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PRIVATE AND CONFIDENTIAL

Town of New Tecumseth
c/o Jay Feehely
Feehely, Gastaldi
5 Mill Street East
Tottenham, Ontario L0G 1W0

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Attention Mr. Jay Feehely

Dear Mr. Feehely

RE: BRSO/GRSO request for Town Water - Town Report #ENG-2017-48

AND RE: BRSO Communal Servicing Responsibility Agreement

As you are aware, I am legal counsel to Briar Hill Residential Servicing Organization ("BRSO") and Green Briar Residential Servicing Organization ("GRSO"). As you are also likely aware, the Town of New Tecumseth Council at the September 28th Council Meeting heard my deputation on behalf of BRSO and GRSO in connection with the captioned matters. I believe there is a lot of confusion and misunderstanding regarding the captioned matters and accordingly I am writing you to provide context and clarity on what is being sought by BRSO and GRSO. Hopefully this will assist you in briefing Town Council on the BRSO Communal Servicing Responsibility Agreement and other issues raised in Town Report #ENG-2017-48 – August 21, 2017.

I believe this will also help to clarify matters for the residents of Briar Hill and Green Briar as there has been a significant amount of speculation, misunderstanding, misinformation and unnecessary worry by the residents in connection with their water supply. BRSO and GRSO believe that resolution of the requests and issues raised in this letter will also bring closure for and certainty to the residents of Briar Hill and Green Briar with respect to their water supply.

Please consider the following:

1. Purpose

The purpose of this letter is to clearly set out:

- i) what is being requested from the Town of New Tecumseth ("Town") by BRSO and GRSO with respect to water supply;
- ii) the historical facts and background upon which the requests are being made; and
- iii) BRSO and GRSO's response to the issues raised in Town Staff Reports #ENG-2017-48 and #ENG-2017-60

2. Request to the Town

BRSO and GRSO are requesting:

- i) BRSO be supplied water (228 cu m daily) from the Town in accordance with the Town's obligations under the 2000 Communal Servicing Responsibility Agreement ("2000 CSRA") and permitted to immediately hook up to the existing "T" connection installed in the water main on the 14th Line adjacent to Briar Hill installed for that purpose;
- ii) GRSO be permitted to hook up to the existing "T" connection in the water main on the 10th Side Road adjacent Green Briar for the purpose of emergency water supply if and when needed which supply will be paid for if and when used for such purposes; and
- iii) The Town consider in its next update to the Town's Master Water Plan the:
 - a) supply by the Town to BRSO and GRSO of their water requirements over the agreed amount provided for in the 2000 CRSA;
 - b) timing of supply (ie. within the planning horizon year of 2031); and,
 - c) estimated cost of the requested supply.

3. GRSO and BRSO Background

GRSO was established in 1987 and BRSO was established in 1995 each as a non-share capital/not for profit Corporation to provide private water, sanitary and other services to the residents of the communities of Green Briar and Briar Hill respectively. Essentially, GRSO and BRSO provide their services (including water and sanitary sewer supply) on a cost recovery basis to the residents of Green Briar and Briar Hill respectively.

BRSO and GRSO are responsible stewards of their current respective water systems and it is their responsibility and mandate to secure and ensure emergency and long term water supply for the residents they serve. This obligation requires BRSO and GRSO to periodically examine the options for securing water supply and its associated costs. BRSO and GRSO operate much like the Town with respect to the similar services the Town supplies to their rate payers. Like the Town, BRSO and GRSO both need to look beyond present circumstances to explore options that will fulfil their mandate both now and into the future – including looking for sources of bulk water whether from the Town, their own supply wells or otherwise and alternate sources of water for emergency water supply purposes if and as necessary.

To be clear, GRISO and BRISO are not looking to the Town to take over the water distribution/delivery systems in GRISO and BRISO – they are simply looking at the various sources of supply of bulk water to fulfill their mandate to their respective residents both now and in the future. Notwithstanding the fact that the current well supply is adequate for Green Briar and both the existing development and the planned build out of Briar Hill, Town water is one future source that is being considered along with the existing well supply.

Nothing in the agreements with the Town entered into by BRISO or GRISO precluded them from making application to the Town for water supply at some time in the future. Indeed the Town, under the 2000 CSRA, is required to provide a certain volume of water to BRISO and BRISO was invited to apply for additional water supply (although no future additional supply was guaranteed in the 2000 CSRA).

4. Communal Servicing Responsibility Agreements

BRISO entered into two Communal Servicing Responsibility Agreements with the Town.

The first agreement, dated June 1997 ("1997 CSRA"), pertains to those lands comprising lands in what is now Plan 51M 589. The 1997 CSRA was entered into by the Town, 1204551 Ontario Ltd./Cable Bridge Enterprises Limited (as the "Developer"), 1204551 Ontario Ltd. (as the "Private Servicing Landowner") and BRISO (as the "Servicing Company"). The 1997 CSRA is generally unremarkable and contains the provisions one would expect to see in a municipal responsibility agreement including the ability for the Town to take over a particular service in certain circumstances of emergency or default or breach in the obligation of the private servicing company and the reimbursement of costs associated with any such take over.

The second, being the 2000 CSRA, pertains to the lands immediately to the west of Plan 51M 589 being Lot 9 Concession 14 (with several small carve outs on the periphery of the lands owned by others). The 2000 CSRA was entered into by the Town, BRISO (as the "Servicing Company") and 1204551 Ontario Ltd. (as the "Developer" and the "Private Servicing Landowner"). The agreement contains various provisions that one would expect to see in a municipal responsibility agreement including the ability for the Town to take over a particular service in certain circumstances of emergency or default or breach in the obligation of the private servicing company and the reimbursement of costs associated with any such take over. However, the 2000 CSRA at Section 4 also includes some additional requirements with respect to water supply which requires the Town to maintain/provide certain water supply capacities and for the Servicing Company to either purchase water from the Town or pay for its availability.

Section 4(a) provides the Town, as part of its "*contingent liability pursuant to MOE (now MOECC) guidelines*" and the 2000 CSRA, is required to "*guarantee a minimum water reserve and supply*" and "*to purchase additional Water Capacity from its supply source*" to satisfy the capacities required to be supplied to the Developer and/or Servicing Company under Section 4 of the 2000 CSRA. In addition the 2000 CSRA provides "*The Developer or the Servicing Company may also elect and receive the Water Capacity from the dates and in the amounts described herein*".

Section 4(b) provides for the volumes that the Developer and/or Servicing Company is required to 'take or pay' for the Water Capacity to be provided by the Town being 91 cu m/day from 2005 to the end of 2009 and 228 cu m/day thereafter. Amounts are based on average daily demand.

Section 4(c) requires the Town and Developer prior to January 1, 2005 to determine the appropriate connection point or points between the municipal water supply system and the Private Servicing System ("PPS"). The Developer is responsible, either directly or through the Servicing Company, for obtaining all required approvals to make the connection of the PSS to the municipal system, for making the connection at the connection point and providing any required treatment, storage and pressure adjustments – all at its or their cost.

Section 4(d) Notwithstanding the Town makes no representation and warranties as to additional water supply, this provision acknowledges that the "*Developer and / the Serving Company*" may request from time to time additional water supply and the Town agrees to consider such request "*in a fair and equitable manner having regard to the water supplied to the Municipality from time to time*".

GRSO did not enter into a municipal responsibility agreement. However, some provisions akin to the provisions of a municipal responsibility agreement were included in the Development Agreement entered into in February 1985 including the ability for the Town to take over a particular service in certain circumstances of emergency or default or breach in the obligation of the private servicing company and the reimbursement of costs associated with any such take over

5. Events Subsequent to the Execution of the CSRA

Since the signing of the 2000 CSRA, no attempt was made by the Town in accordance with Section 4(c) of the 2000 CSRA to determine a connection point in respect of a connection from the municipal water system to the BRSO PSS and no discussions or negotiations were undertaken with Developer or BRSO respecting same.

It wasn't until 2013 that water was directly available to the BRSO PSS from the water main constructed to service the Treetops/Belterra development to the east of the Briar Hill and Green Briar communities and "T" connections were installed in the water main on the 14th Line and 10th Side Road to provide service connections to the Briar Hill and Green Briar communities respectively. In 2013 a request was made by BRSO for a hook up to the municipal water system however no response was received and despite additional requests by the Developer and/or BRSO, no water hook up to the municipal water system was offered or permitted by the Town.

No notice of the availability of the water supply as required under the 2000 CSRA has been received by BRSO and BRSO has never received an invoice or other demand for payment from the Town in respect of the 2000 CSRA and in particular Section 4(b) thereof.

In 2015 the Town undertook a Water Supply Distribution and Storage Master Plan (the "**Water Master Plan**"). An express objective of the Water Master Plan was "*developing projections of future water demands, storage requirements and distribution system needs*". As a result of that express objective, a request was made on behalf of BRSO and GRSO at that time to include the full water supply for the Briar Hill and Green Briar Communities described in a Water Servicing Report dated August 2015 by Gerrits Engineering in support of the request. The Town

acknowledged in a letter dated July 18, 2015 the request and advised that it would be considered in the study to be undertaken.

The Water Master Plan was completed in 2016 however, without informing BRSO, GRSO or the Developer, the request was not considered in the study. Rather the Report concluded "*the Master Plan was developed with the assumption that the current water supply to the developments (ie. Green Briar and Briar Hill) will remain and therefor provisions have not been made to connect the private development to the Alliston system at this time..... Should the Town wish to supply the developments from the Town water system in the future, the Master Plan will need to be updated to determine the source of the additional supply and conveyance system, and responsibility for associated costs.*"

So rather than studying and providing the information required to address the request by BRSO and GRSO for additional water supply, the matter was intentionally disregarded without any prior notice to BRSO, GRSO or the Developer.

6. Town Report #ENG-2017-48 – August 21, 2017 (the "Report")

The Report reviews from the Town's perspective the historical facts leading up to the present request by BRSO and GRSO. BRSO and GRSO are not in agreement with some of the comments which infer that some amount is owing to the Town under the 2000 CSRA and the characterization of the request by BRSO and GRSO in respect of their request for additional water supply in respect of the 2016 Water Master Plan. I believe the issues raised in the report can be divided into two categories:

- i) those arising under Section 4 (a), (b) and (c) of the 2000 CSRA (mandatory water supply obligations); and,
- ii) those arising under Section 4(d) of the 2000 CSRA and BRSO's request for additional water (additional water supply request)

1. Mandatory Supply Obligation Under the 2000 CSRA – Issues

- i) the obligation of the Town to supply water;
- ii) the obligation of the BRSO to 'take or pay' for water required to be reserved; and
- iii) the amount now required to be paid by BRSO, if any.

2. Additional Water Supply Request - Issues

- i) requirement of an addendum to the Water Master Plan;
- ii) payment of costs for addendum study;
- iii) application of Development Charges to additional supply; and
- iv) payment of additional costs of water supply.

7. BRSO/GRSO's Position on Issues Raised in Report #ENG-2017-48

1. Mandatory Supply Obligations/Requirements to 'Take or Pay'

The 2000 CSRA requires in Section 4 (c) the Town and the Developer "in good faith prior to January 1, 2005 determine the appropriate connection point or points between the municipal water supply system and the PPS". This was not undertaken and no "connection point or points between the municipal water supply system and the PPS" were identified by the Town. BRSO has never been contacted to discuss nor has the Town identified a connection point to the municipal water system in accordance with Section 4 (c) of the CSRA. Indeed no connection point was physically available until 2013 when a "T" connection was installed in the water main on the 14th Line adjacent the Briar Hill development. Following installation of the "T" connection and a request by or on behalf of BRSO for a hook up, the Town has:

- i) either refused or ignored the request;
- ii) never sent an invoice to BRSO or the Developer;
- iii) not made a demand for payment from BRSO or the Developer in connection with any payments under the 2000 CSRA; and
- iv) not included the 228 cu m/day in the Water Master Plan to meet the Town's contingent liability as required under the CSRA to the knowledge of BRSO, BRSO's consultants or the Developer.

Accordingly, both BRSO and the Developer strongly dispute there are any monies owing to the Town or will be owing to the Town in respect of Section 4 of the 2000 CSRA until such time as the Town complies with its obligations under the 2000 CSRA, provides a written consent to BRSO permitting the hook up to the municipal water system at the "T" connection on the 14th Line and receives its allotted supply of water from the Town (228 cu m/day) under the provisions of Section 4(b) of the 2000 CSRA as it has requested.

2. Request for Additional Water Supply

The 2000 CSRA at Section 4(d) contemplates further requests for additional water supply and provides "The Developer and the Serving Company may request from time to time additional water supply, and the Municipality agrees to consider such request for additional water supply from time to time in a fair and equitable manner having regard to the availability of water supplied to the Municipality from time to time." The Developer on behalf of BRSO and GRSO made a request to the municipality in 2015 for not only the water supply the Town was obligated to provide under the 2000 CSRA but additional water supply in advance of the study which resulted in the Water Master Plan. The applicant understood that the request would be considered in the Water Master Plan (especially when one of the express objectives of the Plan was "developing projections of future water demands, storage requirements and distribution system needs" and that the Town had an obligation to consider the request.

The applicant understands there may be costs associated with the additional supply, but obviously, as responsible stewards of the water supply system, they need to ascertain costs so they could each make the appropriate decision in respect of various sources of supply of bulk water to fulfill their mandate to their respective residents both now and in the future. The suggestion in the Water Master Plan "Should the Town wish to supply the developments (Briar

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Hill and Green Briar) from the Town water system in the future, the Master Plan will need to be updated to determine the source of the additional supply and conveyance system, and responsibility for associated costs" begs the question – why wasn't that issued considered in the Water Master Plan – either as a discrete item or in conjunction with the overall study? The suggestion that there be an addendum to the Water Master Plan now creates additional cost which could likely have been avoided or minimized in the original Water Master Plan – costs that BRSO/GRSO are now being asked to pay for the proposed addendum. Is that fair? BRSO and GRSO think not.

Accordingly, to avoid additional cost at this time for the Town and/or BRSO and GRSO as a result of the failure to include this request in the 2016 Master Water Plan as promised, BRSO and GRSO suggest that the request for water supply to BRSO and GRSO be included in the next update to the Water Master Plan to avoid the cost of a separate study at this time. Coincidentally with that study the relative costs of the supply, the relevance of Development Charges and other issues respecting the supply request can be dealt with.

8. Next Steps

Once the Town has had an opportunity to review the forgoing, we believe it is appropriate to have a face to face meeting to discuss the requests made and issues raised in this letter, identify or clarify issues that are not resolved between the Town and BRSO/GRSO so that Town staff can then brief Council accordingly. I assume Council will then provide direction to staff following which we are prepared to meet again with a view to finding a mutually satisfactory resolution of any outstanding issues.

As noted in my preamble , I believe this course of action will also help to clarify matters for the residents of BRSO and GRSO and bring closure for and certainty to the residents of BRSO and GRSO in respect of their current and future water supply.

I look forward to hearing from you.

Yours very truly,

MCCARTER GRESBAN BEYNON WEIR PROFESSIONAL CORPORATION

Per:
Paul E. Gresban
PEG/nh

C: Briar Hill Residential Servicing Organization (by electronic mail)

Green Briar Residential Servicing Organization (by electronic mail)