



A People Place, A Change of Pace
SHELBURNE
ONTARIO, CANADA

Meeting Date: Sunday, April 26, 2020

To: Mayor Mills and Members of Council

From: **Steve Wever, Town Planner**

Report: P2021-12

Subject: **Pre-servicing Agreement for Draft Plan of Subdivision DPS 17/02 and Draft Plan of Condominium DPC 17/02 – Sconce Developments Inc. (Marmel Homes)**

Recommendation

1. Be it resolved that Council receive Report P2021-12 as information;
2. That Council enact By-law 19-2021 to enter into a Subdivision (Pre-Servicing) Agreement with Sconce Developments Inc. and to authorize the Mayor or his designate and the Clerk to execute the agreement substantially in the form attached to the by-law.

Background

The Sconce Developments Inc. (Marmel Homes – Shelburne Towns) Draft Plan of Subdivision (DPS 17/02) and Draft Plan of Condominium were draft approved on June 24, 2019 for the development of land located along the east side of the former railway corridor at the west end of First Avenue West and Second Avenue West, north of Main Street West at Gordon Street. The land subject to the draft plans has a total area of approximately 1.2 hectares. The property does not have a municipal address and is legally described as Part of Lot 1, Concession 3, Old Survey (formerly in the Geographic Township of Melancthon), Town of Shelburne, County of Dufferin (the "Site"). No existing building or structures are located on the Site, other than a marketing sign for the development.

The draft plan includes 6 residential blocks for a total of 33 townhouse units, a block for future development at the corner of Main and Gordon Street, a small block to be conveyed to an adjoining residential property to resolve an existing encroachment, and a block for proposed condominium common elements including a private road, parking, sidewalks, services and a stormwater management facility.

A Pre-servicing Agreement has been prepared for Council consideration to permit the owner to construct certain works and services within the development and related external works.

Analysis

The owner is requesting approval to commence pre-servicing works this spring under a Pre-servicing Agreement. A Pre-servicing Agreement has been prepared and includes the following site works for the proposed "Phase 1A" development (33 townhouse units), as summarized in the Agreement:

- site clearing;
- construction access and mud mats;
- installation of silt fencing and erosion control measures;
- stump removal and rough grading;
- installation of temporary sediment basin (pond);
- fill importation, placement and compaction;
- rough grading and retaining walls;
- installation of the stormwater management facility;
- servicing installation including underground services (sanitary sewers, storm sewers, watermain and relevant laterals);
- construction of the roadway and parking areas to base asphalt;
- installation of common utilities trench and utilities;
- installation of internal fire hydrants.

In addition to the above, the following external works are included in the Pre-servicing Agreement:

- outlet for the stormwater management facility;
- improvements to First Avenue West and Second Avenue West to provide the required vehicular access to the private common elements roadway and restore/replace impacted driveways/aprons and service laterals within the rights-of-way;
- removal of the portion of the existing gravel driveway that encroaches on the Site, subject to approval of the property owner to re-align and reconstruct the driveway within the limits of 226 First Avenue West.

The Agreement sets out specific requirements that the owner must fulfill as part of the pre-servicing works. The owner will continue to be responsible for

obtaining all the necessary approvals from any regulatory authorities having jurisdiction for specified works and/or development and site alteration, such as the Ministry of Environment, Conservation and Parks and the Nottawasaga Valley Conservation Authority.

A Development Agreement fee (\$2,000), security (Letter of Credit – final amount to be confirmed by the Town Engineers), payment of outstanding amounts on the development account for professional services rendered, and a cash deposit for \$20,000 for municipal expenses will be required by the owner at the time of execution of this Agreement. Payment of Development Charges will be required in accordance with Subdivision and/or Condominium Agreements and is normally required at the time of building permits unless otherwise specified in an agreement.

Policies & Implications (if any) Affecting Proposal

Town of Shelburne Official Plan
Town of Shelburne Zoning By-law 38-2007

Consultation and Communications

The draft agreement has been reviewed with the Director of Development and Operations, the Town's engineering consultants and by legal counsel, and has been circulated to the NVCA.

Council Strategic Priorities

Council's Strategic Priorities has three Goals - Sustainable, Engaged and Livable. There are a total of 12 targets with the three Goals.

This report aligns with the Sustainable Goals within the Targets:

- T2 Municipal services review and evaluation
- T3 Invest and fund critical infrastructure for future
- T4 Promote balanced growth

Supporting Documentation

By-law 19-2021 and Pre-servicing Agreement

Respectfully Submitted:

Steve Wever, MCIP, RPP, Town Planner

Reviewed by:

Denyse Morrissey, CAO

THE CORPORATION OF THE TOWN OF SHELBURNE

BY-LAW NO. 19-2021

**A BY-LAW TO AUTHORIZE THE TOWN OF SHELBURNE
TO EXECUTE AN AGREEMENT BETWEEN THE CORPORATION OF THE
TOWN OF SHELBURNE AND SCNCE DEVELOPMENTS INC.
FOR PRE-SERVICING FOR A SUBDIVISION/CONDOMINIUM DEVELOPMENT
TOWN FILE NOS. DPS 17/02, DPC 17/02**

WHEREAS pursuant to the provisions of the Planning Act, s. 51, the Town is authorized to enact this by-law;

NOW THEREFORE the Municipal Council of The Corporation of the Town of Shelburne enacts as follows:

- 1. THAT The Corporation of the Town of Shelburne enters into a Subdivision (Pre-Servicing) Agreement with Sconce Developments Incorporated dated April 26, 2021, substantially in the form attached to this By-law.
- 2. THAT the Mayor and Clerk are hereby authorized and directed to execute, on behalf of The Corporation of the Town of Shelburne, this agreement with Sconce Developments Incorporated, and to affix thereto the seal of The Corporation of the Town of Shelburne.
- 3. THAT this By-law shall come into force and take effect on the date of its final passing.

BY-LAW READ A FIRST AND SECOND TIME THIS 26TH DAY OF APRIL, 2021.

BY-LAW READ A THIRD TIME AND ENACTED THIS 26TH DAY OF APRIL, 2021.

.....
MAYOR

.....
CLERK

Subdivision (Pre-servicing) Agreement

THIS AGREEMENT made this 26th day of April, 2021.

B E T W E E N:

Sconce Developments Inc.
(“Owner”)

Party of the FIRST PART

- and -

THE CORPORATION OF THE TOWN OF SHELBURNE
(“Town”)

Party of the SECOND PART

WHEREAS the Owner warrants that it is the registered Owner in fee simple of the Subject Lands described in Schedule “A” hereto (hereinafter referred to as the “Subject Lands”); upon which Subject Lands the Owner intends to develop a plan of subdivision with parcels of land tied to condominium common elements (“the Plan”);

AND WHEREAS the Plan has been draft approved subject to conditions;

AND WHEREAS the Owner has requested that the Town enter into this Agreement to permit it to undertake certain pre-servicing works (the “Works”) prior to the completion and execution of comprehensive subdivision and/or condominium agreements between the Owner and the Town;

AND WHEREAS the Owner has received approval from the Town to undertake the Works pursuant to the provisions of this Agreement;

AND WHEREAS section 51 (25)(d) of the *Planning Act* provides authority for the Town to require the Owner to enter into agreement(s) prior to obtaining final approval of the Plan;

AND WHEREAS section 51(26) of the *Planning Act* provides that such an agreement may be registered on the title of the Subject Lands and that the Town is entitled to enforce the provisions of such an agreement against the Owner and any subsequent owners of the Subject Lands;

AND WHEREAS the Town has enacted By-law Number 26-2015 being a By-law to Regulate Site Alterations, Placement of Fill and Removal of Topsoil within the Town of Shelburne and the site alterations authorized under this Agreement are deemed to comply with said By-law;

NOW THEREFORE in consideration of the Town granting the Owner permission to commence the Works prior to the execution of comprehensive subdivision and/or condominium agreements between the parties, and in consideration of the mutual covenants, agreements and promises herein contained and the sum of two dollars (\$2.00) of lawful money of Canada now paid by each of the parties to the other (the receipt and sufficiency of which are hereby acknowledged), the parties hereto covenant and agree as follows, including agreeing that the above recitals are true:

1. Term

This Agreement shall remain in full force and effect until such time as all of the obligations herein have been fulfilled or this Agreement is incorporated into and subsumed by a comprehensive subdivision and/or condominium agreement or other form of development agreement in relation to the Subject Lands.

2. Acknowledgement by the Owner

The Owner acknowledges that by proceeding with the Works in advance of the execution of comprehensive subdivision and/or condominium agreements, it is doing so totally at its own risk. The Owner further acknowledges that the Works authorized by this Agreement are private works that are

the sole responsibility of the Owner, as they are proposed to become part of the common elements owned by a condominium corporation. The Owner further acknowledges and agrees that the said Works will not be assumed by the Town of Shelburne as municipal services, save and except for those external works that are specifically noted as being located within the Town-owned rights-of-way as specified in this Agreement.

3. Installation of Works

- (1) The following works (collectively the “Works”) are authorized under this Agreement:

SITE WORKS:

- a. site clearing;
- b. installation of construction access and mud mats at Gordon Street (for fill importation / bulk earthworks access) and First Avenue West (construction access for other site works excluding fill importation / bulk earthworks) and Gordon Street;
- c. installation silt fencing and erosion control measures;
- d. stump removal and rough grading;
- e. installation of temporary sediment basin (pond);
- f. fill importation, placement and compaction;
- g. rough grading and retaining walls;
- h. installation of private common elements stormwater management facility and retaining wall construction;
- i. servicing installation including underground services (sanitary sewers, storm sewers, watermain and relevant laterals);
- j. construction of private common elements roadway and parking areas to base asphalt;
- k. installation of common utilities trench and utilities;
- l. installation of internal fire hydrants;

EXTERNAL WORKS:

- m. outlet for the stormwater management facility including:
 - i. an emergency overland spillway weir and storm sewer / control pipe in the former railway right-of-way owned by the County of Dufferin to the satisfaction of the County including approval and registration of the required easement;
 - ii. storm sewer and catch basin manhole across the property at 5 John Street to the satisfaction of the property owner including approval and registration of the required easement;
 - iii. storm sewer and swale re-grading along John Street to the existing storm outfall ditch along the north side of Main Street West (works within Town-owned right-of-way);
- n. improvements to First Avenue West and Second Avenue West within the Town-owned rights-of-way to provide the required vehicular access to the private common elements roadway, including:
 - iv. roadway modifications to the existing cul-de-sac at the west end of Second Avenue West within the right-of-way;
 - v. required paving, curb and gutter, re-grading, watermain, storm sewer connections and drainage facilities at the west ends of First Avenue West and Second Avenue West, within the rights-of-way;
 - vi. visibility triangles, boulevard restoration/sodding, signage and street trees, utilities, street lighting and service connections, within the rights-of-way, and
 - vii. restoration/replacement of impacted driveways/aprons and service laterals within the rights-of-way;
- o. removal of the portion of the existing gravel driveway that encroaches on the Subject Lands and the portion located within the right-of-way of First Avenue West, subject to obtaining approval of the property owner to re-align and reconstruct the driveway within the property limits of 226 First Avenue West, and connecting to the north side of First Avenue West within the Town-owned right-of-way;

- (2) All such Works shall be carried out in accordance with:

- a. the drawings listed in Schedule “B” to this Agreement;

- b. all relevant reports and peer reviews filed in support of the Plan;
- c. all necessary approvals from any regulatory authority having jurisdiction;
- d. required easements, agreements, permits, approvals or other applicable form of consent of other affected property owners for the external works located on lands not owned by the Owner or the Town;
- e. the provisions of this Agreement; and
- f. the requirements of the Town and the Town Engineer.

(3) For greater certainty, it is agreed that:

- a. Only those Works specifically enumerated in this section may be constructed pursuant to this Agreement;
- b. No site alteration or other work shall be undertaken outside of the limits of work shown on the drawings in Schedule “B” (“Limits of Work”) and such further plans or specifications as the Town may require to delineate the Limits of Work which are further set out as follows:
 - i. the Limits of Work for the Site Works within the Subject Land shall be limited to the area within Blocks 1, 2, 3, 4, 5, 6 and 9 on the Plan, as draft approved, and shall not include Site Works on Blocks 7 and 8 on the Plan except as required to permit a temporary construction access and pond access road as shown in the drawings in Schedule “B”, temporary storage of topsoil from within the Subject Land, for such temporary time periods as permitted in writing by the Town, as well as minor grading, drainage, erosion and sediment controls, dust controls and surfacing with topsoil and seeding or sod to restore, stabilize and maintain Blocks 7 and 8;
 - ii. the Limits of Work for External Works within Town-owned rights-of-way shall be confined to the areas approved by the Town within the Town-owned rights-of-way of First Avenue West, Second Avenue West, John Street and Main Street West;
 - iii. the Limits of Work for External Works within the County-owned right-of-way shall be limited to the area within easement(s) to be obtained and registered by the Owner or as otherwise approved by the County and subject to the approvals, permits and registration of easement(s) to the satisfaction of the County;
 - iv. the Limits of Work for External Works within the property at 5 John Street shall be limited to the area within an easement to be obtained and registered by the Owner across the property at 5 John Street or as otherwise consented to in writing by the owner of the said property;
 - v. the Limits of Work for External Works within the property at 226 First Avenue West shall be the minimum area for which the Owner has required written consent from the property owner to access the land to re-align and reconstruct the driveway within the property limits of 226 First Avenue West connecting to the north side of First Avenue West within the Town-owned right-of-way;
- c. Should there be any discrepancy between the Works listed in this subparagraph and the Works shown on the drawings listed in Schedule “B”, construction of any Works shown on the said drawings but not listed above shall not be permitted pursuant to this Agreement;
- d. Prior to the commencement of the External Works, the Owner shall obtain and register

the required easement(s), approvals, permits or other form of written consent, where required by this Agreement, to permit the Owner to access the land and perform the External Works, and provide a copy of the documentation of same to the Town.

- (4) The Owner acknowledges and agrees that the drawings listed in Schedule “B” are preliminary drawings showing certain elements of the Plan that are permitted to be constructed under this Agreement. The Owner agrees and acknowledges that the drawings listed in Schedule “B” are not final and have not been approved by the Town, except for pre-servicing purposes pursuant to this Agreement. The Owner agrees and acknowledges that this approval for pre-servicing purposes in no way fetters, alters or limits the discretion of the Town to require changes, refinements or amendments to any drawings or to any of the Works constructed pursuant to this Agreement prior to final approval. Any such changes, refinements or amendments shall be carried out at the Owner’s expense pursuant to subdivision and/or condominium agreements or other development agreement between the Owner and the Town. The Owner further agrees and acknowledges that, while the drawings listed in Schedule “B” may show elements aside from those listed in paragraph 3(1) of this Agreement, the Works permitted by this Agreement include only those items specifically enumerated in subparagraphs 3(1). The Owner agrees and acknowledges that no other site alteration, development, construction or other works shall be permitted on the Subject Lands without the written approval of the Town.
- (5) The Owner shall be responsible for all utility stakeouts and protection required to carry out the Works to the Town’s satisfaction.
- (6) For any Works to be carried out in public road allowances, the Owner shall obtain approval in writing from the Town and the public road authority having jurisdiction over the road in question for all necessary road cuts. In carrying out Works in public road allowances, the Owner shall take all necessary measures, and comply with all directions given by the Town and the public road authority having jurisdiction, to ensure that disruption of vehicular traffic is minimized.
- (7) It is acknowledged and agreed that the Owner is proceeding with the Works at its own risk and that the Town shall not be responsible for any costs or liability that may be associated with any preexisting contamination that may be encountered within the area where the Works are being undertaken (“the Work Zone”) on municipal road allowances or other municipal property during the construction of the Works. Without limiting the generality of the foregoing, any costs associated with testing, handling, disposing of or replacing contaminated soils within the Work Zone shall be the responsibility of the Owner and not the Town. Should any preexisting contamination be discovered within Town property, the Town agrees to cooperate in identifying suitable accommodation on Town lands for such material in so far as it may be deemed acceptable under Ministry of Environment, Conservation and Parks (MECP) Site Condition Standards.
- (8) The Owner agrees that all work on the Subject Lands, including delivery of fill and or other materials shall be limited to the hours of 7:00 am to 7:00 pm, Monday to Friday and that no such activities shall take place on statutory holidays. It is agreed that, notwithstanding the foregoing, the Owner may request that the Town provide approval in writing for deliveries or work to take place outside of these hours. Any such request must be made in writing and at least 48 prior to the time of the proposed activity. The Town may grant or deny such permission and/or impose such conditions or limitations as it sees fit in its sole and absolute discretion.
- (9) The Owner agrees that construction access to the Subject Lands shall be in accordance with the following requirements:
 - a. For all deliveries of fill and for bulk earthworks, construction access shall be from the west side of Gordon Street to Block 7 in the location of the temporary pond access road shown on the drawings in Schedule “B”, such access to be removed, restored and stabilized with topsoil and seeding and required curb and asphalt repairs/reinstatement within 30 days of the completion of the installation of the stormwater management pond or at such time as agreed to in writing by the Town;

- b. All heavy truck traffic to and from the Subject Lands shall travel via haul route(s) approved by the Town in writing, and the Owner shall ensure that its agreements with all third party suppliers or contractors include the Town-approved haul route requirement;
 - c. Following completion of fill importation, placement and compaction and the installation of the stormwater management facility and retaining wall, construction access to the Subject Land for servicing installation, road construction and utilities installation shall be from the west end of First Avenue West;
 - d. Temporary traffic controls and signage shall be provided to direct the safe movement of traffic and pedestrians on Gordon Street, at the intersections of First Avenue and Gordon Street and Main Street West and Gordon Street, and along First Avenue West for the impacted residential driveways, while these roadways and intersections in the vicinity of the Subject Land are in use for construction access;
 - e. No construction access to the Subject Land shall be permitted via Second Avenue West which shall only be accessed for the required external works on Second Avenue West as authorized by this Agreement;
 - f. Where facilities are installed by the Owner within the Town-owned rights-of-way for the purposes of construction access to the Subject Land, such facilities shall be located and provided in accordance with the drawings in Schedule “B” and shall be removed or relocated by the Owner if and when required by the Town for the Town’s performance of maintenance and repair activities including but limited to winter road and sidewalk maintenance, and other maintenance and repair of municipal infrastructure;
 - g. Any damage to roadways, works and services located within the Town-owned rights-of-way caused by construction access to the Subject Land shall be repaired at the cost of the Owner to the satisfaction of the Town.
- (10) The Owner shall ensure that all fill imported onto the Subject Lands shall be:
- a. clean and free of waste, asphalt, trash, rubbish, glass, liquid or toxic chemicals, hazardous waste or other contaminants as defined in the *Environmental Protection Act*;
 - b. sourced from a licensed aggregate pit or other fill source approved by the Town in writing;
 - c. certified and tested to the satisfaction of the Town to ensure compliance with the MECP Standards; and,
 - d. imported and placed in accordance with a Fill Importation Protocol prepared by a qualified geotechnical engineer and approved by the Town, and in accordance with the drawings listed in Schedule “B” to this Agreement.
- (11) The Owner shall maintain records of the source(s) of all such fill as well as all testing undertaken to determine the cleanliness of the said fill and compliance with the MECP Standards. The Owner shall provide such records to the Town and such other information as the Town, acting reasonably, may require from time to time upon request, to demonstrate compliance with these requirements.

4. Signs and Public Notices

- (1) Prior to commencing the Works or at an alternative time required by the Town, the Owner shall:
- a. Install signs at each public road entrance to the Subject Lands to advise that public access to the Subject Lands is not permitted, to the satisfaction to the Town Engineer. The signs shall have dimensions of 1.2m by 1.2m with 100mm lettering and shall be posted at each public road entrance to the Subject Lands, reading as follows:

**"PRIVATE ROAD UNASSUMED BY THE TOWN OF SHELBURNE
NO PUBLIC ACCESS"**

- b. Erect temporary barricades to prevent public access to the Subject Lands, if required by the Town Engineer; and,
- c. Distribute a notice to residents and landowners in the vicinity of the Subject Lands, such distribution area to be confirmed with the Town, regarding the scheduled construction of the Works, the hours of work which shall be in accordance with subparagraph 3(8) of this Agreement and the Town's by-laws, the expected timeframe for completion of the Works, any temporary disruptions to public road access, advisory information to promote public safety in the vicinity of the construction area, contact information for the Owner's consultants and contractors and such other information as the Town may require.

5. Maintenance and Repair

- (1) The Owner agrees to maintain and repair the Works at its sole expense during the term of this Agreement, to the satisfaction of the Town's Director of Development and Operations and/or the Town Engineer.
- (2) The Owner shall be responsible for preventing earth, mud and debris from being tracked onto any roads. Should earth, mud and debris accumulate on any roads or other adjacent lands, the Owner shall forthwith clean such roads and/or lands to the satisfaction of the Town's Director of Development and Operations and/or the Town Engineer. In addition, the Owner shall take reasonable steps, as directed by the Town, to minimize dust being spread to adjacent lands. Should either the Town's Director of Development and Operations or the Town Engineer, in his sole discretion be of the opinion that excess dust is being created, he shall be entitled to direct that such additional measures be carried out by the Owner as he views appropriate. In the event that the Owner fails to fulfill the requirements of this section, the Town is authorized to enter on the Subject lands and carry out such measures at the Owner's expense. The cost of any such measures carried out pursuant to this section may be charged by the Town against the security held by the Town pursuant to this Agreement.

6. Fees

- (1) The Owner shall make the required cash payments to the Town as set out in Schedule "G" prior to the execution of the Agreement by the Town.
- (2) The Owner shall also pay such reasonable fees as may be invoiced to the Town by the Town Solicitor, the Town Planner and the Town Engineer in connection with the review of the Works, registration of this Agreement, and the preparation, processing, review and completion of the terms of this Agreement or any other supplementary agreements required to facilitate the Works and development of the Plan, pursuant to By-law Number 26-2015. Such fees shall include those in respect of any on-site or field inspections undertaken by the Town Engineer. The Owner shall also provide any necessary documentation to permit the inputting of the Works into the Town's GIS system.

7. Security

- (1) The Owner agrees to deposit with the Town, at the time of execution of this Agreement and in a form that is satisfactory to the Town, security in the amount set out in Schedule "C" to this Agreement. The required security shall be issued by a financial institution in the form of an irrevocable letter of credit, cash or such other equivalent security satisfactory to the Town's Treasurer and the Town Solicitor, and is referred to in this Agreement as the "Security". Should the Security be in the form of a letter of credit, such letter of credit shall be irrevocable and valid for an initial term of not less than one (1) year and shall provide that it shall be automatically renewed or extended without the need for written notice from the Town requesting such extension. The Owner shall keep the Security in place and, in the case of a letter of credit, shall renew it from time to time until the Town determines that

the Security is no longer required. Upon the Town making such a determination, in the case of a cash deposit, the unspent portion of the Security shall be returned to the Owner without interest or credited to the deposit required by the Town pursuant to further comprehensive subdivision and/or condominium agreements or other development agreements.

- (2) The Security required by the provisions of this section shall be reduced in amount from time to time at the discretion of the Town following inspections by the Town and receipt satisfactory to the Town, of a progress certificate from the Owner's Consulting Engineer and proof of payment to the contractor(s), in respect of the Works covered by the said Security; together with an executed statutory declaration or such other documentation acceptable to the Town Solicitor. In no case shall the amount of the Security be reduced to less than an amount equivalent to fifteen percent (15%) of the cost of completed Works plus the estimated cost to complete and maintain the remaining Works, plus contingencies and H.S.T., as calculated in accordance with Schedule "D".
- (3) The Owner agrees that the Security constitutes earnest money to ensure performance of this Agreement in the event of breach of this Agreement by the Owner, but provision of such Security does not limit the Owner's liability should damages resulting from the Owner's breach exceed the value of the Security.
- (4) In the event that the Owner, in the sole opinion of the Town, breaches any provision of this Agreement, the Owner agrees that the Town, through its employees, agents or contractors, may in its sole discretion, draw upon and use the Security to perform any obligations of the Owner pursuant to this Agreement or to redress any harm or damages that have or may occur as a result of the breach, provided the Town has given the Owner notice of such breach and SEVEN calendar days have elapsed since such notice has been provided, other than in the case of an emergency, without steps satisfactory to the Town to redress the breach having been taken by the Owner. The Owner hereby expressly consents to such entry by the Town's employees, contractors or agents.
- (5) Where, in the opinion of the Town, any damages have been caused or losses incurred directly or indirectly, by the Works or any other actions or omissions of the Owner or its agents in relation to the development of the Subject Lands, the Town shall have and is hereby given the right by the Owner to remedy such damages or losses at the Owner's expense. The Owner shall reimburse the Town for any costs incurred in this regard within SEVEN days of the date of an account for the same being rendered to the Owner by the Town. Should the Owner fail to pay such account, the Town may draw upon the Security.
- (6) Use of the Security by the Town shall not relieve the Owner of any of its obligations pursuant to this Agreement. If the Town draws upon the Security Deposit, the Owner will top up the Security within fourteen (14) days of a request being received from the Town.
- (7) In addition to the Security, the Owner shall deposit with the Town a refundable cash deposit in the amount of \$20,000.00 to be drawn on to reimburse the invoices rendered by the Town Solicitor, the Town Engineer and any outside consultants that may be required to oversee the Works, from time to time, pursuant to this Agreement and By-law Number 26-2015. Such deposit shall be replenished from time to time as required by the Town Treasurer. In the event that the expenses of the Town exceed the amount of the deposit, the Town shall invoice the Owner for payment directly. Should the Owner fail to make such payment within THIRTY days of such invoice, the Town may draw on the deposit or Security without notice to the Owner. Subsequent to the Town Engineer and the Town Solicitor advising the Town that their respective files have been closed on this matter, and subject to all invoices having been paid, and all other financial matters being in good standing, the Town shall remit remaining portion of the replenished deposit, if any, to the Owner. Alternatively, at the Owner's option, these amounts may be credited against any total amount required for the same purpose by a subsuming agreement.

8. Cessation of Work

The Owner agrees that it will proceed diligently with installation of the Works in accordance

with the timelines set out in Schedule “E” to this Agreement, except where deviations from such timelines are approved in writing by the Town. Should the installation of the Works be interrupted for a period in excess of ONE month, for any reason, or should a comprehensive subdivision agreement not be fully executed within one year of this Agreement, the Owner agrees that it shall, if so required by the Town, restore, re-grade, topsoil and seed the Subject Lands to the satisfaction of the Town or take such other remedial steps as the Town may direct to ensure that the Subject Lands do not constitute a danger, nuisance or blight in the opinion of Town staff. If the Town has drawn upon the deposit or the Security pursuant to his Agreement, and the Owner has failed to replenish such deposit or the Security within fourteen (14) days, the Owner shall be deemed to be in breach of this agreement and the Town may issue a stop work order. Upon receipt of such a stop work order, all Work on the Subject Lands carried out pursuant to this agreement shall cease until permission to proceed is given in writing by the Town.

9. Inspections and Right of Entry

The Town and its employees, agents or contractors may at any time enter on any part of the Subject Lands and/or other areas where Works are being carried out under this Agreement, without notice to the Owner, to inspect the same and/or to ensure compliance with the terms of this Agreement. Notwithstanding any other term of this Agreement, if considered necessary by the Town, the Town and its employees, agents or contractors may make emergency repairs to the Subject Lands and/or to the Works without notice to the Owner. The cost of all such emergency repairs determined by the Town shall be paid forthwith by the Owner. In the event the Owner fails to make payment within THIRTY days of receipt of the account, such cost may be recovered by the Town from the Security. Such repairs shall not be deemed an acceptance of the Works by the Town or an assumption by the Town of any liability in connection therewith and shall not release the Owner from any of its obligations under this Agreement.

10. Compliance with Applicable Legislation

The Owner agrees that it will comply with all applicable legislation in the performance of its obligations contemplated by this Agreement. Without limiting the generality of the foregoing, the Owner agrees to comply with all Town by-laws, and to obtain and comply with all approvals required of all other bodies having jurisdiction, including the Department of Fisheries and Oceans, the Nottawasaga Valley Conservation Authority, the Ministry of the Environment, Conservation and Parks, the Ministry of Natural Resources and Forestry, the Ministry of Transportation, the County of Dufferin and any public utilities or other municipalities having jurisdiction. Burning of garbage and debris is prohibited, unless the Town issues an approval to permit such burning.

11. Further Approvals

The Owner acknowledges that this Agreement does not predetermine, prejudice or constrain the Town's jurisdiction with respect to the approval, rejection or imposition of conditions in relation to any development approvals that are now or that may, in future, be proposed for the Subject Lands. Without limiting the generality of the foregoing, this Agreement does not predetermine, prejudice or constrain the Town's jurisdiction with respect to the clearance of conditions related to final approval of the Plan.

12. Indemnification and Insurance

- (1) The Owner shall always indemnify and save harmless the Town and all of its employees and agents, including, without limiting the generality of the foregoing, the Town Engineer, from and against all actions, suits, claims and demands which may be brought against or made upon the Town or any of its employees and agents from all loss, costs, charges and expenses which may be incurred, sustained or paid by the Town or any of its employees and agents in relation to the installation and maintenance of the Works, or the granting of such permission, pursuant to this Agreement, save and except for any act of negligence by the Town or its Staff or Agents. Without limiting the generality of the foregoing, it is specifically agreed and acknowledged that the above obligation to indemnify and save harmless shall apply to any claim in respect of or arising from the Owner's installation of Works in public road allowances, including any claims in respect of or arising from disruption of access to

residences or businesses fronting on those road allowances.

- (2) The Owner shall throughout the term of this Agreement provide and keep in force, for the benefit of the Town and the Owner, general liability insurance in an amount of not less than \$5,000,000.00 in respect of injury to or death of one or more persons or property damage. All insurance shall be effected with insurers and upon terms and conditions satisfactory to the Town including without limitation that the insurer shall not cancel or refuse to renew the policy without first giving the Town at least sixty (60) days prior written notice. The Owner's policy shall insure the Owner; and name the Town and the Town Engineer as additional insureds and shall contain cross-liability and severability of interest provisions as additional insured with respect to liability arising out of the operations of the Owner.
- (3) The Owner shall promptly furnish to the Town copies of insurance policies and other evidence satisfactory to the Town as to such insurance and any renewals thereof.
- (4) In the event that the Owner fails to insure as required or fails to promptly furnish to the Town satisfactory evidence of such insurance or of the renewal thereof prior to its expiration, the Town may, from time to time, effect such insurance for the benefit of the Owner or the Town or both of them for a period not exceeding ONE year and any premium paid by the Town shall be recoverable by the Town from the Owner forthwith. In addition, the Town shall, at its sole discretion and option, be entitled to draw upon the Security to cover the costs of the insurance.

13. Liens

The Owner shall indemnify and hold the Town harmless from and against any liability, claims, damages or expenses due to or arising from any claim made against the Subject Lands and/or any Town lands where Works are installed pursuant to this Agreement for all liens related to any work done by or on behalf of the Owner. Any such liability, claims, damages or expenses incurred by the Town shall be paid by the Owner to the Town forthwith upon demand. The Owner shall further cause all registration of claims for construction liens or certificates of action under the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended, and relating to any such work done by or on behalf of the Owner, to be discharged or vacated as the case may be within THIRTY days of such registration or within FIFTEEN days after notice from the Town.

14. Assignment

- (1) This Agreement shall not be assigned by the Owner or its assignees without an express written consent to assignment executed by both the Town and the assignee.
- (2) In the event that the Owner transfers, assigns or leases its interest in the Subject Lands or any part thereof, the Owner shall forthwith notify the Town in writing of such transfer or assignment together with the names and addresses of the transferees or assignees.
- (3) In the event that the Owner enters into an agreement to sell the Subject Lands or any part thereof, notice shall be provided forthwith to the Town.

15. Registration

- (1) This Agreement shall be enforceable by and against the Parties, their heirs, executors, administrators, successors, and permitted assigns, and this Agreement and all of the covenants by the Owner in this Agreement contained shall run with the Subject Lands for the benefit of the Town and the land or interest in land owned or to be owned by the Town upon the registration of the Plan.
- (2) The Owner agrees to register this Agreement in a form that is satisfactory to the Town in priority to all other encumbrances in the Land Titles Division of the Land Registry Office for the County of Dufferin (No. 7) against the Subject Lands immediately upon execution of this Agreement, and the Owner shall deliver to the Town a Certificate of Title confirming such registration, together with supporting documentation, which Certificate and supporting

documentation shall be to the satisfaction of the Town Solicitor.

16. Notice

Any notice to be given pursuant to this Agreement shall, unless otherwise specified in this Agreement, be delivered or sent by registered letter or facsimile transmission to the Owner and the Town as follows:

TO THE OWNER:

Matthew Melchoir
Sconce Developments Inc.
200 Ronson Drive, Suite 203
Toronto, ON M9W 5Z9
mmelchoir@coram.com

TO THE TOWN:

Jennifer Willoughby
Clerk
Town of Shelburne Municipal Office
203 Main Street East
Shelburne, Ontario, L9V 3K7
jwilloughby@shelburne.ca

or to such other address as the Owner and the Town may respectively from time to time appoint in writing, and any such notice, if mailed, shall be conclusively deemed to be received by the other party FIVE business days after the date of the mailing thereof postage prepaid OR upon receipt of the dated confirmation of the facsimile transmission.

17. No Waiver of Default

No condoning, excusing, overlooking or delay in acting by the Town upon any default, breach or non-observance by the Owner at any time or times in respect of any covenant, provision or condition in this Agreement shall operate as a waiver of the Town's rights under this Agreement in respect of any such or continuing subsequent default, breach or non-observance and no waiver shall be inferred from or implied by anything done or omitted by the Town except an express waiver in writing.

18. Entire Agreement

The Owner acknowledges that there are no covenants, representations, warranties, Agreements or conditions, express or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Agreement save as expressly set out or imported by reference in this Agreement and that this Agreement constitutes the entire agreement duly executed by the Town and the Owner.

19. Severability

If any clause or clauses or part or parts of clauses in this Agreement are determined to be illegal or unenforceable, they shall be considered separate and severable from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties to this Agreement as though the said clause or clauses or part or parts of clauses have never been included.

20. Number and Gender

Whenever a word importing the singular number only is used in this Agreement, such word shall include the plural and words importing either gender and firms or corporations where applicable.

21. Interpretation

It is acknowledged and agreed by the Parties that this Agreement shall be interpreted without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

In witness whereof the parties have duly executed this Agreement as at the year and date first above mentioned.

SCONCE DEVELOPMENTS INC.

Per: _____
Matthew Melchoir c/s
Authorized Signing Officer

I have authority to bind the Corporation

THE CORPORATION OF THE TOWN OF SHELBURNE

Mayor Wade Mills

c/s

Jennifer Willoughby – Town Clerk

“Schedule A”

to this Subdivision (Pre-servicing) Agreement

Description of Subject Lands

Subdivision File No: DPS 17/02

Condominium File No.: DPC 17/02

Name of Development: Stoneridge Holdings Ltd. – Shelburne Station
(Phase 1A – Shelburne Towns)

Legal Description: Part Lot 1, Concession 3 Old Survey, Town of Shelburne

Schedule “B”

to this Subdivision (Pre-servicing) Agreement

List of Preliminary Construction Drawings

Note: The drawings listed below are preliminary and are approved only for pre-servicing purposes pursuant to this Agreement and only with respect to those Works specifically enumerated in paragraph 3(1) of this Agreement.

Name	Drawing	Prepared by	Revision No.	Date
COVER	C000	R.J. Burnside & Associates Ltd.		
GENERAL NOTES	C001			
UNDERGROUND GENERAL PLAN	C101			
ABOVE GROUND GENERAL PLAN	C102			
WATER DISTRIBUTION PLAN	C103			
EXISTING GRADING AND REMOVALS PLAN	C104			
GRADING PLAN (1 OF 3)	C201			
GRADING PLAN (2 OF 3)	C202			
GRADING PLAN (3 OF 3)	C203			
SANITARY DRAINAGE PLAN	C301			
SANITARY DESIGN SHEET	C302			
STORM DRAINAGE PLAN	C303			
STORM DESIGN SHEET	C304			
PLAN AND PROFILE – STREET A	C401			
PLAN AND PROFILE – STREET A	C402			
PLAN AND PROFILE – SECOND AVENUE	C403			
PLAN AND PROFILE – FIRST AVENUE WEST	C404			
PLAN AND PROFILE – OUTFALL SEWER	C405			
PLAN AND PROFILE – OUTFALL SWALE	C406			
PLAN AND PROFILE – SANITARY EASEMENT	C407			
PAVEMENT MARKING & SIGNAGE PLAN	C501			
STORMWATER MANAGEMENT FACILITY PLAN	C601			
STORMWATER MANAGEMENT FACILITY DETAILS (1 OF 2)	C602			
STORMWATER MANAGEMENT FACILITY DETAILS (2 OF 2)	C603			
STANDARD DETAILS	C701			
STANDARD DETAILS	C702			
STANDARD DETAILS	C703			
STANDARD DETAILS	C704			
COMPOSITE UTILITY PLAN	C801			
EROSION AND SEDIMENT CONTROL PLAN	C901			
EROSION AND SEDIMENT CONTROL NOTES AND DETAILS	C902			
STREET LIGHTING ELECTRICAL PLAN	E001			
ELECTRICAL DETAILS	E002			
ELECTRICAL DETAILS	E003			
STREET LIGHTING PHOTOMETRIC PLAN	E001A			

Schedule “C”

to this Subdivision (Pre-servicing) Agreement

Fees/Security to Be Paid/Deposited to the Town

1. Summary of Cash Payments

The Owner shall pay to the Town, prior to the execution of this Agreement by the Town:

- a) Town processing fee under By-law Number 26-2015 which amount is \$2,000.00.
- b) Professional fees: \$22,874.08.
- b) A refundable deposit for fees of the Town Engineer, Town Solicitor, and any other consultants, as required, under By-law Number 26-2015 and which deposit shall be replenished from time to time as may be required in the amount of \$20,000.00.

2. Summary of Security Deposits

The Owner shall deposit with the Town prior to the execution of this Agreement a security in the amount of:

As per Schedule “D”

Preservicing Security	\$906,000
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Such security shall be provided in a form satisfactory to the Town Treasurer and the Town Solicitor in accordance with paragraph 7 of this Agreement.

Schedule “D”

to this Subdivision (Pre-servicing) Agreement

Estimated Cost of Works to be Installed by the Owner
Pursuant to this Agreement

SITE WORKS:	\$787,000.00
EXTERNAL WORKS:	\$119,000.00
TOTAL:	\$906,000.00

SITE WORKS	COST ESTIMATE
Road Works	
HL8 Base Course Asphalt (50 mm)	\$20,281.80
HL3 Top Course Asphalt (40 mm)	\$16,594.20
Granular "A" (150 mm)	\$13,275.36
Granular "B" (450 mm)	\$37,440.00
Removal of Asphalt	\$1,312.50
Fine Grade Road Allowance	\$2,986.00
Concrete Curb	\$36,166.68
100 mm Dia. Subdrains	\$9,194.40
Permanent Signage	\$10,230.00
Concrete Sidewalk	\$23,150.00
Permanent Line Painting	\$2,600.00
Granular "A" (200mm) for Driveways	\$7,411.20
HL3A Top Course Asphalt (50mm) for Driveways	\$8,878.00
Mail Box Pads	\$3,264.00
Roadworks Total	\$192,784.14
Pre-servicing	\$96,392.07
SWM Outfall	
525mm dia. HDPE Sewer	\$11,523.80
600mm dia. Conc. Sewer	\$19,503.00
CBMH 10 (1500mm dia.)	\$7,500.00
Outfall 2 (John St. ditch)	\$7,000.00
Emergency Overflow Weir	\$2,500.00
SWM Outfall Total	\$48,026.80
Pre-servicing	\$48,026.80
Sanitary Sewers Works	
200mm dia. PVC Sewer	\$32,320.00
200mm dia. Conc. Sewer	\$46,200.00
Service Connections (Double & Single)	\$26,900.00
Maintenance Holes	\$33,000.00
Connect to Existing Manhole	\$2,000.00
Sanitary Sewers Total	\$140,420.00
Pre-servicing	70,210.00
Storm Sewer Works	
525mm dia. HDPE Sewer	\$1,321.20
600mm dia. Conc. Sewer	\$6,567.00
675mm dia. Conc. Sewer	\$33,192.00
750mm dia. Conc. Sewer	\$38,220.00

900mm dia. Conc. Sewer	\$7,497.00
150mm dia. PVC Sewer	\$1,035.00
375mm dia. PVC Sewer	\$2,520.00
Double & Ditch Inlet Catch Basins	\$44,000.00
Maintenance Holes	\$44,000.00
Service Connections (Double & Single)	\$30,300.00
Storm Sewer Works Total	\$208,652.20
Pre-servicing	\$104,326.10
Stormwater Management Pond	\$116,373.20
Pre-servicing	\$58,186.60
Watermain	
150mm dia. PVC C900 Watermain	\$49,180.00
150mm Dia. Valve & Box	\$12,000.00
New Hydrant & Valve	\$19,600.00
25mm Poly or Copper Water Service	\$36,300.00
Connections to Ex. Watermains	\$7,000.00
Watermain testing, swabbing etc.	\$14,154.00
Watermain Total	\$138,234.00
Pre-servicing	\$72,617.00
Retaining Walls and Erosion and Sediment Controls	
Construct, Hydroseed, and Stabilize Swale	\$49,800.00
Retaining Walls	\$163,600.00
Siltation & Erosion Control Measures	\$49,088.00
Retaining Walls, Erosion and Sediment Controls Total	\$262,488.00
Pre-servicing	\$156,144.00
Subtotal Site Works Pre-servicing Amount	\$605,902.57
Contingency (15%)	\$90,885.39
Subtotal	\$696,787.96
H.S.T.	\$90,582.43
Total Site Works Pre-servicing Amount	\$787,370.39
TOTAL SITE WORKS SECURITY (ROUNDED)	\$787,000.00
EXTERNAL WORKS	COST ESTIMATE
Remove Existing Curb and Asphalt	\$8,564.45
Remove Existing Driveway Asphalt	\$836.00
Remove Driveway Paving Stones & Store on Site	\$600.00
Fine Grade Road Allowance (Incl. Driveways)	\$1,422.00
Granular "B" (450mm)	\$9,648.00
Granular "A" (150mm)	\$3,283.20
Granular "A" (200mm) for Driveways	\$614.40
Curb	\$11,826.51
100mm dia. Subdrains	\$2,302.60
HL8 Base Course Asphalt (50mm)	\$6,501.00
HL3 Surface Course Asphalt (50mm)	\$1,582.50
HL3 Surface Course Asphalt (40mm)	\$5,319.00
Concrete Sidewalk	\$10,775.00
Reinstate Existing Driveways	\$1,820.00
Permanent Line Painting	\$2,600.00

Permanent Signage	\$1,035.00
External Watermain	\$22,650.00
Subtotal External Works Pre-servicing Amount	\$91,379.66
Contingency (15%)	\$13,706.95
Subtotal	\$105,086.61
H.S.T.	\$13,661.26
Total Externa; Works Pre-servicing Amount	\$118,747.87
TOTAL SITE WORKS SECURITY (ROUNDED)	\$119,000.00

Schedule “E”
to this Subdivision (Pre-servicing) Agreement

Progress and Completion Works Included in this Agreement

Order of Operations, Timing and Schedule

The Owner acknowledges and agrees to submit to the Town a schedule of the approximate timing and order of site works at least 48 hours prior to commencement of the works to the satisfaction of the Town’s Director of Development and Operations and the Town’s Engineer.

All dates listed are tentative and are subject to change based on receipt of all approvals, weather and site conditions.