

STAFF REPORT: Engineering and Public Works



REPORT TO: Infrastructure and Recreation Committee
MEETING DATE: April 14, 2009
REPORT NO.: EPW.09.035
SUBJECT: Pre-Servicing Development Agreement
 Template
PREPARED BY: Reg Russwurm, Director of Engineering and
 Public Works

A. Recommendations

THAT Council approve the Pre-Servicing Development Agreement Template as outlined in Report EPW.09.035; and

THAT Council delegate authority to the Director of Engineering and Public Works to effect clerical revisions to the Pre-Servicing Development Agreement Template.

B. Background

As part of the development process, the Town permits Developers to enter a Pre-Servicing Agreement with the Town to undertake the installation of basic services (underground and roads) contained within the property. No work, other than that absolutely necessary such as drainage works, is permitted on municipal lands.

The Pre-Servicing Agreement permits the Developer to undertake works without posting full securities in advance of a Subdivision Development Agreement. The Developer is fully aware the works are at their sole risk.

Staff have reviewed the Pre-Servicing Agreement Template and are recommending the revised document provided as Attachment #1. The modifications from the previous template are:

- Requiring the Developer's Consultant to provide a Pre-Servicing Certificate to confirm the works have been strictly installed as per the Pre-Servicing Agreement, the Accepted for Construction Drawings and the Town's Engineering Standards
- Change the required security from \$20,000 to 5% of the cost of the Pre-Servicing Works to better reflect the cost of restitution and ongoing maintenance related to drainage works if necessary
- Correct topographical errors, and
- Modify text to clarify the Agreement wording

Via By-Law 2008-10, Policy COR.07.04 delegates authority to Town Staff and Town Solicitor to recommend execution of a Pre-Servicing Agreement by the Mayor and the Clerk.

The template document is not changed for execution but instead, modifying clauses are placed within the Special Conditions portion of the document as necessary. The recommendation of the execution of a Subdivision Development Agreement rests with Council.

From time to time, clerical revisions are necessary to the Pre-Servicing Agreement Template to update the document based on new information. Staff recommend that authority be delegated to the Director of Engineering and Public Works to make clerical revisions to the template. Any modifications to the key terms of the agreement or of a policy nature will be subject to approval of Council.

C. The Blue Mountains' Strategic Plan

The recommended action in this report furthers the Town Strategic Plan Goal # 2, "Addressing the Town Municipal Infrastructure Needs", and Strategic Goal #6, "Providing a strong, well managed municipal government."

D. Environmental Impacts

None

E. Budget Impact

None

F. Attached

1. Pre-Servicing Agreement Template, Revision April 2009

Respectfully submitted,

Reg Russwurm
Director of Engineering and Public Works

PRE-SERVICING AGREEMENT

(Developer and Development Name)

(Town File Number)

Town of The Blue Mountains

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PRE-SERVICING AGREEMENT

THIS AGREEMENT made this day of , 2009

BETWEEN:

(Name of Developer)

(hereinafter referred to as the "Developer")

- and -

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

(hereinafter referred to as the "Town")

WHEREAS the Developer warrants that it is the registered owner of Lands;

AND WHEREAS the Approval Authority has given approval to draft plan of subdivision 42T- (the "Draft Plan") for the subdivision, development and servicing of the Lands in accordance with the Conditions;

AND WHEREAS the purpose of this Agreement is to provide for the installation of the Pre-Servicing Works on the Lands in advance of the execution of a Development Agreement and the Town giving Final Approval.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration covenants hereinafter expressed and other good and valuable consideration, the Parties hereto covenant and agree one with the other as follows:

PART I

DEFINITIONS AND BASIS OF AGREEMENT

1.1 Definitions

In this Agreement, including the recitals, the following terms shall have the meanings set out below, unless otherwise redefined or where the subject matter or context requires another meaning to be ascribed:

"Accepted Plans" means all the studies, reports, designs, plans, drawings and specifications for the installation of the Pre-Servicing Works, the originals of which have been signed and stamped in red ink "Accepted for Construction-Pre-Servicing Only" by the Town and are described in Schedule "B". Where the subject matter or context of a particular section of this Agreement requires reference to an individual Accepted Plan, it may be referred to by its individual name (i.e. Overall Grading Plan, Storm Water Management Plan etc);

"Agreement" means this agreement;

"Approval Authority" means the County of Grey;

"Basic Services" means the Water Distribution Works, the Sanitary Sewage Collection Works, the Storm Sewer, Storm Drainage and Storm Water Management Works, all road crossings for the Utility Services, Road Works, including Private Roads, up to and including curbs and base course asphalt and Rough Grading for the Plan, all as shown on the Accepted Plans;

"Business Day" means any day other than Saturday, Sunday or any statutory or civic holiday in Ontario;

“CBO” means the person holding the title of Chief Building Official for the Town or his designate;

“Conditions” means the conditions imposed by the Approval Authority in accordance with the provisions of the Planning Act for the subdivision, development and servicing of the Lands;

“Consultants” has the meaning ascribed to it in Section 2.2;

“County” means the County of Grey;

“Default” means any default by the Developer in the performance of its obligations under this Agreement, including the failure of the Developer to design, install, repair and maintain the Pre-Servicing Works in accordance with all of the requirements of this Agreement and the failure of the Developer to make any payments to the Town required by this Agreement when due;

“Development Agreement” has the meaning ascribed to it in Section 2.1;

"Director" means the person holding the title of Director of Engineering and Public Works for the Town or his designate;

“Draft Plan” means the draft approved plan as described in the second recital and in the Conditions for the subdivision, development and servicing of the Lands;

"Final Acceptance" means the date upon which the Town has passed an Assumption By-law pursuant to the Development Agreement;

“Final Approval” means the release of the Plan by the Town to the Approval Authority for final approval for registration under the Planning Act;

“Final Lot Grading Certificate” has the meaning ascribed to it in Subsection 2.2(h);

“Government Authority” means any government authority or agency, including conservation authorities that are specifically referred to in the Conditions or have jurisdiction over the Lands or the design, installation or maintenance of any part of the Pre-Servicing Works:

“Highway” means land dedicated as a public highway by the Plan and includes a highway under the jurisdiction of the Town or the County;

“install” shall also mean do, provide, construct, reinstall or reconstruct;

“Lands” shall mean the lands described in Schedule “A”;

“Lot Grading Plan” has the meaning ascribed to it in Subsection 2.2(g);

“Notice” means any written letter, notice, demand, request, direction or instructions given and received in accordance with the provisions of Section 6.3;

“Overall Grading Plan” means the overall grading and drainage plan for the Lands, being one of the Accepted Plans;

“Parties” mean the Developer and the Town;

“person” includes a corporation and the successors, assigns, heirs, executors, administrators and other legal representatives of a person;

“Plan” means the final plan of subdivision and includes, where applicable, the final plan of common elements condominium and the final plan of vacant land condominium which the Developer proposes to register in accordance with the provisions of the Planning Act and the Condominium Act for the purpose of subdividing, developing and servicing the Lands;

“Planning Act” means the Planning Act, R.S.O. 1990, c. P.13, as amended or any successor statute;

“Power Utility” means Hydro One Networks Inc. or Collus Power Corp, whichever has jurisdiction to supply hydro-electric power to the Lands;

“Pre-Servicing Certificate” has the meaning ascribed to it in Section 3.12:

“Pre-Servicing Works” means the Works shown on the Accepted Plans described in Schedule “B” and subject to any limitations itemized in Schedule “C”;

“Private Roads” means the roads and driveways included in the common elements of a common elements condominium corporation or vacant land condominium corporation;

“Private Services” means those Works, including the Private Roads, which are to be retained, operated, maintained, repaired, reconstructed and replaced by the Developer, or its successors and assigns, at its own expense in perpetuity:

“Public Works” means those Works which are to be owned, operated and maintained by the Town following Final Acceptance;

“Rough Grading” means grading the Lands such that all grades are within 0.3 metres of the final grade and all swales and drainage works are within 0.1 metres of the final grade in conformity to the Overall Grading Plan to the satisfaction of the Town to achieve positive drainage and prevent ponding of water on the Lands;

“Security” has the meaning ascribed to it in Section 4.4;

“Town Lands” means all lands owned by the Town, including public highways under the jurisdiction of the Town;

“Town Standards” means the Town's current approved design criteria, design standards, specifications, maintenance standards and procedures for the design, installation and maintenance of the Works in effect on the date of this Agreement, a copy of which are on file in the Town Clerk's Office and may be viewed during normal office hours;

“Treasurer” means the person holding the title of Director of Financial and Information Services (Treasurer) for the Town or his designate;

“Utility Services” means all of the utility services for the Plan including hydro-electric, gas, telephone, cable television and telecommunication but does not include the Street Lighting Works;

“Works” means all of the works, services, facilities, landscaping, fencing, matters and things which are required by the Town, the utility corporations, including the Power Utilities and all Government Authorities to be designed, installed and done by the Developer for the subdivision, development and servicing of the Lands and includes the Pre-Servicing Works. Where the subject matter or context of a particular section of this Agreement requires reference to an individual component of the Works, it

may be referred to by its individual name (i.e. the Grading and Drainage Works, the Storm Water Management Works, the Park Landscaping Works etc);

“Works Fee” has the meaning ascribed to it in Section 4.2;

All other capitalized terms shall have the meanings ascribed to them in this Agreement.

1.2 Interpretation of Agreement

- (a) The part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (b) Unless the context otherwise requires, in this Agreement words importing the singular include the plural and vice versa and words importing a gender include all genders.
- (c) Every provision of this Agreement by which the Developer is obligated in any way shall be deemed to include the words "at the expense of the Developer" unless the context otherwise requires.
- (d) References herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto.
- (e) All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants.
- (f) Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference.
- (g) The Parties agree that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.
- (h) All references to parts, sections, clauses, paragraphs and schedules unless otherwise specified are references to parts, sections, clauses, paragraphs and schedules of this Agreement.
- (i) The Conditions, the Town Standards and the Accepted Plans are incorporated into and form part this Agreement and shall have the same force and effect as if the information shown on them were contained in the body of this Agreement.

1.3 Administration of Agreement

This Agreement shall be administered on behalf of the Town by the Director, unless another Town official is specifically referred to in this Agreement. Where under the terms of this Agreement, decisions, approvals, Notices and certificates are to be made, given or issued by the Town, such decisions, approvals, Notices and certificates shall be made, given or issued by the Director or other Town official, in their sole and absolute discretion, acting reasonably.

1.4 Lands Affected

This Agreement applies to Lands.

1.5 Joint Authors

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.

1.6 Recitals

The Parties agree that the recitals herein are true and accurate and form part of this Agreement.

1.7 Scope of Agreement

This Agreement is an agreement within the meaning of and authorized by section 51(26) of the Planning Act and imposed by the Approval Authority as one of the Conditions. This Agreement shall define the obligations and duties of the Developer with respect to the subdivision, development and servicing of the Lands and, without limiting the generality of the foregoing, shall include the design, installation, repair and maintenance of the Pre-Servicing Works to be provided and payments required to be made to the Town and such other matters as may be more specifically set out herein.

The Developer hereby acknowledges that by entering into this Agreement, the Town is not allocating existing servicing capacity for water and sewer for the development of the Lands. It being understood and agreed that registration of the Plan is required to obtain allocation of existing servicing capacity.

PART II

GENERAL SERVICING REQUIREMENTS

2.1 Development Agreement

The Developer agrees that prior to Final Approval, the Developer shall enter into a Development Agreement with the Town, in a form satisfactory to the Town to satisfy all the Conditions and without limitation to satisfy all of the financial, legal, servicing, engineering, landscaping and other requirements of the Town for the subdivision, development and servicing of the Lands. The Parties agree that the Development Agreement, when executed, shall supersede and replace this Agreement.

2.2 Consultants

Wherever, under the terms of this Agreement and the Development Agreement, the Developer is required to design and install any Works the Developer shall retain competent engineers registered with the Professional Engineers of Ontario and members of the Consulting Engineers of Ontario and competent landscape architects registered with the Ontario Association of Landscape Architects (the "Consultant(s)") to carry out all the necessary engineering and landscaping requirements for the subdivision, development and servicing of the Lands in accordance with this Agreement and the Development Agreement.

The Consultants shall be retained at all times until all of the requirements of this Agreement and the Development Agreement have been complied with to the satisfaction of the Town. In the event, for whatever reason, a Consultant ceases to provide the consulting services required by this Agreement to the Developer, the Developer shall immediately cease all operations which that Consultant was

responsible for until the Developer retains a replacement Consultant approved by the Town, which approval shall not be unreasonably withheld.

The Developer shall provide an executed copy of this Agreement and a copy of the Town Standards to each of the Consultants and obtain and provide to the Town a written acknowledgement from each of the Consultants that they have received copies of these documents.

The Developer's agreements or contracts with the Consultants shall require the Consultants to provide the following consulting services to the satisfaction of the Town:

- (a) act as the Developer's technical representative in all matters pertaining to the design, installation and maintenance of the Works;
- (b) prepare all studies and reports required by the Town for the Works, design the Works in strict conformity to the Town Standards, and prepare, sign, and seal all required plans, drawings and specifications for the Works which shall include a certificate from the Landscape Architect to the effect that all required plans, drawings and specifications for the Works prepared by the Landscape Architect are in conformity to the Overall Grading Plan;
- (c) when applicable, prepare all necessary tender documents and contracts for the installation of the Works;
- (d) obtain, in conjunction with the Town or its agents, the necessary approvals for the installation of the Works from any required Government Authority;
- (e) provide, to the satisfaction of the Town, full time resident field inspection at the subdivision site by an engineer or other qualified person, contract administration and certification of installation of the Works to the satisfaction of the Town. The Town may, where reasonably necessary, require, the Developer to provide an additional full time resident engineer or other qualified person at the subdivision site in furtherance of the Developer's obligation aforesaid;
- (f) obtain all records of construction of the Works, deposit with the Town signed and sealed "As Recorded" plans of all the Works, including lot grading and street lighting plans depicting the location of ducts, wires, power connection points to the Power Utility's system poles and pedestals and an electronic version of these same "As Recorded" plans all in accordance with the Town Standards, for the review and approval of the Town;
- (g) maintain on site an up-to-date red-lined "As Recorded" drawing set available for inspection and review by the Town during normal business hours or while the Contractor is on site;
- (h) until Final Acceptance of all of the Works, prepare, in accordance with the Town Standards, and provide to the Town and the CBO a lot grading and drainage plan for each lot or block on the Plan (including lots or blocks owned by the Town), for which a building permit application is made (the "Lot Grading Plan") showing additional grading details, including final grade elevations for the lot or block and certify on the Lot Grading Plan that the proposed lot or block grading and drainage shown on the Lot Grading Plan is in substantial conformity with the Overall Grading Plan;
- (i) prepare and provide to the Town and the CBO a certificate for each lot or block on the Plan (including lots and blocks owned by the Town) for which the Consultant prepared a Lot Grading Plan (the "Final Lot Grading Certificate") indicating the final grade elevation of the lot or block and

certifying that the lot or block has been graded in substantial conformity with the Overall Grading Plan and the Lot Grading Plan for the lot or block;

- (j) provide to the Town, as and when required, executed copies of any or all contracts or subcontracts or both entered into by or on behalf of the Developer for the construction of any or all of the Works, together with any or all of the following contract documentation:
 - (i) certificates of the substantial performance given pursuant to the provisions of the Construction Lien Act; and
 - (ii) particulars of publication of the certificate of the substantial performance.
 - (iii) copies of final payment certificates or equivalent documentation of actual incurred costs.
- (k) certify to the Town that there are no lien claims relating to any of the completed Works as and when the Developer requests the Town to reduce the Security or accept or assume the Works; and
- (l) provide to the Town all of the other certificates required to be provided by this Agreement.

The Developer shall, within twenty (20) Business Days of receipt by the Developer of a Notice from the Town requiring it to do so, replace any Consultant with a replacement Consultant if the Town, in its sole and absolute discretion and acting reasonably, determines that the Consultant to be replaced is not providing the foregoing consulting services required by this section to the satisfaction of the Town.

2.3 Town Standards

All Works required to be designed, installed, provided and maintained pursuant to this Agreement and Development Agreement shall be designed, installed, provided and maintained in strict accordance with the Town Standards. By the execution of this Agreement the Developer acknowledges having received a copy of the Town Standards. All submissions to the Town shall be made in accordance with the Town Standards. The Town Standards shall also apply to all Works required for plans of common elements condominium and vacant land condominium except Works to which the Building Code Act applies.

2.4 Changes to the Town Standards

Despite anything contained in this Agreement, including the acceptance of the Accepted Plans, if the Town or any Government Authority changes or causes changes to any of the Town Standards for any of the Pre-Servicing Works which the Developer is required to install before the particular Pre-Servicing Works are installed the Developer shall, at its own expense, if required by Notice given by the Town redesign and install the particular Pre-Servicing Works referred to in the Notice in accordance with the new Town Standards.

2.5 Utility Services

The Utility Services shall be installed as a total underground installation at no cost to the Town. The Developer shall enter into an agreement or agreements with such applicable utility companies, to provide the Utility Services as required, to satisfy all requirements, including but not limited to the maintenance and repair of their facilities and equipment until the Final Acceptance of all of the Works by the Town.

The Developer is responsible for informing all the utility providers of its intention to commence any construction on the Lands.

2.6 Highways and Private Roads

The Developer shall:

- (a) install all the underground Basic Services, including all road crossings for the Utility Services, prior to installing the granular and stone bases for municipal services on all Highways and Private Roads and laying the base course of asphalt;
- (b) obtain the approval of the Town for the sub-base prior to placing the granular materials for all the Highway and Private Roads; and
- (c) obtain the approval of the Town for the granular and stone bases for municipal services on all Highways and Private Roads prior to laying the base course of asphalt.

2.7 Grading and Drainage

The Developer shall:

- (a) until Final Acceptance, cause the Consultant to provide to the Town a Lot Grading Plan for each lot or block on the Draft Plan (including lots or blocks owned by the Town), for which a building permit application is made and the Developer agrees that no building permits will be issued until such plans have been provided to and accepted by the Town.
- (b) until Final Acceptance, be responsible for all grading and drainage of the Lands in accordance with the Overall Grading Plan and the Lot Grading Plans and in accordance with the Town Standards and accepted engineering practices.
- (c) until Final Acceptance, correct or rectify any drainage problems by altering the grade of or by constructing catch basins, swales, retaining walls or other structures as may be necessary to correct or rectify such problems, if, in the opinion of the Town, such problems occur due to improper grading design or due to non-compliance with the Overall Grading Plan and/or the Lot Grading Plans by the Developer and/or its successors and assigns and their building contractors;
- (d) until Final Acceptance, correct or rectify any grading deficiencies to the satisfaction of the Town within three (3) weeks, weather permitting, of being given Notice by the Town to do so;
- (e) on the sale of any lot or block, reserve such rights as may be necessary to enable the Developer or the Town or their agents to enter on the lot or block at all times prior to Final Acceptance to undertake drainage rectification work and modifications to the surface drainage features of the said lot or block in accordance with the Overall Grading Plan and the Lot Grading Plans. Should drainage rectification work become necessary in the opinion of the Town at any time prior to Final Acceptance, the Developer shall carry out this drainage rectification work at its own expense when so instructed by the Town;
- (f) not alter the grading or change the elevation or contour of the land shown on the accepted Overall Grading Plan and the Lot Grading Plans except in accordance with amended grading and drainage plans accepted by the Town; and

- (g) shall include in all agreements of purchase and sale for lots or blocks within the Plan, a covenant by the purchaser in which the purchaser agrees not to alter the grading or change the elevation or contour of the land shown on the Overall Grading Plan and the Lot Grading Plan, except in accordance with amended grading and drainage plans accepted by the Town.

2.8 Erosion Control and Tree Preservation

The Developer shall:

- (a) prior to the start of any construction activity on the Lands, install the Siltation and Erosion Control Works, the Tree Protection Fencing, all of the permanent and temporary fencing and other suitable approved barriers all as shown on the Accepted Plans. The Consultant shall supervise and approve the installation of the Siltation and Erosion Control Works and the Tree Protection Fencing and ensure that the Siltation and Erosion Control Works and the Tree Protection Fencing remain in place
- (b) preserve the existing trees shown on the Tree Preservation Plan to be preserved;
- (c) not remove any trees without the prior written approval of the Town except such trees that are diseased or dead or such trees that are designated for removal on the Tree Preservation Plan;
- (d) undertake every precaution necessary to prevent damage to existing trees and vegetated areas, include the following:
 - (i) areas within the Tree Protection Fencing shall remain undisturbed and shall not be used for the storage of surplus soil, debris and building materials or equipment;
 - (ii) no contaminants will be dumped or flushed where feeder roots of vegetation exist;
 - (iii) no vegetation or tree limbs shall be removed, pruned or otherwise damaged during the course of construction; and
 - (iv) no rigging cables shall be wrapped around or installed in trees to be preserved.
- (e) replace, to the satisfaction of the Town, any existing trees shown on the Tree Preservation Plan to be preserved which are removed without prior written approval of the Town except such trees that are diseased or dead;
- (f) shall include in all agreements of purchase and sale for all lots and blocks within the Plan, a covenant by the purchaser in which the purchaser agrees to comply with all of the provisions of this Section 2.8.

2.9 Accepted Plans

The "Acceptance for Construction" of the Accepted Plans shall not absolve the Developer and the Consultants of the responsibility for errors in and or omissions from the Accepted Plans.

PART III**PRE-SERVICING REQUIREMENTS****3.1 Installation of Pre-Servicing Works**

- (a) The Developer may commence the installation of the Pre-Servicing Works shown on the Accepted Plans described in Schedule "B" prior to execution of the Development Agreement and the Developer acknowledges that by proceeding with the installation of the Pre-Servicing Works prior to execution of the Development Agreement it is doing so entirely at its own risk and further agrees to leave the Pre-Servicing Works and the Lands in a safe condition should active development of the Lands come to a termination for any reason.
- (b) The Developer agrees that all of the provisions of Part II of this Agreement shall apply to the design, installation and maintenance of the Pre-Servicing Works. In particular, the Developer shall install the Siltation and Erosion Control Works, the Tree Protection Fencing, all of the permanent and temporary fencing and other suitable approved barriers all as shown on the Accepted Plans prior to commencing installation of any other of the Pre-Servicing Works.
- (c) The Developer shall, at its own expense, unless otherwise provided in this Agreement design, pay for, install and complete in a good and workmanlike manner and maintain and keep in a proper state of repair all of the Pre-Servicing Works in strict accordance with the Town Standards, the Accepted Plans and the requirements of this Agreement to the satisfaction of the Town and all Government Authorities.
- (d) The Developer shall not commence installation of the Pre-Servicing Works until:
 - (i) The Developer has obtained all the necessary approvals for the installation of the Pre-Servicing Works from all required Government Authorities;
 - (ii) The Developer has provided the Security and the insurance requirements to the Town in accordance with Sections 4.4 and 4.6 of this Agreement; and
 - (iii) The Town has given Notice to the Developer authorizing the Developer to commence installation of the Pre-Servicing Works and the Developer has given the Town five (5) business Days Notice of the date upon which installation of the Pre-Servicing Works is scheduled to commence.
- (e) The Developer agrees that, prior to proceeding with the placement of granular "A" on the proposed road as part of the Pre-Servicing Works, the Developer shall obtain approval from the Town of the Composite Utility Plan and the Street Lighting Plan.
- (f) The Developer agrees that if installation of the Pre-Servicing Works has not been completed within two (2) years of the date of this Agreement, then the Town may by Notice require the Developer to fill any excavation and to restore to grade and to reinstate the Lands to a safe condition.
- (g) The Developer agrees that if the Pre-Servicing Works are installed and the development of the Lands does not proceed within three (3) years of the execution of this Agreement, the Developer must satisfy the Town that the Pre-Servicing Works are in an acceptable standard to the Town

and that it is at the sole discretion of the Town whether to accept any Pre-Servicing Works that are not in a condition satisfactory to the Town.

- (h) The Developer shall not connect the Pre-Servicing Works to the Town's sanitary sewer system, water distribution system or storm drainage system or conduct any works on Town Lands until Final Approval and/or the Town has provided written authorization for such connections and work.
- (i) The Developer agrees that any commissioning, inspection and testing procedures undertaken by the Developer for any of the Pre-Servicing Works, including the sanitary sewer system, water distribution system and storm water drainage system is completed for the sole benefit of the Developer satisfying itself that the Pre-Servicing Works have been installed in accordance with the requirements of this Agreement and that the Town at its sole discretion will require further commissioning, inspection and testing procedures prior to the Town issuing a Certificate of Completion and/or a Certificate of Preliminary Acceptance pursuant to the Development Agreement.

3.2 Amendments to the Accepted Plans

All the Pre-Servicing Works shall be installed and maintained in accordance with the Accepted Plans, except where the Town consents in writing to an amendment to the Accepted Plans.

In the event any Accepted Plan is subsequently amended such plans, when signed and stamped "Accepted for Construction-Pre-Servicing Only" by the Town, shall be deemed to be Accepted Plans within the meaning of this Agreement and all the provisions of this Agreement shall apply to them

3.3 Existing Services

The Developer shall repair any damage to any existing municipal, County or provincial services, works or facilities, whether assumed by the Town or otherwise and whether within the Lands or external thereto, caused by the installation of the Pre-Servicing Works or otherwise caused by the development of the Lands. Without limiting the generality of the foregoing or limiting the liability of the Developer, should there be a breach of this provision, the Developer shall repair the existing municipal services upon being given Notice by the Town to do so. A failure by the Developer to repair or rectify such damage to existing municipal services constitutes a Default.

3.4 Limited Means of Access

The Developer agrees that all construction traffic shall enter and leave the Lands using only the Highways, Private Roads and other access points designated by the Town for this use. The Developer shall, when required by the Town, install barricades at the end of other Highways and Private Roads providing access to the Lands to prevent these Highways and Private Roads from being used for construction traffic. The Developer shall maintain these barricades in place until the Town instructs the Developer to remove them.

3.5 Inspection by Town

The Town may inspect the installation of the Pre-Servicing Works and shall have the power to stop any work in the event that in its opinion the work is not being performed in accordance with the requirements of this Agreement or being performed a manner that may result in a completed installation or construction that would not be satisfactory to the Town.

The Developer agrees that the Town, its employees, agents and contractors or any other authorized persons may enter upon the Lands and inspect the construction under any contract, but such inspection shall in no way relieve the Developer from its responsibility to inspect the said construction itself. If the installation of the Pre-Servicing Works is not, in the opinion of the Town being carried out in accordance with the provisions of this Agreement or in accordance with accepted engineering or landscaping practices, the Town may issue instructions to the Developer and/or to the Consultants to take such steps as may be deemed necessary to procure compliance with the provisions of this Agreement. Such instructions may be given by Notice or may be verbal, in which case the Town shall confirm them by Notice within forty-eight (48) hours. In the event that neither the Developer nor the Consultants is present at the site of the Works to receive such verbal instructions, the Town may instruct the contractor(s) to cease work forthwith.

3.6 Additional Tests

The Developer acknowledges and agrees that the Town may conduct or require the Developer to conduct, at the expense of the Developer, any tests that the Town considers necessary to satisfy itself as to the proper installation of the Pre-Servicing Works.

3.7 Town May Repair Works

In the event that the Developer fails to keep any of the Pre-Servicing Works in a proper state of repair as required by this Agreement, the Town may upon five (5) Business Days Notice, enter upon the Lands and make such repairs as are necessary at the Developer's expense. The Developer shall pay to the Town, within twenty (20) Business Days of receipt by the Developer of a Notice demanding payment, all costs of the work incurred in making the said repairs as determined by the Town.

3.8 Emergency Repairs

If any of the Pre-Servicing Works do not function or do not function properly in the opinion of the Town, or require necessary immediate repairs to prevent damage or hardship to any persons or to any property, the Town may enter upon the Lands and make whatever repairs may be deemed necessary at the expense of the Developer. The Developer shall pay to the Town, within twenty (20) Business Days of receipt by the Developer of a Notice demanding payment, all costs of the work incurred in making the said repairs as determined by the Town. The Town shall advise the Developer forthwith by Notice of the nature and extent of the emergency and repairs which were necessary. Such undertaking to repair shall not be deemed an acceptance of the Pre-Servicing Works by the Town or an Final Acceptance by the Town of any liability in connection therewith and shall not release the Developer from any of its obligations under this Agreement.

3.9 Applicable Laws

- (a) In installing and maintaining the Pre-Servicing Works, the Developer shall comply with all statutes, laws, by-laws, regulations, ordinances, orders and requirements of all Government Authorities having jurisdiction at any time or from time to time in force. Without limiting the foregoing, the Developer agrees to comply with, and cause to be complied with, the provisions of the Occupational Health and Safety Act, the Environmental Protection Act and the Ontario Water Resources Act and any regulations, policies and guidelines relating thereto, including all obligations of the constructor and employer under the Occupational Health and Safety Act and regulations as applicable, and any obligation to obtain any approval or permit required under the Environmental Protection Act or the Ontario Water Resources Act or any regulations, policies and guidelines relating thereto. The

Developer further agrees to handle and dispose of all materials in accordance with the foregoing legislation.

- (b) The Developer shall do, cause to be done or refrain from doing any act or thing as directed by the Town if at any time the Town considers that any situation or condition is unsafe, damaging to the environment or contrary to the provisions of any applicable laws above. If the Developer fails to comply with such direction, the Town may take action to rectify the situation at the expense of the Developer and in this regard the Town also shall be entitled to draw upon the Security
- (c) Nothing in this Agreement shall relieve the Developer from compliance with all applicable municipal by-laws, laws and/or regulations or laws and/or regulations established by any Government Authority.

3.10 Damage and Debris

The Developer covenants and agrees:

- (a) that all Town Lands that may be used by the Developer or parties employed by the Developer or others during the installation and maintenance of the Pre-Servicing Works, as well as all buildings and structures within the Plan, shall be kept in a good and usable repair and condition and if, in the sole opinion of the Town, such Town Lands and buildings and structures are damaged in any way by the Developer or parties employed by the Developer, such Town Lands and buildings and structures, will be repaired or restored immediately to the satisfaction of the Town.
- (b) not to foul any public highways outside the limits of the Plan, including tracking of mud or other materials thereon and further agrees to provide the necessary persons and equipment to be available on reasonable notice at all times to keep such highways clean and that all trucks making deliveries to or taking materials from the Lands shall be adequately covered and reasonably loaded so as not to scatter refuse, rubbish, or debris on the abutting highways and streets;
- (c) that, if in the opinion of the Town, the requirements of this Section 3.10 are not complied with, the Town will do the work as required by the Town at the Developer's expense. The Developer shall pay to the Town, within twenty (20) Business Days of receipt by the Developer of a Notice demanding payment, all costs of the work incurred by the Town as determined by the Town.

3.11 Special Provisions

The Parties covenant and agree to comply with all of the Special Provisions set out in Schedule "C". All of the works, services, facilities, matters and things required by the Town, the County and Government Authorities for the subdivision, development and servicing of the Lands referred to in the Special Provisions set out in Schedule "C" shall be deemed to be Pre-Servicing Works within the meaning of this Agreement.

3.12 Pre-Servicing Certificate

- (a) Prior to preparation of the Development Agreement by the Town, the Consultants shall provide to the Town a certificate (the "Pre-Servicing Certificate"), for approval by the Town, describing the Pre-Servicing Works that have been completed, stating that the completed Pre-Servicing Works have been installed in strict accordance with the Town Standards, the Accepted Plans and the requirements of this Agreement, setting out the actual costs of installing the completed Pre-Servicing Works and

setting out the current estimated costs, as of the date of the certificate, of installing the balance of the Works required for the development and servicing of the Lands.

- (b) The Developer acknowledges and agrees that the Town will use the approved Pre-Servicing Certificate as the basis for preparing Schedule "E" - Estimated Cost of the Works and Security Required - to the Development Agreement and deciding, in its sole discretion, the amount of the Security the Developer is required to provide to the Town prior to the Town executing the Development Agreement.
- (c) The Developer acknowledges and agrees that the Town will not approve the Pre-Servicing Certificate until such time as the Town has inspected the completed Pre-Servicing Works described in the Pre-Servicing Certificate and the Developer has rectified and repaired to the satisfaction of the Town all defects and deficiencies in these Works found by this inspection, unless otherwise agreed in writing with the Town.
- (d) The Developer acknowledges and agrees that the approval of Pre-Servicing Certificate by the Town does not constitute Preliminary Acceptance of the Pre-Servicing Works described therein within the meaning of the Development Agreement and that a Certificate of Preliminary Acceptance issued pursuant to the Development Agreement is required for this purpose.

PART VI

FINANCIAL ARRANGEMENTS AND INSURANCE

4.1 Fees and Charges

The Town acknowledges receipt of a non-refundable administration fee from the Developer in the amount specified in Schedule "D" for expenses incurred by the Town for the processing and administration of this Agreement.

4.2 Works Fee

The Developer shall pay to the Town, upon execution of this Agreement, a non-refundable works fee equal to the aggregate total of three per cent (3%) of the first \$1,000,000.00 of the estimated cost of the Works set out in this Agreement and two percent (2%) of the estimated cost of the Works set out in this Agreement in excess of \$1,000,000.00 (the "Works Fee") for expenses incurred by the Town for review of the design of the Works and for inspections and other matters related to the installation of the Works. The Works Fee required by this Agreement is specified in Schedule "D".

The Developer shall pay additional Work Fee(s) under subsequent agreements for any additional works provided for under the subsequent agreements.

4.3 Disbursement and Expenses

- (a) In addition to the non-refundable administration fee referred to in Section 4.1, the Developer shall pay to the Town, within twenty (20) Business Days of receipt of a Notice demanding payment, the full amount of such costs, expenses and disbursements as may be or are incurred by the Town in connection with the preparation, administration and enforcement of this Agreement and the Development Agreement, including, without limiting the generality of the foregoing, the Town's legal costs and the costs of other consultants (the "Agreement Costs").

- (b) As security to ensure payment of the Agreement Costs by the Developer, the Developer will be required to provide a refundable deposit in the amount specified in Schedule "D" to be used by the Town for the purpose of paying the Agreement Costs. The Developer shall replenish this refundable deposit to its full amount within twenty (20) Business Days of receipt of a Notice providing details of the amounts of the Agreement Costs incurred by the Town and requesting replenishment of this deposit. Failure to replenish this deposit constitutes a Default and the Treasurer shall be entitled to draw upon and use all or a part of the Security to rectify the Default and replenish the deposit.

4.4 Security

- (a) In order to guarantee total performance of this Agreement by the Developer, the Developer shall provide to the Town, upon execution of this Agreement, an irrevocable letter of credit in the amount of five percent (5%) of the estimated cost of the Pre-Servicing Works as specified in Schedule "D" (the "Security"). The letter of credit shall be from an Ontario Branch of a Canadian Chartered Bank and in a form approved by the Treasurer. The Developer covenants and agrees that the letter of credit shall be kept in full force and effect and that it will pay all premiums on the letter(s) of credit as they become due until such time as the Town returns the letter of credit.
- (b) Wherever in this Agreement a letter of credit is required to be filed with the Town, the Developer may instead deposit cash or a certified cheque to be cashed, in an amount equal to the letter of credit and such deposit shall be held by the Town as Security in accordance with this Agreement provided that no interest shall be payable on any such Security.
- (c) The Developer acknowledges that upon the transfer of ownership of any of the Lands, the Town will not return any letter of credit or cash deposit required under this Agreement until the new developer files a substitute letter of credit or deposits cash or a certified cheque to be cashed in the required amounts with the Town.

4.5 Developer in Default

- (a) The Developer agrees that the Treasurer shall be entitled to draw upon and use all or a part of the Security to rectify any Default.
- (b) If the Developer fails to make any payment demanded by the Town pursuant to the provisions of this Agreement within twenty (20) Business Days from the date of receipt by the Developer of a Notice demanding payment, such failure constitutes a Default and the Treasurer shall be entitled to draw upon and use all or a part the Security to rectify the Default and make the payment, together with the interest thereon, to the Town.
- (c) If, in the sole and absolute opinion of the Town, the Developer is in Default, other than a Default referred to in Subsection 4.5(b), the Town, except in cases of emergencies, shall give Notice to the Developer of the Default and require the Developer to rectify the Default. If the Default is not rectified within Twenty (20) Business Days after receipt by the Developer of such Notice or within such time period as may be designated in the Notice by the Town, then
 - (i) the Town shall have full authority and power immediately to purchase such materials, tools and machinery and to employ such contractors or workmen as in the opinion of the Town are required for the proper rectification of the Default, to enter upon the Lands

and to do all such work and things, including the installation of Works, as are necessary to rectify the Default to the satisfaction of the Town, at the cost and expense of the Developer. In cases of emergencies, such work may be done without prior Notice but the Developer shall be notified forthwith. The cost of such work will be calculated by the Town, whose decision shall be final. It is understood and agreed that such costs shall include a management fee of fifteen per cent (15%) of the cost of the labour, materials, tools, machinery, and applicable taxes; and

- (ii) the Treasurer may, at any time draw on and use all or part of the Security to pay the cost, as calculated by the Town, of any works or things, including the installation of Works, done by the Town pursuant to the provisions of this section to rectify the Default.
- (d) The Developer agrees that any entry on the Lands and any work done by the Town pursuant to the provisions of this section shall not be a Preliminary Acceptance and/or Final Acceptance of the Works by the Town and the acceptance of any liability in connection therewith nor a release of the Developer from any of its obligations under this Agreement.
- (e) Upon the execution of the Development Agreement and the provision to the Town of the security required by the Development Agreement, the Town shall release the unused balance of the Security to the Developer. or at the Developer's direction include the unused balance of the Security as part of the security required by the Development Agreement.

4.6 Default of Payment

If the Developer fails to make any payment demanded by the Town pursuant to the provisions of this Agreement within twenty (20) Business Days from the date of receipt by the Developer of a Notice demanding payment and no Security is available or the Security is insufficient to make the payment, the Developer agrees that such payment, together with interest thereon, shall be added to the tax rolls for the Lands and collected in like manner as taxes in accordance with Section 446 of the Municipal Act, 2001.

4.7 Interest on Payment Demands

If the Developer fails to make any payment demanded by the Town pursuant to the provisions of this Agreement within twenty (20) Business Days from the date of receipt by the Developer of a Notice demanding payment such failure constitutes a Default and such payment shall then bear interest from the date of the Default at the same interest rate as the Town charges on tax arrears.

4.8 General Liability Insurance Policy

- (a) Prior to the execution of this Agreement and commencing any work on the Lands, the Developer shall take out and keep in full force and effect until Final Acceptance of all of the Works, at its sole cost and expense, the following minimum insurance:
 - (i) Commercial General Liability insurance applying to all operations of the Developer which shall include coverage for bodily injury liability, property damage liability, products and completed operations liability, contractor's protective liability, contractual liability, and non-owned automobile liability, contingent employers liability and employees as additional insureds.

This policy shall contain no exclusions for damage or loss from blasting, vibration, pile driving, the removal or weakening of support, shoring, and underpinning or from any other activity or work that may be done in connection with the development of the Plan.

This policy shall be written with limits of not less than FIVE MILLION DOLLARS (\$5,000,000) exclusive of interest or costs, per occurrence and shall include the Town as an additional insured;

This policy shall provide primary insurance coverage and not excess to any other insurance available to the Town; and

- (ii) Automobile Liability (Owned and/or Leased Vehicles) insurance with an inclusive limit of liability of not less than TWO MILLION DOLLARS (\$2,000,000) exclusive of interest or costs, per occurrence for loss or damage resulting from bodily injury to or death of one or more persons and for loss or damage to property. This policy must cover all vehicles owned, leased or operated by or on behalf of the insured; and
- (iii) Environmental Pollution Liability insurance to cover third party bodily injury and property damage claims arising out of sudden and accidental pollution, including but not limited to unexpected and unintentional spill, discharge, emission, dispersal, leakage, migration, release or escape of pollutants. The coverage cannot be limited to hostile fire only.

This policy shall be written with a limit of not less than TWO MILLION DOLLARS (\$2,000,000) exclusive of interest or costs, on a claims-made basis, or such other limit as the Town may reasonably require, and shall include the Town as an additional insured.

As an alternative, the Developer may provide this insurance by requiring all of its contractors doing any work on the Lands to take out this insurance and keep it in full force and effect at all times the contractors are doing any work on the Lands and include the Developer and the Town as additional insured.

- (b) These policies shall not be terminated, cancelled, or materially altered unless written notice, by registered mail, of such termination, cancellation, or material alteration is given by the insurers to the Town at least sixty (60) days before the effective date thereof.
- (c) The premiums on these policies must be paid initially for a period of one year and the policies shall be renewed for further one-year periods until all the Works required under this Agreement are installed and assumed by the Town. If required by the Town, the Developer shall prove to the satisfaction of the Town that all premiums on these policies have been paid and that all insurance is in full force and effect.
- (d) The Developer shall deliver with this Agreement (if not previously delivered) certified copies of these policies of insurance or a certificate of insurance setting out the essential terms and conditions of insurance, the form and content of which shall be satisfactory to the Town.
- (e) The Developer shall file a renewal certificate with the Town not later than one (1) month before the expiry date of any policy provided pursuant to this Agreement, until the Town has indicated in writing that the policy need not continue in force any longer. In the event that such renewal certificate is not received, the Town shall be entitled to either renew the policy at the expense of the Developer or to order that all work on the Lands cease until the policy is renewed.
- (f) These policies shall provide for cross-liability and severability of interest protecting the Town against claims by the Developer as it were separately

insured and providing that the Town shall be insured notwithstanding any breach of any condition in the policy by any other insured.

- (g) If these policies contain deductible clauses, the Developer agrees to deposit a certified cheque or such Security as may be acceptable to the Town in the deductible amounts, as a deposit, together with a letter from the Developer authorizing the Town to appoint an independent adjuster and to investigate claims less than the deductible amount and authorizing the Town to pay such claims determined to be valid by the adjuster out of the said deposit. The Developer is responsible for all adjustment service costs and shall maintain the deposits in the amount of the deductible.
- (h) In Sections 4.8, 4.9 and 4.10, the term policy or policies includes a policy or policies of insurance provided the Developer's contractors.

4.9 No Relief

The issuance of such policies of insurance shall not be construed as relieving the Developer from responsibility for other or larger claims, if any, for which the Developer is or may be liable under this Agreement or at law.

4.10 Notice of Cancellation

If the Town receives notice from the insurer that it has cancelled or refused to renew the insurance, or that it intends to do so, or if the Town otherwise determines that the insurance has lapsed or is about to lapse without renewal or replacement, the Town may, on Notice to the Developer and at the sole cost and expense of the Developer, obtain insurance in accordance with this section. In such circumstances, the Town shall be entitled to obtain new insurance or add the necessary insurance coverage to the Town's blanket insurance. The Developer shall forthwith, upon receipt of Notice thereof from the Town, reimburse the Town for the cost of such insurance payable as noted above. In addition, the Town shall, at its sole discretion and option, be entitled to draw upon any Security posted under this Agreement to cover the costs of the insurance.

PART V

BUILDING AND PLANNING

5.1 Model Homes

- (a) Building permits may be issued for model homes prior to Final Approval and the installation of the Basic Services provided that the Developer and the builders comply with the Town's Model Home Policy. This policy requires, among other things, that the lot or block for which the building permit is applied for is zoned accordingly to permit the construction of the model home, including, where applicable, the removal of the holding –h symbol from the zoning by-law and that the Developer and that the builder enter into a Model Home Site Plan Agreement with the Town, with appropriate security, in a form satisfactory to the Town.
- (b) Where building permits have been issued to permit the construction of model homes, adequate water supply and access for firefighting purposes shall be available to the lot or block at all times during construction and occupancy of such model homes as may be determined in the sole and absolute discretion of the Town.

5.2 Notices and Warning Clauses

The Developer shall include the notices and warning clauses set out in Schedule "E" into all agreements of purchase and sale entered into subsequent to the

execution of this Agreement for all properties, land, buildings and structures constructed or situated on the lots and blocks on the Draft Plan.

PART VI

ADMINISTRATION

6.1 Indemnity and Release

The Developer shall indemnify and save completely harmless the Town and its elected officials, officers, agents, contractors and employees from and against all actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly or in any way connected with a Default, the design, installation or operation of any of the Pre-Servicing Works required under this Agreement, the maintenance and repair or lack of maintenance and repair of such Works by the Developer pursuant to the terms of this Agreement or any defect in workmanship or material until Final Acceptance of all of the Pre-Servicing Works by the Town.

The Developer hereby releases the Town and its elected officials, officers, agents, contractors and employees from all actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly or in any way connected with the installation of the Pre-Servicing Works.

6.2 Transfer of Lands

In the event the Developer transfers the Lands to a third party prior to execution of the Development Agreement, the Developer shall prior to completing this transfer provide the Town with an agreement from the new owner in a form satisfactory to the Town in which the new owner agrees to be bound by the terms of this Agreement.

6.3 Notices

- (a) Any notice to be given by the Town to the Developer with respect to this Agreement shall be given in writing and may be mailed by postage prepaid mail, personally delivered or sent by facsimile transmission to the address shown on Schedule "A" or such other address of which the Developer has by Notice notified the Municipal Clerk and any such Notice mailed or delivered shall be deemed good and sufficient Notice under the terms of this Agreement.
- (b) Any notice to be given by the Developer to the Town with respect to this Agreement shall be given in writing and may be mailed by postage prepaid mail, personally delivered or sent by facsimile transmission to or delivered to:

The Town of The Blue Mountains
26 Bridge Street East,
Box 310, Thornbury, ON, N0H 2P0
Attention: The Director of Engineering and Public Works
Facsimile: (519) 599-3664

or such other address of which the Town has by Notice given the Developer and any such Notice mailed or delivered shall be deemed good and sufficient Notice under the terms of this Agreement.

- (c) Any Notice shall be deemed to have been given to and received by the party to which it is addressed;

- (i) if delivered, on the date of delivery;
- (ii) if mailed, on the fifth day after mailing thereof; or
- (iii) if faxed, on the date of faxing, as confirmed

6.4 Waiver

The failure of the Town at any time to require performance by the Developer of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Town of the performance of any obligation hereunder be taken or be held to be a waiver of the performance of the same or any other obligation hereunder at any later time. The Town shall specifically retain its rights at law to enforce this Agreement.

6.5 Extension of Time

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 the Developer 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.

6.6 Enforcement

The Developer acknowledges that the Town, in addition to any other remedy it may have at law, shall also be entitled to enforce this Agreement and recover any amounts or costs owing to it in accordance with Sections 442 and 446 of the Municipal Act.

6.7 Nullification of this Agreement

If the Plan is not registered within three (3) years from the date of execution of this Agreement, the Town may, at its option and on twenty (20) Business Days Notice to the Developer, declare this Agreement null and void and of no further effect. Any Security held at the time of nullification of this Agreement shall be returned forthwith to the Developer, less any amounts drawn by the Town from the Security to remedy any Defaults occurring before the nullification of this Agreement and drawn to pay any costs incurred by the Town to return the Lands to a safe and presentable condition. The refund of any fees, levies or other charges paid by the Developer pursuant to this Agreement shall be in the sole discretion of the Town but the Developer acknowledges that under no circumstances will interest be paid on any refund.

6.8 Governing Law

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

6.9 Registration of Agreement

The Developer agrees that this Agreement may be registered upon the title to the Lands at the Developer's expense and the Developer 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 subordinate their interests in the Lands to the Town to the extent of this Agreement.

6.10 Successors & Assigns

It is hereby agreed by and between the Parties hereto that this Agreement shall be enforceable by and against the Parties hereto, their heirs, executors,

administrators, successors and assigns and that the Agreement and all the covenants by the Developer herein contained shall run with the Lands.

6.11 No Fettering of Discretion

Despite any other provisions of this Agreement, the Parties hereto agree with each other that none of the provisions of this Agreement (including a provision stating the Parties' intention) is intended to operate, nor shall have the effect of operating in any way to fetter either the Town Council which authorized the execution of this Agreement or any of its successor councils in the exercise of any of Council's discretionary powers, duties or authorities. The Developer hereby acknowledges that it will not obtain any advantageous planning or other consideration or treatment by virtue of it having entered into this Agreement or by virtue of the existence of this Agreement.

LIST OF SCHEDULES

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

"SCHEDULE A" being a description of the Lands;

"SCHEDULE B" being a description of the Accepted Plans for the Pre-Servicing Works

"SCHEDULE C"; being a list of Special Provisions

"SCHEDULE D"; being a list of Fees and Securities

"SCHEDULE E"; being a list of Notices and Warning Clauses

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals duly attested by the hands of their proper signing officers in that behalf.

) SIGNED, SEALED AND DELIVERED
)
) **(Name of Developer)**
)

) _____ c/s
) Name:
) Title:
) I have authority to bind the corporation.

)
) **THE CORPORATION OF THE TOWN
OF THE BLUE MOUNTAINS**

) _____
) Mayor
)
)
) _____ c/s
) Clerk

SCHEDULE "A"

This Schedule forms part of a Pre-Servicing Agreement between *** and
The Corporation of the Town of The Blue Mountains**

DESCRIPTION OF THE LANDS

Assessment Roll No.

(Geographic Township of Collingwood),

Town of The Blue Mountains, County of Grey,

Province of Ontario

PIN

ADDRESS OF THE DEVELOPER FOR SERVICE

(Enter Contact person's name and title)

SCHEDULE "B"

This Schedule forms part of a Pre-Servicing Agreement between *** and
The Corporation of the Town of The Blue Mountains**

ACCEPTED PLANS FOR THE PRE-SERVICING WORKS

Pre-Servicing Plans

Consultant - (Name of Consultant)

SCHEDULE "C"

This Schedule forms part of a Pre-Servicing Agreement between *** and
The Corporation of the Town of The Blue Mountains**

SPECIAL PROVISIONS

SCHEDULE "D"

This Schedule forms part of a Pre-Servicing Agreement between *** and
The Corporation of the Town of The Blue Mountains**

FEEES AND SECURITIES

Estimated cost of Pre-Servicing Works \$

Fees

- | | |
|--------------------------------|----|
| 1. Pre-Servicing Agreement Fee | \$ |
| 2. Works Fee (Section 4.2) | \$ |

Securities

- | | |
|---|----|
| 1. Agreement Deposit (Section 4.3) | \$ |
| 2. Pre-Servicing Security (Section 4.4) | \$ |

SCHEDULE "E"

This Schedule forms part of a Pre-Servicing Agreement between *** and
The Corporation of the Town of The Blue Mountains**

NOTICES AND WARNING CLAUSES

- 1 Notice and Warning Clauses will be included at the Development Agreement.