

PRE-DEVELOPMENT AGREEMENT

THIS AGREEMENT MADE THIS 23RD DAY OF AUGUST, 2021.

B E T W E E N:

BEAVERTON COMMON INC.

(Hereinafter called the "Developer")

- and -

THE CORPORATION OF THE TOWNSHIP OF BROCK

(Hereinafter called the "Township")

WHEREAS the Developer warrants and represents that it is the owner of the lands and premises described in Schedule "A" attached hereto (hereinafter called the "Lands");

AND WHEREAS the Developer warrants and represents that there are no encumbrances of the Lands;

AND WHEREAS the Developer wishes to proceed with the removal of trees in advance of an approved Site Plan Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the covenants herein contained and 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 (receipt whereof is hereby acknowledged) the parties hereto hereby covenant, promise and agree with each other as follows:

1. In this agreement, the term "work" or "works" means any and all activities associated with the removal of trees as per the following (the "Plans and Specifications").
 - Forest Edge Management Plan for the Beaverton Common Commercial Site (Dillon Consulting, August 27, 2020)
 - Ecological Offsetting Strategy (EOS) for the Beaverton Common Commercial (Dillon Consulting, February 3, 2021)
 - Planting Plan Areas, Schedule, Invasive Species Management Plan and Ecological Monitoring Plan (Dillon Consulting, February 3, 2021)

No other activities are permitted under this agreement. The Owner acknowledges and agrees that the further requirements of the Plans and Specifications will be required to be undertaken pursuant to a future Site Plan Agreement for the Lands.

2. The Developer shall undertake tree removal in accordance with the Plans and Specifications. The Developer agrees that all works shall be undertaken in accordance with the Plans and Specifications, including but not limited to the extent of the area of tree removal as shown on Schedule "B" to this Agreement.
3. No fill shall be imported to or exported from the Lands as part of this agreement and without other applicable approvals.
4. The Developer agrees to control dust and mud on the Lands, on adjacent lands and on construction access roads, to the satisfaction of the

Township. Without limiting any other remedies provided by this Agreement, if the dust and mud from the Lands is not maintained to the satisfaction of the Township in its sole discretion, the Township may, after 48 hours' notice, complete work to control the dust and invoice the Developer for the costs thereof. Without limiting any other remedies provided by this Agreement, if the Developer does not pay the invoice within thirty (30) days the Township may draw upon the letter of credit or collect such costs and expenses in a like manner as municipal taxes as provided for in Schedule C of this Agreement.

5. The Developer shall maintain the Lands in a tidy condition and free from the accumulation of waste products and debris (including any waste products and debris on the Lands caused by third parties). Without limiting any other remedies provided by this Agreement, if the Lands are not maintained to the satisfaction of the Township in its sole discretion, the Township may, after two weeks' notice, complete the work and invoice the Developer for the costs thereof. Without limiting any other remedies provided by this Agreement, if the Developer does not pay the invoice within thirty (30) days the Township may draw upon the letter of credit or collect such costs and expenses in a like manner as municipal taxes as provided for in Schedule C of this Agreement.
6. The Developer acknowledges that the Lands are located within the Urban Area of Beaverton and therefore fires are generally prohibited. Should a burn permit be requested, authority for the permit is granted through the Fire Chief and Council. Should an illegal fire be set, the Developer hereby agrees to pay any costs which may be incurred as a result of the illegal fire and the Township will invoice the Developer to recover such costs. The Developer shall ensure that all requirements of the Brock Fire Chief are complied with as detailed in the Construction Site Fire Safety Guidelines, 1992. Without limiting any other remedies provided by this Agreement, if the Developer does not pay the invoice within thirty (30) days the Township may draw upon the letter of credit or collect such cost and expenses in a like manner as municipal taxes as provided for in Schedule C of this Agreement.
7. The Developer agrees that any on site trailer and/or washroom facility will be approved by the Township prior to installation.
8. The Developer agrees to allow the Township, its employees, servants, agents and consultants to enter the Lands at all reasonable times and for all reasonable purposes, including and without limiting the generality of the foregoing, for inspecting any of the work and to correct any problems with work, and any drainage problems with the Lands, including any problems which require corrective erosion and siltation control measures, and to correct or eliminate any other nuisance such as dust, garbage, debris or excavations and the cost incurred by the Township in so doing shall be paid by the Developer.
9. The Developer agrees to reimburse the Township for all its reasonable costs incurred in preparing and registering this Agreement on title and in carrying out any of the provisions hereof.
10. Upon execution of this Agreement, the Developer shall post security in the amount set out in Schedule "C" to this Agreement which amount shall secure all of the Developer's obligations pursuant to this Agreement. If in the opinion of the Township at any time and from time to time, such amounts are insufficient, such amounts may be increased, and the

Developer shall pay such additional sum as may be required as a result of such increase. In determining the sufficiency of the amount, regard need not be placed solely on the particulars outlined in Schedule "C" attached hereto, but the total cost of satisfying all of the obligations of the Developer pursuant to any of the provisions of this Agreement. The Township may use any portion, or all of the security to satisfy any obligation set out in the Agreement regardless of the estimates set out in Schedule "C". The Township may accept an irrevocable letter of credit drawn on a chartered bank of Canada acceptable to the Township in lieu of such total cash amounts referred to in Schedule "C" attached hereto and such additional amounts as determined by the Township, provided such letter of credit shall be in a form acceptable to the Township Solicitor and contain the following provisions:

- (a) the letter of credit shall be security for any obligations of the Developer pursuant to the provisions of this Agreement, without any limitations whatsoever;
- (b) drawings on the letter of credit shall be permitted upon presentation of a letter from the Township to the bank claiming default by the Developer under the terms of this Agreement, and such default shall not be limited to the actions of the Developer;
- (c) partial drawings shall be permitted;
- (d) if the Township has not determined the extent of the default or the amount required to rectify the default or compensate the Township or third parties as a result thereof, the Township may draw on the full amount of the Letter of Credit without any requirement to justify the amount of the draw;
- (e) if the letter of credit is not renewed at least thirty (30) days prior to the date of expiry by an irrevocable letter of renewal or replacement letter of credit in such form and on such terms acceptable to the Township Solicitor, the Township may be permitted to draw on up to 100 percent of the letter of credit on or before the date of expiry.

All reductions on the letter of credit shall be in the sole discretion of the Township and the Township shall not be obligated to reduce the letter of credit by any amounts based on actual work performed by the Developer.

In the event the Developer fails to provide sufficient cash or a letter of credit as required pursuant to the provisions of this Agreement, such failure shall be deemed to be a substantial default pursuant to provisions of this Agreement and such default shall enable the Township to realize on all or a part of the Lands secured by this Agreement in the same manner as if the Township was enforcing its rights as a mortgagee against such lands.

11. Prior to the commencement of construction of any of work, the Developer shall obtain and maintain insurance, and continue to maintain such insurance (until insurance is posted pursuant to the Subdivision Agreement) against all damages or claims for damage, with an insurance company satisfactory to the Township. Such policy or policies shall include the Township as a named insured and a certified copy of such insurance policy shall be delivered to the Township and be in full force and effect until a policy is provided pursuant to the Plan of Subdivision Agreement

by the Township of such Services pursuant to the Subdivision Agreement. Such policy of insurance shall be in a form acceptable to the Township Solicitor and without limiting the generality of the foregoing, shall provide:

- (a) that the minimum limits shall be not less than \$5,000,000.00 for any single occurrence;
- (b) that it includes a cross-liability and completed operation coverage;
- (c) that it shall not contain an exclusion for blasting, shoring, underpinning raising or demolition of any building or structure, collapse of any structure or subsidence of any structure or land from any cause;
- (d) that the insurance premium has been prepaid for a period of not less than one year;
- (e) that the policy will provide that it is not cancellable unless prior notice by registered mail has been received by the Township from the insurer not less than thirty (30) days prior to the cancellation date;
- (f) the policy shall not contain a deductible clause, provided however, if the policy does contain a deductible clause, the same shall be approved by the Township, and the Developer shall provide an additional cash deposit payable to the Township in an amount to be determined by the Township. In the event of claims made against the Township to which the deductible applies, the Township shall appoint an independent adjuster to investigate such claim, and the finding of the independent adjuster shall authorize the Township to pay such claims deemed valid by such adjuster out of the additional cash deposit posted with the Township. In the event such additional cash deposits are deemed to be insufficient by the Township at any time and from time to time, the Developer hereby agrees to pay such additional cash deposits forthwith to the Township. All costs of the adjuster shall be borne by the Developer;
- (g) Where a subcontractor is retained for work where Professional Liability coverage is a contract requirement, the Developer must ensure that the Professional Liability insurance is in an amount not less than two million dollars (\$2,000,000) per claim.

12. The Developer shall defend, indemnify and save completely harmless the Township against all actions, causes of action, suits, alleged or actual claims, costs, demands, proceedings, debts, damages or costs whatsoever which may arise directly or indirectly by reason of this Agreement, the Lands or as a result of any other matter or thing in connection therewith or pertaining thereto, including any default by the Developer pursuant to the terms of this agreement or by reason of any negligence or wrongful act of the Developer, its servants, contractors, agents or representatives:

- (a) all reasonable legal fees and disbursements as a result of legal services rendered to the Township in connection with this Agreement, the Lands, the Plan or any other matter or thing in connection herewith or pertaining thereto;
- (b) any costs and damages suffered by third parties as a result of the

negligence of the Developer or the default of the Developer pursuant to the terms of this Agreement or the contravention of any laws, notwithstanding the fact that such third parties have not claimed or are not entitled to claim against the Township for such damages or costs; and

- (c) the reasonable cost of all Services and the employment of all persons, firms and corporations in connection with this Agreement or referred to herein.

The Developer shall pay promptly any and all accounts rendered by the Township to the Developer pursuant to any provision of this Agreement, and all accounts shall be due and payable upon the date that the same are rendered. Failure to pay such accounts within fifteen (15) days from the date thereof shall result in interest being added thereto at the rate of one and a half (1.5%) percent per month until payment in full has been received.

- 13. The Developer agrees to engage the services of a qualified person or company (the "Consulting Ecologist") to provide inspection for all works undertaken on the Lands and to carry out all periodic field layout verification.
- 14. The Developer agrees that it shall, upon the request of the Township, make, do, execute or cause to be made, done or executed all such further and other lawful acts, deeds, things, devices and assurances whatsoever to ensure the full implementation of the terms, provisions and conditions of this Agreement, and to satisfy the intentions of the parties as set out herein.
- 15. The Developer agrees to comply with every direction issued or given by the Township during the course of the work, the phasing of works or any other matter which the Township deems to be in the interest of the proper development of the Lands and surrounding lands. The Developer acknowledges that the Township may for any reason require the cessation of work and agrees to comply with such direction. In the event the Township requires a cessation of work, then the Developer has no redress, claim, demand, right of action whatsoever against the Township.
- 16. The Developer agrees that the Township may draw on the letter of credit deposited in accordance with Schedule "C" for the completion of any works considered necessary by the Township in his sole discretion and other works such as rectification of drainage problems and clean-up of existing roads, or for the purposes of restoring the Lands to its original condition if, in the sole opinion and discretion of the Township, reasonable progress has not been made, including progress toward the completion of a Site Plan Agreement for the Lands.
- 17. The Township may terminate this Agreement at any time by giving to the Developer twenty (20) days written notice of its intention to terminate.
- 18. The parties agree that this Agreement shall terminate upon the earliest of:
 - (a) the termination of this Agreement by the Township pursuant to paragraph 16;
 - (b) the registration of the Site Plan Agreement between the Developer and the Township for the Lands;

(c) the date of any default by the Developer pursuant to any of the terms of this Agreement.

Upon termination of the Agreement, if in the sole opinion of the Township the work on the lands has not been completed to the satisfaction of the Township, the Township may require the Developer to restore the Lands to their original condition or may do so itself using securities posted pursuant to this Agreement.

19. Nothing in this Agreement shall be construed as requiring the Township to issue any building permits. Building permits shall only be issued in accordance with the **Building Code Act, 1992**, as amended and the Subdivision Agreement.
20. The Developer hereby consents to the registration of this Agreement upon the Lands and hereby acknowledges that the same constitutes a first lien upon the Lands (not subject to any other liens or encumbrances) as security for any obligation of the Developer pursuant to this Agreement. The said lien shall be enforceable upon a judgment or order of any court and all or any part of the Lands may be realized as security for such lien in the same manner as if the Township was enforcing its rights as a mortgagee under a mortgage. The Developer shall procure and cause to be executed and registered such discharges, postponements, and subordination agreements as may be required by the Township in order to provide for the priority of registration on title to the Lands.
21. The Developer hereby agrees not to assign this Agreement without the express consent, to be obtained in writing, from the Township. Such consent may be refused by the Township unless:
 - (a) the proposed assignee has executed an assumption agreement acceptable to the Township Solicitor;
 - (b) the Consulting Ecologist has agreed to be employed by the proposed assignee and continue on to act as Consulting Ecologist as required by this Agreement; and
 - (c) the Developer is not in default under any of the terms of this Agreement.
22. Subject to the restrictions on assignment hereof by the Developer, this Agreement shall ensure to the benefit of and be binding upon the respective successors and assigns of each of the parties hereto. If a party hereto is a person, this agreement shall further be binding upon the respective heirs, executors, legal representatives and administrators of such person. "Successors and assigns" shall include any successor in title to the Developer as if such successor in title had entered into this Agreement in the place and stead of the Developer, and in the event of more than one successor in title to the Developer, or successors in title to part of the Lands, all of such parties collectively shall be deemed to be the Developer pursuant to the terms of this Agreement. For greater certainty, it is intended that the obligations of the Developer shall also be binding upon all of the successors in title to the Developer of the Lands save and except any Lands conveyed to the Township, but no conveyance to any successor in title shall relieve the Developer of its obligations pursuant to this Agreement.

23. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement shall be made in writing, either by mail or by facsimile, as follows:

- (a) if made to the Township, shall be addressed to the Township of Brock until further notice. Notice to the Township of Brock shall be given at:

Township of Brock
1 Cameron Street East
P.O. Box 10
Cannington, Ontario
LoE 1EO
705-432-2355

- (b) to the Developer at:

Beaverton Common Inc.
c/o Armour Heights Developments
81 Zenway Boulevard, Unit 24
Vaughan, ON
L4H 0S5
905-303-7800 ext. 222

24. This Agreement may be executed electronically and in one or more counterparts, which together shall be deemed to be an original and such counterparts together shall constitute but one and the same instrument. Such counterparts may be delivered by electronic transmission.

[The rest of this page is intentionally blank]

IN WITNESS WHEREOF the parties hereto have set their hands and seal and the Township has hereunto caused its Corporate Seal to be affixed, duly attested by the hands of its proper signing officers.

SIGNED, SEALED AND DELIVERED)

In the presence of)

Authorized to be executed by)

By-law No. 3069-2021 passed)

on the 23rd day of August, 2021)

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THE CORPORATION OF THE TOWNSHIP OF BROCK

Per: _____
John Grant, Mayor

Per: _____
Fernando Lamanna, Clerk

BEAVERTON COMMON INC.

Per:  _____
Name: FRANK MAZZOTTA -
Title: PRESIDENT .

Per: _____
Name:
Title:

I/We have authority to bind the Corporation.

SCHEDULE "A"
LEGAL DESCRIPTION OF THE LANDS
TOWNSHIP FILE: 04-2020-PL
TOWNSHIP OF BROCK

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Township of Brock, in the Regional Municipality of Durham, being composed of:

Firstly:

PIN: 72035-0160 (LT)

PCL THORAH CON. 5-11-3, SEC BROCK, REGIONAL MUNICIPALITY OF DURHAM; PT LT 11, CON 5, TWP OF BROCK, IN THE REGIONAL MUNICIPALITY OF DURHAM, PT 1, 40R3239 ; T/W ROW PT LT 11 CON 5 THORAH, PT 6, 40R763 AS IN LTC36047 ; BROCK

Secondly:









PIN: 72035-0255 (LT)

PART LOT 11, CONCESSION 5, GEOGRAPHIC TOWNSHIP OF THORAH, PARTS 1, 2 AND 3, PLAN 40R31012; TOWNSHIP OF THORAH

**SCHEDULE "B"
WORK PLAN – AREA OF TREE REMOVAL
TOWNSHIP OF BROCK**

BEAVERTON COMMON INC.


**COMMERCIAL AREA
FIGURE 1**

-  Project Location
-  Edge of Active Farm Field
-  Proposed Development Plan
-  Approximate Area to be Cleared of Forest
-  Road
-  Watercourse
-  Waterbody
-  NHS Area

SCALE: 1:5,500
0 25 50 100 m

MAP DRAWING INFORMATION:
DATA PROVIDED BY MNRIF, TREDEBOV COGNAC
MAP CREATED BY: LK
MAP CHECKED BY: TPY
MAP PROJECTION: NAD 1983 UTM Zone 17N

PROJECT: 17-4532
STATUS: DRAFT
DATE: 2020-11-26




SCHEDULE "C"

(Security)

**TOTAL SECURITY REQUIRED FOR TREE REMOVAL AND CONSULTING COSTS IN
RELATION TO THIS AGREEMENT**

\$329,403.21

The estimate contained in this Schedule is for informational purposes only and shall not restrict the rights of the Township to draw on the cash or Letter of Credit up to the full remaining balance thereof to rectify any default, nor to require any increase in said security as set out therein. If Township costs to rectify any default exceeds the value of the Letter of Credit, the Township may recover all costs and expenses incurred by the Township, whether directly or indirectly, with respect to the default or remedy thereof and collect such costs and expenses in like manner as municipal taxes.