

CORPORATION OF THE TOWNSHIP OF NORTH HURON

DEVELOPMENT AGREEMENT

between

BRITESPAN BUILDING SYSTEMS

- and -

THE CORPORATION OF THE TOWNSHIP OF NORTH HURON

Dated July __, 2017

The Corporation of the Township of North Huron
274 Josephine St., Box 90
Wingham, ON N0G 2W0

THIS AGREEMENT made in triplicate on the _____ day of July, 2017 A.D.

BETWEEN:

BRITESPAN BUILDING SYSTEMS

hereinafter called the “Developer” of the FIRST PART

- and -

THE CORPORATION OF THE TOWNSHIP OF NORTH HURON

hereinafter called the “Municipality” of the SECOND PART

WHEREAS the Developer is the owner of land at 688 Josephine Street adjacent to the Township of North Huron (the “Lands”) and proposes to develop said Lands.

AND WHEREAS the Developer wishes to obtain potable water for his development from the Municipality via a proposed private servicing easement over 63 North Street West (Maitland Welding)

AND WHEREAS the Developer agrees to construct a service to the municipal water system to provide water service for development.

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 -- INSTALLATION OF MUNICIPAL SERVICES

1.1 General

The Developer shall design, construct and install at his own expense (subject to the cost-sharing provisions of Section 4.1) and in good workmanlike manner municipal services to the Servicing Standards of the Municipality for the watermain installation. Without limiting the generality of the foregoing, the Developer shall, or shall contract with and instruct its contractors, engineers or other professionals (as applicable) as follows:

- (a) To prepare designs;
- (b) To prepare and furnish all required drawings;
- (c) To enter into and deliver the necessary contract(s);
- (d) To obtain the necessary approvals in conjunction with the Municipality, the County of Huron, and others as required;

- (e) To provide the field layout and the full time supervision of municipal watermain 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 provide co-ordination and scheduling to comply with the timing provisions of this Agreement and the requirements of the Municipality's Engineer, for all Works specified in this Agreement;
- (h) To provide certification that the installation of the Works 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, acting reasonably;
- (i) To take such other actions as may be required by the Municipality, acting reasonably, for the completion of the Works in accordance with this Agreement and good engineering practices.

1.2 Municipality's Legal and Engineering Costs

- (a) The Developer agrees to pay its share of the Municipality's cost of the Municipal Solicitor and of the Municipality's Engineer's invoices for the checking of plans and specifications and for supervision and inspection on behalf of the Municipality in accordance with Section 4.1 hereof.
- (b) The Developer shall be invoiced regularly by the Municipality for its share of all costs incurred by the Municipality with respect to this Agreement pursuant to Section 1.2 (a).
- (c) The Developer shall reimburse the Municipality for its share of all costs incurred by the Municipality as referred to in Section 1.2 (a) herein, within thirty (30) days of each billing.

1.3 Developer's Engineer

The Developer shall employ engineers holding a certificate of authorization from Professional Engineers Ontario and approved by the Municipality to complete any tasks required to be completed by the Developer's engineers pursuant to this Agreement, including without limitation the items identified in paragraphs 1.1(a), (b), (e), (f) and (h) above.

1.4 Works to be Installed

The Works to be installed are generally described as follows:

- *A proposed 200mm diameter water service between the existing 200mm diameter watermain on the south side of North Street West and a proposed valve on property line. The Municipality cannot guarantee that the water system will be able to provide pressure and flow for a sprinkler system. Should the building be designed to require a sprinkler system, the Developer may need to add additional internal boosting equipment.*
- *A proposed 150mm diameter sanitary service between a proposed maintenance hole to be installed on the existing 200mm diameter sanitary sewer; just west of the proposed water service; and property line*

The Works are to be as indicated on Drawings 4186-1 through 4186-4 Titled "Legend, Project Notes & Details Plan", "Original Conditions and Removals Plan", "Grading

and Erosion and Sediment Control Plan”, and “Site Servicing Plan”, as prepared by Meritech Engineering, subject to changes and modifications as may be permitted in accordance with the terms of this Agreement.

Watermain materials shall be in accordance with current Municipal and OPSD standards.

All watermain and appurtenances to be installed, bedded and backfilled in accordance with current Ontario Provincial Standard Specifications and to the satisfaction of the Municipality.

Minimum 1.8 metre depth of cover over all mains and services.

All watermain shall be tested, flushed, swabbed and disinfected. Such procedures shall be in accordance with OPSS 441 for pressure testing and the most recent version of AWWA C651 and the MOECC “Watermain Disinfection Procedure” for disinfection and connection to the waterworks system. The Developer shall inform the Municipal Engineer when the watermain is to be tested and disinfected. Bacteriological testing will be completed by the municipal operating authority. The Developer will be billed for any testing or retesting required. Any failure of the testing and disinfecting shall require the Developer to reflush, retest and/or re-disinfect the watermain until the watermain has met the requirements of the Ontario Provincial Standard Specifications and the MOECC, to the satisfaction of the Municipality. Minimum requirements for bacteriological testing are:

- *Escherichia coli – not detectable*
- *Total coliforms – not detectable*

All chemicals and materials used in the disinfecting of the drinking water system shall conform to the following standards:

- *AWWA B300 for Hypochlorites*
- *AWWA B301 for Liquid Chlorine*
- *NSF/ANSI 60, Drinking Water Treatment Chemicals – Health Effects*
- *NSF/ANSI 61, Drinking Water System Components – Health Effects.*

1.5 Approval of Plans

The detailed plans and specifications of all services must be submitted by the Developer to the Municipality’s Engineer 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.

Any changes or modifications required to the design due to actual site conditions shall not be made without the approval of the Municipality (and, if require by the Municipality, the approval of the Municipality’s Engineer), which approval shall not unreasonably withheld.

1.6 Notification of Commencement

The Developer shall not commence the construction of any of the Works until the plan has been approved by the Municipality’s Engineer and the Developer has provided 72 hours written notice to the Municipality’s Engineer of his intent to commence work. Should, for any reason, there be a cessation or interruption of construction for a period of greater than fourteen (14) days, the Developer shall provide 24 hours written notification to the Municipality’s Engineer before work is resumed.

1.7 Progress of Works

The Developer shall install all Works in a timely manner, in accordance with the requirements of this Agreement. If he 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 fourteen (14) days written notice by prepaid registered mail to the Developer, the Municipality may, without further notice, enter upon the said Lands and 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 Developer's share of the cost thereof (in accordance with Section 4.1) together with an engineering fee of ten percent (10%) of the Developer's share 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 the cash deposit, letters of credit, or other securities.

1.8 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 the Developer's share (in accordance with Section 4.1) 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.

1.9 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 Developer's share (in accordance with Section 4.1) of the cost of such tests shall be paid by the Developer within thirty (30) 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.

1.10 Erosion and Silting Control

The Developer must take all necessary precautions to prevent erosion and sedimentation of sewers, ditches, culverts, slopes, etc., 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.

1.11 Emergency Access

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

1.12 Dust Control

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

SECTION 2 -- ACCEPTANCE OF WORKS

2.1 Preliminary Acceptance of the Works

The Municipality will grant Preliminary Acceptance of servicing upon completion of the installation of the Works, and upon completion of all testing and commissioning of the Works, which shall be completed by the Municipality forthwith upon receiving notice from the Developer that installation of the Works is complete.

2.2 Maintenance of Works

The Developer will be responsible for the repair and maintenance of all services and for its share of the costs thereof (in accordance with Section 4.1) until a Certificate of Final Acceptance is issued. This maintenance period shall extend for two (2) years from the date of the Certificate of Preliminary Acceptance of the Works (the "Maintenance Period"). During this Maintenance Period, a 10% security holdback shall be retained by the Municipality in accordance with the provisions of Clause 4.2 (d) of this Agreement. If during this period, the Developer fails to carry out maintenance work within seventy-two (72) hours after receipt of the request from the Municipality, then the Municipality's Engineer or Director of Public Works may, without further notice, undertake such maintenance work and the Developer's share of the total costs of such work, 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.

Notwithstanding the provisions above, operational responsibility for the Works shall be transferred to the Municipality once the watermain is commissioned. Any municipal costs associated with repair and maintenance of the water distribution system during the maintenance period shall be charged back to the Developer and the Developer shall pay its share of such amounts (in accordance with Section 4.1) to the Municipality within thirty (30) days of receiving the associated invoices.

2.3 Final Acceptance of the Works

On receipt of a written request from the Developer for final inspection and final acceptance towards the end of the Maintenance Period outlined in Section 2.2, 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. This Certificate will be issued provided that the Developer has paid all accounts to the Municipality and the Municipality is:

- Satisfied all repairs or maintenance work on the applicable services have been completed.

and the Municipality has:

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

2.4 Use of Works by Municipality

The Developer agrees that:

- (a) The Works may be used prior to acceptance by the Municipality for the purposes for which such Works were designed, being the delivery of water to the Developer's property.
- (b) Such use shall not be deemed an acceptance of the Works by the Municipality.

- (c) Such use shall not in any way relieve the Developer of his obligations in respect of the construction and maintenance of the Works so used; provided, however, that the Municipality shall indemnify and hold the Developer harmless from any loss incurred by or claim against the Developer (including any loss or claim arising under this Agreement) resulting from the negligence of the Municipality or its agents in making use of the Works prior to acceptance by the Municipality.

2.5 Ownership of Services

Upon the issuance to the Developer of the Certificate of Final Acceptance, the ownership of the Works shall vest in the Municipality and the Developer shall have no claim or rights thereto except those occurring as an owner of the Lands.

Notwithstanding the above, after the Developer and Municipality agree on connection of the Works, the Municipality will become the operator of said Works. This will not relieve the Developer of any maintenance responsibilities under this Agreement.

2.6 Emergency Repairs

Employees or agents of the Municipality may enter onto the Lands at any time or from time to time prior to Final Acceptance of the Works for the purpose of making emergency repairs to any of the Works. 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 his obligations under this Agreement.

SECTION 3 – ADMINISTRATION

3.1 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 in accordance with Section 4.1" and "as approved or accepted by the Municipality, acting reasonably", unless specifically stated otherwise.

3.2 Insurance

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 Plan.

The Developer shall insure against all damages or claims for damage in an Insurance Company satisfactory to the Municipal Clerk, acting reasonably. Such policy or policies shall be issued in the joint names of the Developer, the Municipality, the Municipality's Engineer and the County of Huron and the form and content shall be subject to the approval of the Municipality, acting reasonably. The minimum limits of such policies shall be \$5,000,000 all inclusive, but the Municipality shall have the right to set higher amounts upon providing reasonably justification for such increase to the Developer in writing. 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 or any replacement policy that the Developer may obtain (provided that there is no interruption in coverage) shall be in effect for the period of this Agreement including the period guaranteed maintenance 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 he may be held responsible.

3.3 Legal Notice to Developer

Any notice required to be given hereunder may be given by registered mail addressed to the Developer at his principal place of business and shall be effective three (3) business days following the deposit of such notice in the Post Office.

3.4 Right to Enter into an Agreement

The Developer agrees not to call into question directly or indirectly in any proceedings whatsoever in law or in equity any administrative tribunal, 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 proceedings.

3.5 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.

3.6 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 Works, the Developer shall complete the Works unless written consent altering this condition is received from the Municipality. Failure to adhere to the above schedule may result in the Municipality completing the Works in accordance with Section 1.7 of this Agreement.

3.7 No Municipal Engineer Liability

This Agreement and the provisions herein do not give the Developer or any person acquiring any interest in the Lands (each hereinafter in this clause called “such person”), any rights against the Municipality’s Engineer with respect to the failure of the Municipality’s Engineer to perform any obligations under this Agreement.

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’s Engineer to the Developer or any person acquiring any interest in the Lands.

3.8 Assignment

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

3.9 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.

3.10 Joint and Several

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

SECTION 4 – FINANCIAL PROVISIONS

4.1 Cost Sharing

The Developer is completely and wholly responsible for the cost of the watermain and sewer installation in accordance with the standards and specifications as outlined in this Agreement.

4.2 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) Cash in the amount of One Hundred Percent (100%) of the estimated cost of construction, that being **\$16,024.50** and as approved by the Municipality's Engineer and Municipal Council, 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 the work being **\$16,024.50** and as approved by the Municipality's Engineer or
- (c) Some combination of cash and Letter of Credit, totaling 10%.
- (d) 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."

4.3 Reduction of Securities

An application for the reduction of the security on deposit with the Municipality pursuant to Section 4.1 herein may be made upon commissioning of the works.

- (a) To obtain a reduction in security the Developer shall file with the Municipality's Engineer a written application.
- (b) The application shall include written confirmation from the Developer's Engineer:
 - describing the Works constructed as at the date of the application and a calculation of the cost thereof.
 - confirming that the Works have been installed by the Developer with full time supervision of municipal watermain construction by the Developer's Engineer and in accordance with the requirements of this Agreement and schedules hereto.
 - 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 Municipal Clerk and the Developer 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 Developer’s share of the estimate of the Works or ten thousand dollars (\$10,000.00).

SECTION 5 – SIGNATURES

THIS AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.
SIGNED, SEALED AND DELIVERED this day of July A.D. 2017.

(BRITESPAN BUILDING SYSTEMS
(
(_____
(Title:
(I/We have authority to bind the Corporation
(
(THE CORPORATION OF THE TOWNSHIP OF
(NORTH HURON
(
(_____
(Reeve
(
(_____
(Clerk
(We have authority to bind the Corporation

Developer’s Address: _____
Developer’s Telephone: _____
Developer’s Facsimile: _____