

**By-law Number 36-2018
of The Regional Municipality of Durham**

Being a by-law to authorize the Regional Chair and Regional Clerk to execute servicing agreements for non-subdivision related developments.

And Whereas many servicing agreements entered into by the Region are substantially in the same form;

And Whereas it is considered expedient to have a specific by-law authorizing the Chair and Clerk to execute servicing agreements provided the agreements are substantially in accordance with a standard form.

Now therefore, the Council of The Regional Municipality of Durham hereby enacts as follows:

1. Authority

- 1.1 Subject to Section 1.2 of this By-law, the Chair and the Clerk are authorized to execute any servicing agreement that is substantially similar in form and content to the standard form servicing agreements attached to this by-law as Schedule "A".
- 1.2 Prior to presenting any servicing agreement under the authority contained in Section 1.1 to the Chair and Clerk for execution, Regional staff shall ensure that,
 - (a) the total project costs are to be borne by the owners of the lands covered by the servicing agreement;
 - (b) the servicing agreement does not require any regional financial commitment;
 - (c) a letter of credit is received by the Region for the full value of the works upon execution of the agreement; and
 - (d) pay assurance provisions are included, if applicable.
- 1.3 By-law Number 29-2008 shall continue to apply to any complete submission for a servicing agreement received by the Development Approvals Division of the Regional Works Department on or before June 30, 2018.

2. Repeal

- 2.1 Save as provided for in Section 1.3 of this by-law, By-law Number 29-2008 is repealed upon the coming into force of this by-law.

3. Effective Date

- 3.1 This by-law shall come into force and takes effect the 1st day of July, 2018.

This By-law Read and Passed on the 13th day of June, 2018.

G.L. O'Connor, Regional Chair and CEO

R. Walton, Regional Clerk

Schedule A

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SERVICING AGREEMENT

This Agreement dated [x] is made

B E T W E E N:

X
(the “Owner”)

- and -

THE REGIONAL MUNICIPALITY OF DURHAM
(the “Region”)

- and -

X
(the “Encumbrancer”)

RECITALS

WHEREAS:

- (a) The Owner is the registered owner of the Lands;
- (b) The Owner proposes to develop the Lands;
- (c) The Land Division Committee for The Regional Municipality of Durham has granted a provisional consent for the severance of the Lands; and
- (d) The Region requires as a condition of the granting of the provisional consent that a servicing agreement be entered into between the Owner and the Region.
- (e) This Agreement will not be registered until the terms and conditions of this Agreement herein contained have been met, pursuant to Section 41 of the *Planning Act*, as amended; and
- (f) The development of the Lands will necessitate the construction of the Works.

NOW THEREFORE the Owner, the Region and the Encumbrancer agree as follows:

INTERPRETATION

Definitions

- 1. In this Agreement and in the recitals above,
 - (a) “**Agreement**” means this servicing agreement and all referenced Schedules including the drawings referenced in the definition of “Works” which shall all inclusively be considered the complete and entire Agreement;

- (b) **“Completion Acceptance Letter”** means the letter described in Section 11;
- (c) **“Final Acceptance Letter”** means the letter described in Section 12;
- (d) **“Lands”** means the lands legally described as [x], in the [x], in the Regional Municipality of Durham;
- (e) **“Letter of Credit”** means the letter of credit described in Section 24;
- (f) **“Region”** means The Regional Municipality of Durham acting as a body corporate and, where the context requires, includes all employees, officers, servants and agents of The Regional Municipality of Durham; and
- (g) **“Works”** means all of the sanitary sewers and appurtenances, sanitary sewer connections, watermains and appurtenances, water service connections, Regional storm sewers and appurtenances, Regional storm sewer connections, and Regional road work to be installed as shown on the engineering drawings titled as

and upon contractual agreement between the parties shall be available at the Works Department of the Region for viewing and includes the removal of any existing services as noted on such drawings.

Schedules

2. The following Schedules are attached to and form part of this Agreement:

Schedule A Solicitor's Certificate
Schedule B Lands and Easements to be Conveyed to the Region
Schedule C Contact Information for Prime Contractor

References

3. References in this Agreement to Sections and Schedules are to Sections and Schedules in this Agreement.

Extended Meanings

4. This Agreement shall be read with all changes in gender or number as the context may require.

Owner's Expense

5. Every provision of this Agreement by which the Owner is obligated in any way shall be deemed to include the words "at the expense of the Owner" unless the context otherwise requires.

REGIONAL SERVICES

Design and Installation

6. (1) In this Section, “plans” means the plans, profiles, contours, surveys and other engineering reports, materials, drawings, data and investigations required to complete the design and installation of the Works.
- (2) The Owner shall be responsible for the preparation of all plans and the installation of all Works. The plans shall be prepared and the installation of the Works shall be undertaken in accordance with all applicable federal, provincial and municipal laws, by-laws, rules, regulations, standards and other governmental requirements and the Design and Construction Specifications for

Regional Services. Where no materials are specified in the Region's design guidelines, the materials shall be approved by the Region prior to the installation of the Works.

(3) At the request of the Region, the Owner shall make all necessary changes or deletions to the plans and the scope of the Works shall be adjusted accordingly.

Authorization to Commence Work

7. The Owner shall not commence the installation of the Works without written permission from the Region. Such permission shall not be given until,
 - (a) all monies, securities and insurance policies required by this Agreement have been delivered to the Region;
 - (b) this Agreement has been registered against title to the Lands;
 - (c) the lands and easements set out in Schedule B have been conveyed to the Region; and
 - (d) the Owner has obtained all necessary approvals for the installation of the Works.

Additional Work

8. If at any time prior to completing the installation of the Works the Region is of the opinion that additional Regional services are necessary to service the Lands or that existing Regional services need to be removed from the Lands, the Owner shall install or remove such services at the request of the Region.

Completion of the Works

9. The completion dates for the installation of the Works shall be as follows:
 - (a) All regional underground services on or before [x]
 - (b) Base course asphalt on Regional roads on or before [x]
Surface course asphalt and sodding on Regional roads on or before [x]
10. If the Owner fails to complete the installation of the Works by such dates, the Owner shall pay to the Region, as predetermined liquidated damages, the sum of one hundred dollars (\$100.00) per day beyond the completion date for every hundred thousand dollars worth of uncompleted work unless the Owner has been prevented from so doing by reason of strike, lock-out, material shortages, or natural calamities beyond the reasonable control of the Owner.
11. After the Works have been installed to the satisfaction of the Region, the Region shall issue a letter (the "Completion Acceptance Letter") confirming completion of the Works and the commencement date for the maintenance period referred to in Section 12.

Maintenance of the Works

12. The Owner shall maintain the Works for a minimum period of two (2) years. At the conclusion of the maintenance period, the Region shall re-inspect the Works and, if acceptable, the Region shall issue a letter (the "Final Acceptance Letter") confirming such acceptance and the termination of the maintenance period. Upon the issuance of the Final Acceptance Letter, the Region shall assume ownership of, and all operation and maintenance responsibilities for, the Works.

"As Recorded" Drawings

13. Prior to the issuance of the Final Acceptance Letter, the Owner shall submit to the Region, complete in accordance with Regional standards, "as recorded" drawings for the Works.

Emergency Repairs

14. The Region may enter upon the Lands at any time for the purpose of making emergency repairs to any of the Works. In such situation the Region shall not be deemed to have accepted any of the Works or assumed any liability in connection with the Works.

Restoration of Roads

15. The Owner shall be responsible for the clean-up and repair of all Regional and local roads, including boulevards, which become dirty or damaged as a result of the installation of the Works. Within 48 hours of verbal notification to the Owner by the Region, the Owner shall undertake such works as are necessary to clean-up or repair the roads.

FINANCIAL MATTERS

Cost of the Works

16. The Owner shall be responsible for the full cost of the Works. The estimated cost of the Works is as follows:

(a)	Sanitary sewers and appurtenances	\$0.00
(b)	Sanitary sewer connections	0.00
(c)	Watermains and appurtenances	0.00
(d)	Water service connections	0.00
(e)	Regional storm sewers and appurtenances	0.00
(f)	Regional storm sewer connections	0.00
(g)	Regional roads	<u>0.00</u>
	TOTAL	<u>\$0.00</u>

Development Charges

17. The Owner shall pay Regional development charges for each dwelling unit at the rate in effect at the time payment is made in accordance with the Region's development charge by-laws. The development charges for [x] dwelling units calculated as of the date of this Agreement are as follows:

(a)	Water Supply (\$9,420.00/unit)	<u>\$0.00</u>
(b)	Sanitary Sewerage (\$9,170.00/unit)	<u>0.00</u>
(c)	Regional Roads (\$9,250.00/unit)	<u>0.00</u>
(d)	Regional Police Services (\$715.00/unit)	<u>0.00</u>
(e)	Long Term Care (\$19.00/unit)	<u>0.00</u>
(f)	Development Related Studies (\$19.00/unit)	<u>0.00</u>
(g)	Paramedic Services (\$170.00/unit)	<u>0.00</u>
(h)	Go Transit (\$723.00/unit)	<u>0.00</u>
(i)	Regional Transit (\$1,143.00/unit)	<u>0.00</u>
(j)	Health and Social Services (\$123.00/unit)	<u>0.00</u>
(k)	Housing Services (\$387.00/unit)	<u>0.00</u>
	TOTAL	<u>\$0.00</u>

18. The Owner shall pay Regional development charges for commercial use at the rate in effect at the time payment is made in accordance with the Region's

development charge by-laws. The development charges for [x] square feet of gross floor area calculated as of the date of this Agreement are as follows:

(a)	Water Supply (\$3.51/sq. ft.)	\$0.00
(b)	Sanitary Sewerage (\$5.88/sq. ft.)	0.00
(c)	Regional Roads (\$8.54/sq. ft.)	0.00
(d)	Regional Transit (\$0.54/sq. ft.)	<u>0.00</u>
	TOTAL	<u>\$18.47/sq. ft.</u>

19. The Owner shall pay Regional development charges for industrial use at the rate in effect at the time payment is made in accordance with the Region's development charge by-laws. The development charges for [x] square feet of gross floor area calculated as of the date of this Agreement are as follows:

(a)	Water Supply (\$2.80/sq. ft.)	\$0.00
(b)	Sanitary Sewerage (\$3.38/sq. ft.)	0.00
(c)	Regional Roads (\$3.24/sq. ft.)	0.00
(d)	Regional Transit (\$0.54/sq. ft.)	<u>0.00</u>
	TOTAL	<u>\$ 9.96/sq. ft.</u>

20. The Owner shall pay Regional development charges for institutional use at the rate in effect at the time payment is made in accordance with the Region's development charge by-laws. The development charges for [x] square feet of gross floor area calculated as of the date of this Agreement are as follows:

(a)	Water Supply (\$0.86/sq. ft.)	\$0.00
(b)	Sanitary Sewerage (\$1.05/sq. ft.)	0.00
(c)	Regional Roads (\$7.18/sq. ft.)	0.00
(d)	Regional Transit (\$0.54/sq. ft.)	<u>0.00</u>
	TOTAL	<u>\$ 9.63/sq. ft.</u>

21. Regional development charges shall be payable in accordance with the Region's development charge by-laws with respect to each dwelling unit.

22. Regional development charges shall be payable in accordance with the Region's development charge by-laws with respect to the commercial, industrial and institutional use.

Commutation of Rates and Charges

23. Prior to the execution of this Agreement by the Region, the Owner shall commute and pay all local improvement charges, sewer rates and water works rates imposed against the Lands.

Fees

24. (1) In this Section,
- (a) "Engineering Fee" means all costs and expenses incurred by the Region in reviewing, examining and inspecting the design and installation of the Works;
 - (b) "Local Connections" means all water connections, sanitary sewer connections and Regional storm sewer connections related to the Lands previously installed or paid for by the Region;
 - (c) "Local Services" means all watermains and appurtenances, sanitary sewers and appurtenances, Regional storm sewers appurtenances, and Regional road work related to the Lands previously installed or paid for by the Region; and

- (d) "MOE Credit" means any payments made by the Owner for processing a Ministry of the Environment certificate for sanitary sewers, watermains and/or Regional storm sewers.

(2) The Engineering Fee is calculated by applying the applicable formula in the following chart to the total cost of the Works:

Total Cost of the Works	Engineering Fee
Less than \$100,000	3% (minimum \$250.00)
\$100,001 to \$200,000	\$3,000 on first \$100,000 and 2.5% on next \$100,000
\$200,001 to \$500,000	\$5,500 on first \$200,000 and 2.25% on next \$300,000
\$500,001 to \$1,000,000	\$12,250 on first \$500,000 and 2.0% on next \$500,000
\$1,000,001 to \$2,000,000	\$22,250 on first \$1,000,000 and 1.50% on next \$1,000,000
\$2,000,001 to \$4,000,000	\$37,250 on first \$2,000,000 and 1.20% on next \$2,000,000

(3) The Engineering Fee only includes periodic inspection. If the Region is required to provide full-time on-site inspection services for the installation of the Works, then the Owner shall reimburse the Region for all costs and expenses incurred by the Region for such services. All such costs and expenses shall be in addition to the Engineering Fee.

(4) Prior to execution of this Agreement by the Region, the Owner shall pay to the Region by certified cheque the sum of **\$[x]** calculated as follows:

(a)	Engineering Fee	\$0.00
(b)	MOE Credit	(0.00)
(c)	Local Services	
	(i) Regional roads and storm sewers	0.00
	(ii) Watermains	0.00
	(iii) Sanitary sewers	0.00
(d)	Local Connections	0.00
	(i) Regional storm sewer connection	0.00
	(ii) Water service connection	0.00
	(iii) Sanitary sewer connection	0.00
(e)	legal fees for the preparation and processing of this Agreement	1,125.00
(f)	financial administration fee	<u>475.00</u>
	TOTAL	<u>\$0.00</u>

25. The Owner shall reimburse the Region for the cost of registering this Agreement and all related documents against title to the Lands.

Security

26. The Owner shall file with the Region a letter of credit (the "Letter of Credit") in the amount of **\$[x]** (100 % of the estimated cost of the Works) in order to guarantee the due performance of all of the Owner's obligations under this Agreement with respect to the installation of the Works. The Letter of Credit shall be in a form satisfactory to the Region's Treasurer.

27. The Letter of Credit shall be reduced to 25% of its original amount provided the Completion Acceptance Letter has been issued and the Owner has filed with the Region a statutory declaration stating that,

- (a) all services and materials with respect to the installation of the Works have been supplied and no amounts are owing to any person in relation to such materials or services;
 - (b) no person has given notice of a claim for lien under the *Construction Lien Act*, R.S.O. 1990, c.30 against the Lands or any part thereof, and no person is entitled to make such a claim;
 - (c) there are no judgments or executions filed against the Owner;
 - (d) nothing is owing by the Owner or claimed against it for unemployment insurance deductions, income tax deductions or premiums under the *Workplace Safety and Insurance Act*, 1997, S.O. 1997. c. 16, Sch. A;
 - (e) the Owner has not made any assignment for the benefit of creditors, no receiving order has been made against it under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and no petition for such an order been served upon the Owner; and
 - (f) forty-five (45) days have passed since the completion of the installation of the Works.
28. The Region shall release the Letter of Credit following the issuance of the Final Acceptance Letter.

Pay Assurance

29. The following provisions shall apply where the Owner has posted security in accordance with this Agreement, and the Owner enters into a contract with a Prime Contractor to construct the works to which this Agreement relates, and provided that the Owner has notified the Region in writing of the name of the Prime Contractor prior to the commencement of construction by filling out Schedule C and provided that the Prime Contractor operates at arm's length to the Owner and is not otherwise under the control of the Owner.

In the event that a Prime Contractor then notifies the Region's Commissioner of Works in writing that monies are payable to the Prime Contractor from the Owner, the Owner acknowledges and agrees that the Region may make payment into escrow from the securities posted by the Owner subject to the following:

- i. The Prime Contractor has delivered to the Region a true copy of its invoice addressed to the Owner for payment of the installation of the works;
- ii. The Prime Contractor has delivered to the Region proof that the Prime Contractor has made a written demand for payment to the Owner to which the Owner has not responded for a period of sixty-one (61) days. The Prime Contractor has delivered to the Region a copy of the contract;
- iii. The Prime Contractor has delivered to the Region an Engineer's Certificate certifying that the works invoiced to the Owner by the Prime Contractor for which payment is sought from the Region has been completed satisfactorily in accordance with the Owner's obligations under this Agreement, and has further certified the date upon which the Prime Contractor's invoice became due and payable under the Owner's contract with the Prime Contractor, and has further confirmed that the Prime Contractor has performed and continues to perform its obligations under the terms of its contract with the Owner;

- iv. The Prime Contractor has executed a release and indemnity in a form satisfactory to the Region, releasing the Region from any and all claims the Prime Contractor may have against the Region and indemnifying the Region against any and all claims for loss arising from any source whatsoever resulting from the Region's disclosure of any amount in the Letter of Credit, from the Region's payment or non-payment into escrow, from the Region's release of any monies from the Letter of Credit to the Owner and shall agree to submit to arbitration and sign an agreement to be bound by the dispute resolution process pursuant to the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended;
- v. The Owner agrees that the Prime Contractor may request at any time from the Region the amount remaining in the Owner's Letter of Credit upon signing the above release and indemnity;
- vi. The amount claimed by the Prime Contractor is at least Twenty-Five Thousand Dollars (\$25,000.00) and at least Thirty Thousand Dollars (\$30,000.00) is available in security posted by the Owner;
- vii. The Region shall be entitled to reimbursement of its Administrative costs, by deducting the Region's actual costs from any amount to be paid to the Prime Contractor;
- viii. The Owner agrees that it shall make no claims against the Region and hereby release and indemnify the Region of and from any claims arising from the payment or non-payment into escrow from the security posted by the Owner, or as a result of any action taken or not taken under this Agreement;
- ix. After Completion Acceptance, pursuant to Section 11, the Owner hereby acknowledges that the Region is authorized to call for the reduction of the Owner's security and to authorize payments into escrow of the amount in reserve if same is available where there exists a dispute between the parties;
- x. The Region shall not make payment into escrow any money in excess of the estimated value of the Works, as set out in Section 16 of this Agreement, less the amount to be secured for maintenance, such amount being calculated as the amount held in Section 26 less the amount held in Section 27;
- xi. Under no circumstances will the Region be obliged to draw down and pay the full amount of security it holds under this Agreement, and for greater certainty, the Region shall not be left with less than such amount being calculated as the amount held in Section 26 less the amount held in Section 27 and the amount for the Region's Administrative fees;
- xii. The Owner has made explicit reference to the Region's Pay Assurance provisions in any contract it enters into with a Prime Contractor for carrying out any of the works to be installed by the Owner under this Agreement;
- xiii. The Region shall have no obligation to pay the Owner's Prime Contractor;
- xiv. The Owner agrees that if for any reason the Region has released securities or is unable to cash or access the letter of credit, there shall be no claim against the Region available to the Prime Contractor; and

The Owner acknowledges and agrees that the Region may make payment out of escrow from the securities posted by the Owner subject to the following:

- xv. The Region shall pay monies out of escrow only in accordance with the formal award under the Arbitration Act, 1991, 5.0. 1991, c. 17, as amended;
- xvi. That the Owner acknowledges and agrees that it shall provide the required Engineer's Certificate in subsection (c) to the Prime Contractor;
- xvii. If the Region makes a payment or payments to the Prime Contractor in accordance with this Agreement, the Works for which the Prime Contractor receives payment from the Region out of the Owner's security shall be credited toward the Owner's obligations under this Agreement less the amount to be held under Section 27 on account of maintenance and less the Region's administrative charges;
- xviii. In the event that a Prime Contractor does not notify the Region's Commissioner in writing that monies are payable to the Prime Contractor from the Owner by the time the Owner satisfies Section 27, the Owner acknowledges that the reduction and Release of the securities provided by the developer shall follow Section 27 of this agreement.

Insurance

30. (1) The Owner shall obtain and maintain policies of insurance with the following types of coverage and associated limits:
- (a) General Liability coverage to a limit of \$5,000,000;
- (2) Any insurance obtained under this Section shall name the Region as additional insured so that it is protected from claims by third parties, is protected from claims by insurers, and, in the case of insurance insuring against major perils, is able to receive the proceeds for the purposes of correcting any deficiencies arising as a result of any perils insured against which are not being rectified by the Owner.
- (3) No policy of insurance shall contain a clause for exclusion for blasting.
- (4) All insurance policies shall specify that they shall not be cancelled or changed to reduce the coverage unless the insurance company has given thirty (30) days prior written notice to the Region.
- (5) Certificates of insurance setting out the essential terms and conditions of the insurance shall be provided to the Region prior to the Region executing this Agreement and shall be continued until the Final Acceptance Letter has been issued. The certificate of insurance shall be in a form satisfactory to the Region's Treasurer.
- (6) The issuance of any policy of insurance shall not be construed as relieving the Owner from responsibility from other or larger claims, if any, for which the Owner may be held responsible.

Indemnification

31. Until the Final Acceptance Letter has been issued, the Owner shall indemnify and save harmless the Region from all losses, damages, costs, expenses, claims, demands and actions of every nature and kind whatsoever including death or injury (collectively referred to as "losses") arising directly or indirectly

from the design, installation, maintenance or operation of the Works or any other obligation of the Owner under this Agreement, whether or not such losses are incurred by reason of negligence on the part of the Owner and whether such losses are sustained by the Region, the Owner or their employees, workmen, servants, agents or councillors or any other person or corporation.

DEFAULT

Events of Default

32. The Owner shall be in default under this Agreement if,
- (a) the Owner fails to install or maintain any part of the Works as required by this Agreement or fails to carry out any other obligation under this Agreement; or
 - (b) the Region receives legal notice, or otherwise finds, that the Owner has ceased to carry on business, whether such cessation of business is voluntary or involuntary.

Remedies of Default

33. If the Owner is in default and such default has continued for a period of seven (7) days (or such longer period as may be reasonably required in the circumstances to cure the default) after receipt of notice from the Region setting out the particulars of the default, the Region may enter upon the Lands and do all such matters and things as are required to remedy the default, including the repair or reconstruction of faulty work and the replacement of substandard materials. Nothing in this Section shall require the Region to give notice in any situation deemed by the Region to be an emergency.
34. Actual costs incurred by the Region in carrying out any remedial work plus twenty five (25%) percent of such costs as a charge for overhead (to be construed as a liquidated amount, not as a penalty) shall be paid by the Owner to the Region.
35. The Region may draw upon the Letter of Credit to satisfy any costs associated with remedying any default.
36. Failure by the Region to exercise any of its rights, powers or remedies under this Agreement or any delay in doing so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

OTHER MATTERS

Land Division Committee

37. The Region shall inform the Land Division Committee that the Region's condition requiring a servicing agreement has been satisfied when conditions (a), (b) and (c) in Section 7 have been met.

Notice of Agreement

38. This Agreement shall be registered against title to the Lands and shall be enforceable against the Owner and all subsequent owners of the Lands.

39. The Owner shall give to every purchaser of any part of the Lands actual notice of the existence and the terms of this Agreement and include such notice in any offer to purchase or other similar document dealing with the Lands.
40. At the request of the Owner, the Region shall release this Agreement from title to the Lands provided the Final Acceptance Letter has been issued and the Owner has paid to the Region the Region's fee and registration expenses for such release.

Postponement

41. All rights and interests which the Encumbrancer has in the Lands are hereby postponed to this Agreement and any easement given pursuant to this Agreement.

Conveyances

42. The Owner shall convey or ensure that the necessary party conveys to the Region on the signing of this Agreement the lands and interests in land set out in Schedule B. Any such conveyances shall be in a form acceptable to the Regional Solicitor.

Connection Approvals

43. Prior to making connection to the sanitary sewers and watermain being installed under the terms of this Agreement, the Owner shall obtain connection approvals from the Region. The Region shall not issue a connection approval until the Completion Acceptance Letter has been issued.

Further Assurances

44. The Owner shall execute such further assurances of the rights hereby granted as deemed necessary by the Region.

Notices

45. (1) Any notice to the Owner shall be in writing and shall be delivered to the following address:

x
x, Ontario
x

Attention: x
Fax No. x

- (2) Notice shall be sufficiently given if,
- (a) delivered in person;
 - (b) sent by registered mail; or
 - (c) sent by facsimile transmission during normal business hours on a business day.
- (3) Each notice sent shall be deemed to have been received,
- (a) on the day it was delivered;
 - (b) on the third business day after it was mailed (excluding each business day during which there existed any general interruption of postal services due to strike, lockout or other cause); or

(c) on the same day that it was sent by facsimile transmission or on the first business day thereafter if the day on which it was sent by facsimile transmission was not a business day.

(4) The Owner may change its address for notice by giving notice to the Region's Clerk in the manner provided in this Section.

Successors and Assigns

46. (1) The Owner agrees that it will not convey by way of deed, or transfer, or grant or assign or exercise a power of appointment or enter into an agreement of purchase and sale in respect of the Property, or any portion thereof, or enter into any other agreement or lease, which has or could have the effect of granting the use of or right in the Property, or any portion thereof, directly or by entitlement to renewal, for a period of 21 years or more, unless the Owner requires the proposed purchaser, grantee, assignee, lessee, or such other person who would be entitled to the benefits of such agreements or transactions, to execute and deliver to the Region of Durham an agreement with the Region of Durham, satisfactory in form and content to the Regional Solicitor, wherein such party agrees to assume the covenants and obligations of the Owner set out in this Servicing Agreement and to be bound by the terms of this Servicing Agreement.
- (2) The parties consent to the registration of this Servicing Agreement against title to the Property in priority to all other charges and mortgages, and agree to execute any and all documents required for such purpose and agree that the burden of these rights, easement and covenants shall run with and bind the Property and every owner of the Property, and every successor and assign of every owner of the Property in perpetuity and the benefit of this Servicing Agreement shall be annexed to and run with the Property.
- (3) This Servicing Agreement shall be binding upon and shall enure to the benefit of each of the parties and their respective successors and assigns, whether on title or otherwise.

Recitals

47. The Recitals contained in this agreement are true and correct and are legally binding and form a true part of this agreement.

Electronic and Counterpart Signatures

48. This Agreement and any Ancillary Agreements may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same agreement or document. A signed copy of this Agreement or any Ancillary Agreement transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement or such Ancillary Agreement for all purposes.

IN WITNESS WHEREOF the parties have executed this Agreement and if required may do so with counterpart signatures.

[OWNER]

2018/ /

Name:
Title:

2018/ /

Name:
Title:
I/We have authority to bind the Corporation

THE REGIONAL MUNICIPALITY OF DURHAM

2018/ /

G. L. O'Connor, Regional Chair and CEO

2018/ /

Ralph Walton, Regional Clerk

[ENCUMBRANCER]

2018/ /

Name:
Title:

2018/ /

Name:
Title:

SCHEDULE A

Solicitor’s Certificate

**TO: THE REGIONAL MUNICIPALITY OF DURHAM
(the “Region”)**

I, [x], a Solicitor duly qualified to practise law in the Province of Ontario, do hereby certify that the Owner is the owner in fee simple of the Lands and that there are no mortgages or other encumbrances upon the Lands or any part thereof save and except the following:

x

I further certify that [x] is the owner in fee simple of the lands to be conveyed to the Region as set out in Schedule B and that there are no mortgages or other encumbrances upon such lands or any part thereof save and except the following:

x

This Certificate is given by me to the Region for the purpose of having the Region act in reliance on it in executing the Servicing Agreement dated [x], 2018 and for certifying title to the Lands and the lands set out in Schedule B.

DATED at [x], Ontario, this [x] day of [x], 2018.

Solicitor

SCHEDULE B

Lands and Interests to be Conveyed to the Region

SCHEDULE “C”

Contact Information for Prime Contractor