

SUBDIVISION PRE-SERVICING AGREEMENT

This Agreement made this _____ day of August, 2019

B E T W E E N:

WALKER WEST ESTATES INC.
(hereinafter collectively called the “Owner”)

OF THE FIRST PART

- and -

THE CORPORATION OF THE MUNICIPALITY OF BROCKTON
(hereinafter called the “Municipality”)

OF THE SECOND PART

WHEREAS the Owner is the owner of the lands in the Municipality of Brockton, in the County of Bruce, described in Schedule “A” hereto (the “Lands”);

AND WHEREAS the Owner proposes to subdivide the lands and is proceeding with a plan of subdivision, engineering drawings and a Subdivision Agreement;

AND WHEREAS the Owner warrants that it has received draft plan approval from The County of Bruce for the subdivision. A copy of the Plan and the draft plan conditions are on file for inspection at the municipal office;

AND WHEREAS the Owner intends to immediately commence with site grading, as further described in the plans, drawings and reports listed in Schedule “B” (the “Works”) prior to the execution and the registration of the Subdivision Agreement, and final approval and the registration of the Plan;

AND WHEREAS the Parties hereto have entered into this Subdivision Pre-Servicing Agreement (the “Agreement”) for the purpose of defining the terms and conditions upon which the construction, installation and provision of the Works will be carried out;

AND WHEREAS the Owner has obtained the required written approval of various agencies, not limited to but including the Ministry of the Environment, Conservation and Parks, the Saugeen Valley Conservation Authority, the Ministry of Natural Resources, the Ministry of Transportation, and the Ministry of Citizenship and Culture to the satisfaction of the Municipality in so far as these agencies and their comments and requirements relate to the construction, installation or provision of the Works;

AND WHEREAS the Owner acknowledges that written confirmation from various utility companies that satisfactory agreements or arrangements have been reached for the provisions of their respective services is required prior to execution of the Subdivision Agreement.

NOW THEREFORE, this Agreement witnesseth that in consideration of the covenants herein contained, and other good and valuable consideration, the Parties hereto covenant and agree as follows:

PRE-SERVICING AT OWNER’S RISK

1. The Owner acknowledges and agrees that the installation, construction or provision of the Works to the Lands or external to the Lands is at its sole and complete risk. The Owner acknowledges and agrees that, should the Plan for this development for any reason be refused final approval and the Plan is not registered, any pre-servicing authorized under this Agreement shall cease and the Owner agrees to accept full responsibility and obligation, financial and otherwise, for all servicing provided and Works that have been constructed or installed. Should the Plan be refused final approval, the Owner agrees to remove any or all Works or portions of Works if so requested by the Municipality and to rectify any situation including all making restoration as a result of construction to the satisfaction of the Municipality, if requested by the Municipality to do so.

MODIFICATIONS MAY BE REQUIRED TO ENGINEERING DRAWINGS AND PLANS

2. The Owner acknowledges and agrees that the engineering design drawings and plans as submitted have not been finally reviewed by the Municipality. In order to obtain final approval of the engineering design drawings and plans, should any modification, alteration, relocation, and reconstruction of all or part of the Works be required, the Owner agrees that it may be required to make such modifications and alterations and to relocate and reconstruct some or all or any portions of the Works at its sole cost and expense.

WRITTEN ACCEPTANCE OF PRE-SERVICING BY MUNICIPALITY REQUIRED

3. The Owner acknowledges and agrees that the Works for which pre-servicing may proceed must be approved in writing by the Municipality, and that only those Works that have been approved in writing may be constructed in accordance with the provisions of this Agreement and all other requirements of the Municipality and its engineers.

MUNICIPALITY MAY REQUIRE PRE-SERVICING TO STOP

4. The Owner acknowledges and agrees that if the Works, as set out in the engineering design drawings, are not being carried out in an acceptable manner and the development of the Plan is not proceeding expeditiously to the satisfaction of the Municipality, the Municipality, will have the right to require the Owner to cease any or all construction activities, by written notice to the Owner in accordance with Clause 29 of this Agreement.

ESTIMATED COSTS

5. The Owner acknowledges and agrees that the total estimated costs of the Works to be constructed pursuant to this Agreement are set out in Schedule “C”. The Owner acknowledges and agrees that Schedule “C” is only a preliminary estimate and that additional work may be required prior to the acceptance of the Works by the Municipality. The Owner further acknowledges that the amounts set out in Schedule “C” are estimates only and that the actual cost will be based on tender prices.

PROFESSIONAL ENGINEER

6. The Owner covenants and agrees to retain a consulting Professional Engineer (the “Owner’s Engineer”), skilled and experienced in municipal work, to design, create drawings and contracts, obtain necessary approvals, supervise, layout, provide full time site inspection and certify the Works on behalf of the Owner. The Owner’s Engineer shall maintain records and provide “as - recorded” plans to the Municipality for the Works undertaken.

COSTS OF CHECKING PLANS AND SPECIFICATIONS

7. The Owner agrees to pay the Municipality the ongoing reasonable costs for legal, planning, administrative, public works and engineering costs for the checking and verification of plans and specifications, and for any site inspection of the Works on behalf of the Municipality.

AT OWNER’S COST

8. Every provision of this Agreement by which the Owner is obligated in any way is deemed to include the words “at the expense of the Owner and to the Municipality’s satisfaction”, unless specifically stated otherwise.

NOTIFICATION OF COMMENCEMENT

9. The Developer shall not commence the construction of any of the Works until the Developer has provided 72 hours written notice to the Municipality’s Engineer or Director of Public Works of his intent to commence work. Should, for any reason, there be a cessation or interruption of construction, the Developer shall provide 72 hours written notification to the Municipality’s Engineer or Director of Public Works before work is resumed.

EXPIRY OF THIS AGREEMENT

10. This agreement shall become null and void, and the developer shall cease all pre-servicing should:
 - The developer fails to obtain final approval of the Plan, and complete a Subdivision Agreement with the Municipality prior to the date of expiry of draft plan approval, or,
 - Should the conditions of draft plan approval be extended, should within two (2) years of the date of the signing of this agreement, the developer fail to obtain final approval of the Plan, and complete a subdivision agreement with the Municipality.

MUNICIPALITY TO HAVE UNRESTRICTED ACCESS TO LANDS

11. The Owner agrees to permit unrestricted access to the Lands to the Municipality and its agents and to the various authorities involved with approval of the Plan and construction of the Works for the purpose of inspection of the construction activities and the Works.

REGULAR MUNICIPAL INSPECTIONS

12. The Municipality may make regular site inspections as deemed necessary to ensure that construction methods conform to acceptable engineering practice and in accordance with the accepted drawings and specifications. If, in the opinion of the Municipality, acceptable full-time site inspection is not being provided by the Owner's engineer or construction is not satisfactory, the Municipality will have the authority to order that construction operations cease by providing written notice to the contractor in charge of the construction or to the Owner's Engineer. A copy of this clause shall be delivered by the Owner to each and every contractor engaged for construction of the Works and to the Engineer.

SILTATION AND EROSION CONTROL

13. The Owner agrees to complete the Works as required by the agencies where they relate to pre-servicing and construction activities and to provide and maintain all siltation and erosion control facilities during and after construction to the satisfaction of the Municipality and, the Saugeen Valley Conservation Authority.

OWNER'S SOLELY RESPONSIBLE FOR DESIGN, PLANS AND SPECIFICATIONS

14. Notwithstanding any acceptance of the engineering design given by the Municipality, neither the Municipality nor the Consulting Engineer retained by the Municipality shall in any way be responsible for the design drawings, plans or specifications and the Owner shall bear sole responsibility for the soundness of the engineering design and for ensuring that the Works required to be constructed will function as intended and will be compatible with the final approved services.

EMERGENCY ACCESS

15. The Developer shall at all times during construction and development of the Works maintain emergency access to the land to the satisfaction of the Municipality's Engineer.

CONSTRUCTION REFUSE AND WEEDS

16. The Owner shall regularly dispose of all construction refuse, debris or weeds related to the development of the site, in an orderly and sanitary fashion. If the Owner fails to remove and dispose of construction refuse, debris or weeds to the satisfaction of the Municipality's By-law Enforcement Officer, the Municipality may give written notice to the Owner. If the Owner 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 Owner forthwith upon demand, which costs shall include all expenses incurred by the Municipality in carrying out such removal and disposition. The burning of construction refuse, debris of weeds, related to the development of the site on any lands within the Plan is prohibited.

DUST CONTROL

17. The Owner shall use such reasonable methods to prevent any dust problem as the Municipality shall deem necessary and for this purpose the Municipality's Director of Operations shall notify the Owner in writing from time to time of the requirements of the Municipality.

CONTAMINANTS

18. In the event the Owner 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 Owner hereby agrees to notify the Municipality and the Ministry of the Environment, Conservation and Parks immediately and take all necessary steps and remedial efforts required by the Ministry of the Environment, Conservation and Parks 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 Owner 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.

NO CONNECTION TO MUNICIPAL SERVICES

19. The Owner expressly covenants and agrees not to connect any Works to any municipal or public services on any public right-of-way or any lands owned by the Municipality, except as may be permitted by the Director of Operations, or designate.

NO WORK ON LANDS NOT OWNED BY OWNER WITHOUT WRITTEN CONSENT

20. The Owner acknowledges and agrees that no work shall be carried out on lands not owned by it without the written consent of the owner of such lands and that such consent shall be forthwith filed with the Municipality.

OTHER APPROVALS

21. The Owner agrees that it shall forthwith obtain any and all other governmental approvals necessary for the Works and that it shall submit to the Municipality all the normal and usual plans and documents that may be required by the Municipality and to enter into a Subdivision Agreement.

STORMWATER FLOWS AND SEDIMENT WASH-OFF

22. The Owner covenants and agrees to take any and all necessary steps, to the satisfaction of the Municipality and the Saugeen Valley Conservation Authority, to ensure that stormwater flows and sediment wash-off is controlled to the extent that downstream lands are protected from nuisance and/or damage.

INSURANCE

23. (a) The Owner agrees to file with the Municipality, prior to commencement of the Works provided for in this Agreement, a public liability insurance policy in an amount of no less than five million dollars (\$5,000,000.00) (subject to the Municipality's right to set higher limits if it considers necessary) naming the Municipality and the Municipality's Engineer, as co-insured, for insurance against all damages or claims for damages. The form, content and type of insurance policy are to be subject to approval by the Municipality. The Owner shall keep the

aforesaid insurance policy in effect until Final Acceptance of all Works as defined in the Subdivision Agreement and shall provide proof of such insurance to the Municipality on request.

- (b) The premiums for the insurance policy shall initially be paid for a period of one (1) year. Upon execution of this Agreement and prior to commencement of each policy year the Owner shall provide a copy of the policy to the Municipality indicating full payment.
- (c) The issuance of the policy of insurance shall not be construed as relieving the Owner from responsibility for other or larger claims, if any, for which it may be held responsible.

TREE REMOVAL

- 24. As a condition of draft approval of the subdivision, the Owner is to complete a “Tree Planting Plan” to the satisfaction of the Municipality and the SVCA. The Owner shall adhere to all of the requirements of that approved plan. During the pre-servicing of the development, the Owner shall remove only those trees required for the installation of the Works, as determined by the Owner’s Engineer and as may be approved by the Municipality in writing.

SECURITY

- 25. (a) In order to guarantee the due performance of its covenants in this Agreement, the Owner shall, prior to execution of this Agreement, provide the Municipality with a Letter of Credit (“Letter of Credit”) or cash security in addition to any monies previously deposited with the Municipality in the amount of 20% of the total estimated cost of the entire Works within the limits of the Plan and 100% of the total cost of the entire Works external to the Plan. The estimated value of the Works is outlined in Schedule “C”.
- (b) The Letter of Credit or cash security shall comprise of an irrevocable letter of credit from a Canadian Chartered Bank issued in accordance with terms satisfactory to the Municipality’s Treasurer in the form set out in Schedule “D” and shall provide that if in the sole opinion of the Municipality, there is a default under the terms of this Agreement the Letter of Credit or cash security may thereupon be drawn or cashed in whole or in part.
- (c) The Owner acknowledges and agrees that no reduction in the amount of the Letter of Credit filed by the Owner with the Municipality in accordance with the terms of this Agreement shall be permitted until such time as the Owner has entered into a Subdivision Agreement with the Municipality for the Lands. Thereafter, any reductions in the Letter of Credit posted by the Owner shall be completed in accordance with the terms of the said Subdivision Agreement.
- (d) Prior to execution of the Subdivision Agreement, securities shall be revised in accordance with the executed Subdivision Agreement.
- (e) Where phasing is proposed of the registration within the Plan or of the pre-servicing within the plan, Securities shall be posted based upon the extent of the limit of the area of the pre-servicing, or the extent of the area of the anticipated registration, whichever is greater.

DEPOSIT

- 26. (a) Prior to execution of this Agreement, the Owner, if it has not already done so, shall deposit with the Municipality a cash deposit in the amount of twenty thousand dollars (\$20,000.00) as a deposit for the Municipality’s engineering fees for the review of drawings and supervision of the performance of the Works, and legal costs attributable to this Agreement and other legal advice related to the development contemplated by this Agreement. The Owner agrees to reimburse the Municipality for all engineering and legal costs incurred and to make payments to maintain the deposit.

- (b) The Owner agrees that any accounts relating to engineering and legal work that are not covered by the deposit must be paid within thirty (30) days of submission by the Municipality and, if not paid within thirty (30) days, the Municipality shall, at its discretion, be entitled to draw on the aforementioned Letter of Credit or cash security for payment of any outstanding accounts plus an administration fee of \$100.00 per outstanding account together with interest at the rate of the prime rate of the Municipality's Bank from the date the invoice was first issued. If the Municipality draws on the Letter of Credit to pay any outstanding accounts, the Owner is considered to be in default of this Agreement in which case, the Municipality, at its sole discretion, may issue a stop work order and the Owner agrees that no work may proceed until such time as the Letter of Credit is increased to its original amount.

LIMITED CONSTRUCTION ACCESS

27. The Owner covenants and agrees to:

- (a) Limit construction access to such roads as the Municipality may determine from time to time;
- (b) Maintain all access roads in good repair at all times and meet all the requirements of the Municipality's Public Works Department if public roadways are involved; and
- (c) Provide dust control in order to prevent any dust problem to traffic or home occupants.
- (d) Throughout the pre-servicing and servicing of the subdivision, provide, at all times, access to cottagers who may have historical easements, rights of way, or licenses to access their lands through the development site.

SIGNAGE

28. The Owner agrees to construct, at its expense, signs at each access point to the Lands stating that the property is "PRIVATE PROPERTY" and "NO ACCESS IS PERMITTED AT ANY TIME". The signs shall be at least 1.2 metres by 1.2 metres and the lettering and colouring shall be to the Municipality's satisfaction. The signs shall not be removed until the Subdivision Agreement has been executed at which time signs as required by the Subdivision Agreement must be posted in their place. The Owner acknowledges that all roads on the Lands are private roads and the Municipality is under no obligation to assume or maintain them.

MUNICIPALITY NOT OBLIGATED TO COMPLETE ANY OUTSTANDING WORKS

29. The Owner agrees that should it fail to complete any of the Works contemplated by this Agreement, the Municipality is under no obligation whatsoever to complete all or any portion of the Works but the Municipality has the right to complete the Works if it chooses to. Notwithstanding the foregoing, the Owner agrees that the Municipality shall, at its sole discretion, have the right to enter onto the Lands to take whatever action it deems necessary to safeguard the health and welfare of the residents of the Municipality including, but without limiting the generality of the foregoing, to filling in holes, blocking off access, posting signs and leveling terrain, at the Owner's expense. The Owner further agrees to indemnify the Municipality, its agents or servants, from any and all claims that may arise as a result of any actions taken by the Municipality pursuant to this clause.

NOTICE

30. Where this Agreement requires notice to be delivered by one party to the other, such notice shall be in writing and delivered either personally or by facsimile transmission by one party to the other party at their addresses and facsimile numbers noted below. Such notice shall be deemed to have been given, if by personal delivery, on the date of

delivery, and if by facsimile transmission or e-mail, on date of delivery of electronic confirmation of receipt obtained:

(a) To the Municipality:

The Corporation of the Municipality of Brockton
100 Scott Street,
Walkerton, ON
N0G 2V0

Attention: Sonya Watson
Phone: (519) 881 2991

(b) To the Owner:

Walker West Estates Inc.
36 John Crescent
Chepstow, ON
N0G 1K0

Attention: Bill Clancy

Or such other address as the Owner has provided to the Municipal Clerk in writing and any notice faxed or delivered shall be deemed good and sufficient notice under the terms of this Agreement.

INDEMNITY

31. (a) The Owner agrees to indemnify and save harmless the Municipality, its agents or servants against all actions, causes of action of any kind including causes of action of negligence, suits, claims and demands whatsoever in tort, contract or otherwise which may arise either directly or indirectly by reason of the Owner undertaking pre-servicing pursuant to this Agreement.
- (b) It is specifically understood and agreed that inspections of any aspect of construction, review the Municipality or its Engineer, or any damage or interference resulting from winter road maintenance or any other works or actions undertaken by the Municipality, its agents or servants (which are hereinafter specifically agreed to be acting as agents of the Owner with respect to such work) shall impose no liability upon the Municipality or its Engineer to the Owner and the Owner specifically agrees that it will make no such claim.

SEVERABILITY

32. If any of the provisions of this Agreement are found by a court of competent jurisdiction to be unenforceable it shall not affect the enforceability of each and every other clause contained herein.

TRANSFER OF OWNERSHIP

33. In the event of any transfer of any beneficial ownership of interest in the Lands or in the event of any change in the ownership of the principals of the Owner, then, at the sole discretion of the Municipality, this Agreement may be terminated upon written notice by the Municipality being provided in accordance with Clause 24.

NOT BINDING ON SUCCESSORS AND ASSIGNS

34. This Agreement shall be binding on the Parties hereto but unless this Agreement is registered in accordance with the requirements of the Municipality pursuant to Clause 36 of this Agreement, it shall not enure to the benefit of their successors and assigns.

SCHEDULES

35. The following schedules attached hereto form an integral part of this Agreement:

- (a) Schedule “A” – Legal Description of the Lands;
- (b) Schedule “B” – Description of the Works, Drawings and Reports;
- (c) Schedule “C” – Estimated Construction Costs; and
- (d) Schedule “D” – Form of Letter of Credit

REGISTRATION OF AGREEMENT

36. The Owner covenants and agrees that this Agreement and any schedules attached hereto may be registered upon title to the Lands and that such registration shall be at the instance of the Municipality and at the Municipality’s sole and absolute discretion. The Owner further covenants and agrees to pay all costs associated with the preparation and registration of this Agreement, as well as all other costs incurred by the Municipality as a result of the registration of any other documents or instruments pertaining to this Agreement, including but not limited to, any amendment thereto.

Upon registration of a Subdivision Agreement on the Plan, the Owner, if directed by the Municipality shall, at its expense, remove this pre-servicing agreement from title on the Plan.

NO FETTERING OF DISCRETION

37. Notwithstanding any other provision of this Agreement, the Owner expressly acknowledges and agrees that none of the provisions of this Agreement (including a provision stating the parties’ intention) is intended to operate, nor shall have the effect of operating, in any way to fetter the discretion of the Municipality and its Council in the exercise of any of its discretionary power, duties or authorities, including without limitation, the authority to approve, approve with conditions or deny draft plan approval of the Plan filed by the Owner. The Owner expressly acknowledges and agrees that it will not obtain any advantageous planning or other consideration or treatment, including approval of a draft plan of subdivision for the Lands, by virtue of it having entered into this Agreement.

NO BUILDING PERMITS UNTIL REGISTRATION OF PLAN

38. The parties agree that the provisions of this Agreement constitute “other applicable law” pursuant to the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended, and that the Owner expressly agrees to not apply for any building permits until final approval of the Plan has been obtained and a Subdivision Agreement is registered on title to the Lands and that this provision may be pleaded by the Municipality in any action or proceeding as an estoppel of any denial of such right.

REQUIREMENTS OF SUBDIVISION AGREEMENT

39. The parties acknowledge that all requirements of any Subdivision Agreement executed pursuant to s.51 of the *Planning Act*, R.S.O. c. P.13 for the subject lands are applicable, except where altered by this Agreement.

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their corporate seals under the hands of their officers properly authorized in that behalf.

SIGNED, SEALED & DELIVERED

Walker West Estates Inc.

NAME_____title_____
(I have authority to bind the corporation)

**THE CORPORATION OF THE MUNICIPALITY OF
BROCKTON**

Chris Peabody, Mayor

Fiona Hamilton, Clerk
25(we have authority to bind the Corporation)

SCHEDULE “A”

LEGAL DESCRIPTION OF THE LANDS

Part of Lot 21, Concession 1, South of Durham Road, Municipality of Brockton, County of Bruce.

SCHEDULE “B”

DESCRIPTION OF THE WORKS, DRAWINGS & REPORTS

Description of the Works

The pre-servicing Works under this agreement include the following:

1. Stripping of topsoil and Area Grading to be completed

List of Drawings

List of drawings or other documents on file with the Municipality of Brockton pertaining to the Works:

C8 - Lot Grading Plan


C11 - Erosion and Sedimentation Control Plan

SCHEDULE “C”

ESTIMATED CONSTRUCTION COSTS

Project No. 02701

July 25, 2019



Walker West Estates
Pre-Servicing Securities Cost Estimate
Municipality of Brockton

Item	Tender Cost Summary	Total
1.0	General Construction Items and Removals	\$473,450.00
	Total Preliminary Cost	\$473,450.00

SCHEDULE “D”

FORM OF LETTER OF CREDIT

Sample - Letter of Credit to be provided as security to the Municipality of Brockton for the completion of all site Works as approved in the Pre-Servicing Agreement.

**NAME OF BANK
BRANCH OR DEPARTMENT
ADDRESS**

**DATE
NO. _____**

LETTER OF CREDIT

TO: The Corporation of the Municipality of Brockton

We hereby authorize you to draw on Bank Name and Address, for the account of our customer, up to an aggregate amount of _____00/100 Dollars () available on demand as follows:

Pursuant to the request of our Customer, we Bank Name hereby establish and give to you an irrevocable Standby Letter of Credit (the “credit”) in your favour in the total amount of _____00/100 Dollars (____) which may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you, which demand we shall honour without inquiring whether you have a right as between yourself and our Customer to make such demand and without recognizing any claim of our customer.

Provided, however, that you are to deliver to us at such time as written demand for payment is made upon us a certificate purported to be signed by an authorized officer of the Municipality of Brockton, agreeing and/or confirming that monies drawn pursuant to this Credit No.

_____ will be retained and used by you to meet any obligations in connection with the Agreement.

The amount of this Credit shall be reduced from time to time as advised by notice in writing given to this branch from time to time by you.

This credit will continue to the _____day of _____, _____and will expire at the Branch address at the close of banking business on that date.

It is condition of this Credit that it shall be deemed to be automatically extended for one year from the present or any future expiration date hereof, unless 30 days before any such date we notify you in writing by Registered Mail that we elect not to consider this Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw by means of your demand accompanied by your written certification, that the amount will be retained and used by you to meet obligations incurred or to be incurred in connection with the Agreement. Partial drawings are permitted.

Bank

SIGNED

SIGNED