

Properties

PIN37140 - 0115 LT

DescriptionPT LT 15 SW/S HURON ST, 16 SW/S HURON ST, 17 SW/S HURON ST, 18 SW/S HURON ST, 19 SW/S HURON ST PL THORNBURY; PT MCAULY ST PL THORNBURY PT 2 & 4 16R8184; S/T INTEREST OF THE MUNICIPALITY; THE BLUE MOUNTAINS

AddressTHORNBURY

Consideration

Consideration\$0.00

Applicant(s)

The notice is based on or affects a valid and existing estate, right, interest or equity in land

NameTHE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

Address for Service32 Mill Street, Box 310
Thornbury, ON N0H 2P0

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Party To(s)CapacityShare

Name2798734 ONTARIO LIMITED

Address for Service8611 Weston Road, Unit 21A
Woodbridge, ON L4L 9P1

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Statements

This notice is pursuant to Section 71 of the Land Titles Act.

This notice is for an indeterminate period

Schedule: See Schedules

Signed By

Debra-Ann Katherine Young32 Mill Street
Thornbury
N0H 2P0acting for
Applicant(s)Signed2024 03 01

Tel519-599-3131

Fax519-599-3018

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

THE TOWN OF BLUE MOUNTAINS32 Mill Street
Thornbury
N0H 2P02024 03 01

Tel519-599-3131

Fax519-599-3018

Fees/Taxes/Payment

Statutory Registration Fee\$69.95

Total Paid\$69.95

PRE-SERVICING AGREEMENT - FILL, EXCESS SOIL & ALTERATION OF GRADE

THIS AGREEMENT made this 28th day of February, 2024

BETWEEN:

2798734 Ontario Limited

(hereinafter called the "Owner")

And

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

(hereinafter called the "Town")

WHEREAS The Owner is the owner of lands known as Thornbury Town Plot PT LOTS 15 TO 19 PT MCAULY ST RP 16R8184 PARTS 2 AND 4 (the "Lands")

AND WHEREAS Section 142 of the Municipal Act, 2001 SO 2001 c.25, authorizes a Town to prohibit or regulate the placing or dumping of fill;

AND WHEREAS By-law 2002-78 of the Town regulates fill in the Town of The Blue Mountains;

AND WHEREAS an agreement is required to exempt the placing/dumping of fill or alteration of grade from the provisions of By-law 2002-78 of the Town of The Blue Mountains;

AND WHEREAS this is an agreement as contemplated by By-law 2002-78;

AND WHEREAS the Owner wishes to deposit said excess soil and fill on the Lands;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants hereinafter expressed and the exchange of ten dollars (\$10.00) paid by each Party hereto to the other, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree with the other as follows:

PART 1 - GENERAL

1. DEFINITIONS

- a. "Agreement" means this agreement
- b. "Alter grade"/"Altering grade" means the alteration of the grade of any land by any means including the construction of a building or addition, the removal, addition, excavation, disturbance or movement of soil or fill, landscaping, dredging, stockpiling or otherwise changing the grade of the land.
- c. "Applicable Laws" means any and all laws, statutes, orders, ordinances, requirements, regulations, policies, guidelines, and by-laws of the Town, County of Grey, Province of Ontario, or Government of Canada which apply to the Lands or activities on the Lands;
- d. "Accepted Plans" means the plans, studies, and drawings as identified in Schedule B of this Agreement;
- e. "By-law" means By-law 2002-78 of the Town of The Blue Mountains, as amended;
- f. "Default" means any failure of the Owner in the performance of any of its obligations under this Agreement,
- g. "Designated Official" means the Town Staff Official delegated authority to administer such matters related to this Agreement as per Bylaw 2021-66, as amended, and being the Manager of Development Engineering;
- h. "Dump"/"Deposit" means the depositing or placing of Fill or Soil in any location other than in the same location from where it was obtained.
- i. "Existing Grade" means the elevation of the ground surface of the lands upon which dumping and/or placing of fill is proposed prior to the dumping or placing of fill and of abutting ground surface up to 3 metres wide surrounding such

lands, except that where placing or dumping of fill has occurred in contravention of the By-law, existing grade shall mean the ground surface of the lands as it existed prior to the placing or dumping of fill.

- j. "Fill" means any type of material deposited or placed on lands and includes but is not limited to sand, soil, stone, aggregate, granular material, loam, sod or turf either singly or in combination, which is free of contamination.
- k. "Finished Grade" means the approved elevation of the ground surface of lands upon which Fill has been placed in accordance with this By-law.
- l. "Qualified Person" or "QP" is as defined in Ontario Regulation 406/19 *On-Site and Excess Soil Management*;
- m. "Permit" means a Permit issued in accordance with the provisions of By-law 2002-78 of the Town of The Blue Mountains, as amended.
- n. "Soil" means material commonly known as earth, top soil, loam, subsoil, clay, sand, aggregate, or gravel either singly or in combination, which is free of contamination.
- o. "Town" means the Corporation of The Town of The Blue Mountains.
- p. "Works" means the dumping, depositing, stockpiling of Fill or Soil, or altering grade on the Lands.

2. INTERPRETATION

- 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 Owner is obligated in any way shall be deemed to include the words "at the expense of the Owner" 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.

3. ADMINISTRATION

- a. This Agreement shall be administered on behalf of the Town by the Designated Official or their designate 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 Designated Official or other Town official, in their sole and absolute discretion, acting reasonably.
- b. The Owner shall, at all times, comply with all Applicable Laws.

- c. In the event of any conflict between this Agreement and any Applicable Laws, the Applicable Laws shall govern.
- d. The parties agree that this Agreement may be transmitted by facsimile transmission and/or "sign and scan" email transmission and such transmission of the Agreement and the signatures thereon shall be deemed to be as valid as if such Agreement and such signatures were originals.
- e. This Agreement may be executed in any number of counterparts (including counterparts by facsimile and/or "sign and scan" email transmission) and all such counterparts taken together shall be deemed to constitute one and the same instrument.
- f. The parties hereto consent and agree to the use of electronic signatures pursuant to the Electronic Commerce Act 2000, S.O. 2000, c17 as amended from time to time with respect to this Agreement and any other documents respecting this transaction.
- g. The heirs, executors, administrators, successors and assigns of the Parties shall be bound by the terms herein.
- h. This Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario.
- i. Amendments to this Agreement shall be in writing.
- j. The parties agree that the recitals are true.

4. ENFORCEMENT

- a. The Owner covenants and agrees that the Town, in addition to any other remedy it may have at law, shall be entitled to enforce this Agreement in accordance with the provisions of the *Municipal Act, 2001*, including but not limited to, sections 442, 444, 445 and 446.

5. REGISTRATION OF AGREEMENT

- a. The Owner hereby agrees that this Agreement, together with any schedules thereto, may, at the Town's discretion, be registered upon title to the Lands and the Owner hereby authorizes the Town Solicitor or their designate to execute on behalf of the Owner all documents necessary to register this Agreement in the Land Registry Office. The Owner further covenants and agrees to pay to the Town the cost of registration of this Agreement, as well as any further costs incurred by the Town as a result of the registration of any other documents pertaining to this Agreement.

6. PUBLICATION OF AGREEMENT

- a. The Owner covenants and agrees that this Agreement and all schedules or attachments hereto 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 Owner hereby consents to such disclosure.

7. NOTICE

- a. If any notice is required to be given by the Town to the Owner with respect to this Agreement, such notice shall be mailed, delivered or sent by email transmission to the Owner as shown in Schedule "A" or such other address of which the Owner has notified the Town, in writing, and any such notice mailed, delivered or sent by email transmission shall be deemed good and sufficient notice under the terms of this Agreement.
- b. If any notice is required to be given by the Owner to the Town with respect to this Agreement, such notice shall be mailed, delivered or sent by email transmission to:
 - i. Manager of Development Engineering
The Corporation of the Town of The Blue Mountains
32 Mill St. Box 310
Thornbury, ON
N0H2P0

- ii. Or such other address of which the Town has notified the Owner, in writing.

8. TERM AND TERMINATION OF AGREEMENT

- a. The Term of this Agreement is one (1) year from the Effective Date.
- b. The Parties may agree to extend this Agreement at the end of the Term for additional one (1) year periods, at the Town's sole discretion.
- c. The Parties agree that, at the end of the Term, or prior to any renewal for additional one (1) year extensions, the Town may refuse to renew the Agreement or require additional or revised terms and conditions under this Agreement, at the Town's sole discretion.
- d. In the event that this Agreement is terminated, either pursuant to this Section or in the event of a Default under this Agreement, the Town may utilize the Securities and enter onto the Lands to restore, repair or grade the Lands, including the provision of landscaping, planting and other remediation at the Town's sole discretion.

9. WAIVER

- a. The failure of the Town at any time to require performance by the Owner of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall be 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 right at law to enforce this Agreement.

10. EXTENSION OF TIME

- a. Time shall always 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 Owner 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.

11. NO CHALLENGE TO AGREEMENT

- a. The parties covenant and agree with each other not to call into question or challenge, directly or indirectly, in any proceeding or action in court, or before any administrative tribunal, the party'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 in s. 41 of the Planning Act interpreted to the contrary. The parties agree that adequate consideration has flowed from each party to the other and that they are not severable. This provision may be pleaded by either party in any action or proceeding as an estoppel of any denial of such right.

12. GOVERNING LAW

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

13. INDEMNITY

- a. The Owner shall indemnify and save completely harmless the Town and its elected officials, officers, agents, contractors and employees from and against all actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly or in any way connected with the Works or any obligations under this Agreement, the maintenance and repair or lack of maintenance and repair of the Works by the Owner pursuant to the terms of this Agreement, the use of the Works by any person or any defect in workmanship or material with respect to the Works.

14. SCHEDULES

- a. The following Schedules which are attached hereto form part of this Agreement:

- a) Addresses for Notice
- b) Accepted Plans
- c) Construction access (Sediment Control and General Coordination Plan)

15. SUCCESSORS AND ASSIGNS

- a. This Agreement and everything herein contained shall ensure to the benefit of and be binding upon the parties hereto and their successors and assigns.
- b. In the event the Owner sells, transfers or otherwise conveys the Lands or any part thereof to any other party or successor in title, the Owner agrees that any Financial Security (as outlined in Part 3, Section 3 of this Agreement) held by the Town in relation to this Agreement shall not be released to the Owner until:
 - i. the new owner/successor in title agrees in writing with the Town to be bound by the terms of this Agreement or such similar terms to the Town's satisfaction; and,
 - ii. the new Owner has posted new Financial Security with the Town to the Town's satisfaction.
- c. In the event the new owner does not agree to be bound by the terms of this Agreement or refuses to post the required financial security with the Town, the Owner shall be deemed to be in Default under this Agreement.

16. COMMENCEMENT OF CONSTRUCTION PRIOR TO FINAL APPROVAL

- a. The Owner 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 a subdivision (or site plan) agreement with the Town, 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 Owner undertaking the Works or exercising any other right pursuant to this Agreement. The Owner 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 Owner covenants and agrees that this Agreement does not allocate water, sewer, or stormwater servicing allocation to the Owner or the Lands, and the Owner is not entitled to such allocation except as set out in a future subdivision (or site plan) agreement with the Town. The Owner further covenants and agrees that Town is under no obligation whatsoever to reserve or hold any water, sewer, or stormwater servicing allocation for the Owner or the Lands, and the Owner is, in any event, desirous of proceeding with the installation of the Works. The Owner further covenants and agrees that if it does not, or is unable to, proceed to execute a subdivision (or site plan) agreement, it shall have no recourse against the Town for any costs or damages related to any Works installed pursuant to this Agreement.
- c. The Owner specifically acknowledges, understands, and accepts that there may be inadequate sanitary sewage capacity to service the proposed development of the Lands until the Mill St. sanitary sewage pumping station is upgraded. Therefore, the Owner acknowledges, understands, and accepts that the Owner may not be entitled to any further planning approval, the execution of any further development or site plan agreement(s), or the granting final approval related to the Lands until such time as adequate sanitary sewage capacity is available to the Lands, in the Town's sole and absolute discretion. The Owner further acknowledges, understands, and agrees that the upgrades to the Mill St. sanitary sewage pumping station which will facilitate sufficient sanitary sewage service to the Lands is subject to the usual budgetary process and approval of Town Council and the Town shall not undertake or commit to any particular timeframe for said upgrades.

- d. Notwithstanding clause 16(c) above, the Owner covenants and agrees that it remains desirous of proceeding with the installation or construction of the Works, and the entering into of this Agreement and the expending of funds related thereto. The Owner hereby indemnifies, releases, and forever discharges the Town from any claim related to money expended on the Works or any delay in the development of the Lands related to, or because of, the unavailability of sanitary sewage capacity to service the Lands.

PART 2- FILL AND EXCESS SOIL REQUIREMENTS

1. DUMPING AND DESPOSIT OF FILL AND SOIL

- a. The Owner shall not Dump or Deposit any Fill or Soil, or cause or permit to be Dumped or Deposited any Soil or Fill, on the Lands until:
 - i. The Owner has confirmed in writing to the Town that the requirements of Ontario Regulation 406/19 *On-site and Excess Soil Management*, as applicable, have been satisfied, and the Works and project are in compliance thereto; and,
 - ii. The Owner has retained a Qualified Person, if required; and,
 - iii. The Owner has delivered to the Town, and the Town has approved:
 - 1. the Accepted Plans
 - 2. Hauling Routes
 - 3. MTO/County/Provincial/Conservation Authority Permits (if applicable)
 - 4. Proof of Insurance
 - iv. The Owner has complied with the obligations set out in this Agreement, including the delivering of Security.
- b. The Owner covenants and agrees to provide written confirmation to the Town, and Engineered Record Drawings if required by the Town, that the Works are complete in accordance with the Accepted Plans within one-month following completion of the Works.

2. PROJECT LEADER

- a. The Owner covenants and agrees that they are the Project Leader as defined in Ontario Regulation 406/19.
- b. The Owner covenants and agrees that this Agreement does not supercede or exempt the Owner of any obligations as set out in Ontario Regulation 406/19.

3. QUALIFIED PERSON

- a. If the Owner is required to retain the services of a Qualified Person (QP) as defined in Ontario Regulation 406/19, as amended. The QP shall be approved by the Designated Official prior to any Fill or Soil being received on the Lands.
- b. Any change in the QP responsible for the Lands must also be pre-approved by the Designated Official.
- c. Any and all QPs must confirm in writing to the Town that they have no conflict of interest including but not limited to direct, indirect or any other relations other than providing professional services for compliance with this Agreement the Applicable Laws and O. Reg 406/19.

4. DUST CONTROL

- a. The Owner agrees to control and mitigate dust, arising from the operation of the Works on the Lands, on adjacent lands and on construction access roads to and from the Lands as required by the Designated Official, and at least once per week during operation.

5. MUD, EROSION AND SEDIMENT CONTROL

- a. The Owner shall not take or cause any work to be done that will adversely affect drainage from or onto neighbouring properties in the vicinity of the Lands, and

the Owner shall with the prior approval of the Municipality, at the Owner's expense, construct such drainage works as may be required.

- b. Notwithstanding the aforesaid, the Owner shall indemnify and save harmless the Town with respect to drainage from or onto lands adjoining the Lands as a result of the operations hereby contemplated and the construction of any works, facilities or structures on the Lands, whether approved by the Town or not.
- c. The Owner shall construct and install temporary or permanent erosion and siltation control devices required by the Town or as deemed necessary by industry best management practices, prior to importing any Fill to the Lands and shall maintain these facilities in good working order.
- d. The Owner shall provide additional erosion and siltation control devices/measures as may be required by the Town during construction of this project, and as may be required by the Town thereafter from time to time.
- e. The Owner shall ensure Erosion and Sediment Control Plans are consistent with the latest guidelines for erosion measures of the Grey Sauble Conservation Authority.
- f. The Owner shall control and mitigate the fouling of all municipal highways as a result of the Works undertaken on the Lands and shall clean any fouled municipal highway forthwith to the satisfaction of the Designated Official.
- g. The Owner shall inspect the Lands regularly regarding erosion control. The inspection should include the following elements as a minimum:
 - i. A 'walk-through' inspection of the Lands must be undertaken in anticipation of rain, extended wet weather periods, snow melt events, or any conditions that could potentially yield significant runoff volumes;
 - ii. Regular and adequate inspections should occur during all construction stages; and
 - iii. The minimum frequency of inspection must be:
 1. On a weekly basis;
 2. Before and after every rainfall event in excess of 5mm of rain within any 24-hour period;
 3. After significant snowmelt events;
 4. Monthly during inactive periods (> 30 days);
 5. Daily during extended rain or snowmelt periods; and
 6. More frequent inspections may be specified by the Designated Official

6. HOURS OF OPERATION AND NOISE MITIGATION

- a. The Owner shall at all times comply with the Town's Noise By-Law Number 2002-9, as amended, for both onsite and offsite activities related to the Works.
- b. This may include providing instruction to staff and haulers or imposing requirements regarding minimizing excessive noise such as:
 - i. tailgate banging;
 - ii. the use of engine brakes along the haul routes; and
 - iii. controlling excessive vehicle idling, and manage site movements to minimize vehicle reversing;
- c. Notwithstanding the above, the permitted Hours of Operation for all construction on the Lands, including receipt and deposition of Fill and Soil, shall be only during the period Monday to Friday 7:00 am – 7:00 pm. There shall be no fill received at any time on Saturdays, Sundays or statutory holidays.
- d. Hours of operation will be further restricted during any period in which a wind warning for the area has been issued by Environment Canada and during any time where weather, traffic and unusual events would compromise the ability of the Lands activities to be conducted in a safe and environmentally sound manner with due consideration of the public.
- e. The Owner may conduct site grading, levelling and contouring and general maintenance works on Saturdays so long as the activities comply with the Town's noise by-law.

- f. The Owner covenants and agrees to implement all reasonable noise mitigation strategies at the request of the Town.

7. CONSTRUCTION ACCESS

- a. The Owner has prepared a Construction Access Plan as shown on the Sediment Control and General Coordination Plan to the satisfaction of the Town attached as Schedule B.
- b. The Owner shall at all times comply with the Construction Access Plan attached at Schedule B hereto.

8. PLANTING AND LANDSCAPE PLAN

- a. *Intentionally left blank.*

9. COMPLAINT PROTOCOL

- a. The Owner agrees to take all reasonable remedial measures necessary to address public complaints regarding the Works as received by the Owner or the Municipality.

10. SECURING THE LANDS

- a. The Owner shall take all necessary and reasonable steps to secure the Lands and prevent all unauthorized persons from accessing the Lands and Lands.
- b. The Owner shall ensure that the Lands are adequately secured to prevent use of the Lands or operation of the Works outside of the Hours of Operation as described in this Agreement.

11. RIGHT OF ENTRY

- a. The Owner covenants and agrees that the Town, its employees, agents or contractors, may enter onto the Lands at any time to ensure the Works are proceeding in accordance with this Agreement.

12. REPORTING

- a. On or before December 1 of each year, or sooner if required by the Town, the Owner shall submit a compliance report prepared by a Professional Engineer confirming that the Works are in accordance with the Accepted Plans.

13. MAINTENANCE OF THE WORKS

- a. The Owner covenants and agrees that they shall, at all times, ensure that the Works are constructed and maintained in strict accordance with the terms of this Agreement all Applicable Laws and the Accepted Plans.

14. EMERGENCY REPAIR

- a. If, in the sole and absolute opinion of the Town, the Works require emergency or urgent repair, 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 emergency, to enter upon the Lands and to do all such work and things, including the installation of Works, as are necessary to rectify the emergency to the satisfaction of the Town, at the cost and expense of the Owner. Such work may be done without prior Notice but the Owner 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;
- b. In the event the Town undertakes any Emergency Report or works under this section, the Parties agree that such work or repairs by the Town is as agent for the Owner and the Town bears no ownership or responsibility for the work or maintenance of the Works. The Owner 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 any acceptance of any liability or responsibility for the Works nor a release of the Owner from any of its obligations under this Agreement.

PART 3 – INSURANCE, DEFAULT & SECURITY

1. INSURANCE

- a. Prior to commencing any work on the Lands, the Owner shall take out and always keep in full force and effect until the Works are complete, at its sole cost and expense, Commercial General Liability insurance (“CGL”) with a limit of not less than FIVE MILLION DOLLARS (\$5,000,000) exclusive of interest or costs, per occurrence and shall include the Town as an additional insured. Said CGL shall apply to all operations of the Owner which shall include coverage for bodily injury liability, property damage liability, products and completed operations liability, contractor's protective liability, contractual liability, non-owned automobile liability, contingent employers liability and employees as additional insureds.
- b. Prior to commencing any work on the Lands the Owner shall take out and keep in full force and effect Environmental & Pollution Liability Insurance (“PLI”) which shall be written with limits of not less than FIVE MILLION DOLLARS (\$5,000,000) exclusive of interest or costs, per occurrence and shall include coverage for but not limited to, bodily injury including death, property damage and remediation costs which are reasonable and necessary to investigate, neutralize, remove, remediate (including associated monitoring) or disposal of soil, Fill, surface water, groundwater or other contamination. The policy shall remain in force for a minimum of two (2) years following termination of this Agreement for whatsoever reason. The Town shall not be named as an additional insured;
- c. Both the Commercial General Liability and Environmental & Pollution Liability Insurance as described in Sections 1 (a) and (b) above shall:
 - i. provide primary insurance coverage and not excess to any other insurance available to the Town.
 - ii. Maintain the policies of insurance in good standing and in full force and effect until the Works on the Lands are complete to the Town’s satisfaction.
 - iii. not be terminated, cancelled, or materially altered unless written notice, by registered mail, of such termination, cancellation, or material alteration is given by the insurers to the Town at least sixty (60) days before the effective date thereof.
 - iv. be paid initially for a period of one year and the policies shall be renewed for further one-year periods until the insurance is no longer required by this Agreement. If required by the Town, the Owner 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.
 - v. deliver with this Agreement (if not previously delivered) certified copies of the 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.
 - vi. 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 Owner or to order that all work on the Lands cease until the policy is renewed.
 - vii. provide for cross-liability and severability of interest protecting the Town against claims by the Owner as it were separately insured and providing that the Town shall be insured notwithstanding any breach of any condition in the policies by any other insured.

d. NO RELIEF

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

e. NOTICE OF CANCELLATION

- i. 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 Owner and at the sole cost and expense of the Owner, 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 Owner 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.

2. DEFAULT

- a. If, in the sole and absolute opinion of the Town, the Owner is in Default, the Town, except in cases of emergencies, shall give Notice to the Owner of the Default and require the Owner to rectify the Default. If the Default is not rectified within Twenty (20) Business Days after receipt by the Owner of such Notice or within such time period as may be designated in the Notice by the Town, then
 - i. the Town shall have full authority and power immediately to purchase such materials, tools and machinery and to employ such contractors or workmen as in the opinion of the Town are required for the proper rectification of the Default, to enter upon the Lands and to do all such work and things, including the installation of Works, as are necessary to rectify the Default to the satisfaction of the Town, at the cost and expense of the Owner. In cases of emergencies, such work may be done without prior Notice but the Owner 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;
 - ii. Any invoice or demand for payment for work undertaken under clause 3.a.i above shall be due and payable within 15 days of the Town issuing such invoice or demand to the Owner.
 - iii. the Town shall have the full authority, at its sole discretion, to terminate this Agreement.
 - iv. Unless the Town terminates this Agreement a declaration of Default shall not relieve the Owner of any obligations under this Agreement.
 - v. The declaration of Default does not relieve the Owner of any obligations under any other applicable law, legislation, or regulation.
- b. The Owner 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 any acceptance of any liability or responsibility for the Works nor a release of the Owner from any of its obligations under this Agreement.
- c. In the event of a Default the Town may, at its sole and absolute discretion, and on ten (10) business days' notice to the Owner, declare this Agreement to be terminated in accordance with Part 1, Section 8 of this Agreement.

3. FINANCIAL SECURITY & FEES

- a. The Owner agrees, at the time of execution of this Agreement, to deliver to the Town the following Financial Security & Engineering Works Fee in a form approved by the Town’s Director of Finance and IT/Treasurer:
 - i. Estimated cost of the works: \$1,194,375.00

Agreement Preparation Fee (by-law 2022-14)	\$9,685.00
Pre-Servicing Works Fee (0.7% of estimated cost of works)	\$8,360.63
Total Security (10% of estimated cost of works)	\$119,437.50
Total Fees	\$18,045.63

- b. The Owner agrees that the Town may utilize the Financial Security to rectify any Default under this Agreement, any required Emergency Repairs, and to rectify and repair any damage to Town owned land or infrastructure caused by the Owner in the exercise of this Agreement.
- c. The Owner agrees that they shall not be entitled to any reduction or return of the Financial Security until the Works are complete to the Town’s satisfaction, or until a further development agreement between the Owner and Town is executed which supersedes this Agreement, whichever is later.

SIGNATURE PAGE TO FOLLOW

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



Name: Carlos Lopez
Title: President

I/We have the authority to bind the Corporation

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS


Mayor – Andrea Matrosovs
Town Clerk – Corrina Giles

SCHEDULE A

This Schedule forms a part of this Agreement

Addresses for Notice

Town of the Blue Mountains	Manager of Development Engineering The Corporation of the Town of The Blue Mountains 32 Mill St. Box 310 Thornbury, ON N0H2P0
2798734 Ontario Limited	8611 Weston Road, UNIT 21A Woodbridge, Ontario L4L 9P1

SCHEDULE B

This Schedule forms a part of this Agreement

Accepted Plans

The SC-1 Sediment Control and General Coordination Plan is available upon request with the Town Clerk.