

Corporation of the Municipality of West Grey

By-law Number 134 - 2018

Being, A by-law to enter into a Subdivision Pre-Servicing Agreement, between John Welton Custom Homebuilding Ltd., and the Municipality of West Grey;

WHEREAS the Council of the Municipality of West Grey deems it necessary in the public interest to enter into a Subdivision Pre-Servicing Agreement between John Welton Custom Homebuilding Ltd., and the Municipality of West Grey, being owners of lands described as Part Lot 24 Concession 1 Divisions 2 and 3 East of Garafraxa Road Glenelg Part 1 16R9070 Except Parts 1 & 2 16R10954; Municipality of West Grey, PIN: 372227-0380(LT);

Now therefore the Council of the Corporation of the Municipality of West Grey hereby enacts as follows:

1. That the Mayor and Clerk are hereby authorized to enter into a Subdivision Pre-Servicing Agreement between John Welton Custom Homebuilding Ltd., and the Municipality of West Grey, being owners of lands described as Part Lot 24 Concession 1 Divisions 2 and 3 East of Garafraxa Road Glenelg Part 1 16R9070 Except Parts 1 & 2 16R10954; Municipality of West Grey, PIN: 372227-0380(LT), attached as Schedule "A", hereto becomes part of this by-law.

2. That this by-law shall come into force and effect on the date of passing thereof.

Read a first and second time this 17th day of December, 2018.

Read a third time and finally passed this 17th day of December, 2018.

(Signed)
Christine Robinson, Mayor

(Signed)
Mark Turner, Clerk

SUBDIVISION PRE-SERVICING AGREEMENT

This Agreement made in triplicate this 17th day of December, 2018

B E T W E E N:

JOHN WELTON CUSTOM HOMEBUILDING LTD.
(hereinafter collectively called the "Owner")

OF THE FIRST PART

- and -

THE CORPORATION OF THE MUNICIPALITY OF WEST GREY
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Owner is the owner of the lands in the Municipality of West Grey, in the County of Grey, 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 Corporation of the County of Grey for the approval of plan of subdivision 42T-2018-05 (the "Plan");

AND WHEREAS the Owner intends to immediately commence with the area grading for the subdivision 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 internal to the subdivision;

AND WHEREAS the Owner has obtained written approval of various agencies, 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 been conditionally accepted by the Municipality. The Owner agrees that it may be required to make modifications and alterations and to relocate and reconstruct some or any portions of the Works at its sole cost and expense, due to site conditions or unforeseen circumstances.

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, acting reasonably, 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 24 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 "Engineer"), skilled and experienced in municipal work, to design, supervise, layout, inspect and certify the works, and to be responsible to the Municipality for the design, supervision, layout, inspection, maintenance and remedies until the time of final acceptance of the Works. The engineer shall maintain records and provide "record plans" to the Municipality for works undertaken and provide payment certificates for substantial performance under the Construction Lien Act.

COSTS OF CHECKING PLANS AND SPECIFICATIONS

7. The Owner agrees to pay the Municipality and/or its agent the ongoing reasonable costs for legal, planning, administrative, public works and engineering costs for the checking and verification of plans and specifications, and for the 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.

MUNICIPALITY TO HAVE UNRESTRICTED ACCESS TO LANDS

9. 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

10. The Municipality will 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 supervision is not being provided 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

11. 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, the Conservation Authority for the entirety of the lands.

OWNER'S SOLELY RESPONSIBLE FOR DESIGN, PLANS AND SPECIFICATIONS

12. 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.

NO WORK ON LANDS NOT OWNED BY OWNER WITHOUT WRITTEN CONSENT

13. 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

14. 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.

STORMWATER FLOWS AND SEDIMENT WASH-OFF

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

INSURANCE

16. (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 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 the guaranteed maintenance period has expired and the Works have been assumed by the Municipality.
- (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

17. The Owner shall remove only those trees required for the installation of Works comprising underground services, as determined in the field by the Engineer and as approved by the Municipality in writing.

SECURITY

18. (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 100% 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) Except as may be permitted by the Director of Public Works, or designate, 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 Registration of any Subdivision Agreement, securities shall be revised to represent 100% of the cost of uncompleted works. Complete works will be defined as works which have been accepted by the Municipality as acceptable to be placed on the Maintenance period.

DEPOSIT

19. (a) Prior to execution of this Agreement, the Owner shall deposit with the Municipality a cash deposit in the amount of 2% of the cost of the Works, as outlined in Schedule "C", for engineering fees for the review of drawings and supervision of the performance of the Works to a maximum of \$10,000.00 and a cash deposit of \$5,000.00 in respect of Municipality's 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 legal costs incurred.
- (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

20. 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) provide nightly access to the residences/properties during the construction period, if necessary.
 - (e) provide notification to residents for service disruptions at least 48 hours in advance of such service disruptions.
 - (f) Within reason, accommodate local traffic to the best of the Owner's ability.
 - (g) coordinate all on site requirements from the Municipality, Ontario Clean Water Agency, other utilities as necessary and to host a pre-construction meeting with all relevant parties.
 - (h) post a construction signs(s) per provincial standards.
 - (i) complete a road closure application for notification to emergency services, if necessary.

SIGNAGE

21. 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

22. 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

23. 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 West Grey
402813 Grey Rd. 4, RR#2
Durham, ON
N0G 1R0
Attention: Mark Turner, Clerk
Phone: (519) 369-2200

(b) To the Owner:

John Welton Custom Homebuilding Ltd.
685 Riddell Rd, Unit 6
Orangeville, ON
L9W 5J7

Attention: John Welton
Phone: (519) 341-6443

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

INDEMNITY

24. (a) The Owner agrees to indemnify and save harmless the Municipality and 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 by the Municipality 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 to the Owner and the Owner specifically agrees that it will make no such claim.

SEVERABILITY

25. 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

26. 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.

BINDING ON SUCCESSORS AND ASSIGNS

27. This Agreement shall be binding upon and enure to the benefit of the parties hereto, their respective heirs, executors, successors or assigns as the case may be.

SCHEDULES

28. The following schedules attached hereto form an integral part of this Agreement:
- (a) Schedule "A" – Legal Description of the Lands;
 - (b) Schedule "B" – Drawings and Reports;
 - (c) Schedule "C" – Estimated Construction Costs; and
 - (d) Schedule "D" – Form of Letter of Credit

REGISTRATION OF AGREEMENT

29. 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.

NO FETTERING OF DISCRETION

30. 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

31. Except as may be provided in a model home agreement with the Municipality, 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

32. The parties acknowledge that all requirements of any Subdivision Agreement executed pursuant to s.51 of the Planning Act for the subject lands are applicable, except where altered by this Agreement.

RESTRICTIONS TO SERVICING THE LANDS

33. The Owner agrees that servicing of the Lands is not permitted and services are not to be constructed until a separate agreement is entered into and securities are in place in support of that separate 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

JOHN WELTON CUSTOM HOMEBUILDING LTD.

c/s
John Welton
President

I have authority to bind the corporation.

THE CORPORATION OF THE MUNICIPALITY OF WEST GREY
Per:

c/s
Christine Robinson, Mayor

Mark Turner, Clerk

We have authority to bind the corporation.

SCHEDULE "A"

LEGAL DESCRIPTION OF THE LANDS

PIN:

Part Lot 24 Concession 1 Divisions 2 and 3 East of Garafraxa Road Glenelg Part 1
16R9070 Except Parts 1 & 2 16R10954; Municipality of West Grey, Being PIN 37227-
0380 (LT)

SCHEDULE "B"

DRAWINGS & REPORTS

List of Drawings

Drawing	Rev. #	Rev. Date	Title
C13	0	October 30, 2018	Lot Grading Plan
C14	0	October 30, 2018	Stormwater Management Pond
ESC1	0	October 30, 2018	Erosion and Sedimentation Control Plan

SCHEDULE "C"
ESTIMATED CONSTRUCTION COSTS

Project No. 00701

November 13, 2018



Table 1

**Sunvale Homes Subdivision Area Grading
Securities Cost Estimate
Municipality of West Grey**

Item	Tender Cost Summary				Total
1.0	General Construction Items				\$18,000.00
2.0	Site Works				\$219,225.00
3.0	Contingency Allowance				\$10,000.00
Total Preliminary Cost					\$247,225.00
1.0	General Construction Items	Quantity	Unit	Unit Price	Total
1.01	Mobilization/ Demobilization	100%	LS	\$1,500.00	\$1,500.00
1.02	Supply and Place Rip-Rap c/w Geotextile	100	m ²	\$45.00	\$4,500.00
1.03	Temporary Culvert	15	m	\$200.00	\$3,000.00
1.04	Supply, Install, Maintain Mud Mat	2	Each	\$1,500.00	\$3,000.00
1.05	Granular 'B'	500	tonne	\$12.00	\$6,000.00
Total Section 1.0					\$18,000.00
2.0	Site Works	Quantity	Unit	Unit Price	Total
2.01	Supply, Install, Maintain and Remove Silt Fence	660	m	\$10.00	\$6,600.00
2.02	Topsoil Stripping and Stockpiling	80,000	m ²	\$1.25	\$100,000.00
2.03	Cut and Fill On Site	16,000	m ³	\$3.00	\$48,000.00
2.04	Cut and Stockpile Fill On Site	23,500	m ³	\$2.75	\$64,625.00
Total Section 2.0					\$219,225.00

Notes:

- The estimate of construction costs is provided for budgetary purposes only. This is not to be interpreted as a guarantee by Cobide Engineering Inc. of the actual cost.

SCHEDULE "D"

FORM OF LETTER OF CREDIT

Sample - Letter of Credit to be provided as security to the Municipality of West Grey 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 West Grey

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 West Grey, 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