

PRE-SERVICING AGREEMENT – EXTERNAL WORKS ONLY

Town of The Blue Mountains

EDEN OAK - TRAILSHEAD

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PRE-SERVICING AGREEMENT – EXTERNAL WORKS ONLY
THIS AGREEMENT made this 17 day of November, 2023

BETWEEN:

EDEN OAK (TRAILSHEAD) INC.
(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 Developer has been given draft approval for Draft Plan of Subdivision 42T-2012-01 to provide for the development and servicing of the Lands in accordance with the Conditions;

AND WHEREAS in order to develop the Lands according to the draft approve Plan of Subdivision, the Developer is required to undertake certain Works which are external to the Lands;

AND WHEREAS the Developer is desirous of undertaking and installing certain external Works on the Town Lands to facilitate the development of the Lands and the Plan in advance of the execution of a Subdivision/Condominium Agreement and the Town/Approval Authority giving Final Approval or the Assumption of the Works;

AND WHEREAS this Agreement shall also be considered a land occupation agreement and constitute a land use permit, both as set out in Town By-law 2014-65, as amended;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the covenants hereinafter expressed, other good and valuable consideration and the sum of TEN DOLLARS (\$10.00) of lawful money of Canada now paid by each of the Parties hereto to each of the other Parties hereto, the receipt whereof is hereby acknowledged, the Parties hereto hereby covenant and agree with each 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 section of this Agreement requires reference to an individual Accepted Plan, it may be referred to by its individual name;

"Agreement" means this agreement;

"Applicable Laws" means with all statutes, laws, by-laws, regulations, ordinances, orders and requirements, including the Engineering Standards, of the Town and all Government Authorities, at any time or from time to time in force governing the Lands or the design, installation, maintenance and repair of any part of the Works or the erection of buildings or structures on the Lands;

"Approval Authority" means the County of Grey;

"As Built" in the context of a drawing, plan, or document means a drawing, plan, or document created by or based solely on information provided by a third party that reflects the installed, constructed, or commissioned conditions of a work, device, machine, equipment, apparatus, structure, system, or other outcome of an engineering project.

"Assumption" means a point in time as set out in this Agreement or a Subdivision Agreement, Town after which all ownership and responsibility over the Public Works shall vest in the Town in accordance with the terms of this Agreement and/or the Subdivision Agreement;

"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 described in Schedule "A" imposed by the Approval Authority in accordance with the provisions of the Planning Act with respect to the approval of the Draft Plan;

"Consultants" has the meaning ascribed to it in Section 2.2;

"Contaminant" is as defined in the *Environmental Protection Act*, R.S.O. 1990, c. E.19

"County" means the County of Grey;

"Default" means a failure by the Developer to perform or fulfill any requirement or obligation of this Agreement, including but not limited to:

the failure of the Developer to design, construct, install, repair or maintain the Works in accordance with all of the requirements of this Agreement;

the failure of the Developer to make any payments to the Town required by this Agreement when due;

the failure to abide by any Applicable Laws;

the neglecting or abandoning of the Works prior to Assumption;

unreasonably delaying the installation of Works so that the conditions of this Agreement are violated or executed carelessly, or in bad faith;

the neglect or refusal to renew or reinstall Works which have been rejected by the Town as defective or unsuitable;

"Director" means the person holding the title of Director of Planning and Development Services for the Town or their designate;

"Discharge" is as defined in the *Environmental Protection Act*, R.S.O. 1990, c. E.19

"Draft Plan" means the draft approved plan as described in Schedule "A" and in the Conditions;

"Engineer" means a professional engineer who holds a Certificate of Authorization for municipal engineering applications from the Association of Professional Engineers of Ontario;

"Engineering 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;

"Final Approval" means the release by the Town of the final plan of subdivision to the Approval Authority for final approval for registration under the Planning Act;

"Government Authority" means any government authority or agency, including conservation authorities and the Niagara Escarpment Commission 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 Works;

"Highway" means highway described in the Municipal Act under the jurisdiction of the Town and includes a highway under the jurisdiction of the Town which has not been assumed for public use by a by-law of the Town;

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

"Lands" shall mean the lands described in Schedule "A";

"Landscape Architect" means a landscape architect registered with the Ontario Association of Landscape Architects;

"lot" or "Lot" means a lot or block shown on a Plan;

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

"OBC" means the Building Code Act, 1992, S.O.1992 c.23 and all regulations thereto;

"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 which the Developer proposes to register in accordance with the provisions of the Planning Act for the purpose of subdividing 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 EPCOR Electricity Distribution Ontario Inc., whichever has jurisdiction to supply electric power to the Lands;

"Pre-Servicing Certificate" has the meaning ascribed to it in Section 3.11;

"Private Works" are those services or Works which will be installed, maintained and owned by the Developer or their successor, in perpetuity;

"Public Works" means those Works which are to be owned, operated and maintained by the Town following Assumption in accordance with the Subdivision Agreement;

"Record Drawings" means documents created to accurately reflect as-constructed, as-built or as fabricated conditions and that have been sealed by a professional engineer after verifying that the documents are accurate.

"Security" has the meaning ascribed to it in Section 4.2;

"Subdivision Agreement" has the meaning ascribed to it in Section 2.1;

"Town Lands" means all lands and easements owned by the Town, including Highways under the jurisdiction of the Town, and specifically, for the purposes of this Agreement, means those portions of Lakeshore Dr. in the Town which are shown on the Accepted Plans;

"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 required for the servicing of the Lands including hydro-electric, gas, telephone, cable television and telecommunication, but does not include the Street Lighting Works or other lighting included in the Public Works and the Private Works;

"Works" means all of the works, grading and drainage, services, facilities, landscaping, fencing, matters and things shown on the Accepted Plans or referred to in this Agreement 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 as further itemized at Schedule "B" hereto. Where the subject matter or context of a section of this Agreement requires reference to an individual component of the Works, it may be referred to by its individual name. The Works includes the Public Works, and Private Works;

"Works Fee" is the fee to be paid by the Developer to the Town in accordance with the Town's Fees and Charges By-law, as amended, and as outlined in Schedule "D" hereto;

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 Engineering 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

- (a) 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.
- (b) Where the Town corresponds with the Consultants with respect to any matter arising out of this Agreement and provides a copy of such correspondence to the Developer, such correspondence shall be deemed to be correspondence received by the Developer.
- (c) The Parties acknowledge that Parts I to VI of this Agreement constitutes the Town's Standard Form of Pre-Servicing Agreement and that some provisions of Parts I to VI may not apply to the installation of the Works shown on the Accepted Plans. This Agreement shall be administered by the Town on the understanding that if the Town determines that a particular provision of this Agreement does not apply to Works show on the Accepted Plans, it will not apply such provision, without the necessity of amending this Agreement to delete the non- applicable provision from this Agreement.
- (d) The Developer covenants and agrees not to call into question or challenge, directly or indirectly, in any proceeding or action in court, or before any administrative tribunal, the Town's right to enter into and enforce this Agreement. The law of contract applies to this Agreement and the parties are entitled to all remedies arising from it, notwithstanding any provision of the Planning Act interpreted to the contrary. The parties agree that adequate consideration has flowed from each party to the other and that this provision shall not be severable from the terms of this Agreement. This provision may be pleaded by the Town in any action or proceeding as an estoppel to any denial of such right.

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

- (a) 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 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.
- (b) The Developer acknowledges that the only work or construction which may proceed on the Lands is such work or construction as shown on the Accepted Plans. Any additional Works which the

Developer wishes to install after the execution of this Agreement shall not be installed until the plans and specifications for these additional Works have been stamped "Accepted for Construction".

- (c) In the event, after the execution of this Agreement, the Developer wishes to install additional works, the plans and specifications for these works when stamped "Accepted for Construction-Pre-Servicing Only" by the Town are incorporated into and form part this Agreement as Accepted Plans and shall have the same force and effect as if the information shown on them were contained in the body of this Agreement and all of the provisions of this Agreement shall apply to them.

1.8 Representations and Warranties

The Developer hereby represents and warrants to the Town as follows and acknowledges that the Town is relying on such representations and warranties in entering into this Agreement:

- (a) It is duly incorporated, organized and validly subsisting under the laws of its jurisdiction of incorporation and is qualified and able to own or lease property, and to carry on business, in Ontario.
- (b) It has full power and authority to carry on its business and to enter into this Agreement and any agreement or instrument referred to or contemplated by this Agreement and to carry out and perform all of its obligations and duties hereunder and thereunder.
- (c) It has duly obtained all corporate approvals and the authorizations of any governmental authority required for the execution, delivery and performance of this Agreement and such execution, delivery and performance and the consummation of the transactions herein and therein do not conflict with or result in a breach of any covenants or agreements contained in, or constitute a breach of or default under or result in the creation of any encumbrance under, the provisions of its constating documents or any shareholders' or directors' resolution or any indenture, agreement or other instrument whatsoever to which it is a party or by which it is bound and does not contravene any applicable Laws of any governmental authority.
- (d) This Agreement has been duly executed and delivered by it and is valid, binding and enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, and other laws of general application limiting the enforcement of creditors rights generally and to the fact that specific performance and other equitable remedies are available only in the discretion of a court.
- (e) It has not committed an act of bankruptcy, is not insolvent and is able to meet its obligations as they come due, has not proposed a compromising arrangement to its creditors generally, has not had any petition for a receiving order in bankruptcy filed against it, has not made a voluntary assignment in bankruptcy, has not taken any proceedings with respect to a compromise or arrangement, has not taken any proceeding to have itself declared bankrupt or wound-up, has not taken any proceeding to have a receiver appointed in respect of any part of its assets, has not had any encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or become levied upon any of its property.
- (f) It owns its respective fee simple right, title and interest in and to the Lands free and clear of all encumbrances, other than those specifically contemplated and/or permitted by this Agreement.
- (g) It acknowledges and agrees that any municipal approvals, including zoning and subdivision approvals, do not verify or confirm the adequacy of soil conditions and the Developer accepts full responsibility for soil conditions, including soil and/or groundwater and surface water contamination.

PART II

GENERAL SERVICING REQUIREMENTS

2.1 Subdivision Agreement

- (a) The Developer agrees that prior to Final Approval, the Developer shall enter into a subdivision and/or condominium 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 "Subdivision Agreement"). The Parties agree that the Subdivision Agreement, when executed, shall supersede and replace this Agreement.
- (b) The Developer agrees and acknowledges that it shall not be entitled to Preliminary Acceptance or Final Acceptance or Assumption of any of the Works until the Developer and the Town have entered into the Subdivision Agreement, or as otherwise set out in this Agreement.
- (c) If the Parties do not execute a Subdivision Agreement prior to the lapsing of the draft approval of the Draft Plan, 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.

2.2 Consultants

The Developer shall retain one or more Engineers and one or more Landscape Architects (individually the "Engineering Consultant" or the "Landscaping Consultant" and collectively the "Consultants") to carry out all the necessary engineering and landscaping requirements for the subdivision, development and servicing of the Lands in accordance with this Agreement. The Town, may upon pre-qualification of such, accept the use of other qualified professionals for certain components of the design, inspection and certification processes of the Works.

All the engineering requirements set out in this Agreement, including the issuing of certificates for the engineering Works shall be the responsibility of the Engineering Consultant and all the landscaping requirements set out in this Agreement, including the issuing of certificates for the landscaping Works shall be the responsibility of the Landscaping Consultant.

The Consultants shall be retained at all times until all of the requirements of this 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.

The Developer shall provide an executed copy of this Agreement and a copy of the Engineering 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 the Works.
- (b) Prepare all studies, investigations, environmental site assessments and reports required by the Town for the Works and the Lands, design the Works in strict conformity to the Engineering

Standards, and prepare, sign, and seal all required plans, drawings and specifications for the Works which shall include a certificate from the Landscaping Consultant to the effect that all required plans, drawings and specifications for the Landscape Works are in conformity to the Accepted Plans.

- (c) Prepare, when applicable, 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. 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 Record Drawings 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 Record Drawings all in accordance with the Engineering Standards, for the review and approval of the Town.
- (g) Provide to the Town the following contract documentation:
 - I. Contract schedule of unit quantity and prices including mobilization/de-mobilization;
 - II. certificates of the substantial performance given pursuant to the provisions of the Construction Act; and
 - III. particulars of publication of the certificate of the substantial performance.
- (h) 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.
- (i) Provide to the Town all the other certificates required to be provided by this Agreement.

2.3 Applicable Laws and the Engineering Standards

All Works required to be designed, installed, provided and maintained pursuant to this Agreement shall be designed, installed, provided and maintained in strict accordance with all Applicable Laws and the Engineering Standards. All submissions to the Town shall be made in accordance with the Applicable Laws and the Engineering Standards. Nothing in this Agreement shall relieve the Developer from compliance with all Applicable Laws.

2.4 Changes to the Engineering Standards

- (a) 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 Applicable Laws and/or the Engineering Standards for any of the Works which the Developer is required to install before the particular Works are installed, the Developer shall, at its own expense, if required by Notice given by the Town redesign and install the particular Works referred to in the Notice in accordance with the new Applicable Laws and/or the revised engineering standards.
- (b) In the event the Engineering Standards are revised by the Town, the revised engineering standards shall be deemed to be the Engineering Standards within the meaning of this Agreement and all the provisions of this Agreement shall apply to them.

2.5 Utility Services

The Utility Services shall be installed as a total underground installation, except internal street lighting poles and fixtures, at no cost to the Town and with no obligation of the Town to install the Utility Services.

The location of the Utility Services and the detailed plans and specifications for the street lighting system shall be shown on the Accepted Plans described in this Agreement and the Subdivision Agreement. The detailed plans and specifications for the Utility Services shall form part of the agreements between the Developer and the utility providers for the installation of the Utility Services.

- (a) The Developer shall, prior to Final Approval, enter into a secured agreement with the Power Utility which requires the electrical distribution system for the Plan to be installed and energized prior to the occupancy of the first dwelling to be constructed on the Plan. A copy of such agreement shall be delivered to the Town prior to Final Approval.
- (b) The Developer shall, prior to Final Approval, make arrangements in writing with the other utility providers who will be providing Utility Services to the Plan which require these Utility Services to be installed and energized prior to the occupancy of the first dwelling to be constructed on the Plan. A copy of such arrangements shall be delivered to the Town prior to Final Approval.
- (c) The Developer shall install and energize the Street Lighting System for the Plan prior to the occupancy of the first dwelling to be constructed on the Plan.
- (d) The Developer is responsible for informing all the utility providers of its intention to commence any construction on the Lands.
- (e) The Developer shall include in all agreements of purchase and sale for lots within the Plan, a statement advising the purchaser of the Utility Services which will be provided to the lot by the utility providers and advising the purchaser that it is the obligation of the utility providers to install the Utility Services and not the Town's.

2.6 Highways and Private Roads

The Developer shall:

- (a) Install all the underground services prior to installing the granular and stone bases for municipal services on all Highways and laying the base course of asphalt.
- (b) Install Utility Service road crossings prior to laying base course asphalt.
- (c) Obtain the approval of the Consultant Geotechnical Engineer with a review satisfactory to the Town for the sub-grade prior to placing the granular materials on all the Highways.
- (d) Obtain the approval of the Consultant Geotechnical Engineer with a review satisfactory to the Town for the granular and stone bases for municipal services on all Highways prior to laying the base course of asphalt.
- (e) Receive the authorization of the Town prior to laying base course asphalt.

2.7 Grading and Drainage

The Developer shall:

- (a) Be responsible for all grading and drainage of the Lands in accordance with the Accepted Plans and in accordance with the Engineering Standards and accepted engineering practice.
- (b) 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 Accepted Plans.
- (c) 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.

- (d) Not alter the grading or change the elevation or contour of the land shown on the Accepted Plans except in accordance with amended grading and drainage plans accepted by the Town.

2.8 Tree Preservation and Landscaping Requirements

The Developer shall:

- (a) Preserve the existing trees and vegetation shown on the Accepted Plans to be preserved.
- (b) Install the tree protection fencing shown on the Accepted Plans to the satisfaction of the Town prior to the start of any construction activity on the Lands, which fencing shall remain in place until all grading and construction activity of any kind are completed.
- (c) Not remove any trees or vegetation without the prior written approval of the Town except such trees and vegetation that are diseased or dead or such trees and vegetation that are designated for removal on the Accepted Plans.
- (d) Require the Landscape Consultant to supervise and approve the installation of the tree protection fencing and ensure that the tree protection fencing remains in place during the entire period of construction activity of any kind on the lot and that the Landscape Consultant will notify the Town that this fencing has been installed in accordance with Accepted Plans.
- (e) Undertake every precaution necessary to prevent damage to existing trees and vegetated areas, include the following:
 - a. 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;
 - b. no contaminants will be dumped or flushed where feeder roots of vegetation exist;
 - c. no vegetation or tree limbs shall be removed, pruned or otherwise damaged during construction; and
 - d. no rigging cables shall be wrapped around or installed in trees to be preserved.
- (f) Replace, to the satisfaction of the Town, any existing trees and vegetation shown on the Accepted Plans to be preserved which are removed without prior written approval of the Town except such trees and vegetation that are diseased or dead.

The Developer acknowledges that the Town, in addition to any other remedy it may have under this Agreement and at law, shall also be entitled to enforce this Section in accordance with the Town's Tree Preservation By-law No. 2010-68 as amended from time to time or any successor or replacement by-law thereto.

2.9 Siltation and Erosion Control

The Developer shall install the siltation and erosion control works shown on the Accepted Plans to the satisfaction of the Town prior to the start of any construction activity on the Lands and these Works shall remain in place and be maintained by the Developer until all grading, construction activity of any kind, and landscape Works on the Lands are completed, the Town is satisfied that the parts of the Lands requiring the siltation and erosion control works are fully vegetated and there is no reasonable expectation of future erosion on these lands and the Town has advised the Developer by notice that these Works may be removed.

2.10 Accepted Plans

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

2.11 Environmental Contamination or Impairment

- (a) If the Town has a reasonable concern that any Works, work, activity or construction on the Lands has created or poses a real or potential impairment to watercourses, surface water, groundwater, any land or the environment, the Town may require the Developer, or its Consultants/contractors/agents, to produce or undertake relevant information, studies, or inspections to the Town to determine if there has been such impairment or there is a risk of same. Such inspections or studies may include an environmental site assessment, hydrogeological study, water quality study, well survey or any other such study as the Town, the Ministry of the Environment, Conservation & Parks (“MECP”), or other Government Authority deem necessary to investigate real or potential contamination or impairment of any lands, the environment, watercourses, surface water, or groundwater.
- (b) The Developer covenants and agrees that if there has been:
- I. a Discharge of a Contaminant;
 - II. an impairment or contamination of any land or the environment;
 - III. an impairment or contamination of a watercourse;
 - IV. an impairment or contamination of surface water or groundwater; then,

the Developer agrees that it shall:

- I. notify the Town forthwith;
 - II. notify the MECP and any other relevant Government Authority forthwith as required by Applicable Laws;
 - III. take all practicable steps, including the design and installation of restorative or mitigative work or infrastructure, to eliminate and ameliorate the effects of the Discharge of a Contaminant, impairment or contamination of any land, environment, watercourse, surface water, or groundwater, as the case may be, to the satisfaction of the Town, MECP, and/or other Government Authority, as applicable.
- (c) The Developer agrees to indemnify and compensate the Town for any incurred costs, losses, or damages to the Town as a result of any Discharge of a Contaminant, impairment or contamination of any land, environment, watercourse, surface water, or groundwater, or in exercising the Town’s authority under this Agreement in relation, directly or indirectly, to any Discharge of a Contaminant, impairment or contamination of any land, environment, watercourse, surface water, or groundwater.
- (d) The Developer further covenants and agrees that nothing in this Section shall impose any obligation or responsibility on the Town to notify or report any Discharge of a Contaminant, impairment or contamination of any land, environment, watercourse, surface water, or groundwater, nor any obligation or responsibility to employ corrective measures and such obligations shall remain the Developer’s sole obligations.

PART III

PRE-SERVICING REQUIREMENTS

3.1 Installation of the Pre-Servicing Works

- (a) The Developer acknowledges and agrees that in exercising the rights afforded by this Agreement and by proceeding with the installation of the Works prior to obtaining all of the necessary approvals from all required Government Authorities, and prior to execution of the Subdivision Agreement, and prior to Final Approval it is doing so entirely at its sole and absolute risk and expense without any claim or recourse whatsoever against the Town by virtue of the Developer undertaking the Works or exercising any other right pursuant to this Agreement. The Developer further agrees to leave the Works and the Lands in a safe and tidy condition, to the satisfaction of

- the Town, should active development of the Lands come to an end for any reason. All the provisions of this Agreement shall apply to the design, installation and maintenance of the Works.
- (b) The Developer covenants and agrees to carry out, construct, and install the Works at its sole expense and in accordance with the Accepted Plans and in a good and workmanlike manner to the satisfaction of the Town.
 - (c) The Developer agrees that it will be bound by the terms and conditions of the Subdivision Agreement and that nothing contained in this Agreement or in the Town's grant of the permission to proceed with the installation and construction of the Works will stop the Town from imposing any of its standard conditions and requirements pertaining to the installation of public works or from enforcing its authority to require the Developer to fully comply with all applicable conditions of approval of the plan of subdivision.
 - (d) The Developer acknowledges and agrees that it is seeking to construct the Works ahead of the final approval and registration of the Plan on the Lands and by entering into this Agreement, the Town is not pre-approving any future planning approval, works, infrastructure, development or development project on the Lands. The Developer is entering into this Agreement and constructing the Works at its sole and absolute risk, and at no cost or expense to the Town. In the event the Developer does not, or is unable, to construct or complete the development of the Lands for any reason whatsoever, the Developer shall have no recourse as against the Town for any costs expended in constructing, repairing or maintaining the Works or in the exercise of any authority granted under this Agreement and shall hold the Town entirely harmless in this regard. In the event the Plan does not proceed for any reason whatsoever the Works constructed pursuant to this Agreement shall still vest in the ownership of the Town pursuant to this Agreement and the Town shall have no obligation whatsoever to pay, compensate, or refund the Developer in any manner for the Works so constructed, or any costs or expenses related, directly or indirectly, thereto. Notwithstanding that the Works are intended to service the Lands, the entering into of this Agreement or the installation of Works pursuant to this Agreement shall in no way fetter the authority and discretion of the Town to approve, or not approve, any future planning approval, subdivision, site plan, works, engineering submission, construction, or development, or enter into any further development agreement related to the Lands and the Town shall retain the right to approve or not approve of any such matters in the usual course at the usual time. Further, if in the sole and absolute opinion of the Town, any changes or upgrades are required to the Works to facilitate the proper functioning of the Works, servicing or development of the Lands or the Plan, the Developer shall make such change or upgrade as set out in a future development agreement related to the Lands/Plan at no cost to the Town.
 - (e) The Developer agrees that it may be required to modify, alter, daylight, relocate, and reconstruct the Works at the discretion of the Town and based on the final plans, drawings, standards, and specifications as set out in the Subdivision Agreement.
 - (f) 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 Works in strict accordance with the OBC, Engineering Standards, the Accepted Plans and the requirements of this Agreement to the satisfaction of the Town and all Government Authorities.
 - (g) The Developer shall not commence installation of the Works until:
 - (i) The Developer has obtained all the necessary permits and approvals for the installation of the Works from all required Government Authorities, including, but not limited to the Town, County of Grey, Ministry of Transportation, or other applicable Provincial Ministry.
 - (ii) The Developer has obtained all the necessary Permits from the CBO for the Works shown on the Accepted Plans that are governed by the OBC.
 - (iii) The Developer has provided the Security and the insurance requirements to the Town in accordance with this Agreement; and

- (iv) The Town has given Notice to the Developer authorizing the Developer to commence installation of the Works and the Developer has given the Town ten (10) business Days' Notice of the date upon which installation of the Works is scheduled to commence.
- (h) The Developer agrees that, prior to proceeding with the placement of paving on any proposed road as part of the Works, the Developer shall obtain approval from the Town of the Composite Utility Plan and the Street Lighting Plan, as defined in the Engineering Standards.
- (i) The Developer agrees that if installation of the 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 excavations and to grade and to reinstate the Lands to their pre-existing condition.
- (j) The Developer agrees that if the 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 Works are in an acceptable standard to the Town and that it is at the sole discretion of the Town whether to accept any Works that are not in a condition satisfactory to the Town.
- (k) The Developer shall not connect the Works to the Town's sanitary sewer system, water distribution system, storm drainage system or public highway system or conduct any works on Town Lands until Final Approval and/or the Town has provided written authorization for such connections and work. Further, the Developer covenants and agrees that the entering into of this Agreement and the installation of the Works does not provide the Developer with servicing allocation for water, sewer, or stormwater municipal services and the Developer further covenants and agrees that such allocation shall not be assigned or allocated except as set out in the Subdivision Agreement.
- (l) The Developer agrees that any commissioning, inspection and testing procedures undertaken by the Developer for any of the 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 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 Preliminary Acceptance of the Basic Services pursuant to the Subdivision Agreement.
- (m) The Developer agrees to maintain all of the Works in a good, safe, and workmanlike manner, at the Developers sole expense and to the satisfaction of the Town until Assumption and as outlined in the Subdivision Agreement.
- (n) The Developer agrees that the Town is under no obligation whatsoever to complete all or any portion of the Works if the Developer is in Default and fails to complete them but that, notwithstanding the foregoing, the Town shall, at its sole and absolute discretion, be entitled to enter onto the Lands and complete all or any portion of the Works and take any action it deems necessary to safeguard and protect the property, health and safety of its residents all at the Developer's sole cost and expense.

Despite anything contained in this Agreement the Developer shall, with respect to Works shown on the Accepted Plans that are governed by the OBC, comply with all the requirements of the OBC to the satisfaction of the CBO. In the event of a conflict between any provision of the OBC and any provision of this Agreement, the OBC shall prevail to the extent of the conflict.

The Developer acknowledges and agrees that the Town is entitled to withdraw its permission granted herein for the installation of the Works if it is determined, in the reasonable and professional discretion of the Town, that such withdrawal is in the best interest of the Town. Upon Notice of such withdrawal of permission the Developer agrees to immediately cease any further installation or other work in respect to the Works.

3.2 Amendments to the Accepted Plans

All the 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 Town, 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 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 and other access points designated by the Town for this use as per the Accepted For Construction drawings. The Developer shall, when required by the Town, install barricades at the end of other Highways providing access to the Lands to prevent these Highways from being used for construction traffic. The Developer shall maintain these barricades in place until the Town instructs the Developer to remove them. The Developer agrees that the Town may, at its discretion, issue a Stop Work Order to the Developer if they fail to abide by the construction access parameters as set by the Town.

3.5 Inspection by the Town

- (a) The Town may inspect the installation of the Works and shall have the power to stop any work in the event that in its professional opinion the work is not being performed in accordance with the requirements of this Agreement or being performed in a manner that may result in a completed installation or construction that would not be satisfactory to the Town.
- (b) The Developer agrees that the Town, its employees, agents and contractors or any other authorized persons may enter upon the Lands in compliance with the Developer's health and safety procedures 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 Works is not, in the professional 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 Works.

3.7 Town May Repair Works

In the event that the Developer fails to keep any of the 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 Works do not function or do not function properly in the professional opinion of the Town as determined by the Manager of Development Engineering, 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 Works by the Town or an 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 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 Works, as well as all buildings and structures on the Lands, 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 unreasonably foul any public highways, 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) To apply dust suppressant or other mitigating measures to any soil, fill, roads, stockpiles, or lands from which dust is emanating in connection with the development of the Lands in order to reasonably mitigate the impact on people and property, to the satisfaction of the Town.
- (d) Not to allow and to restrain, insofar as it is able to do so, all others, from depositing junk, debris, or other materials on the Lands, the Town Lands and private land.
- (e) To clear debris and garbage from the Lands if so requested by Notice given by the Town and that the Town shall have the authority to remove such debris and garbage at the cost of the Developer if the Developer fails to do so within forty-eight (48) hours of being advised to do so;
- (f) That, if in the opinion of the Town, the requirements of this Section 3.9 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.

3.10 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 Works within the meaning of this Agreement.

3.11 Pre-Servicing Certificate

- (a) Prior to preparation of the Subdivision Agreement by the Town, the Consultants shall provide to the Town a certificate (the "Servicing Certificate"), for approval by the Town, describing the Works that have been completed, stating that the completed Works have been installed in strict accordance with the Engineering Standards, the Accepted Plans and the requirements of this Agreement, setting out the actual costs of installing the completed 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 Certificate as the basis for preparing Schedule "D" - Estimated Cost of the Works and Security Required - to the Subdivision 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 Subdivision 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 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 the Servicing Certificate by the Town does not constitute acceptance of the Works described therein by the Town and that a Certificate of Preliminary Acceptance of the Basic Services issued pursuant to the Subdivision Agreement is required for this purpose.

3.12 Communications Plan

The Developer covenants and agrees to abide by a Communications Plan, as described in Schedule C hereto. The Developer further agrees that if the Communications Plan requires that Notice or communications be given before any step is taken, the Developer shall not take such step until such Notice or communication is given. In the event the Developer fails to give Notice or facilitate required communication, the Town may issue a Stop Work Order and the Developer shall cease all work on the lands related to the failure to give Notice until proper Notice or Communication is given or made.

3.13 Fill

The Developer covenants and agrees that any fill or excess soil on the Lands shall be governed and regulated by Ontario Regulation 406/19 as amended.

3.14 Topsoil Screening and Stockpiling

- a) The Developer shall ensure that any screening or processing of soil shall be completed and cease no later than July 1 of any given year. In the event that screening or processing is not complete by July 1, the Developer agrees to shape and hydroseed any soil stockpile and shall not be entitled to re-commence screening or processing until October 1 of the same year.
- b) The Developer shall adopt reasonable dust mitigation protocols to minimize the impact of dust on the surrounding lands. The Developer agrees to use and implement all reasonable dust mitigation measures and techniques when requested by the Town.
- c) The Developer shall ensure that all necessary Ministry of the Environment, Conservation and Parks permissions, permits and approvals, as applicable, are in place prior to the commencement of any soil screening or processing.

3.15 Stop Work Order

- (a) A Stop Work Order shall mean an order, issued by the Town, which requires the Developer or their contractors, agents, employees, or assigns, to immediately cease any work, works, activity or construction if, in the opinion of the Town:
- a. the work, works, activity or construction poses a threat to person or property;
 - b. the work, works, activity or construction or any circumstance on the Lands is considered an emergency by the Town;
 - c. the work, works, activity or construction is in contravention of, or not in compliance with, the terms and conditions of this Agreement, including the Applicable Laws and Accepted Plans;
 - d. the Works are not functioning properly or as designed;
 - e. additional or different Works, services, or infrastructure are required to facilitate the proper and adequate servicing of the Lands/Plan.
- (b) Nothing in a Stop Work Order shall prohibit the Developer or their contractors, agents, employees or assigns from continuing work or Works for the sole purpose of securing the Lands or preventing damage to person or property.
- (c) The Town agrees to forthwith rescind a Stop Work Order once the remedial action as outlined in the Stop Work Order has been fulfilled, at the Town's discretion, acting reasonably.
- (d) The Developer covenants and agrees to indemnify the Town and that the Town shall not be responsible or liable for any damages or losses incurred by the Developer or its contractors, agents, employees or assigns, as a result of the issuance of any Stop Work Order by the Town, unless said Stop Work Order was issued maliciously, negligently, or in bad faith.
- (e) The failure of the Developer or their contractors, agents, employees or assigns to comply with a Stop Work Order shall constitute a Default.

3.16 Blasting

The Developer covenants and agrees not to conduct any blasting on the Lands without the express written permission of the Town, and in strict conformity with the following conditions:

- (a) to advise all contractors and workers on the Lands of the proposed blasting and schedule;
- (b) to be responsible for ensuring that all contractors and subcontractors take all necessary precautions to protect all persons, buildings, structures, works, facilities and utilities from damage occurring due to blasting conducted on the Lands;
- (c) to be responsible for any damage or harm arising to any person, building, structure, work, facility and utility;
- (d) to provide all occupants of buildings within 150 metres of the Lands with at least five (5) days prior written notice of all proposed blasting. Any blasting scheduled for the following seven days may be included in one notice, provided the Developer strictly adheres to the outlined schedule; any material deviation (greater than 6 hours) from said schedule shall require further notice as set out in this section;
- (e) to ensure that any blasting activity shall only occur between the hours of 8:00 a.m. and 5:00 p.m. on weekdays that are not statutory or civic holidays and only at times when atmospheric conditions provide clear observation for a distance of at least 1,000 meters from the blasting site;
- (f) that the Town shall be entitled, on reasonable grounds, to retain the services of an independent qualified blasting and vibration control engineer to review all documentation submitted to the Town and to conduct necessary inspections and supervision of blasting operations on the Lands. All reasonable costs incurred by the Town shall be borne by the Developer;

- (g) that all blasting shall be undertaken in strict conformity with *OPSS.MUNI 120: General Specifications For The Use of Explosives*.
- (h) Any conflict between *OPSS.MUNI 120: General Specifications For The Use of Explosives* and this Agreement shall be resolved by deferring to the more stringent/ strict requirement.
- (i) That the Developer shall obtain adequate insurance, to the satisfaction of the Town, to cover all blasting activities on the Lands and shall not commence any blasting prior to the Town accepting and approving said insurance.

3.17 Maintenance and Repair of the Works

- (a) The Developer shall maintain and keep in a proper state of repair and operation, to the satisfaction of the Town, all of the Works from the commencement of construction and until the Works are Assumed or otherwise as stipulated in a Subdivision Agreement.
- (b) The Developer’s responsibility shall also include the operation, maintenance, repair of the:
 - (i) stormwater control and management Works within the Lands, the removal of silt material and the periodic cleaning of the storm sewer system, facilities and the storm flow outlets within the Lands;
 - (ii) Stormwater management and control Works outside the Lands, the removal of silt material and cleaning of the Stormwater management and control Works, including sewers and storm flow outlets, if work within the Lands has resulted in required maintenance or repair of said Stormwater management and control Works outside the Lands, or if such maintenance and repair is necessary for the proper management of stormwater and drainage on, or originating from, the Lands;
 - (iii) Sanitary sewer Works, the removal of debris from the sanitary collection system; and
 - (iv) Highways, removal of debris and maintain all Highways for vehicular traffic to the requirements of all Applicable Laws for Highways and shall maintain all sidewalks on all Highways for pedestrian traffic during all phases of construction until Final Acceptance.
- (c) The Developer’s responsibility shall also include the maintenance of the trees, sod and landscaping, and silt and erosion Works.
- (d) The Developer agrees that in the event of any failure of the Works within the Lands, or in the event any work within the Lands harms or impacts property or land outside the Lands, the Developer is responsible for, and will maintain or repair said property or land outside the Lands.

3.18 Restoration of the Lands

- (a) The Developer covenants and agrees that if:
 - i. the Developer ceases work, Works, construction, or activity on the Lands for a period exceeding three (3) months and fails to re-commence work when given Notice to do so by the Town; or,
 - ii. the Developer is unable, or unwilling, to complete the Works as required by this Agreement; or,
 - iii. the Developer commits an act of bankruptcy, becomes insolvent, or is generally unable to meet its obligations as they come due to its creditors or otherwise; or,
 - iv. the Developer is in Default and fails to rectify the Default as and when required by the Town; or,
 - v. this Agreement is deemed null and void;

then, in any such case, the Town may give Notice to the Developer to restore the Lands, as much as practicable, to the same condition as of the date immediately prior to this Agreement being entered into, and the Developer agrees to do so at its sole cost and expense. Said restoration work may be specified by the Town in the Notice, and may include, but is not necessarily limited to:

- vi. the grading/re-grading of the Lands; and,
- vii. the removal of Works or infrastructure; and,
- viii. the removal of buildings and structures; and,
- ix. the planting/re-planting of trees and vegetation; and,
- x. the rectification of any damage to the Lands or any other lands which was caused by any work or construction pursuant to this Agreement; and,
- xi. any other such matters as may be required to restore, secure, or protect the Lands, at the sole and absolute discretion of the Town.

(b) If the Developer fails to undertake such restoration and remediation on such terms and at such times as set out in a Notice from the Town, then the Town may, at its sole and absolute discretion, draw on the Security to undertake all such work as the Town, in its sole and absolute discretion, deems appropriate. The Town may add reasonable administrative costs to its costs of undertaking said work.

3.19 Early Assumption of Certain Works

- (a) The Town may, upon the completion of any or all of the Works which are located on/in the Town Lands, assume such Works at which time the ownership of said Works shall vest in the Town and the Town shall be responsible for their operation, maintenance and repair of said Works.
- (b) The Parties agree that the Town shall be under no obligation to assume the Works as set out in Section 3.20 (a) above unless the Town is satisfied, in its sole and absolute discretion, that the Works are installed properly and in accordance with this Agreement, that the Works have been installed and properly maintained without any evidence of damage or disrepair for a minimum of one year from the date of completion and there is no risk of future damage to said Works by the future development of the Lands.

3.20 Impact on Existing Works and Infrastructure

- (a) The Developer shall not cause or permit to be caused any interruption in the provision of municipal water, sanitary, stormwater, public highway services, or recreational use of any public trail without the Town’s written permission.
- (b) The Developer agrees that should any work or construction on the Lands result in any interruption to the provision of municipal water, sanitary, stormwater or public highway services then effected residents shall be given advance notice of the disruption, in coordination with the Town.
- (c) In the event any lands, including Town owned lands, which are not owned by the Developer are damaged while exercising the rights and obligations as set out in this Agreement, the Developer agrees to forthwith restore said lands to a condition which is the same or better than it was pre-construction, and indemnify and hold the Town harmless in this regard.

PART VI

FINANCIAL ARRANGEMENTS AND INSURANCE

4.1 Fees and Charges

The Developer shall pay to the Town, upon execution of this Agreement, the payments, fees, charges and rates as set out in Schedule "D" in accordance with Town By-law 2022-14 as amended from time to time.

4.2 Security

- (a) The Developer shall provide to the Town, prior to the execution of this agreement by the Town, a letter of credit or letters of credit in the amount of [REDACTED] to cover the fulfillment and performance of the obligations of the Developer arising under this Agreement including but not limited to the construction of certain Works, restoration/remediation of the Lands or portion thereof, stabilization of the Lands and Works, and any other financial matter. 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(s) 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(s) of credit in accordance with the provisions of this Agreement.
- (b) The Developer covenants and agrees that if the Town is required to draw on the Security for any reason, including a Default, it may use the Security to meet of fulfill any obligation of the Developer pursuant to this Agreement.
- (c) 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 to the Developer on any such Security.
- (d) 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 owner files a substitute letter of credit or letters of credit or deposits cash or a certified cheque to be cashed in the required amounts with the Town, or the Town otherwise agrees in writing.
- (e) The Developer hereby acknowledges and agrees that the Town may draw on and use the Security to complete any work or matter required to be done by the Developer pursuant to this Agreement. And further, that any Security filed with the Town may be used for any item or any other matter which, under the terms of this Agreement, is the responsibility or obligation of the Developer, including without limiting the generality of the foregoing, payment of engineering, legal, planning, enforcement or other costs incurred by the Town pursuant to this Agreement.
- (f) The Developer covenants and agrees that the Town may use any or all of the Security to indemnify the Town for any costs, fees, or expenses it incurs in the course of defending itself and its interests against any claim, suit of any kind brought against the Town related to this Agreement or the Developer's obligations as set out in this Agreement or related to the Works.
- (g) The Developer acknowledges and agrees that the Town shall be under no obligation to reduce the Security unless the Town is satisfied, in its sole and absolute discretion, that the Works are installed properly and in accordance with this Agreement, and that the Works have been properly maintained by the Developer for a period of not less than one-year from the date of completion (as determined by the Town) without any evidence of damage or disrepair.

4.3 Developer in Default

- (a) If, in the sole and absolute opinion of the Town, the Developer is in Default, other than a Default referred to in Subsection 4.3 (c) or in the case of emergencies, The Town 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 sole 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 or repair of the Works, done by the Town pursuant to the provisions of this section to rectify any Default.
- (b) The Developer agrees that the Treasurer may use any of the Security held by the Town pursuant to this Agreement to rectify any Default, regardless of what Works, fees, or costs the Security was collected for.
- (c) If the Developer fails to make any payment required by 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.
- (d) Any time there is a Default the Town, acting reasonably, may require that all development which may be affected by any Default shall cease until such time as the Default is cured to the satisfaction of the Town, and the Town shall be entitled to pursue as against the Developer all remedies that are legally available. The declaration of this Agreement, or any subsequent agreement, including a Subdivision Agreement, to be in Default may not affect the validity of said Agreements to permit continued development provided the Town is satisfied, and confirms the same in writing, that said Agreements and portion of the Lands are not adversely affected by the default, and that further development can appropriately proceed without the Default being rectified.
- (e) 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 considered the acceptance or Assumption of the Works by the Town nor of any liability in connection therewith nor a release of the Developer from any of its obligations under this Agreement.
- (f) The Developer agrees that notwithstanding any term or condition of this Agreement which permits the Town to undertake any work, Works, construction, maintenance, restoration, or remediation on the Lands, the Town is under no obligation to do so, but may do so at its sole and absolute discretion in accordance with this Agreement. Notwithstanding any work, Works, construction, maintenance, restoration, or remediation so undertaken by the Town, all such obligations and liabilities shall remain that of the Developer.

4.4 Insurance

- (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 acceptance of all 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 [REDACTED] 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 [REDACTED] 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 [REDACTED] exclusive of interest or costs, on a claims-made basis, or such other limit as the Town may reasonably require.

- (b) The premiums on the Commercial General Liability and Automobile Liability Insurance must be paid initially for a period of one year and these policies shall be renewed for further one-year periods until all the Works required under this Agreement are installed and accepted by the Town. The Environmental Pollution Liability Insurance must be paid initially for a period of five months and shall be renewed until all the Works required under this Agreement are installed and accepted 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.

4.5 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.

4.6 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

Building permits may be issued for model homes prior to Final Approval in accordance with the OBC provided that the Developer and the builders comply with the Town's Model Home Policy and in-effect Zoning By-law. Where there is a conflict, the Zoning By-law shall prevail. 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.

**PART VI
ADMINISTRATION**

6.1 Indemnity and Release

- (a) The Developer hereby agrees to indemnify and save completely harmless the Town, its agents, employees, contractors, or servants, from and against all claims, demands, losses, damages, debts, actions, causes of action, suits, proceedings, or costs whatsoever, at law or in equity, suffered or incurred by the Town whether directly or indirectly, as a result of, or related to
- I. this Agreement, the entering into of it, or any term, condition, right or obligation contained therein;
 - II. the Lands, or development thereof;
 - III. the Plan, or the approval thereof;
 - IV. any Default;
 - V. the review, approval, or inspection of the Works or construction;
 - VI. the design, installation, construction, or operation of any of the Works;
 - VII. the maintenance and repair or lack of maintenance and repair of any Works;
 - VIII. the use of the Works by any person;
 - IX. any construction, work, or activity undertaken by or on behalf of the Developer, or on the Lands;
 - X. any defect in workmanship or material in the Works;
 - XI. any work or service undertaken by the Town, its agents, contractors, or employees in order to complete any Works which are required to be completed pursuant to this Agreement;

- XII. any damage to any lands whatsoever and howsoever arising related to work undertaken by or on behalf of the Developer;
- XIII. drainage from the Lands, or any impact of drainage from the Lands on or onto any other Lands as a result of the development of the Lands; and/or, the implementation of any drainage or stormwater management plans or Works; and/or the construction of any Works, facilities or structures on the Lands and/or the use of the Lands;

Without limiting the generality of the foregoing, such indemnification shall extend to the following:

- I. All fees, costs, disbursements or expenses (including administration, engineering consulting, and legal fees/costs) incurred by the Town in connection with this Agreement;
- II. any costs and damages suffered by third parties as a result of the negligence of the Developer or the Default of the Developer or the contravention of any Applicable Laws, notwithstanding the fact that such third parties have not claimed or are not entitled to claim against the Town for such damages or costs;

6.1.1 Withdrawal of Permission

The Developer acknowledges and agrees that the Town is entitled to withdraw its permission granted herein for the installation and construction of the Works if it is determined, in the sole and absolute discretion of the Town, that such withdrawal is in the best interests of the Town. Upon notification of such withdrawal of permission, the Developer covenants and agrees to immediately cease any further construction, installation or other work in respect of the Works. The Developer acknowledges that it shall have no claim against the Town if it exercises its right to withdraw the permission granted under this Agreement and it specifically waives and disclaims its rights to make any claim in connection therewith.

6.2 Transfer of Lands

In the event the Developer transfers the Lands to a third party prior to execution of the Subdivision 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

- 1. 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 email 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.
- 2. 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 email transmission to or delivered to:

The Town of The Blue Mountains
32 Mill Street, Box 310 Thornbury, ON, NOH 2P0
Attention: Director of Planning and Development Services
Email: directorpds@thebluemountains.ca

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.

- 3. 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 emailed, on the date of email, if 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 the provisions of the Municipal Act and in accordance with the Town's Property Standards By-law 2002-18 as amended from time to time or any successor or replacement by-law thereto.

6.7 Governing Law

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

6.8 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.

6.9 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.

6.10 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.

6.11 Public Disclosure

The Developer covenants and agrees that this Agreement and all schedules or attachments hereto, including the Accepted Plans, shall be made publicly available and may be posted on the Town's website or otherwise made freely available to all members of the public and the Developer hereby consents to such disclosure.

6.12 Counterparts

The Parties agree that this Agreement may be executed in any number of counterparts (including counterparts by email or facsimile) and all such counterparts taken together shall be deemed to constitute one and the same instrument.

6.13 Electronic Signatures

The Parties consent and agree to the use of electronic signatures pursuant to the *Electronic Commerce Act 2000*, SO 2000, c17 as amended from time to time with respect to this Agreement.

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 Works
- "SCHEDULE C" being a list of Special Provisions
- "SCHEDULE D" being a list of Fees and Securities

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.

[Redacted Signature]

Name: Romas Kartavicius

Title: President

I have authority to bind the corporation.

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

[Redacted Signature]

Mayor – Andrea Matrosovs

[Redacted Signature]

Clerk - Corrina Giles

DESCRIPTION OF THE LANDS

Pt Lots 158 & 173, Plan 529, Part 2, RP16R-1974

The “Lands” includes the “Town Lands”

ADDRESS OF THE DEVELOPER FOR SERVICE

Eden Oak Trailshhead
1443 Hurontario Street, Mississauga ON, Canada L5G 3H5

DESCRIPTION OF THE DRAFT PLAN AND CONDITIONS

1.1 Draft Plan of Subdivision

42T-2012-01 as approved by the May 12, 2021 Local Planning Appeal Tribunal Decision (as it then was), including schedules thereto, for Case No: PL160268

1.2 Description of the Conditions

The Draft Plan and the Conditions are set out in the May 12, 2021 Local Planning Appeal Tribunal Decision (as it then was), including schedules thereto, for Case No: PL160268.

(The Draft Plan and Conditions are on file with the Town Clerks Office and may be viewed during normal office hours.)

SCHEDULE "B"

**This Schedule forms part of a Pre-Servicing Agreement – External Works Only between the
Developer and
The Corporation of the Town of The Blue Mountains**

ACCEPTED PLANS FOR THE WORKS

General

Where the subject matter or context of a section of this Agreement requires reference to an individual Accepted Plan, it may be referred to by its individual name.

All the Accepted Plans have been delivered to the Consultants and are on file with the Town Clerks Office and may be viewed during normal office hours.

The Accepted Plans

The following plans/drawings, studies, reports, designs, plans, drawings, and specifications for the installation of the Works, prepared by **Crozier Consulting Engineers for Project 218-2659** which are marked “Accepted for Construction” by the Town dated **October 19, 2023**, are Accepted Plans:

- C100-EXT – Title Page and Index
- C101A-EXT – Lakeshore Road East STA 0+140 TO 0+420
- C101B-EXT – Lakeshore Road East to Pumphouse
- C102-EXT – Grading Plan 1
- C103-EXT – Notes and Details
- C104A-EXT – Traffic Control Plan Stage #1
- C104B-EXT – Traffic Control Plan Stage #2
- C105-EXT – Erosion and Sediment Control Plan

Public/ Private Works

The following are the “Public Works” for the purposes of this Agreement:

- All Works shown on the Accepted Plans.

The following are the “Private Works” for the purposes of this Agreement:

- NIL

SCHEDULE "C"
This Schedule forms part of a Pre-Servicing Agreement – External Works Only between the
Developer and
The Corporation of the Town of The Blue Mountains

SPECIAL PROVISIONS

1. Communications Plan

The Developer/Consultant agree to the following:

1. Installation of a Project Notification Sign, 1.2 m x 2.4 m minimum, to Town template, at each construction access to the Lands and visually obvious to the public, at least forty-eight (48) hours' before the start date of any site alteration and/or construction and maintained for full duration of construction.
2. Notification of the site alteration and construction project to property owners adjacent to the Lands, located on construction access routes, and as deemed appropriate in consultation with the Town's Development Engineering Division via hand/mail delivery.
3. Schedules of intended site activities updated routinely (typically, weekly to bi-weekly) and posted on a publicly accessible website (which may be copied or duplicated on the Town's website) and/or physical location adjacent to the Lands.
4. A minimum of two-weeks notice to the public following Town approval and prior to commencement of:
 - (i) Significant site activities such as site alteration works e.g. tree clearing & grubbing, commencement of site servicing/grading, placement of asphalt, concrete curbs and sidewalk, and landscaping.
 - (ii) Off-site works on Town Owned Lands/Roads following receipt of a Municipal Land Use Permit (MLUP).

2. Works Provisions

- a) The Developer covenants and agrees that where any Works are to be undertaken on any lands or highways not owned by the Town, the Developer shall be solely responsible for obtaining the necessary permission of the owner of said lands, including the issuance of permits, easements, or otherwise, prior to commencing any work or Works on the Town Lands or Lands as shown on the Accepted Plans.
- b) The Developer covenants and agrees that Lakeshore Rd. East shall remain open at all times during construction of the Works, that the construction of the Works shall not interfere with vehicular or pedestrian use of Lakeshore Rd. East, and any closure of Lakeshore Rd. East must be approved in advance by the Town in writing.
- c) The Developer covenants and agrees that access to and from the Craighleith lift station must be preserved at all times and the construction of the Works shall not impact access, ingress, or egress to/from the Craighleith lift station by Town staff or disposal trucks.
- d) The Developer covenants and agrees that the construction of the Works shall not impact the recreational and pedestrian use of the Georgian Trail, and any impact on the use or function of the Georgian Trail, or any proposal or close or re-route (even temporarily) the Georgian Trail must be pre-approved by the Town in writing.

SCHEDULE "D"

This Schedule forms part of a Pre-Servicing Agreement – External Works Only between the
Developer and
The Corporation of the Town of The Blue Mountains

FEES AND SECURITIES

Fees

Agreement Preparation Fee(*):



Security (s. 4.2)(*):

Development Engineering Pre-Servicing Works Fee(**):

Total:

*To be paid at the time of Agreement execution by the Developer

** The Development Engineering Works Fee is equal to 5.64% of the total cost of the Works, which is estimated to be [REDACTED] As this Pre-Servicing – External Works Only Agreement is the sole Agreement for these works, the 5.64% is due upon the execution of this Agreement per the Town Fees and Charges by-law. The Developer agrees that this estimation may be revised prior to the execution of a Subdivision Agreement and the Works Fee may be revised accordingly, and any such revision shall be incorporated into the Subdivision Agreement. This fee is in addition to the Works Fee as required pursuant to a Subdivision or Development Agreement.