

PRE-SERVICING AGREEMENT
"Exeter Heights Subdivision"

THIS AGREEMENT MADE BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF SOUTH HURON
(hereinafter called the "Municipality")

- and -

CVD EXETER INC.
(hereinafter called the "Subdivider")

WHEREAS the Subdivider has received Draft Plan Approval for a Subdivision;

AND WHEREAS the Subdivider wishes to undertake site preparation and grading, and to construct necessary public infrastructure (Municipal Services) prior to the execution and registration of a Subdivision Agreement and prior to registration of the M-Plan for the first phase;

AND WHEREAS the Subdivider will undertake works within the boundaries of Subdivision Lands and upon adjacent Municipal Lands;

AND WHEREAS the Municipality has received confirmation from its engineer that the required drawings and cost estimates have been approved;

NOW THEREFORE in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. DEFINITIONS

In this Pre-Servicing Agreement, unless something in the subject matter or context is inconsistent therewith, the following words and phrases shall have the meanings hereinafter ascribed:

- (a) "Draft Plan Approval" means the Draft Plan Approval with Conditions as approved by the County of Huron (File 40T15002) Date of Draft Approval, June 5, 2019;
- (b) "Municipal Lands" means:
 - (1) a portion of the lands described in PIN 41236-0093 more particularly described as that portion of William Street, Plan 376 lying between Francis Street, Plan 376 and Church Street, Plan 376; and
 - (2) a portion of the lands described in PIN 41236-0099 more particularly described that portion of Part 1, Plan 22R-2697 extending from Part 2, Plan 22R-2697 westerly for a distance of 400.88 feet .
- (c) "Municipal Services" means those Municipal Services to be constructed by the Subdivider which Municipal Services are generally described in section 4 and described in detail in the engineering plans and specifications to be submitted to and accepted by the Municipality and forming Schedule A hereto (Approved Plans);
- (d) "Plan of Subdivision" means the M-Plan(s) to be registered pursuant upon the granting of Final Approval;
- (e) "Subdivision Agreement" means the Agreement to be entered into between the Municipality and the Subdivider pursuant to the Draft Plan Approval;
- (f) "Subdivision Lands" means the lands described in PIN 42136-0133(LT) legally described as Part of Lots 765 & 884, Plan 376, being Parts 1 & 2 on Plan 22R-6791; s/t an Easement Over Part 2, Plan 22R-6791 as in R175686; Municipality of South Huron.

2. **ASSUMPTION OF RISK BY SUBDIVIDER**

- 2.1 The Subdivider agrees to assume all risk (including all costs) in commencing site preparation and grading and the installation of Municipal Services on the Subdivision Lands and Municipal Lands prior to execution of a Subdivision Agreement with the Municipality, and the registration of the Plan of Subdivision. The Subdivider hereby releases the Municipality, its agents, servants and employees from and against all actions, suits, claims and demands whatsoever which may arise either directly or indirectly as a result of site preparation and grading and the installation of Municipal Services by the Subdivider.
- 2.2 The Subdivider acknowledges and agrees that, in the event that a Subdivision Agreement with the Municipality is not finalized for any reason within twenty four (24) months of the date of execution of this Agreement, pre-servicing on the Subdivision Lands shall cease immediately, and the Subdivider, if directed by the Municipality, agrees to remove all Municipal Services installed on the Municipal Lands (if any) and to restore those lands to their original condition, to the satisfaction of the Municipality.

The Subdivider further acknowledges and agrees that it is not entitled to payment for any work conducted under authority of this agreement.

- 2.3 The Subdivider acknowledges and agrees that engineering design plans and specifications for the site preparation and grading and Municipal Services to be installed by the Subdivider, as submitted to the Municipality in accordance with the terms of this Agreement, may require further amendment as a result of requirements imposed by the Municipality under the terms of the Subdivision Agreement to be entered into.

The Subdivider covenants and agrees to assume all risk and responsibility for the cost of required revisions to the engineering design drawings and specifications for the site preparation and grading and the Municipal Services, together with the costs of modifying, reconstructing, removing and/or replacing Municipal Services installed by the Subdivider pursuant to the terms of this Agreement, in order to satisfy the requirements finally imposed by the Municipality at the time that the Subdivision Agreement is finalized.

3. **REQUIREMENTS PRIOR TO EXECUTION OF AGREEMENT BY MUNICIPALITY**

- 3.1 The Subdivider agrees to submit the following to the Municipality, in a form satisfactory to the Municipality, prior to the execution of this agreement:
- (a) Construction/Engineering Plan and Specifications - those plans and specifications for the site preparation and grading and Municipal Services necessary to identify the construction/ engineering aspects of the proposed development, in conformity with the general design concepts of the Municipality. All approved plans shall include electronic copies in a format approved by the Municipality's Engineer; such plan and specifications shall include all necessary measures to ensure that stormwater flows and sediment wash off (erosion and siltation control) are controlled to protect all downstream or upstream lands;
 - (b) Consulting Engineer's Letter - a letter from a qualified engineer experienced in the field of Municipal Services, confirming the terms of his retainer, which letter shall be in the format of the draft letter supplied by the Municipality;
 - (c) Ministry Approvals - confirmation that all Environmental Compliance Approvals (ECAs) and/or approvals as may be necessary to permit the construction of the Municipal Services have been obtained from the requisite approval authorities including, without limiting the generality of the foregoing, such approvals from the applicable Ministry that may be required;

- (d) Utility Authorities - letters from the appropriate Natural Gas, Electricity, Telephone and Telecommunications authorities confirming that satisfactory arrangements have been made with those authorities concerning the relocation and/or construction/reconstruction of any authority facilities located adjacent to, underneath or within the subdivision land;
- (e) Cash Deposits/Security - the deposits/security due to the Municipality as set out in Schedule "B" attached;
- (f) Insurance Certificate - a certified copy of an insurance policy, or a certificate of insurance, confirming comprehensive general as specified in section 15 herein;
- (g) Taxes - have paid all municipal tax bills issued and outstanding against the Subdivider's Lands;

4. MUNICIPAL SERVICES AND CONDUCT OF WORK

4.1 To Be Constructed by Subdivider - The Subdivider agrees to construct and install, at its expense, the Municipal Services in accordance with the Approved Plans submitted to and accepted by the Municipality, and any other applicable approval agency. Such services shall be constructed to the standards and specifications required by the Municipality, and under the direction and supervision of a practising consulting engineer retained by the Subdivider who will certify construction to the satisfaction of the Municipality. The Municipal Services are generally summarized as:

- (a) On the Subdivision Lands
 - (1) installation of storm and sanitary sewers and appurtenances thereto;
 - (2) installation of water distribution system;
 - (3) installation of road base, base asphalt, curbs and gutters;
 - (4) installation of gas, electricity and telecommunications distribution systems;
 - (5) streetlights;
 - (6) construction of stormwater management works.
- (b) On the Municipal Lands
 - (1) installation of storm and sanitary sewer mains, including a sanitary forcemain and appurtenances thereto;
 - (2) installation of water distribution system;
 - (3) installation of road base, base asphalt, curbs and gutters;
 - (4) installation of gas, electricity and telecommunications distribution systems;
 - (5) streetlights.

4.2 Cost Sharing (Sanitary Forcemain) – The sanitary forcemain referenced in subsection 4.1(b)(1) will be built at the Subdivider's initial expense. The Municipality shall reimburse the Subdivider for the actual costs incurred by the Subdivider including all necessary engineering costs. The Subdivider acknowledges and agrees that the specific method and timing of the payment of such amount by the Municipality shall be set out in the Subdivision Agreement. Furthermore the security required hereunder shall not include or be calculated with respect to the cost of such forcemain (which is estimated to be \$236,000).

4.3 Excess Soil/Material from Subdivider's Lands – The Subdivider acknowledges and agrees that it is responsible for the management of excess soil from the Subdivider's Lands in accordance with all applicable legislation and regulations including without limitation the *Environmental Protect Act*, R.S.O. 1990 as amended (the EPA). Where the Subdivider removes and delivers excess soil to other locations, including other lands that may be owned by the Subdivider, that are not subject to a site plan agreement or subdivision (including a consent) agreement registered on title, the Subdivider shall ensure that such excess soil is managed at the off-site location in compliance with all applicable legislation and regulations, including but not limited to the EPA.

4.4 Conduct of Work On Municipal Lands – the Subdivider acknowledges that portions of the Municipal Lands are currently used as a public highway and as access to abutting privately owned lands. The Subdivider agrees to maintain access to such property from and along the portions of Church and Williams Streets during construction. Notwithstanding the foregoing the parties acknowledge that there will be times when access will be interrupted and the Subdivider acknowledges and agrees that it is obliged to coordinate with and seek approval of the Municipality's Director of Infrastructure and Development and/or CAO concerning the times and dates upon which access will be interrupted and to provide for adequate notice thereof to the affected parties.

5. INSPECTION

5.1 The Subdivider agrees to permit unrestricted access (to the Subdivision Lands) to the Municipality and its agents, during construction, for the purpose of inspection of the site preparation and grading and Municipal Services to be installed by the Subdivider and to determine whether all work is progressing in accordance with the Approved Plans. Notwithstanding that inspections may be conducted by the Municipality or its agents, the Subdivider shall bear sole responsibility for the soundness of the engineering design and construction of the Municipal Services, and for ensuring that the Municipal Services will function as intended and will be compatible with the final Plan of Subdivision when and if such Plan of Subdivision is approved.

5.2 If, in the opinion of the Municipality, there is an emergency situation as a result of any work undertaken by the Subdivider or its servants, or agents, which requires immediate attention to avoid damage to private or public property or services owned by the Municipality or to eliminate a potential hazard to persons, such work may be done immediately by the Municipality at the expense of the Subdivider, but notice shall be given to the Subdivider at the earliest possible time.

6. APPLICATION OF SECURITY

6.1 In the event of default by the Subdivider under the terms of this Agreement, or if the Municipality deems it necessary to conduct any work on the Subdivision Lands or Municipal Lands due to an emergency including any potential negative impact upon surrounding lands or other Municipal Services as a consequence of the Subdivider's conduct or actions, the Municipality shall be entitled to draw upon the security, in whole or in part, to cover the costs incurred by the Municipality in remedying the default on the part of the Subdivider, or in addressing any emergency situation.

7. NO REDUCTION OF SECURITY

7.1 The Subdivider acknowledges and agrees that no reduction in the amount of security filed by the Subdivider with the Municipality shall be permitted until such time as the Subdivider has entered into the Subdivision Agreement with the Municipality. Thereafter, any reductions in the security posted by the Subdivider shall be completed in accordance with the terms of the said Subdivision Agreement.

8. NO ASSUMPTION OF MUNICIPAL SERVICES

8.1 The Subdivider acknowledges and agrees that the Municipality shall not be required to assume the Municipal Services, until such time as the Subdivider has entered into a Subdivision Agreement with the Municipality for the Subdivision Lands, and the Municipal Services have been completed, inspected, and approved for assumption in accordance with such Subdivision Agreement.

9. CASH DEPOSITS AND SECURITY

9.1 The Subdivider shall lodge with the Municipality, as applicable, those cash deposits and security more particularly described in Schedule "B" attached, prior to the date of execution of this Agreement by the Municipality.

- 9.2 In the event that there is an increase in the estimated costs of Municipal Services upon which security set out in Schedule "B" hereto is based, the Subdivider shall increase the amount of security lodged, upon the written request of the Municipality, according to the increase in the cost estimates, failing which the Subdivider shall be considered in default of this agreement.

10. EXPENSES TO BE PAID BY THE SUBDIVIDER

- 10.1 Every provision of this Agreement by which the Subdivider is obligated in any way shall be deemed to include the words "at the expense of the Subdivider" unless the context otherwise requires.
- 10.2 The Subdivider shall pay such reasonable fees as may be invoiced to the Municipality by its Solicitor, its Planner, and its Municipal Engineer in connection with all work to be performed as a result of the provisions of this Agreement.
- 10.3 All expenses for which demand for payment has been made by the Municipality, shall bear interest at the rate of 12% per annum commencing 30 days after demand is made.
- 10.4 In the event that the Municipality finds it is necessary to engage the services of an engineer or technical personnel not permanently employed by the Municipality to review the plans of the Subdivider and/or carry out on-site inspections of the work performed, the Municipality will advise the Subdivider accordingly of this need, and the costs of such outside engineers so engaged shall be the responsibility of the Subdivider. The Municipality may require a deposit for this purpose.

11. MAINTENANCE OF MUNICIPAL STREETS

- 11.1 All access to the Subdivision Lands for the purposes of undertaking work contemplated herein shall occur via Wellington Street, and a private access road to Airport Line.
- 11.2 Prior to the acceptance of Municipal Services (which will only occur in accordance with the assumption provisions to be included in the Subdivision Agreement), the Subdivider will maintain proper vehicular access over the Municipal streets used for construction access to the Subdivision Lands as well as those streets forming part of the Municipal Lands herein defined at all times. Without limiting the generality of the foregoing, the Subdivider agrees to repair and maintain the road surfaces to an acceptable standard, as determined by the Municipality, at all times during the period of site preparation and grading and construction of the Municipal Services. Upon certification of Final Completion of roadworks by the Engineer for the Municipality, (subject to the terms of the Subdivision Agreement to be entered into between the Municipality and the Subdivider), a two-year maintenance period will apply.
- 11.3 The Subdivider acknowledges and agrees that any security or deposits filed/lodged with the Municipality may be utilized to secure performance of the above-noted obligation.

12. EROSION/SILTATION CONTROL DURING CONSTRUCTION

- 12.1 The Subdivider covenants and agrees to construct and maintain all storm water management and erosion and sedimentation control structures in good repair and operating condition during the period of construction of Municipal Services, in a manner satisfactory to the Municipality.

13. NOTICE

- 13.1 Any notice required to be given pursuant to this Agreement may be given by prepaid registered post:

a) ~~To the Municipality: 322 Main Street S., Box 759, Exeter, ON N0M 1S6~~

b) To the Subdivider: At the address set out on the tax roll for the Subdivision Lands.

Notice sent by mail shall be deemed to have been given and received on the fifth day after mailing.

14. INDEMNIFICATION FROM LIABILITY AND RELEASE

- 14.1 The Subdivider covenants and agrees with the Municipality, on behalf of itself, its successors and assigns, to indemnify and save harmless the Municipality, their servants and agents from and against any and all actions, suits, claims and demands whatsoever which may arise either directly or indirectly by reason of any work performed by the Subdivider or on its behalf in connection with the carrying out of the provisions of this Agreement.
- 14.2 The Subdivider further covenants and agrees to release and forever discharge the Municipality from and against all claims, demands, causes of actions, of every nature and type whatsoever that may arise either as a result of the failure of the Municipality to carry out any of their obligations under this Agreement, or, as a result of the Municipality performing any municipal work on the said lands or the adjacent properties which may damage or interfere with the works of the Subdivider, provided that such default, failure or neglect was not caused as a result of negligence on the part of the Municipality, its servants or agents.

15. INSURANCE CERTIFICATE AND POLICY

- 15.1 Policy of Insurance - The Subdivider shall lodge with the Municipality, on or prior to the execution of the Agreement, an insurance certificate with an Insurance Company satisfactory to the Municipality, (which said approval shall not be unreasonably withheld or delayed), and insuring for the joint benefit of the Subdivider and the Municipality, against any liability that may arise out of the construction or installation of any work to be performed pursuant to this Agreement and for a period of 1 year after completion and acceptance of the Municipal Services to be constructed herein.
- 15.2 Comprehensive General Liability - Such policy shall carry limits of liability in the amount to be specified by the Municipality, but in no event shall it be less than \$5,000,000.00 inclusive comprehensive general liability and such policy shall contain:
- (a) a cross-liability clause;
 - (b) product/completed operation coverage;
 - (c) shall not have an exclusion pertaining to blasting, provided that any blasting required to be done shall be done by an independent contractor duly qualified to do such work or where no blasting will occur, such clause may be included where the Town has received to its satisfaction, written confirmation from the Consulting Engineer or a Statutory Declaration from the Subdivider that no blasting will occur on the lands subject to this agreement;
 - (d) shall include the following names as additional insureds:
 - (1) The Corporation of the Municipality of South Huron
 - (e) Notice of Cancellation - a provision that the insurance company agrees to notify the Municipality 15 days in advance of any material change or cancellation of the said insurance policy.
- 15.3 Certificate of Coverage - Any certificate of coverage filed with the Municipal solicitor shall specifically contain confirmation that the coverage as specified in subsection 15.2 above is in effect.
- 15.4 Confirmation of Premium Payment - The Subdivider shall, from time to time as required by the Municipality, provide confirmation that all premiums on such policy or policies of insurance have been paid, and that the insurance is in full force and effect. The Subdivider at the request of the Municipality shall file a copy of the policy with the Municipality.

15.5 Claim in Excess of Policy Limits - The issuance of such Policy of Insurance shall not be construed as relieving the Subdivider from responsibility for other or larger claims, if any, and for which it may be held responsible.

16. NO ASSIGNMENT

16.1 The Subdivider shall not assign or otherwise transfer the benefit of this Agreement without the written consent of the Municipality.

IN WITNESS WHEREOF the Subdivider has hereunto set its hands and seals this ___ day of _____, 2019.

CVD EXETER INC.

per: _____
Name:
Title:

I have authority to bind the Corporation.

IN WITNESS WHEREOF the Municipality as hereunto sets its hands and seals this ___ day of _____, 2019.

**THE CORPORATION OF THE
MUNICIPALITY OF SOUTH HURON**

Per: _____
Mayor: George Finch

Per: _____
Clerk: Rebekah Msuya-
Collison

THIS IS SCHEDULE A TO THE PRESERVICING AGREEMENT BETWEEN THE MUNICIPALITY OF SOUTH HURON AND CVD EXETER INC.

SCHEDULE "A"

APPROVED PLANS

The following plans and drawings prepared by Archibald, Gray & McKay Engineering Ltd., Project No. 1400-1, Exeter Heights – Exeter, ON are hereby incorporated by reference:

<u>Sht. No</u>	<u>Description</u>	<u>Rev.</u>
01	Master Plan	1, July 5/19
02	Phasing Plan	1, July 5/19
03	Sanitary & Storm Drainage Plan and Design Sheets	1, July 5/19
04-A	Erosion & Sediment Control Plan	1, July 5/19
04-B	Grading Plan, East Half	1, July 5/19
04-C	Grading Plan, West Half	1, July 5/19
05	Typical Road Section, General Notes & Details	1, July 5/19
06	Street A, Crescent Loop	1, July 5/19
07	Street A, North Leg	1, July 5/19
08	Street A, East Leg	1, July 5/19
09	Carling Street, Marlborough Street	1, July 5/19
10	Church Street	1, July 5/19
11	William Street & Temporary Storm	1, July 5/19
12	Storm Pond Inlet Storm Pond Outlet	1, July 5/19
13	Storm Water Management Pond	1, July 5/19

The following plans and drawings prepared by Dillon Consulting, Project No. 19-9094, Exeter Heights Subdivision are hereby incorporated by reference:

<u>Sht. No</u>	<u>Description</u>	<u>Rev.</u>
01	Photometric Layout	2, 2019/03/07
02	Photometric Layout	2, 2019/03/07

THIS IS SCHEDULE B TO THE PRESERVICING AGREEMENT BETWEEN THE MUNICIPALITY OF SOUTH HURON AND 2695352 ONTARIO INC.

SCHEDULE "B"

CASH DEPOSITS AND SECURITY

The Subdivider shall, on the dates specified herein, lodge with the Municipality, the following described cash deposits and security.

1. **TYPE OF SECURITY**

Any security required to be filed under this Agreement, shall be by a certified bond valid for 1 year, a Letter of Credit valid for a period of 1 year with extension provisions and prepared in a form provided by the Municipality, as applicable, and shall be for the amount or amounts hereinafter set out. It shall be drawn on a Schedule A Chartered Bank of Canada and shall be for the amount hereafter set out.

2. **CASH DEPOSITS**

The following cash deposits are estimates only and are to be paid to the Municipality, as applicable, prior to the execution of this Agreement by the Municipality. In the event that the actual costs incurred by the Municipality exceed the deposits, such excess shall be invoiced to the Subdivider and be due and payable 30 days after demand.

- (a) For legal and planning and engineering expenses and disbursements

\$10,000.00

3. **SECURITY SUMMARY**

Security in the following amounts shall be lodged with the Municipality

@10% of Estimated Costs of Works (excluding estimated cost of Forcemain)

Inclusive of HST \$2,612,000.00 x 0.10

\$261,200.00