

TEMPORARY SALES OFFICE AGREEMENT

THIS AGREEMENT made this 22 day of June 2023

BETWEEN:

PRIMONT (PEAK MEADOWS) INC.
(hereinafter called the OWNER)

- and -

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS
(hereinafter called the "Municipality")

WHEREAS the Owner is the owner of the land described in Schedule "A" hereto (the "Lands");

AND WHEREAS the Owner is desirous of constructing a sales office on the Land;

AND WHEREAS the Owner is required to obtain Site Plan Approval from the Town to facilitate the construction of the sales office;

AND WHEREAS the Municipality has granted conditional site plan approval and approved the plans and drawings submitted with the Owner's application, subject to certain conditions, including the entering into of an agreement with respect to the provision of facilities, works or matters as permitted by subs. 41(7) of the *Planning Act*, R.S.O. 1990, c. P.13;

AND WHEREAS subs. 41(10) of the *Planning Act* permits the registration of this Agreement against the lands to which it applies;

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

1. Construction in Accordance with Plans and Drawings

The Owner covenants and agrees to develop the Lands and to construct and build such buildings or structures in a good and workmanlike fashion, in compliance with any applicable laws and by-laws, including the *Building Code Act 1992*, S.O. 1992, c. 23 and in strict compliance with the plans and drawings set out in Schedule "B" of this Agreement (the "Approved Plans")

2. Special Provisions

The Owner covenants and agrees to satisfy and be bound by each of the special provisions set out in Schedule "C" to this Agreement.

3. Fees and Charges

The Owner covenants and agrees to pay to the Municipality the fees and charges set out in Schedule "D" to this Agreement upon execution of this Agreement by the Owner.

4. Parkland

The Owner covenants and agrees to pay \$NIL to the Municipality as cash-in-lieu of a dedication of land for parks purposes pursuant to Parkland Dedication By-law 2003-31, as amended.

5. Security

In order to guarantee compliance with all conditions contained herein, the Owner covenants and agrees to file with the Municipality prior to or upon execution of this Agreement, a letter of credit in the amount of _____ ("Security"). The aforesaid letter of credit shall be in a form approved by the Municipality, and the Owner covenants and agrees that the said letter of credit shall be kept in full force and effect and that it will pay all premiums as the said letter of credit

becomes due or until such time as the Municipality returns the letter of credit. The Owner hereby acknowledges and agrees that should there be any default, deficiency in, or failure to carry out any work or matter required by any clause of this Agreement, and the Owner fails to comply, within thirty (30) days of receipt of written notice of said default, deficiency, or failure, with a direction to carry out such work or matter, the Municipality may draw on the letter of credit to the extent necessary and enter onto the Lands and complete all outstanding works or matters, and pay all costs and expenses incurred thereby from the proceeds so drawn. In place of a letter of credit, the Owner may deposit with the Municipality cash or certified cheque in an amount equal to the letter of credit and such deposit shall be held by the Municipality as security in accordance with this Agreement, provided that no interest shall be payable on any such deposit. The Owner covenants and agrees that the Municipality shall not be obliged to return any of the unused balance of the Security until all the work or matters required by this Agreement are complete to the Municipality's satisfaction.

6. Insurance

The Owner shall take out and keep in full force and effect, at its sole cost and expense, commercial general liability insurance which shall include coverage for bodily injury liability and property damage liability arising out of the use, repair, construction or maintenance of any Municipal lands, the Lands, any works, services, infrastructure, buildings, structures or utilities in any way connected with, or approved by, this Agreement. This policy shall be written with limits of not less than _____ exclusive of interest and costs, per occurrence and shall include the Town as an additional insured. This policy 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 of such change or cancellation. In the event the policy is changed, cancelled or materially altered without the express written consent of the Town, this Agreement shall be immediately terminated, and the Owner acknowledges and agrees that they shall have no further right to continue the construction, work, or works contemplated by this Agreement, whether or not Notice of such termination has been given to the Owner.

7. Construction Act

The Owner covenants and agrees that it will hold back in its payments to any contractor who may construct services, facilities or works, such amounts as may be required under the provisions of the *Construction Act*, R.S.O. 1990, c. C.30 as amended. The Owner agrees to indemnify the Municipality from and against all claims, demands, actions, causes of action and costs resulting from any construction being performed by the Owner, its agents and assigns pursuant to the provisions of this Agreement, and, on demand by the Municipality, the Owner will take such steps as may be necessary to immediately discharge all liens registered upon the lands or interests thereto.

8. Notices

Any notice required to be given by either party to the other shall be mailed, delivered or sent by email transmission to:

(a) the Owner: 9130 Leslie Street, Suite 301 Richmond Hill, ON. L4B 0B9
Attn: Joe Montesano

(b) the Municipality at: 32 Mill St., Box 310. Thornbury, ON. N0H2P0
Attn: Director of Planning & Development – directorpds@thebluemountains.ca

or such other address of which the parties have notified the other in writing, and any such notice mailed, delivered or sent by email transmission shall be deemed good and sufficient notice under the terms of this Agreement.

9. Occupancy

The Owner covenants and agrees not to permit occupancy of any building or part thereof for which building permits have been issued until all works required under this Agreement are

completed in accordance with the requirements of the Ontario Building Code, the applicable zoning by-law and any other municipal by-laws.

10. Entry by Municipality

The Municipality may, by its officers, employees or agents, enter on the Lands or any part thereof as well as any building(s) erected thereon to ensure that any works, services or facilities required to be provided, constructed or installed by the Owner comply with this Agreement

11. General Conditions

The Owner covenants and agrees:

- (a) To provide, during all hours of construction, competent on-site supervision of all works required to be done on all public and private lands and building construction to be undertaken on the Lands.
- (b) To verify the location of all existing and proposed utilities within the right-of-way. The Owner will be required to pay all costs associated with the relocation of utilities as may be required.
- (c) To make all necessary arrangements and to be solely responsible for the costs of removing and relocating any existing municipal or public services requiring relocation in the course of, or in connection with, the construction, installation or provision of the works, services and facilities required under this Agreement.
- (d) To comply with all provisions of the Municipality's noise by-law.
- (e) Not to foul the highways leading to the Lands and to provide on all construction accesses leading to the Lands, an interim granular surface to prevent mud or dust from fouling the road.
- (f) Not to conduct any staging, storage or construction within the Municipality's Right of Way or municipal land.
- (g) Not to connect to any municipal services, including water or sewer, without the express written permission of the Municipality.
- (h) Not to use or occupy any municipal right of way or land without the express written permission of the Municipality and obtaining of a Municipal Land Use Permit, if applicable.

12. Registration of Agreement

The Owner hereby consents to the registration of this Agreement, together with any schedules hereto, upon the title to the Lands. The Owner agrees to pay to the Municipality the cost of registration of this Agreement, as well as any further costs incurred by the Municipality as a result of the registration of any other documents pertaining to this Agreement.

13. Postponement & Subordination

The Owner 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 Municipality to postpone and subordinate their interest in the Lands to the interest of the Municipality 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.

14. Termination of Agreement

If the development proposed by this Agreement is not commenced within 2 years from the date of the execution of this Agreement, the Municipality may, at its sole option and on 30 days written notice to the Owner, declare this Agreement null and void and of no further force or effect and the Owner shall not be entitled to any refund of fees, levies or other charges paid by the Owner pursuant to this Agreement.

This Agreement shall remain in full force and effect until such time as an occupancy permit for the use of the sales trailer for residential purposes has been issued by the Town's Chief Building Official provided that if such occupancy permit has not been issued by a date three (3) years from the date of execution of this Agreement by the Municipality this Agreement will terminate on this date (the "Termination Date") unless an extension of the Termination Date has been granted

by the Director of Planning and Development Services. A request for extension of this Termination Date shall be submitted to the Director of Planning and Development Services ninety (90) days prior to the Termination Date.

In the event this Agreement is terminated in accordance with Section 14, without a residential occupancy permit having been issued by the Town, the Owner shall immediately cease the use of the sales trailer and forthwith demolish the same, subject to all necessary permits, and leave the Lands in a safe condition by no later than ninety (90) days from the termination of this Agreement.

15. Enforcement

The Owner acknowledges that the Municipality, in addition to any other remedy it may have at law, shall also be entitled to enforce this Agreement in accordance with s. 446 of the *Municipal Act, 2001*.

16. Applicable Laws

Nothing in this Agreement shall relieve the Owner from compliance with all applicable municipal by-laws, laws, regulations, notices or other policies or laws and/or regulations established by any other governmental body that may have jurisdiction over the Lands.

17. Indemnity

The Owner hereby indemnifies and shall 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 this Agreement.

18. 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) This Agreement shall be construed with all changes in number and gender as may be required by the context.
- (c) Every provision of this Agreement by which the Owner is obligated in any way shall be deemed to include the words "at the expense of the Owner" unless the context otherwise requires, including the payment of any applicable taxes.
- (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 Owner and the Municipality 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) The failure of the Municipality at any time to require performance by the Owner of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Municipality 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 Municipality shall specifically retain its rights at law to enforce this Agreement.
- (i) The law of contract applies to this Agreement and the parties are entitled to all remedies arising from it, notwithstanding any provision in s. 41 of the Planning Act

interpreted to the contrary. The parties agree that adequate consideration has flowed from each party to the other and that they are not severable. This provision may be pleaded by either party in any action or proceeding as an estoppel of any denial of such right.

- (j) This Agreement shall be interpreted under and be governed by the laws of the Province of Ontario.
- (k) Notwithstanding 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 Municipal 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 Owner 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.
- (l) This Agreement embodies the entire agreement of the Parties with regard to the matters dealt with herein, and no understandings, commitments, representations or agreements, verbal or otherwise, exist between the Parties except as herein set out.
- (m) This Agreement may be executed in any number of counterparts (including counterparts by facsimile) and all such counterparts taken together shall be deemed to constitute one and the same instrument.
- (n) The parties hereto consent and agree to the use of electronic signatures pursuant to the *Electronic Commerce Act* 2000, S.O. 2000, c17 as amended from time to time with respect to this Agreement and any other documents respecting this transaction.

19. Successors and Assigns

This Agreement and everything herein contained shall ensure to the benefit of and be binding upon the parties hereto and their successors and assigns.

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

SIGNED, SEALED, DELIVERED

—

✓ _____

Per: Joe Montesano, President

I have the authority to bind the corporation

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

Tim Murawsky, Chief Building Official

SCHEDULE A

This Schedule forms part of a Site Plan Agreement between the Owner and Municipality

DESCRIPTION OF THE LANDS

Lot 1, Draft Plan of Subdivision Block 38 PLAN 16M24

SCHEDULE B

This Schedule forms part of a Site Plan Agreement between the Owner and Municipality

APPROVED PLANS

Site Plan prepared by RN Design Project Number 21039; and
Elevation drawings prepared by Jane Lockhart Interior Design dated May 8, 2020
Approved by the Town on June 15, 2023

SCHEDULE C

This Schedule forms part of a Site Plan Agreement between the Owner and Municipality

SPECIAL PROVISIONS

1. The Owner agrees to obtain all necessary permits for the sales office use from the appropriate approval authorities including, but not necessarily limited to, the Municipality, entrance permits and building permits, conservation authority, and County of Grey
2. The Owner agree to store snow in accordance with the Approved Plans, if indicated or to otherwise remove surplus snow from the Lands and to ensure that the access lands, parking spaces and landscaping are not used for the stockpiling of snow.
3. The owners acknowledge that should snow storage occur on Town lands, the Town may elect to remove said snow at the cost of the Owner.
4. The Owner agrees that the sales office shall not be used for human habitation until such a time that a permit for occupancy has been issued by the Town's Chief Building Official, in accordance with the Building Code Act.
5. On or before the Termination Date (as set out in Section 16 of this Agreement) the Owner covenants and agrees to remove and restore the parking area to the Municipality's satisfaction. The Owner further agrees that if it fails to adequately remove and restore the parking area the Municipality shall be entitled to enter onto the Lands and undertake the work at the Owner's expense and the Owner agrees to forthwith reimburse the Municipality for the cost of such restoration and the Municipality shall be entitled to draw on the Security if the Owner fails to reimburse the Municipality accordingly.
6. The Owner agrees to install barrier free signage for the required accessible parking space(s), to the satisfaction of the Municipality.
7. The Owner agrees to install a caution sign for the traveling public to indicate that the area is an active construction site to the satisfaction of the Municipality.

DEDICATIONS AND CONVEYANCES

NIL

SCHEDULE D

This Schedule forms part of a Site Plan Agreement between the Owner and Municipality

FEES AND CHARGES

Due at time of execution:

- Sales Centre Agreement Fee:
- Security:

