

STAFF REPORT:**PLANNING**

REPORT TO: Council
MEETING DATE: March 22, 2010
REPORT NO.: PL.10.21
SUBJECT: The Neighbourhoods at Delphi Point Inc. (the "Developer") - Agreements Re: Draft Plans of Subdivision 42T-88003 and 42T-95007 (the "Draft Plans")

PREPARED BY: John G. Metras Q.C. – Town Solicitor

A. Recommendation

THAT Council receive Report PL.10.21 and authorize the Mayor and Clerk to execute the following agreements in forms approved by the Director of Engineering and Public Works, the Director of Planning and Building Services, the Director of Financial and Information Services and the Town Solicitor:

1. A Subdivision Agreement between the Developer and the Town for the Draft Plans (the "Subdivision Agreement").
2. A Cost Sharing and Security Agreement between the Developer and the Town for the installation of a sanitary sewer on and the widening and reconstruction of Peaks Road (the "Cost Sharing Agreement").
3. A Memorandum of Understanding between The Georgian Peaks Club and the Town substantially in accordance with the draft Memorandum of Understanding attached hereto (the "GP MOU").
4. A Licence Agreement between The Georgian Peaks Club and the Town substantially in accordance with the draft Licence Agreement attached hereto (the "Licence Agreement"); and

FURTHER THAT the Mayor and Clerk are authorized to execute all documents, in forms approved by the Town Solicitor, necessary to complete the transfers and other transactions referred to in the above Agreements and that the Town Solicitor or his designate is authorized to execute all documents necessary to register the subdivision documents in the Land Registry Office.

B. Background

The Ontario Municipal Board by its Decision/Order No. 2282 issued August 15, 2007 granted draft approval to the Draft Plans subject to the Developer satisfying the Conditions of Draft Approval attached to this Order/Decision, one of which required the Developer to construct intersection improvements, including traffic signals, at the intersection of Highway 26 and Peaks Road (the "Intersection Improvements" in accordance with a secured agreement between the Developer and the MTO (the "MTO Agreement").

Attached is a draft of the final plan of subdivision which the Developer proposes to register (the "Final Plan") which includes all of the lands shown on the Draft Plans.

The Developer proposes to develop the Draft Plans in two phases as follows;

Phase – 1 Blocks 5 and 6 shown on the Final Plan for 22 townhouse units

Phase – 2 Block 7 shown on the Final Plan for 68 residential dwelling units in accordance with a Draft Plan of Vacant Land Condominium 42-CDM -2007 approved by the County of Grey on May 19, 2009.

The following agreements, in addition to the MTO Agreement, are necessary to satisfy the Conditions of Draft Approval for the Draft Plans.

The Subdivision Agreement

The Subdivision Agreement, which is in the form of the Town's Standard form of subdivision agreement, provides for, among other things:

1. The phasing of development of the Draft Plans as set out above.
2. The Developer to enter into the MTO Agreement.
3. The Developer to enter into the Cost Sharing Agreement prior to final approval on the plan of subdivision for registration

The Cost Sharing Agreement

In order to satisfy the requirements of the MTO for the Intersection Improvements, it is necessary to include in the Intersection Improvements, the widening and reconstruction of Peaks Road and a minor re-alignment of the Georgian Trail at its intersection with Peaks Road as shown on the attached drawing (the "Peaks Road Works").

It was also determined that a new sanitary sewer outlet to serve the Georgian Peaks Club and other residential properties should be installed on the reconstructed Peaks Road in conjunction with undertaking the Intersection Improvements.

Also included in these works are facilities to provided access to the Georgian Trail from the Georgian Peaks Club parking lot.

The Cost Sharing Agreement provides, for among other things:

1. The construction of the Intersection Improvements, including the Peaks Road Works, together with the installation of the sanitary sewer and the Georgian Trail access works to be undertaken by the Developer at the Developer's initial cost in one construction contract by a public tender process satisfactory to the Town.
2. The Developer to provide security for Peaks Road Works and Georgian Trail access works.
3. The cost of the works to be shared as follows:

Intersection Works (excluding Peaks Road Works) – 100% Developer
Peaks Road Works – 67% Developer 33% Town
Georgian Trail Access Works – 100% Developer
Peaks Road Sanitary Sewer – 100% Town

The GP MOU

The GP MOU, a draft copy of which is attached, provides for, among other things:

1. The Town's agreement to widen and reconstruct Peaks Road substantially in accordance with the attached drawing.
2. The Georgian Peaks Club to transfer and easement to the Town over their parking lot for municipal services and other utilities.
3. The Georgian Peaks Club to permit the public using the Georgian Trail, to use their parking lot from April 15th to November 15th, in accordance with a Licence of Occupation with the Town,

The Licence Agreement

The Licence Agreement, a draft copy of which is attached, sets out the terms and conditions of the Licence of Occupation permitting the public using the Georgian Trail, to use The Georgian Peaks Club parking lot.

C. The Blue Mountains' Strategic Plan

Managing growth to ensure the ongoing health and prosperity of the community.

D. Budget Impact

The approved 2009 Capital Budget includes \$129,000. for the sanitary sewer on Peak Road and the Peaks Road Works.

E. Attached

- A. Draft of Final Plan of Subdivision
- B. Peaks Road Drawing (will be provided at the Council Meeting)
- C. Draft GP MOU
- D. Draft Licence Agreement

Respectfully submitted,

Signature

For more information, please contact:

Name: John G. Metras Q.C. Town Solicitor

Email Address: jmetras@thebluemountains.ca

Business Telephone with Extension: 519-599-3131 Ext 242

PLAN 16M-

CONVEY THIS PLAN TO THE REGISTERED LAND OFFICE IN THE LAND REGISTRY OFFICE FOR THE LAND TITLES DEPARTMENT TO BE REGISTERED AS A CONVEYANCE IN THE REGISTERED LAND OFFICE. THE REGISTERED LAND OFFICE WILL ISSUE A REGISTERED CONVEYANCE TO THE REGISTERED LAND OFFICE. THE REGISTERED LAND OFFICE WILL ISSUE A REGISTERED CONVEYANCE TO THE REGISTERED LAND OFFICE.

REGISTERED LAND OFFICE
 110, WATERLOO STREET, TORONTO, ONT. M5H 1B7

**PLAN OF SUBDIVISION OF
 PART OF LOT 26
 CONCESSION 5 AND
 PART OF LOT 26
 CONCESSION 6
 GEOGRAPHIC TOWNSHIP OF COLLINGWOOD,
 TOWN OF THE BLUE MOUNTAINS
 COUNTY OF GREY**

SCALE: 1:500
 DATE: 1995

NOTES

1. THE PLAN IS SUBJECT TO THE PROVISIONS OF THE REGISTRY ACT AND THE REGISTRY REGULATIONS.
2. THE PLAN IS SUBJECT TO THE PROVISIONS OF THE REGISTRY ACT AND THE REGISTRY REGULATIONS.
3. THE PLAN IS SUBJECT TO THE PROVISIONS OF THE REGISTRY ACT AND THE REGISTRY REGULATIONS.
4. THE PLAN IS SUBJECT TO THE PROVISIONS OF THE REGISTRY ACT AND THE REGISTRY REGULATIONS.
5. THE PLAN IS SUBJECT TO THE PROVISIONS OF THE REGISTRY ACT AND THE REGISTRY REGULATIONS.
6. THE PLAN IS SUBJECT TO THE PROVISIONS OF THE REGISTRY ACT AND THE REGISTRY REGULATIONS.
7. THE PLAN IS SUBJECT TO THE PROVISIONS OF THE REGISTRY ACT AND THE REGISTRY REGULATIONS.
8. THE PLAN IS SUBJECT TO THE PROVISIONS OF THE REGISTRY ACT AND THE REGISTRY REGULATIONS.
9. THE PLAN IS SUBJECT TO THE PROVISIONS OF THE REGISTRY ACT AND THE REGISTRY REGULATIONS.
10. THE PLAN IS SUBJECT TO THE PROVISIONS OF THE REGISTRY ACT AND THE REGISTRY REGULATIONS.

A

SURVEYOR'S CERTIFICATE

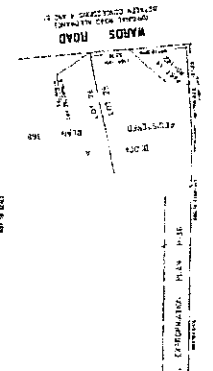
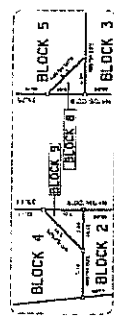
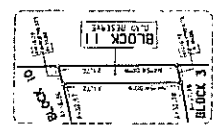
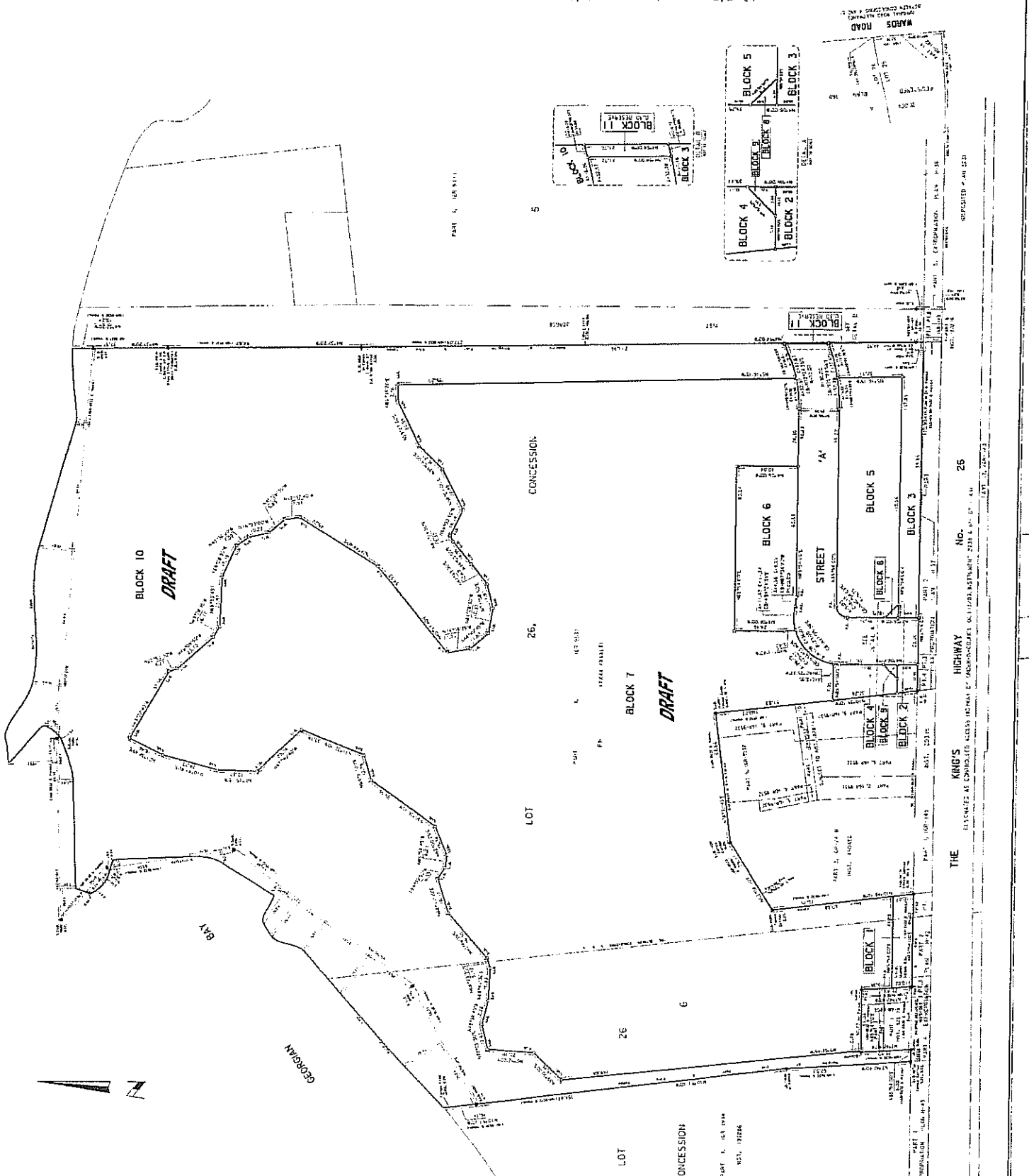
I, the undersigned, being a duly qualified and licensed surveyor, do hereby certify that the above plan and map were prepared by me or under my direct supervision and that the same are true and correct in accordance with the provisions of the Survey Act and the Regulations thereunder. The survey was completed on the 14th day of August 1995.

JULIAN J. JONES
 JULIAN J. JONES
 SURVEYOR
 110, WATERLOO STREET, TORONTO, ONT. M5H 1B7

DRAFT

THIS IS TO CERTIFY THAT THE ABOVE PLAN AND MAP WERE PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT THE SAME ARE TRUE AND CORRECT IN ACCORDANCE WITH THE PROVISIONS OF THE SURVEY ACT AND THE REGULATIONS THEREUNDER. THE SURVEY WAS COMPLETED ON THE 14TH DAY OF AUGUST 1995.

PATTEN & THOMPSON
 110, WATERLOO STREET, TORONTO, ONT. M5H 1B7
 416-921-1111
 416-921-1112
 416-921-1113
 416-921-1114
 416-921-1115
 416-921-1116
 416-921-1117
 416-921-1118
 416-921-1119
 416-921-1120



NO. 26

KING'S HIGHWAY

CONCESSION 26

THE

REGISTERED LAND OFFICE

110, WATERLOO STREET, TORONTO, ONT. M5H 1B7

416-921-1111

MEMORANDUM OF UNDERSTANDING

Dated March **, 2010 **DRAFT**

Between

THE GEORGIAN PEAKS CLUB ("the Club")

and

**THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS
(the "Town")**

1. Agreement

The Parties agree as follows:

2. Purpose

The purpose of this Memorandum of Understanding is to define the respective responsibilities of the Town and the Club with regard to the widening and reconstruction of Peaks Road by the Town, and the transferring of an easement over the Parking Lot Lands from the Club to Town for municipal services, other utilities and for a License of Occupation for pedestrian, bicycle and non-motorized vehicle traffic over the Parking Lot Lands for access to and from the Georgian Trail.

3. Definitions

In this Memorandum of Understanding:

"Construction Drawing" means construction drawing "Hwy 26 at Peaks Road Intersection Improvements, Town of The Blue mountains – New Construction Street 'A' STA9+982 – 10+000, Peaks Rd. STA10+00 – 10+097 Dwg.305 dated ***, 2009 prepared by Crozier & Associates, Engineers, a copy of which is attached as Schedule "A" to this Memorandum of Understanding;

"Easement Lands" means that part of the Club's lands shown as Part 1 on Reference Plan 16R-9673, a copy of which is attached as Schedule "B" to this Memorandum of Understanding;

"Georgian Trail" means the lands owned by the Town shown on Reference Plans 16R-6771 (see Schedule "C") and 16R-9673 (see Schedule "B") as the Georgian Trail;

"Parking Lot Lands" means that part of the Club's lands shown as Part 2 on Reference Plan 16R-6771, a copy of which is attached as Schedule "C" to this Memorandum of Understanding;

"Parties" mean the Club and the Town;

Unless the context otherwise requires words importing the singular includes the plural and vice versa and words importing a gender include all genders.

4. Reconstruction and Widening of Peaks Road

The Town agrees that Peaks Road will be reconstructed and widened substantially in accordance with the Construction Drawing in conjunction with other intersection works being constructed on Highway 26 at the intersection of Peaks Road.

5. Easement and License of Occupation

In consideration of the Town agreeing that Peaks Road will be reconstructed and widened substantially in accordance with the Construction Drawing, the Club agrees, at no cost to the Club,

1. to transfer to the Town on or before the ** day of *****, 2009, for a nominal consideration of \$2.00 and free and clear of any encumbrances an easement for underground sanitary sewers, watermains, storm drainage works and other utilities including electricity, gas, telephone, cable television and other communications lines over the Easement Lands in a form substantially in accordance with the easement schedule attached as Schedule "D" to this MOU;
2. to permit, through the License of Occupation referred to in Section 13(x) of a Site Plan Agreement between the Parties dated February 14th 2006, the Parking Lot Lands to be used for a public walkway for access to and from the Georgian Trail for use by pedestrians, bicycles, non-motorized vehicles and wheelchairs (as defined in Section 1(1) of the Highway Traffic Act, R.S.O. 1990, c.H.8) in addition to the public parking use described therein from April 15 to November 15 in each calendar year of the term of the License of Occupation.
3. to permit, through the License of Occupation referred to above, the Town to construct a public walkway access from the Georgian Trail Lands to the Parking Lot Lands anywhere along the Georgian Trail lands within 50 metres of the west property boundary of the Parking Lot Lands.

6. General

The Club shall not be responsible for any surveying and legal costs incurred to complete the transfer of easements and License of Occupation referred to in this Memorandum of Understanding.

7. Schedules

The following schedules are attached hereto and form part of this Memorandum of Understanding:

- Schedule "A" - Construction Drawing
- Schedule "B" - Easement Lands
- Schedule "C" - Parking Lot Lands
- Schedule "D"- Easement Schedule - Municipal Services and Other Utilities

8. Successors and Assigns

This Memorandum shall be binding on the Parties and their successors and assigns.

Signed and Sealed

THE GEORGIAN PEAKS CLUB

Per _____
 Name
 Title
 I have authority to bind the corporation

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

Ellen Anderson - Mayor

Stephen Keast – Clerk

SCHEDULE "A"
CONSTRUCTION DRAWING

SCHEDULE "D"**FORM OF EASEMENT SCHEDULE**

The Transferor hereby grants, transfers and conveys to the Transferee, in perpetuity, the free, unencumbered, uninterrupted and unobstructed right, license, easement or rights in the nature of an easement in gross in, on, under, upon and through the servient lands of the Transferor described in this Transfer of Easement (the "Easement Lands") for purposes of constructing, installing, operating, maintaining, inspecting, altering, removing, replacing, reconstructing, enlarging and repairing at the sole cost of the Transferee (a) underground sanitary sewers, watermains and storm drainage works of all kinds and all appurtenances and accessories thereto on the Easement Lands (the "Town's Easement Works") and (b) underground electrical transmission lines, gas transmission lines and telephone, cable television and other communication lines and all appurtenances and accessories thereto on the Easement Lands (the "Utilities Easement Works")

The Town's Easement Works and the "Utilities Easement Works are collectively called the "Easement Works" in this Schedule.

The aforesaid rights and easements are herein granted on the following terms and conditions which are hereby mutually covenanted and agreed to by and between the Transferor and the Transferee.

1. The Transferee and its employees, agents, contractors and workmen and other persons duly authorized by the Transferee, at all times and from time to time, may enter on the Easement Lands with their machinery, material, vehicles and equipment for all purposes necessary or incidental to the exercise of the rights hereby granted.
2. The Transferee and its employees, agents, contractors and workmen and other persons duly authorized by the Transferee, at all times and from time to time, shall have access to the said Easement Lands with their machinery, material, vehicles and equipment over such lands of the Transferor as are reasonably required to exercise the rights hereby granted.
3. The Transferor shall keep the Easement Lands free and clear of any obstructions, including without limitation, trees, buildings, structures or improvements, save and except parking spaces, laneways and driveways, and shall not in any way interfere with the rights and easements hereby granted to the Transferee or do or suffer to be done any other thing which might injure or damage the Easement Works.
4. At all times, upon undertaking any of the Easement Works, the Transferee, at its sole cost, shall, as far as practicable, restore the Easement Lands and any lands of the Transferor used for access to the Easement Lands, to the condition existing immediately prior to commencement of the Easement Works
5. The rights and easements transferred herein to the Town with respect to the Utilities Easement Works may be transferred or assigned by the Town to the entity supplying or providing the particular utility services without the consent of the Transferor.
6. Notwithstanding any rule of law or equity, the Easement Works, located upon the said Easement Lands pursuant to this easement, shall be the property of the Transferee, or its successors and assigns, even though the same may have become annexed or affixed to the said Easement Lands.
7. The Transferee agrees that the Transferor has the right to change the location of the Easement Lands prior to the installation of the Town's Easement Works or the Utilities Easement Works if the Club requires the use of any portion or

all of the Easement Lands for any development of Club lands provided that the Club, at no cost to the Town, provides a reasonable alternate location for the Easement Lands.

This transfer of the Easement Lands shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns including successors in title from time to time of the Easement Lands.

D.

LICENCE AGREEMENT – GEORGIAN PEAKS PARKING LOT

Dated March **, 2010 **DRAFT**

Between

THE GEORGIAN PEAKS CLUB ("the Club")

and

**THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS
(the "Town")**

Whereas the Club is the owner of part of Lot 26, Concession 5 in the Town of The Blue Mountains (formerly Township of Collingwood), County of Grey described as Part 2 on Reference Plan 16R-6771 (the "Parking Lot Lands") and has constructed a parking lot on these lands;

And Whereas the Town is the owner of the lands shown on Reference Plan 16R-6771 as the Georgian Trail (the "Georgian Trail Lands");

And Whereas the Club has entered into a site plan agreement with the Town dated February 14, 2006 (the "Site Plan Agreement") which permits the Club to install certain works on Town lands;

And Whereas one of the provisions of the Site Plan Agreement required the Club to permit public parking on the Parking Lot Lands through a Licence of Occupation;

And Whereas this Agreement constitutes the Licence of Occupation referred to in the Site Plan Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants hereinafter contained, The Parties hereto agree as follows.

1. This Agreement shall constitute the Licence of Occupation referred to in Section 13(x) of a Site Plan Agreement to permit the use of the Parking Lot Lands by members of the public for daily parking while using the Georgian Trail Lands and a public walkway for access to and from the Georgian Trail Lands for use by pedestrians, bicycles, non-motorized vehicles and wheelchairs (as defined in Section 1(1) of the Highway Traffic Act, R.S.O. 1990, c.H.8) from April 15 to November 15 in each calendar year of the term of the Licence of Occupation. The Town, with the consent in writing of the Club, may operate special events related to the Georgian Trail Lands on the Parking Lot Lands.
2. (a) This Licence of Occupation shall remain in full force and effect for so long as the Club uses the Parking Lot Lands or any part thereof as a parking lot for its members and/or customers or until such time as the Town terminates this Agreement by notice in writing thereof to the Club, whichever shall occur first. In the event the Club ceases to use any part of the Parking Lot Lands as a parking lot, this Agreement shall cease to apply to such land and the Town agrees to execute any reasonable documentation to release such land from this Agreement.

(b) This Agreement may be terminated by the Club in the event that the cost of maintaining its obligations under this Agreement related solely to the use of the Parking Lot Lands as they may exist from time to time by the public for users of the Georgian Trail becomes prohibitively expensive to the Club. Such expense may be generated by the cost of insurance or the cost of litigation resulting solely from the Club's obligation for public parking pursuant to this Agreement. The Club agrees

that prior to terminating this Agreement it will consult with the Town in an effort to resolve any issue causing the Club to terminate this Agreement and will take all reasonable steps to implement any viable solutions that may arise during such consultations.

3. The Town shall have the right to construct a public walkway access from the Georgian Trail Lands to the Parking Lot Lands anywhere along the Georgian Trail Lands within 50 metres of the west property boundary of the Parking Lot Lands. The Town agrees, at its cost, to move the location of such access if this Agreement ceases to apply to any land on which the access is located as a result of the operation of section 2 above.
4. The Town shall have the right to erect signs on the Parking Lot Lands advising the public of the parking permitted by this Licence of Occupation. The location, design and text of this signage shall be approved by the Club, which approval shall not be unreasonably withheld.
5. The Club shall retain control of the Parking Lot Lands as part of its overall operation, which includes maintenance and repair of the Parking Lot Lands, and the use of the Parking Lot Lands by members of the public shall be subject to reasonable rules and regulations established by the Club which shall include the following:
 - (a) Parking shall be limited to daily use by persons using the Georgian Trail Lands and overnight parking shall be prohibited;
 - (b) The Club shall have the right to operate special events on the Parking Lot lands and thereby limit or restrict public parking within the Parking Lot lands during the operation of such events. The Club agrees to maintain a minimum of 10 public parking spaces during such special events and shall be permitted to temporarily fence the remaining parking area during such special events;
 - (c) The Club shall have the right to eject members of the public by legal means who violate the rules and regulations established by the Club for the use of the Parking Lot Lands; and
 - (d) The Club shall have the right to post signs or other notices notifying those using the Parking Lot Lands that they do so at their own risk and to identify any other restrictions identified herein.
- 6 This Licence of Occupation shall enure to the benefit of and be binding on the parties hereto and their successors and assigns.

IN WITNESS WHEREOF of the parties hereto have executed this Licence of Occupation by affixing thereto their corporate seals as duly attested by the hands of their proper signing officers in that behalf

Signed and Sealed

THE GEORGIAN PEAKS CLUB

Per _____
 Name
 Title
 I have authority to bind the corporation

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

Ellen Anderson - Mayor

Stephen Keast - Clerk

