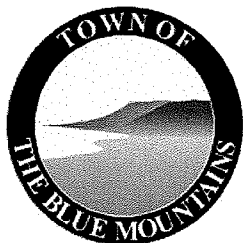


**STAFF REPORT: Planning & Building Services Department**



**REPORT TO: Council**  
**MEETING DATE: June 22, 2009**  
**REPORT NO.: PL.09.68**  
**SUBJECT: The Cedar Run Corporation – Land Exchange Agreement (Plan 1035)**  
**PREPARED BY: David Finbow, Director, Planning & Building Services**

#### **A. Recommendations**

That Council authorizes the Mayor and Clerk to execute a Land Exchange Agreement with The Cedar Run Corporation ("Thornbury Horse Park") substantially in accordance with the Land Exchange Agreement attached hereto.

#### **B. Background**

On January 15, 2007 Council adopted Official Plan Amendment No. 10 and enacted Zoning By-law No. 2007-05 to facilitate the use of the lands within Plan 1035 (save for Lot 15) for a Commercial Recreational Use consisting of a Horse Park, up to 300 Commercial Resort Units and 1,300 square metres of accessory commercial retail space. At the time of adoption/enactment of the amendments it was acknowledged that the proposal incorporated approximately 33,870 square metres of Town owned land being comprised of the unopened road allowances within Plan 1035. Over the past number of months Town Staff and the Proponent have been negotiating the transfer of these lands. Town Staff are recommending to Council that the Town transfer the unopened road allowances within Plan 1035 as soon as reasonably possible in exchange for the hatched lands denoted on Schedule 'A' attached hereto (which are contiguous to the Town's OPP/Fire Hall Site and have an area of approximately 24,089 square metres).

The Town's CAO, Director, Planning & Building, Director, Engineering & Public Works and Solicitor have reviewed the Draft Land Exchange Agreement and are satisfied with same. This Agreement:

1. Contemplates work and events being completed/held on the Town lands in advance of the transfer given the procedural matters required to effect same;
2. Requires the provision of \$5,000,000 in comprehensive general liability insurance and indemnification for the period associated with item 1;

3. Requires the conveyance of the Cedar Run lands to the Town by no later than December 31, 2009; and,
4. Provides the tools necessary to realize on the lands denoted should the Land Exchange not be completed as contemplated.

#### **C. Strategic Plan**

1. *Managing growth to ensure the ongoing health and prosperity of the community.*
2. *Addressing the Town's municipal infrastructure needs.*
3. *Providing a strong, well managed municipal government.*

Town Staff are of the opinion that the proposed Land Exchange Agreement supports the Proponent's desire to develop a world class Commercial Recreational project, addresses the Town's infrastructure needs as they relate to access/egress from the Town's OPP/Fire Hall Site and provides future opportunities for the site.

#### **D. Budget Impact Statement**

Town Staff and legal costs related to permanently close the public highways and convey same to the Proponent.

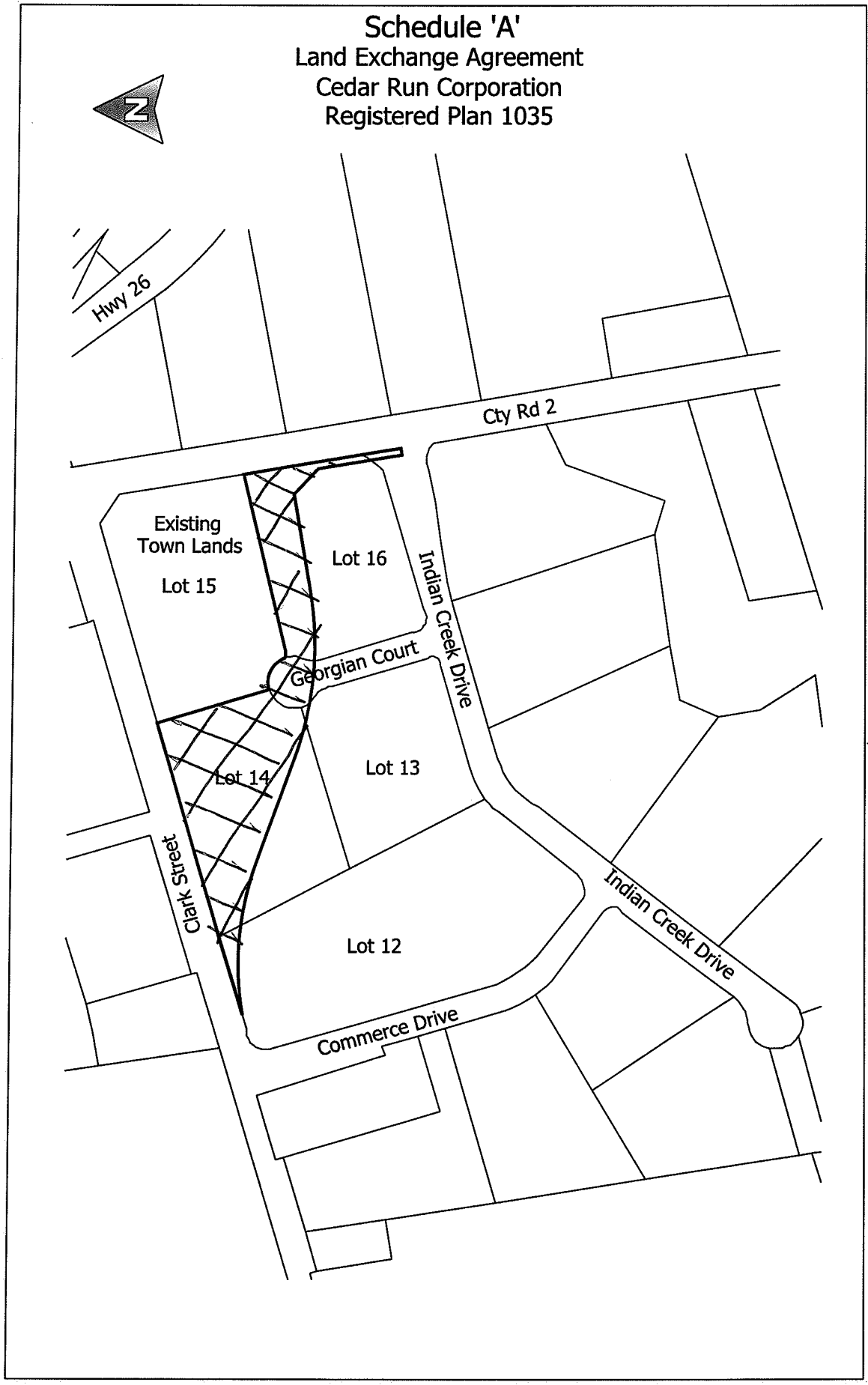
#### **E. Attachment**

- A. The Cedar Run Corporation lands to be transfer to the Town
- B. Draft Land Exchange Agreement

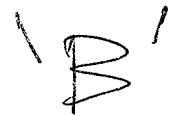
Respectfully submitted:

David Finbow, Director, Planning &  
Building Services/CBO

Schedule 'A'  
Land Exchange Agreement  
Cedar Run Corporation  
Registered Plan 1035



LAND EXCHANGE AGREEMENT



DRAFT - June 19, 2009 – For discussion

Dated June , 2009

Between

THE CEDAR RUN CORPORATION (“CRC”)

and

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS  
(the “Town”)

Whereas CRC is the owner of Lots 12, 13,14, 16 and 20 Registered Plan 1035 (“the CRC Lands”) and Town is the owner of the public highways Indian Creek Drive, Commerce Drive and Georgian Court and Reserve Block 21 shown on Registered Plan 1035 (the “Town Lands”);

And Whereas CRC has agreed to convey the CRC Transfer Lands to the Town in accordance with the provisions of this Agreement in exchange for the Town conveying the Town Lands to CRC.

And Whereas CRC has made an application to the Town for site plan approval as contemplated by Town Zoning By-law 83-40 as amended by By-law 2007-05 so as to permit it to operate a temporary horse show on its lands and the Town Lands for a period not to exceed three weeks in a calendar year with no permanent buildings or structures to be erected (the “Horse Show”) and wishes to operate the Horse Show and undertake certain works on the Town Lands prior to the conveyance of the Town Lands to it.

Now Therefore this Agreement Witnesseth that in consideration of the mutual covenants contained herein and the payment of the sum of Ten Dollars (\$10.00) by each party to the other (the receipt and sufficiency is hereby acknowledged) the parties hereto agree with each other as follows:

1. Recitals, Definitions, Lands Affected and Joint Authors

1.1 The Parties agree that the recitals are true.

1.2 In this Agreement, including the recitals:

“Agreement” means this Land Exchange Agreement;

“CRC Transfer Lands” means those parts of the CRC Lands shown in heavy black outline on the drawing attached as Schedule “A” to this Agreement and further defined by the survey referred to in section 2.1;

“Parties” mean CRC 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 and all capitalize terms have the meanings ascribed to them herein.

1.3 This Agreement applies to the CRC Lands and the Town Lands.

1.4 Each Party acknowledges and agrees that it has participated in the drafting of this Agreement and that no portion of this Agreement shall be interpreted less favorably to either Party because that Party or its legal counsel was primarily

responsible for the drafting of that portion

## **2. Conveyance of the CRC Transfer Lands to the Town**

- 2.1 The Parties agree with each other that the drawing attached as Schedule "A" is only intended to show the general location of the CRC Transfer Lands and the Town Lands. The Town, in consultation with CRC, shall forthwith after the execution of this Agreement arrange for the preparation and depositing of a survey showing the final location and dimensions of the CRC Transfer Lands and the Town Lands. CRC agrees to proceed expeditiously with the preparation of the required transfer documents, including obtaining of discharges of all encumbrances, for delivery to the Town for registration.
- 2.2 CRC shall convey the CRC Transfer Lands to the Town with a good title free of all encumbrances. This conveyance shall be completed within sixty (60) days of the by-laws referred to in section 3.1 being enacted by the Town and in any event by no later than December 31, 2009. This conveyance is in exchange for the Town conveying the Town Lands to CRC in accordance with section 3 of this Agreement.
- 2.3 In the event CRC fails to convey the CRC Transfer Lands to the Town with a good title free of all encumbrances in accordance with section 2.2 of this Agreement, CRC consents to and will not in any way object to the Town exercising all of its powers under the Expropriations Act, R.S.O.1990, c. E.26 as amended to expropriate and take possession of the CRC Transfer Lands without payment to CRC of any compensation, damages and costs whatsoever arising out of the expropriation of the CRC Transfer Lands.
- 2.5 CRC acknowledges and agrees that the conveyance of the Town Lands to CRC in accordance with section 3 of this Agreement represents payment in full of any compensation, damages and costs whatsoever arising out of the expropriation of the CRC Transfer Lands.

## **3 Conveyance of the Town Lands to CRC**

- 3.1 The Town agrees to proceed expeditiously with the passing of the necessary by-laws required to permanently close the public highways on the Town Lands and authorize the conveyance of the Town Lands to CRC and with the preparation of the required transfer documents for delivery to CRC for registration.
- 3.2 The Town shall convey the Town Lands, except the northerly end of Georgian Court and part of Indian Circle Drive where it intersects with County Road 2 to be shown on the survey referred to in section 2.1, to CRC with a good title free of all encumbrances in exchange for CRC conveying the CRC Transfer Lands to the Town in accordance with section 2.2 of this Agreement. This conveyance shall be completed within sixty (60) days of the by-laws referred to in section 3.1 being enacted by the Town and in any event by no later than December 31, 2009.
- 3.3 CRC shall have the right to enter the Town Lands upon the execution of this Agreement by the Parties, for the purpose of operating the Horse Show and undertaking work on the Town Lands provided that before entering the Town Lands CRC shall provide to the Town a general comprehensive liability insurance policy in the amount of \$5,000,000.00 per occurrence in a form satisfactory to the Town, indemnifying the Town from any loss arising from claims or damages, injury or otherwise in connection with the work done by or on behalf of the Developer on the Town Lands and the operation of the Horse Show. The policy shall contain a cross-liability clause naming the Town as an additional insured. The policy shall be maintained in full force and effect until the the completion of the conveyance of the Town Lands to CRC. In the event that any renewal premium is not paid, the Town, in order to prevent the lapse of such liability insurance policy, may pay the renewal premium or premiums and CRC agrees to pay the cost of such renewal or renewals within thirty (30) days of the account

therefore being rendered by the Town. The issuance of such policy of insurance shall not be construed as relieving CRC from any liability or responsibility for any claims in excess of the aforementioned policy limits.

- 3.4 In the event CRC enters the Town Lands for the purposes set out in section 3.3 prior to the completion of the conveyance of the Town Lands to CRC, CRC, on behalf of itself and its successors and assigns, hereby agrees to indemnify and save harmless the Town, and its successors and assigns, from and against any and all claims, actions, damages or liabilities of any kind whatsoever that the Town or its successors and assigns may incur or suffer as a result of CRC entering on the Town Lands prior to the completion of the conveyance of the Town Lands to CRC

#### **4 Land Value, GST and Costs**

- 4.1 The Parties agree that for land valuation purposes for Land Transfer Tax the value of the CRC Lands and the Town Lands shall be the current assessed value per acre of the CRC Lands.
- 4.2 The Parties acknowledge that they both are GST Registrants and the each will self assess following completion.
- 4.3 The Town shall pay the cost of surveying the CRC Transfer Lands and the Town Lands, all advertizing costs required for the closing of the public highways on the Town Lands, the costs of registration of this Agreement and the conveyance of the CRC Transfer Lands to it, including Land Transfer Tax and its own legal costs with respect to the preparation of this Agreement and all matters arising out of this Agreement, including the conveyances referred to in this Agreement.
- 4.4 CRC shall pay all of the costs referred to in section 5.2 of this Agreement, the cost of registration of the conveyance of the Town Lands to it, including Land Transfer Tax and its own legal costs with respect to the preparation of this Agreement and all matters arising out of this Agreement including, including the conveyances referred to in this Agreement.

#### **5. Registration and Postponements**

- 5.1 CRC hereby agrees that this Agreement will be registered upon title to the CRC Lands at the Town's expense.
- 5.2 CRC covenants and agrees, at its own expense, to obtain and register such documentation from its mortgagees or encumbrances as may be deemed necessary by the Town to postpone and sub-ordinate their interest in the CRC Lands to the interest of the Town to the extent that this Agreement shall take effect and have priority as if it had been executed and registered prior to the execution and registration of the document or documents giving to the mortgagee and/or encumbrancers their interest in the Lands.

#### **6. Time of the Essence**

Time shall be of the essence of this Agreement. Any time limits specified in this Agreement may be extended with the consent in writing of both CRC and the Town, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit.

#### **7. Governing Law**

This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.

**8. Schedule**

Schedule "A" attached hereto and initialed by the Parties forms part of this Agreement. A copy of this schedule is on file with the Town Clerks office and may be viewed during normal working hours

**9. Enurement**

This Agreement shall enure to the benefit of the Parties and their respective successors and assigns.

**THE CEDAR RUN CORPORATION**

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