 1 – Interpretation**

#### **1.1 Definitions**

The terms defined in this Section 1.1 shall have the following meanings unless the context expressly or by necessary implication otherwise requires:

**"Agreement"** means this Agreement titled "Development Agreement".

**"Building Code Act"** means the *Building Code Act, 1992*, S.O. 1992, c. 23 as amended and all regulations thereunder.

**"Business Day"** means any day that is not a Saturday, Sunday or Public Holiday as defined in the *Employment Standards Act, 2000* S.O. 2000, c. 41.

**"Certificate of Final Acceptance"** means the certificate issued by the Municipality after satisfaction of the conditions identified in Section 4.3.

**“Certificate of Inspection Re: Readiness for Occupancy”** means the certificate issued by the Municipality after satisfaction of the conditions identified in Section 7.9.

**“Certificate of Preliminary Acceptance”** means the certificate issued by the Municipality after satisfaction of the conditions identified in Section 4.2.

**“Chief Building Official” or “CBO”** means the Chief Building Official and Zoning Administrator or designate for the Municipality of Brockton.

**“Conservation Authority”** means the Saugeen Valley Conservation Authority and its successors and assigns.

**“Construction Act”** means the *Construction Act*, R.S.O. 1990, c. C.30 as amended and any regulations thereunder.

**“County”** means the Corporation of the County of Bruce and its successors and assigns.

**“Cost-Sharing”** shall mean any apportionment respecting the costs of the Works as may be set out in Schedule “G” of this Agreement.

**“Developer”** means, collectively, 5053745 ONTARIO INC. and its respective successors and assigns. “Developer” where used in this Agreement includes an individual, an Association, a Partnership, or a Corporation and wherever the singular is used herein, it shall be construed as including the plural as required in the grammatical context.

**“Director of Operations”** means the Director of Operations or designate for the Municipality of Brockton.

**“Drainage Act”** means the *Drainage Act*, R.S.O. 1990, c. D.17 as amended and any regulation thereunder.

**“Highway Traffic Act”** means the Highway Traffic Act, R.S.O. 1990, c. H.8 as amended and any regulation thereunder.

**“Land and/or Lands”** means the real property which is the subject of the Plan, the legal description of which is attached as Schedule “A”.

**“Municipality”** means the Corporation of the Municipality of Brockton, and its successors and assigns.

**“Municipal Act”** refers to the *Municipal Act, 2001*, S.O. 2001, c. 25 and any amendments thereto.

**“Owner”** means the Owner of a lot or block and may include the “Developer”.

**“Plan”** means the Site Plan attached as Schedule “A” to the Site Plan Agreement.

**“Planning Act”** means the *Planning Act*, R.S.O. 1990, c. P.13 as amended and any regulations thereunder.

**“Works”** means the works and services described in Schedule “C”.

## 1.2 List of Schedules

The following schedules are attached to and form part of this Agreement:

Schedule “A” Description of Lands Being Developed

Schedule “B” Municipal Servicing Guidelines

Schedule “C” Checklist of Works to be Constructed

Schedule “D” Itemized Estimate of Costs of Construction of Each Part of the Works

Schedule "E" List of Lands for Municipal Purposes and Easements to be Granted to the Municipality

Schedule "F" Application for Reduction of Security

Schedule "G" Special Provisions

## **Section 2 -- Order Of Procedure**

### **2.1 Prior to the signing of this Development Agreement the Developer shall:**

- (a) Pay to the Municipality the fee required by the Municipality's Fees and Charges By-law, as amended from time to time.
- (b) Pay to the Municipality the sum of five thousand (\$5,000.00) dollars as a deposit in respect of the Municipality's legal and engineering costs referred to in Section 3.2 (a) herein.
- (c) Submit a general plan outlining the services to be installed.
- (d) Deposit with the Municipality securities and insurance as outlined in the Agreement.
- (e) Pay in full any outstanding taxes or drainage charges and any charges under the Municipal Act including outstanding sewer rates and/or water rates.
- (f) Pay the amount in lieu of parkland to the Municipality or deposit the Transfers/Deeds of Land for the parkland with the Municipality.
- (g) Provide proof of postponement of any encumbrances on the Lands.

### **2.2 Prior to the Registration of this Agreement and prior to starting construction on the Services the Developer shall:**

- (a) Deposit with the Municipality's Solicitor, copies of this Agreement executed by the Developer and the Municipality and retained by the Municipality's Solicitor for registration as hereinafter provided.
- (b) Deliver to the Municipality's Solicitor written authorization to register this Agreement or Notice of this Agreement both before and after registration of the Plan and a cheque in respect of the cost of the said registrations where upon the Municipality's Solicitor shall register this Agreement. Any costs associated with said registration shall be the responsibility of the Developer and shall be deducted by the Municipality from the deposit being held by the Municipality.
- (c) Execute the Site Plan Agreement for the Lands to the satisfaction of the Municipality.
- (d) Have submitted and obtained the written approval of the Director of Operations for the following all of which shall be done in accordance with the Municipal Servicing Guidelines of the Municipality as set out in Schedule "B".
  - a) Engineered road and servicing drawings;
  - b) Stormwater Management Report and designing;
  - c) The Service Layout Plan for underground electrical services, gas, telecommunications, etc.;
  - d) Final approved drawings for all Works required in Schedule "C" to this Agreement.
- (e) Provide written confirmation of having obtained the approval for drainage, road crossings, encroachments, etc. of all road authorities including the Municipality, Conservation Authority and any other authority involved.

- (f) Have deeded to the Municipality the lands/blocks/easements listed in Schedule "E".

**2.3 Prior to the acceptance of any building permit applications, the Developer shall:**

- (a) Have complied with all requirements of Section 7.8 of this Agreement.

**2.4 Prior to any person occupying any building, the Developer shall:**

- (a) Have complied with all the requirements of Section 7.9 of this Agreement.

**Section 3 -- Installation Of Services**

**3.1 General**

The Developer shall design, construct and install at its own expense and in good workmanlike manner Municipal Works to the servicing standards of the Municipality as set out in Schedule "B" to this Agreement.

**3.2 Municipality's Legal and Engineering Costs**

- (a) The Developer agrees to pay the Municipality's cost of the Municipal Solicitor and of the Municipality's Engineer's invoices for the review of plans and specifications and for supervision and inspection on behalf of the Municipality, as outlined in the Municipality's Fees and Charges By-law in place when the invoice is issued to the Municipality. Further, the Developer agrees to reimburse the Municipality for any inspections completed by municipal staff as part of the Municipal Engineer's inspections of the installation of services.
- (b) The Developer shall be invoiced regularly by the Municipality for all costs incurred by the Municipality with respect to this Agreement pursuant to Section 3.2 (a).
- (c) The Developer shall reimburse the Municipality for all costs incurred by the Municipality as referred to in Section 3.2 (a) herein, within thirty (30) days of each billing, failing which the Municipality and its agents shall cease all work with respect to the review of the Development.
- (d) The deposit referred to in Section 2.1 (b) of this Agreement shall be retained by the Municipality as a float against any unpaid bills and such deposit (or the balance thereof, if any) shall be returned to the Developer at Final Acceptance of the Development by the Municipality and the Municipality being satisfied, in its discretion, that all costs in Section 2.1(b) herein and any contingencies with respect to the Development have been paid in full.
- (e) The Developer shall pay to the Municipality, on thirty (30) days written notice from the Municipality, such amount as is necessary to maintain the deposit referred to in Section 2.1 (b) at the sum of five thousand (\$5,000) dollars, failing which the Municipality and its agents shall cease all work with respect to the review of the Development and any amounts that remain outstanding shall accrue interest at the rate of 1.25% per annum (compounded annually) until paid in full.

**3.3 Developer's Engineer**

The Developer shall employ engineers holding a certificate of authorization from Professional Engineers Ontario and approved by the Municipality:

- (a) To prepare designs;
- (b) To prepare and furnish all required drawings;
- (c) To prepare the necessary contract(s);



- (d) To obtain the necessary approvals in conjunction with the Municipality, the Grey Bruce Health Unit, or any successor approval authority, and the Ministry of Environment, Conservation and Parks (MECP), and others as required;
- (e) To provide the field layout, all documentation required by this Agreement and the full time supervision of construction;
- (f) To maintain all records of construction and upon completion, to advise the Municipality's Engineer of all construction changes and to prepare final "as built" drawings. Paper prints and digital versions of the "as built" drawings shall be submitted to the Municipality prior to the issuance of the Certificate of Final Acceptance;
- (g) To act as the representative of the Developer in all matters pertaining to the construction;
- (h) To provide co-ordination and scheduling to comply with the timing provisions of this Agreement and the requirements of the Director of Operations, for all Works specified in this Agreement;
- (i) To provide certification that the installation of services was in conformance to said plans and specifications, such certification to be in a form acceptable to the Municipality's Solicitor and the Municipality's Engineer; and
- (j) To take such other actions as may be required by the Municipality, acting reasonably, for the completion of the Development in accordance with this Agreement and good engineering practices.

### **3.4 Works to be Installed**

The Works to be installed are set out in Schedule "C" to this Agreement. Schedule "C" sets out the Works in general terms only and shall not be construed as covering all items in detail. If at any time and from time to time during the development, the Director of Operations of the opinion that additional works are necessary to provide adequately any of the public services required by the Plan, the Developer shall, at its expense, construct, install or perform such additional Works at the request of the Municipality's Engineer.

### **3.5 Approval of Plans**

The detailed plans and specifications of all services must be submitted by the Developer to the Director of Operations for endorsement of approval and such endorsement of approval shall in no way absolve the Developer or its consulting Engineers of responsibility for errors in or omissions from such plans and specifications.

### **3.6 Notification of Commencement**

The Developer shall not commence the construction of any of the Works until this agreement and the Site Plan Agreement have been registered and until such times as the Developer has satisfied all financial obligations including the Municipality holding all required securities and deposits that form part of this agreement and the Site Plan Agreement. After confirmation of registration and satisfying all financial obligations, the Developer shall provide three (3) business days written notice to the Director of Operations of its intent to commence work. Should, for any reason, there be a cessation or interruption of construction, the Developer shall provide three (3) business days written notification to the Municipality's Engineer before work is resumed.

### **3.7 Progress of Works**

The Developer shall install all Works in a timely manner, in accordance with the requirements of Schedule "B" and this Agreement. If it fails to do so, having

commenced to install the aforesaid Works, fails or neglects to proceed with reasonable speed, or in the event that the aforesaid Works are not being installed in the manner required by the Municipality, then upon the Municipality giving seven (7) days written notice by prepaid registered mail to the Developer, the Municipality may, without further notice proceed to supply all materials and to do all the necessary works in connection with the installation of the said Works, including the repair or reconstruction of faulty work and the replacement of materials not in accordance with the specifications, and to charge the cost thereof together with an additional engineering fee of ten percent (10%) of the cost of such materials and works to the Developer who shall forthwith pay the same upon demand. If the Developer fails to pay the Municipality within thirty (30) days of date on the bill, the money owing may be deducted from any cash deposit, letters of credit, or other securities the Developer had provided to the Municipality for any phase of the Development. It is understood that in the event that the Municipality must enter upon the Lands and have Works completed or repaired due to situations as outlined above any or all original drawings and specifications prepared by the Developer's Engineer must be turned over to the Municipality's Engineer for its use should it require same. It is understood and agreed between the parties hereto that such entry upon the Lands shall be as agent for the Developer and shall not be deemed for any purpose whatsoever, as an acceptance or assumption of the said Works by the Municipality. The Municipality, in addition to all other remedies may refuse to issue building permits until the Works are completely installed in accordance with the requirements of the Municipality.

Without limiting the obligations of the Developer herein, if the Developer defaults on the performance of any term, covenant or provision of this Agreement and if such default continues for ten (10) days after the Developer receives written notice of such default by the Municipality (or such shorter time as may be required in the cases of an emergency or other urgent matters or as otherwise provided for herein), the Municipality may perform that obligation on the Developer's behalf and may enter onto the Lands for this purpose. If the Municipality is compelled or elects to incur any expense in connection with its performance of the Developer's obligations (including any engineering or legal fees incurred in connection with such actions), any reasonable costs so incurred by the Municipality, together with all interest thereon and any damages incurred, shall be payable to the Developer and shall be collectible by the Municipality in like manner as municipal taxes. The Developer also acknowledges and agrees that the Municipality has the right to draw down any Letters of Credit, cash deposits or other security the Developer has provided to the Municipality for any phase of the Development for the purpose of collecting any such expenses incurred by the Municipality.

### **3.8 Scheduling of Works**

Prior to the start of construction and prior to the issuance of any building permits, the Developer shall supply for the approval of the Director of Operations a Schedule of Works setting out the order in which it considers the various sections of the Works within the Plan will be built. The Municipality's Engineer may amend this schedule and the Developer must construct, install or perform the work as the Municipality's Engineer from time to time may direct.

### **3.9 Contractor**

The said services shall be installed by a qualified, competent contractor or contractors retained by the Developer.

### **3.10 Utility Costs and Charges**

The Developer shall deal directly with all utility companies. The Developer's Engineer shall obtain all approvals and permits and pay all fees and charges directly to the appropriate utility company.

**3.11 Access Roads - Intentionally Deleted****3.12 Movement of Fill**

The Developer covenants and agrees that it shall not dump nor permit to be dumped any fill or debris on, nor shall it remove or permit to be removed any fill, topsoil, trees or shrubs from any public lands, other than roads, without the written consent of the Municipality's Engineer. The Developer further agrees that no topsoil shall be removed from the lots and/or blocks except for construction purposes within the Development and then such topsoil shall be stockpiled during grading operations and as each building is completed, the topsoil so stockpiled shall be replaced on the ground around each building to comply with the Municipal Servicing Guidelines as set out in Schedule "B" of this Agreement, and the replacing of such topsoil shall include all surfaces not covered by buildings, driveways or pavement within the development. Excess topsoil may be removed from the site with the approval of the Municipality's Director of Operations.

**3.13 Damage to Existing Plant**

The Developer shall repair any damage caused to any existing road, road allowance or existing structure or plant located on the road allowance as a result of the Development and shall pay for any costs involved in relocation of existing service such as hydrants, telephone poles, hydro poles, pad mount transformers, cubicles and pedestals, etc., which may be necessary because of the development.

**3.14 Testing**

The Municipality's Engineer may have any qualitative or quantitative tests made of any materials which have been or are proposed to be used in the construction of any of the Works required by this Agreement, or may require television camera or soil tests to be carried out, and the cost of such tests shall be paid by the Developer within ten (10) days of the account being rendered by the Municipality. Nothing herein shall relieve the Developer of its responsibility to carry out any tests required by good engineering practice.

**3.15 Erosion and Silting Control**

The Developer must take all necessary precautions to prevent erosion and sedimentation of sewers, ditches, culverts, slopes, etc., both within the Development and downstream during construction and completion of servicing. Failing adequate precautions being taken, the Developer will be responsible for correcting any damages and paying all maintenance costs resulting therefrom.

**3.16 Emergency Access**

The Developer shall at all times during construction and development of the Works maintain a minimum of one lane of traffic on Yonge Street.

**3.17 Construction Refuse and Weeds**

The Developer shall regularly dispose of all construction refuse, debris or weeds within the Yonge Street Right of Way. If the Developer fails to remove and dispose of construction refuse, debris or weeds to the satisfaction of the Municipality's Director of Operations or Roads Supervisor, the Municipality may give written notice to the Developer or Lot Owner. If the Developer fails to dispose of the refuse, debris or weeds within forty-eight (48) hours after receiving a written request from the Municipality to do so, the Municipality may, without further notice, undertake such removal and disposition and the cost thereof shall be paid by the Developer forthwith upon demand, which costs shall include all expenses incurred by the Municipality in carrying out such removal and disposition. The cost of disposal as required by this section will be at the expense of the Developer or each subsequent Owner and the Municipality may recover such expense under Section 446 of the Municipal Act in the same manner as taxes.

### **3.18 Dust Control**

Until the Final Acceptance of all Services to be constructed under this Agreement, the Developer shall use such reasonable method and at all times environmentally acceptable materials to prevent any dust problem to traffic or home occupants as the Municipality shall deem necessary and for this purpose the Municipality's Director of Operations shall notify the Developer in writing from time to time of the requirements of the Municipality.

### **3.19 Contaminants**

In the event the Developer discovers any waste, contaminants, pollutants, hazardous substances or any other similar substances that may be detrimental to the environment during the development of the lands constituting the Plan, the Developer hereby agrees to notify the Municipality and the Ministry of Environment and Climate Change immediately and take all necessary steps and remedial efforts required by the Ministry of Environment and Climate Change and the Municipality to remove such waste, contaminants, pollutants, hazardous substances or other substances that could be detrimental to the environment. In taking such action, the Developer shall fulfill all legislative requirements for the remediation and clean-up of lands constituting the Plan and shall comply with all legislative requirements regulating the removal, transportation and disposal of such waste, contaminants, pollutants, hazardous substances or any other similar substances from the said lands.

## **Section 4 -- Acceptance Of Works**

### **4.1 Stages of Construction and Services**

The Municipality will grant Preliminary or Final Acceptance of servicing based upon two (2) stages of construction; and when the development is phased, within the whole of each phase as approved by the Municipality. Stages of construction are as follows:

- (a) Stage 1 - consists of all works in the Yonge Street Right of Way except for works related to the change of control of the intersection.
- (b) Stage 2 - consists of all works related to the change in control of the intersection. all works that relate to the change to the controlled intersection.

### **4.2 Inspection and Acceptance of the Works**

When all of the services in Stage 1 and 2, as identified above have been completed and the Municipality's Engineer has been given written certification by the Developer's Engineer that such services have been constructed in each stage in accordance with the approved plans and specifications in this Agreement and upon satisfactory inspection by the Municipality's Engineer and/or municipal staff, the Municipality's Engineer will recommend that the Municipality grant a Certificate of Preliminary Acceptance. This Certificate may include a list of minor deficiencies which the Developer must repair. The services shall then be subject to a guaranteed maintenance period as described in Section 5.1.

### **4.3 Final Acceptance of the Works**

On receipt of a written request from the Developer for final inspection and final acceptance following completion of the guaranteed maintenance period outlined in Section 5.1, the Municipality's Engineer will complete an inspection and if there are no deficiencies, will recommend to the Municipality that the Certificate of Final Acceptance be issued. The Certificate of Final Acceptance will be issued provided that the Developer has paid all accounts to the Municipality and the Municipality is:

- a) Satisfied the applicable services have been completely installed;

- b) Satisfied all repairs or maintenance work on the applicable services have been completed;

and the Municipality has:

- a) Approved the formal certification of final completion from the Developer's Engineer certifying that all Works and services have been installed; and
- b) Received final As-Built drawings as detailed elsewhere in this Agreement.

#### **4.4 Acceptance During Winter Months**

The Municipality will not be required to provide Certificates of Preliminary or Final Acceptance during the winter months or any other time of year when inspection of the Works and services is impractical due to snow cover, inclement weather and/or other adverse conditions.

#### **4.5 Use of Works by Municipality**

The Developer agrees that:

- (a) The Works may be used prior to acceptance by the Municipality, or other authorized persons for the purposes for which such Works were designed;
- (b) Such use shall not be deemed an acceptance of the Works by the Municipality; and
- (c) Such use shall not in any way relieve the Developer of its obligations in respect of the construction and maintenance of the Works so used.

#### **4.6 Replacement of Survey Bars**

Prior to the final acceptance by the Municipality, the Developer shall deliver to the Municipal Clerk a statement from an Ontario Land Surveyor approved by the Municipality that after the completion of the work, the Ontario Land Surveyor has found or replaced all survey monuments and iron bars as shown on the registered Plan.

#### **4.7 Ownership of Services**

Upon the issuance to the Developer of the Certificate of Final Acceptance, the ownership of the services described shall vest in the Municipality and the Developer shall have no claim or rights thereto except those occurring as an owner of the lands abutting the streets where such services are installed.

### **Section 5 -- Maintenance Of Works**

#### **5.1 Maintenance of Works**

The Developer will be responsible for the repair and maintenance of all services until a Certificate of Final Acceptance is issued by the Municipality. This maintenance period shall extend for sixty days (60) days from the date of acceptance for each Stage of the Works. During this maintenance period, a 10% security holdback shall be retained by the Municipality in accordance with the provisions of paragraph 8.2(e) of this Agreement. If during this period, the Developer fails to carry out maintenance work within three (3) business days after receipt of the request from the Municipality, then the Municipality's Engineer or Director of Operations may, without further notice, undertake such maintenance work and the total costs of such maintenance, including engineering fees, shall be borne by the Developer. If the Developer fails to pay the Municipality within thirty (30) days of the date of billing then the money owing may be deducted from the deposited securities. Towards the end of the Maintenance Period, the Developer shall make written request to the Municipality for a final inspection to be made in respect to the issuance of the Certificate of Final Acceptance.

## **5.2 Intentionally Deleted**

## **5.3 Emergency Repairs**

Employees or agents of the Municipality may, at any time or from time to time for the purpose of making emergency repairs to any of the Works on behalf of and at the expense of the Developer. Such entry and repairing shall not be deemed an acceptance of any of the Works by the Municipality or an assumption by the Municipality of any liability in connection therewith or a release of the Developer from any of its obligations under this Agreement.

## **Section 6 – Lands To Be Conveyed - Intentionally Deleted**

### **Section 7 – Administration**

#### **7.1 Voiding Agreement**

In the event that the Agreement is not registered in the Land Registry System within one (1) year from the date of the signing of this Agreement, the Municipality may at its option declare this Agreement to be null and void. All costs incurred shall be deducted from the deposit paid by the Developer to the Municipality pursuant to this Agreement or any other agreement between the Developer and the Municipality referred to herein.

#### **7.2 Developer’s Expense**

Every provision of this Agreement by which the Developer is obligated in any way shall be deemed to include the words “at the expense of the Developer” and “as approved or accepted by the Municipality”, unless specifically stated otherwise.

#### **7.3 Developer’s Liabilities**

Until the Municipality has issued the Certificate of Final Acceptance for the Works, the Developer hereby indemnifies and saves harmless the Municipality against all actions, causes of action, suits, claims and demands whatsoever which may arise either directly or indirectly by reason of the Developer undertaking the Development.

#### **7.4 Insurance**

The Developer shall insure against all damages or claims for damage with an insurance company satisfactory to the Municipality. Such policy or policies shall be issued in the joint names of the Developer, the Municipality and the Municipality’s Engineer and the form and content shall be subject to the approval of the Municipality. The minimum limits of such policies shall be five million dollars (\$5,000,000) all inclusive, but the Municipality shall have the right to set higher amounts. The said insurance policy shall include a provision that requires the insurance company to provide the Municipality with thirty (30) days’ notice of termination of such policy. The policy shall be in effect for the period of this Agreement including the guaranteed maintenance period pursuant to Section 5 of this Agreement. The issuance of such a policy of insurance shall not be construed as relieving the Developer from responsibility for other or larger claims, if any, for which it may be held responsible.

#### **7.5 Legal Notice to Developer and Municipality**

Any notice required to be given hereunder may be given by email, personal service delivered directly to the Developer or the Developer’s engineer or by registered mail addressed to the Developer at its principal place of business, as identified in this Agreement or as provided by the Developer from time to time or as shown on the last revised assessment roll in the possession of the Municipality’s Clerk, and shall be effective as of the date delivered or sent via fax or shall be effective, in the case of registered mail, the 5<sup>th</sup> day after the date the Notice was deposited in the Post Office.

Any notice required to be given to the Municipality hereunder shall be given to the Municipality by email to:

Sonya Watson, Chief Administrative Officer  
Municipality of Brockton  
100 Scott Street, Box 68  
Walkerton, ON N0G 2V0  
Phone: (519) 881-2223 ext. 126  
Email: swatson@brockton.ca

#### **7.6 Registration**

The Developer consents and authorizes the registration of this Agreement by the Municipality's Solicitor on title to the Lands both before and after the registration of the Plan in the Land Registry Office, which said registration is at the sole discretion of the Municipality and all costs of registration shall be paid for by the Developer.

The Developer hereby agrees that until the Municipality has registered this Agreement upon title to the Lands, no units as identified on Plan shall be leased or rented.

#### **7.7 Mortgages/Encumbrances – Intentionally Deleted**

#### **7.8 Requirements for Building Permits**

The Developer agrees that it, or anyone claiming title from it or under its authority, shall not apply for any building permits for any units within the Plan until all requirements hereinafter set out have been carried out to the satisfaction of the Municipality. The Municipality shall have the right to refuse to accept for consideration any such application for a building permit until:

- (a) Registration of this Development Agreement and of the Site Plan Agreement.
- (b) Payment to the Municipality by cash in the amount of the current applicable Development Charge(s) per unit in the Plan under the Development Charges By-law of the Municipality;
- (c) The Developer agrees that the preceding requirements in this Section 7.8 are in addition to and not in substitution of the requirements of the Building Code Act with respect to the issuance of Building Permits.

#### **7.9 Requirements for Occupancy**

No building erected on the Lands within the Plan shall be occupied until a Certificate of Inspection re: Readiness for Occupancy has been issued by the Municipality's Chief Building Official and the said Certificate shall not be issued until:

- (a) Preliminary Acceptance has been granted for Stage 1 and 2.

#### **7.10 Right to Enter into an Agreement**

The Developer agrees not to call into question directly or indirectly in any court or proceeding or action, whatsoever in law or in equity, the right to the Municipality to enter into this Agreement and to enforce each and every term, covenant and condition herein contained and this Agreement may be pleaded as an estoppel against the Developer in any such proceeding.

The Developer acknowledges that the Municipality is entering into this Agreement and approving the Plan on the express representation of the Developer that it and its successors and assigns shall observe and perform all the provisions of this Agreement and that the Municipality is of the opinion that the Plan would not be in the public interest if the Developer, its successors and assigns, the owner or owners from time to

time of the land within the Plan were not obligated to observe and perform all the provisions hereof except to the extent the Municipality may lawfully change them.

#### **7.11 Successors and Assigns**

The covenants, agreement, conditions, and undertakings herein contained on the part of the Developer shall run with the land and shall be binding upon it and upon its successors and assigns as owners and occupiers of the said lands from time to time.

#### **7.12 Scheduling, Progress and Completion**

The Developer shall commence construction of services within eighteen (18) months of the signing of this Agreement. Within eighteen (18) months of the date of commencement of the servicing, the Developer shall complete the installation of the Stage 1 and Stage 2 services. Failure to adhere to the above schedule may result in the Municipality completing the Works in accordance with Section 3.7 of this Agreement.

#### **7.13 No Municipal Liability**

This Agreement and the provisions herein do not give the Developer or any person acquiring any interest in the Lands, or any other rights to any unit described in the Plan (each hereinafter in this clause called "such Person"), any rights against the Municipality or the Municipality's Engineer with respect to the failure of any such person to perform any obligations under this Agreement or the failure of the Municipality to force any such Person to perform any obligations under this Agreement or any negligence of any such Person in the performance of the said obligations.

The only duty and responsibility of the Municipality's Engineer arising out of this Agreement is to the Municipality and this Agreement. Any work or services done or performed by the Municipality's Engineer under this Agreement do not in any way create any liability on the part of the Municipality or the Municipality's Engineer to the Developer or any person acquiring any interest in the Lands.

#### **7.14 Assignment**

The Developer shall not assign this Agreement without the prior written consent of the Municipality, which consent may not be unreasonably withheld.

#### **7.15 Conflict**

In the event of any conflict between or among the plans and specifications relating to the construction of the Works, the Director of Operations shall decide which provisions shall prevail.

#### **7.16 Severability**

If any term, covenant or provision of this Agreement shall be found or declared by a Court of competent jurisdiction to be invalid, unenforceable or *ultra vires*, such term, covenant or provision shall be conclusively deemed to be severable from all other terms, covenants and provisions of this Agreement and the remainder of this Agreement shall be and remain in full force and effect.

#### **7.17 Amendment**

Without in any way limiting the rights of the Municipality, the Developer agrees that the Municipality may, with the consent of the then registered owner of the land within the Plan, amend this Agreement insofar as it specifically affects such land or any part thereof. Any amendments to this Agreement shall be agreed upon by the parties in writing.



**7.18 Further Assurances**

The Developer agrees that it shall and will, on the request of the Municipality, make, do, execute or cause to be made, done or executed all such further and other deeds, acts, things and assurances to ensure the full implementation of this Agreement and to satisfy the intention of the parties as set out in this Agreement.

**7.19 Joint and Several**

All terms, covenants, provisions and obligations of the Developer in this Agreement shall be joint and several.

**7.20 Headings**

The headings contained herein are for reference only.

**7.21 Enurement**

This Agreement shall be binding upon and enure to the benefit of the parties hereto and its respective heirs, executors, administrators, successors and assigns.

**7.22 Counterparts**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute one and the same agreement. Any manually executed signature to this Agreement delivered by a party by facsimile or other electronic transmission shall be deemed to be an original signature.

**Section 8 – Financial Provisions****8.1 Securities**

Prior to registering this Agreement, the Developer shall deposit with the Municipality to cover the faithful performance of the contract for the installation of the services and the payment of all obligations and contingencies arising thereunder the following securities:

- (a) Securities in the amount of One Hundred Percent (100%) of the estimated cost of all of the works as set out in Schedule “D” and as approved by the Municipality, in the form of certified cheque, money order or bank draft, or
- (b) An irrevocable Letter of Credit from a chartered bank, issued in form and content satisfactory to the Municipality’s Solicitor, in the amount of One Hundred Percent (100%) of the estimated cost of all Works as set out in Schedule “D” and as approved by the Municipality’s Engineer or
- (c) Some combination of certified cheque, bank draft or money order and Letter of Credit, totaling 100% of the Schedule “D” estimate.
- (d) Prior to depositing the securities, the Developer’s Engineer shall submit an estimate of the cost of the Works to the Municipality for approval. When the cost estimate has been approved it will be set out in Schedule “D” of this Agreement and will become the basis for the limits of these securities.
- (e) All Letters of Credit shall be for a minimum guaranteed period of one (1) year or such longer time as the Municipality may decide. All Letters of Credit referred to in this Section shall contain the following clause:

*“It is a condition of the Letter of Credit that it shall be deemed to be automatically extended without amendment from year to year from the present or any future expiration date thereof, unless at least thirty (30) days prior to the present or any*

*future expiration date, we notify you in writing by registered mail that we elect not to consider this Letter of Credit to be renewable for any additional period.”*

- (f) Unless each and every Letter of Credit is renewed as noted above, the Municipality shall have the absolute right to refuse to accept any building permit applications and to prohibit occupancy of any units whether partially or fully completed, from the said date thirty (30) days prior to the expiration of that Letter of Credit.
- (g) The amount for securities shall be submitted by the Engineer for the Developer to the Municipality’s Engineer for review. The agreed upon security amount shall be inserted in Schedule “D” to this Agreement.

The Municipality reserves the right, at any time, to review the amount of security deposited in light of the value of the work remaining to be completed for any current or subsequent phases of the project and to require an adjustment in the securities, such adjustment to be based upon any anticipated changes to site conditions or construction costs.

## **8.2 Reduction of Securities**

An application for the reduction of the security on deposit with the Municipality pursuant to Section 8.1 herein may be made no earlier than thirty (30) days after the commencement of construction of the Works and every thirty (30) clear days thereafter.

- (a) To obtain a reduction in security the Developer shall file with the Municipality’s Engineer a written application in accordance with Schedule “F” attached hereto.
- (b) The application shall include written confirmation from the Developer’s Engineer:
  - i. describing the Works constructed as at the date of the application and a calculation of the cost thereof.
  - ii. confirming that the Works have been installed by the Developer with full time supervision of the Developer’s Engineer and in accordance with the requirements of this Agreement and schedules hereto.
  - iii. describing the Works remaining to be completed as at the date of the application and a calculation of the estimated cost thereof.
- (c) The value of the reduction shall be determined by the Municipality’s Engineer who shall give a certificate to the Municipality confirming the amount of the reduction of the security and the amount of the security remaining on deposit with the Municipality.
- (d) The value of the reduction shall be based upon the value of the Works remaining to be completed by the Developer plus ten percent (10%) of the value of the Works completed to the date of the application.
- (e) Subject to any outstanding deficiencies or contingencies, the Municipality throughout the maintenance period shall hold as security the greater of ten percent (10%) of the estimate of the cost of the Works as set out in Schedule “D” or twenty thousand dollars (\$20,000.00).

## **8.3 Statutory Declaration of Accounts Paid**

The Developer agrees that upon applying for a discharge of securities or for a Certificate of Preliminary Acceptance for the services, it shall supply the Municipality with a Statutory Declaration that all accounts for work and materials for said services have been paid except normal guarantee holdbacks and that there are no claims for liens or otherwise in connection with such work done or materials supplied for or on behalf of the Developer in connection with the Development.

**8.4 The Construction Act**

The Developer agrees that it will hold back in its payments to any Contractor who may construct the services, such sums as are provided in accordance with the Construction Act, and shall otherwise indemnify and save harmless the Municipality against any claims, actions or demands for liens or otherwise in connection with the Works and all costs in connection therewith, on a full solicitor and own client basis, and on the demands of the Municipality's Solicitor will forthwith take such steps to immediately discharge all liens registered against the Lands.

Notwithstanding anything to the contrary contained in this Agreement, the Developer hereby agrees that the filing of any liens pursuant to the said Construction Act, with respect to the Lands, shall constitute a default by the Developer of the terms of this Agreement and shall entitle the Municipality to draw on any or all of the security referred to in Section 8.1 of this Agreement and to use said draw to make payment into Court of the holdback together with costs.

**8.5 Release**

At the time the Developer completes all of the requirements of this agreement and Final Acceptance of all of the Works has been achieved, it may make application to the Municipality for a full release of this agreement from the title of the lands within the Plan.

The remainder of this page has intentionally been left blank.

**Section 9 – Special Provisions**

9.1 The Developer and the Municipality agree that the provisions set forth in the attached Schedule “G” form an integral part of this Agreement.

**Section 10 – Signatures**

IN WITNESS WHEREOF the parties hereto have affixed their hands and seals attested to by the hands of the proper officer duly authorized on its behalf.

( 5053745 ONTARIO INC.  
 (  
 (  
 (Per: \_\_\_\_\_  
 (  
 (  
 (Per: \_\_\_\_\_  
 (  
 ( We have authority to bind the Corporation  
 (  
 ( THE CORPORATION OF THE MUNICIPALITY  
 ( OF BROCKTON  
 (  
 ( \_\_\_\_\_  
 ( Chris Peabody, Mayor  
 (  
 ( \_\_\_\_\_  
 ( Fiona Hamilton, Clerk  
 ( We have authority to bind the Corporation

Developer’s Address: \_\_\_\_\_

Developer’s Telephone: \_\_\_\_\_

Developer’s Email \_\_\_\_\_

### Schedule "A" Of Agreement

Note: It is understood and agreed that this Schedule forms part of the Municipality's Agreement.

#### **Description Of Lands Being Developed**

The road allowance immediately adjacent to the eastern side of the property legally described as FIRSTLY: PART PARKLOT 38 PLAN 162 PARTS 1 & 2 3R3215; TOGETHER WITH AN EASEMENT AS IN R367382; SECONDLY: PART PARTLOT 38 PLAN 162 PARTS 1 & 2 3R10758; SUBJECT TO AN EASEMENT AS IN R341039; TOGETHER WITH AN EASEMENT AS IN R341039; MUNICIPALITY OF BROCKTON , bearing parcel identifier number 33196-0623 (LT), and as shown in the following plans:

River Breeze Townhouses Proposed Development – Wilson Developments prepared by Cobide Engineering Inc STAMPED - 01892 Site Plan Approval Set AUG 08/24

1. Sheet No. 01892 -TS– Title Sheet
2. Sheet No. 01892-EX1 – Existing Conditions and Removals Plan
3. Sheet No. 01892-SP1 – Development Site Plan
4. Sheet No. 01892-SS1 – Site Servicing Plan
5. Sheet No. 01892-SGR1 – Site Grading Plan
6. Sheet No. 01892-SGR2 – Site Grading Plan
7. Sheet No. 01892-STM1 – Storm Sewer Catchment Areas
8. Sheet No. 01892-DET1 – Chamber/Miscellaneous Details I
9. Sheet No. 01892-DET2 – Miscellaneous Details II
10. Sheet No. 01892 DET3 – Miscellaneous Details III
11. Functional Servicing Report Yonge Street Townhouses prepared by Cobide Engineering dated July 2024
12. Storm Sewer Design Sheet 5-Year Storm dated April 3, 2024

Report - True North Safety Group 'TNS' Entrance Safety Assessment at 37 Yonge Street, Municipality of Brockton, Ontario dated June 19, 2024.

**Schedule "B" Of Agreement**

Note: It is understood and agreed that this Schedule forms part of the Municipality's Agreement.

**Municipal Servicing Guidelines**

Municipality of Brockton Municipal Servicing Guidelines dated June 25, 2019

**Schedule "C" Of Agreement**

Note: It is understood and agreed that this Schedule forms part of the Municipality's Agreement.

**Checklist Of Works To Be Constructed**

1. Roads complete with asphalt paving and curb and gutter
2. Storm Water Management Plan, and storm sewer system
3. Sanitary sewers and building connections to the lot line
4. Water distribution system, fire protection and building connections to the lot line
5. Underground electrical distribution system and an electrical service
6. Utility obligations – telecommunications, gas service
7. Sidewalks
8. Topsoil and sod on boulevard from property line to curb
9. Pedestrian walkways.

**Note: Works Required Denoted by**

**Schedule "D" Of Agreement**

Note: It is understood and agreed that this Schedule forms part of the Municipality's Agreement.

**Itemized Estimate Of Costs Of Construction Of Each Part Of The Works**

The full summary and itemized estimate of costs of construction of each part of the works is available and on file at the Municipal Office and referenced as:

Cobide Engineering Inc. Project No. 01892 dated August 30, 2024 – Wilson Developments – 37 Yonge Street. Preliminary Construction Cost Estimate – Offsite Works Municipality of Brockton and includes Table 1 with a total cost estimate of \$22,800.00 and Table 2 with a total cost estimate of \$229,650.00.



**Schedule "E" Of Agreement**

Note: It is understood and agreed that this Schedule forms part of the Municipality's Agreement.

**Lands For Municipal Purposes To Be Conveyed To The Municipality**

None

**List Of Easements To Be Granted To The Municipality**

None

**Schedule "F" Of Agreement**

Note: It is understood and agreed that this Schedule forms part of the Municipality's Agreement.

**Application For Reduction Of Security**

To: (Name of Municipality's Engineer), Engineer, \_\_\_\_\_ of \_\_\_\_\_  
Developer: (Name of Developer)  
Agreement: (Date of Agreement)  
Property: (Legal Description of Property)  
Application No. (Specify number of application)

The undersigned, (Name of Developer's Engineer) being the Developer's Engineer, hereby confirms that the Works constructed as at the date of this Application have been installed by the Developer under the full time supervision of the Developer's Engineer and in accordance with the requirements of the Agreement between the Developer and the Municipality.

The Works installed to the date hereof and the calculation of the cost thereof are detailed in the schedule attached hereto.

Further, the undersigned Developer's Engineer hereby confirms that the Works remaining to be constructed as at the date of this Application and the calculation of the estimated cost thereof are also detailed in the schedule attached hereto.

This Application is given and delivered to the Municipality's Engineer with full knowledge that the Municipality's Engineer and the Municipality will rely upon the information contained herein in granting a reduction of the security held by the Municipality pursuant to Section 8.2 of the said Agreement affecting the above property.

Dated at \_\_\_\_\_, Ontario this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Signature of Developer's Engineer

Name of Developer's Engineer

### **Schedule "G" Of Agreement**

Note: It is understood and agreed that this Schedule forms part of the Municipality's Agreement.

#### **Special Provisions**

The following special provisions apply to this Agreement:

1. The Developer shall agree to make satisfactory arrangements for the installation of postal boxes, if deemed necessary by Canada Post. The location and construction standard of community postal boxes shall be jointly approved by Canada Post and the Municipality of Brockton.
2. The Developer shall install sidewalks in accordance with the Municipal Servicing Guidelines to extend from the existing sidewalk on Yonge Street extending to the northerly limit of the intersection of Valleyside Drive and Yonge Street.
3. The Developer shall install catch basins on municipal property as shown on the plans to conform with the Plans.
4. The Developer shall connect such sanitary and sewer services to extend to the Lands in accordance with the Plans.
5. Once all the sanitary and sewer connections and catch basins have been installed to the satisfaction of the Municipal Engineer or Director of Operations or designate, the Developer shall rehabilitate and repave the surface of the full portion of Yonge Street from the beginning of the sidewalk extension to the northerly limit of the Valleyside Drive and Yonge Street intersection.
6. The Developer shall further install all signs and road markings to establish an all-way stop at the intersection of Valleyside Drive and Yonge Street, with all such signs and markings in accordance with the Highway Traffic Act.
7. The Developer shall provide ten (10) days notice to all adjacent property owners of the Lands that construction on the Work will be commencing by sending letters via regular mail with the Municipality being copied on such letters.