

PRE-SERVICING AGREEMENT

Plan 42T-2010-03

Town File Number

PHASE 4

WINDFALL LIMITED PARTNERSHIP
By its General Partner
WINDFALL GP INC.

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PRE-SERVICING AGREEMENT

THIS AGREEMENT made this day of August, 2019
BETWEEN:

WINDFALL LIMITED PARTNERSHIP
By its General Partner
WINDFALL GP 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 Approval Authority by a decision dated November 15, 2011 as amended by a Decision dated May 10, 2012 gave draft plan approval to the Draft Plan of Subdivision as further described in Schedule B to this Agreement;

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

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

PART I

DEFINITIONS AND BASIS OF AGREEMENT

1.1 Definitions

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

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

"Agreement" means this agreement;

"Applicable Laws" means with all statutes, laws, by-laws, regulations, ordinances, orders and requirements, including where applicable the Engineering Standards and the OBC, 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;

"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;

"County" means the County of Grey;

"Default" means any default by the Developer in the performance of its obligations under this Agreement;

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

"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 Pre-Servicing Works;

"Highway" means highway described in the Municipal Act under the jurisdiction of the Town and also 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" 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 3.12:

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

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

"Security" has the meaning ascribed to it in Section 4.4;

"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;

"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 Services;

"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. Where the subject matter or context of a particular section of this Agreement requires reference to an individual component of the Works, it may be referred to by its individual name;

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

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

1.2 Interpretation of Agreement

- (a) The part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (b) Unless the context otherwise requires, in this Agreement words importing the singular include the plural and vice versa and words importing a gender include all genders.
- (c) Every provision of this Agreement by which the Developer is obligated in any way shall be deemed to include the words "at the expense of the Developer" unless the context otherwise requires.

- (d) References herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto.
- (e) All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants.
- (f) Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference.
- (g) The Parties agree that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.
- (h) All references to parts, sections, clauses, paragraphs and schedules unless otherwise specified are references to parts, sections, clauses, paragraphs and schedules of this Agreement.
- (i) The Conditions, the 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

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

1.4 Lands Affected

This Agreement applies to Lands.

1.5 Joint Authors

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

1.6 Recitals

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

1.7 Scope of Agreement

This Agreement is an agreement within the meaning of and authorized by section 51(26) of the Planning Act and imposed by the Approval Authority as one of the Conditions. This Agreement shall define the obligations and duties of the Developer with respect to the subdivision, development and servicing of the Lands and, without limiting the generality of the foregoing, shall include the design, installation, repair and

maintenance of the Pre-Servicing Works to be provided and payments required to be made to the Town and such other matters as may be more specifically set out herein.

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

PART II

GENERAL SERVICING REQUIREMENTS

2.1 Subdivision Agreement

The Developer agrees that prior to Final Approval, the Developer shall enter into a subdivision 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 Land (the "Subdivision Agreement"). The Parties agree that the Subdivision Agreement, when executed, shall supersede and replace this Agreement.

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 Governmental 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 "as recorded" plans of all the Works, including lot grading and street lighting plans depicting the location of ducts, wires, power connection points to the Power Utility's system poles and pedestals and an electronic version of these same "as recorded" plans all in accordance with the Engineering Standards, for the review and approval of the Town;
- (g) provide to the Town, as and when required, copies of any or all contracts or subcontracts or both entered into by or on behalf of the Developer for the construction of any or all of the Works, together with any or all of the following contract documentation:
 - (i) certificates of the substantial performance given pursuant to the provisions of the Construction Act; and
 - (ii) 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; and
- (i) provide to the Town all of the other certificates required to be provided by this Agreement.

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

2.3 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

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, install and maintain the particular Works referred to in the Notice in accordance with the new Applicable Laws and/or Engineering Standards.

2.5 Utility Services

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) The Developer is responsible for informing all the utility providers of its intention to commence any construction on the Lands.
- (f) 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, including all road crossings for the Utility Services, prior to installing the granular and stone bases for municipal services on all Highways and laying the base course of asphalt;
- (b) obtain the approval of the Town for the sub-grade prior to placing the granular materials for all the Highway ; and
- (c) obtain the approval of the Town for the granular and stone bases for municipal services on all Highways prior to laying the base course of 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 practices;
- (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; and

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, 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:
 - (i) areas within the tree protection fencing shall remain undisturbed and shall not be used for the storage of surplus soil, debris and building materials or equipment;
 - (ii) no contaminants will be dumped or flushed where feeder roots of vegetation exist;
 - (iii) no vegetation or tree limbs shall be removed, pruned or otherwise damaged during the course of construction; and
 - (iv) no rigging cables shall be wrapped around or installed in trees to be preserved.
- (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 Works

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

PART III

PRE-SERVICING REQUIREMENTS

3.1 Installation of Pre-Servicing Works

- (a) The Developer may commence the installation of the Pre-Servicing Works shown on the Accepted Plans prior to execution of the Subdivision Agreement and the Developer acknowledges that by proceeding with the installation of the Pre-Servicing Works prior to execution of the Subdivision Agreement it is doing so entirely at its sole and absolute risk and further agrees to leave the Pre-Servicing Works and the Lands in a safe condition should active development of the Lands come to a termination for any reason. All of the provisions of Part II of this Agreement shall apply to the design, installation and maintenance of the Pre-Servicing Works.
- (b) The Developer agrees that it may be required to modify, alter, relocate and reconstruct certain of the Pre-Servicing Works based on the final plans, drawings and specifications forming part of the accepted plans included in the Subdivision Agreement.
- (c) The Developer shall, at its own expense, unless otherwise provided in this Agreement design, pay for, install and complete in a good and workmanlike manner and maintain and keep in a proper state of repair all of the Pre-Servicing Works in strict accordance with the OBC, Engineering Standards, the Accepted Plans and the requirements of this Agreement to the satisfaction of the Town and all Government Authorities.
- (d) The Developer shall not commence installation of the Pre-Servicing Works until:
 - (i) The Developer has obtained all the necessary approvals for the installation of the Pre-Servicing Works from all required Government Authorities;
 - (ii) The Developer has 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 Sections 4.4 and 4.6 of this Agreement; and
 - (iv) The Town has given Notice to the Developer authorizing the Developer to commence installation of the Pre-Servicing Works and the Developer has given the Town five (5) business Days Notice of the date upon which installation of the Pre-Servicing Works is

scheduled to commence; and

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 of 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.

- (e) The Developer agrees that, prior to proceeding with the placement of paving on any proposed road as part of the Pre-Servicing Works, the Developer shall obtain approval from the Town of the Composite Utility Plan and the Street Lighting Plan.
- (f) The Developer agrees that if installation of the Pre-Servicing Works has not been completed within two (2) years of the date of this Agreement, then the Town may by Notice require the Developer to fill any excavations and to restore to grade and to reinstate the Lands to a safe condition.
- (g) The Developer agrees that if the Pre-Servicing Works are installed and the development of the Lands does not proceed within three (3) years of the execution of this Agreement, the Developer must satisfy the Town that the Pre-Servicing Works are in an acceptable standard to the Town and that it is at the sole discretion of the Town whether to accept any Pre-Servicing Works that are not in a condition satisfactory to the Town.
- (h) The Developer shall not connect the Pre-Servicing Works to the Town's sanitary sewer system, water distribution system, 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.
- (i) The Developer agrees that any commissioning, inspection and testing procedures undertaken by the Developer for any of the Pre-Servicing Works, including the sanitary sewer system, water distribution system and storm water drainage system is completed for the sole benefit of the Developer satisfying itself that the Pre-Servicing Works have been installed in accordance with the requirements of this Agreement and that the Town at its sole discretion will require further commissioning, inspection and testing procedures prior to the Town issuing a Certificate of Preliminary Acceptance of the Basic Services pursuant to the Subdivision Agreement.
- (j) The Developer agrees that the Town is under no obligation whatsoever to complete all or any portion of the Pre-Servicing 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 Pre-Servicing 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. *acting reasonably*
- (k) The Developer acknowledges and agrees that the Town is entitled to withdraw its permission granted herein for the installation of the Pre-Servicing Works if it is determined, in the sole and absolute 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 Pre-Servicing Works. The Developer acknowledges that it shall have no claim against the Town if it exercises its right to withdraw permission under this Agreement and it specifically waives and disclaims its rights to make any claim in connection therewith.

3.2 Amendments to the Accepted Plans

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

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

3.3 Existing Services

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

3.4 Limited Means of Access

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

3.5 Inspection by Town

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

3.6 Additional Tests

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

3.7 Town May Repair Works

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

3.8 Emergency Repairs

If any of the Pre-Servicing Works do not function or do not function properly in the opinion of the Town, or require necessary immediate repairs to prevent damage or hardship to any persons or to any property, the Town may enter upon the Lands and make whatever repairs may be deemed necessary at the expense of the Developer. The Developer shall pay to the Town, within twenty (20) Business Days of receipt by the Developer of a Notice demanding payment, all costs of the work incurred in making the said repairs as determined by the Town. The Town shall advise the Developer forthwith by Notice of the nature and extent of the emergency and repairs which were necessary. Such undertaking to repair shall not be deemed an acceptance of the Pre-Servicing Works by the Town or an 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 Pre-Servicing 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 foul any public highways outside the limits of the Lands, 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) 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.
- (d) 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;
- (e) that, if in the opinion of the Town, the requirements of this Section 3.10 are not complied with, the Town will do the work as required by the Town at the Developer's expense. The Developer shall pay to the Town, within twenty (20) Business Days of receipt by the Developer of a Notice demanding payment, all costs of the work incurred by the Town as determined by the Town.

3.10 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 Pre-Servicing 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 "Pre-Servicing Certificate"), for approval by the Town, describing the Pre-Servicing Works that have been completed, stating that the completed Pre-Servicing Works have been installed in strict accordance with the Engineering Standards, the Accepted Plans and the requirements of this Agreement, setting out the actual costs of installing the completed Pre-Servicing Works and setting out the current estimated costs, as of the date of the certificate, of installing the balance of the Works required for the development and servicing of the Lands.
- (b) The Developer acknowledges and agrees that the Town will use the approved Pre-Servicing Certificate as the basis for preparing Schedule "E" - Estimated Cost of the Works and Security Required - to the 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 Pre-Servicing Works described in the Pre-Servicing Certificate and the Developer has rectified and repaired to the satisfaction of the Town all defects and deficiencies in these Works found by this inspection, unless otherwise agreed in writing with the Town.
- (d) The Developer acknowledges and agrees that the approval of Pre-Servicing Certificate by the Town does not constitute acceptance of the Pre-Servicing 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.

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 "C".

4.2 Works Fee

The Developer shall pay to the Town, upon execution of this Agreement, a non-refundable works fee in accordance with the requirements of the Town's Fees and Charges By-law related to Engineering and Public Works Services in force at the date of this Agreement (the "Works Fee") for expenses incurred by the Town for review of the design of the Pre-Servicing Works and for inspections and other matters related to the installation of these works. The amount of the Works Fee to be paid is set out in Schedule "D".

The Developer may be required to pay an additional Works Fee under the Subdivision Agreement.

4.3 Disbursement and Expenses

- (a) In addition to the non-refundable fees referred to in Section 4.1, the Developer shall pay to the Town, within twenty (20) Business Days of receipt of a Notice

demanding payment, the full amount of such costs, expenses and disbursements as may be or are incurred by the Town in connection with the preparation, administration and enforcement of this Agreement, including, without limiting the generality of the foregoing, the Town's legal costs and the costs of other consultants (the "Agreement Costs").

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

4.4 Security

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

4.5 Developer in Default

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

BCW
Trust Company,
or Credit Union,
KS
CG

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

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

4.6 Default of Payment

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

4.7 Interest on Payment Demands

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

4.8 General Liability Insurance Policy

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

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

This policy shall be written with limits of not less than [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) These policies shall not be terminated, cancelled, or materially altered unless written notice, by registered mail, of such termination, cancellation, or material alteration is given by the insurers to the Town at least sixty (60) days before the effective date thereof.
- (c) The premiums on these policies must be paid initially for a period of one year and the policies shall be renewed for further one-year periods until all the Works required under this Agreement are installed and assumed by the Town. If required by the Town, the Developer shall prove to the satisfaction of the Town that all premiums on these policies have been paid and that all insurance is in full force and effect.
- (d) The Developer shall deliver with this Agreement (if not previously delivered) certified copies of these policies of insurance or a certificate of insurance setting out the essential terms and conditions of insurance, the form and content of which shall be satisfactory to the Town.
- (e) The Developer shall file a renewal certificate with the Town not later than one (1) month before the expiry date of any policy provided pursuant to this Agreement, until the Town has indicated in writing that the policy need not continue in force any longer. In the event that such renewal certificate is not received, the Town shall be entitled to either renew the policy at the expense of the Developer or to order that all work on the Lands cease until the policy is renewed.
- (f) These policies shall provide for cross-liability and severability of interest protecting the Town against claims by the Developer as it were separately insured and providing that the Town shall be insured notwithstanding any breach of any condition in the policy by any other insured.
- (g) If these policies contain deductible clauses, the Developer agrees to deposit a certified cheque or such Security as may be acceptable to the Town in the deductible amounts, as a deposit, together with a letter from the Developer authorizing the Town to appoint an independent adjuster and to investigate claims less than the deductible amount and authorizing the Town to pay such claims determined to be valid by the adjuster out of the said deposit. The Developer is responsible for all adjustment service costs and shall maintain the deposits in the amount of the deductible.

4.9 No Relief

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

4.10 Notice of Cancellation

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

PART V

BUILDING AND PLANNING

5.1 Model Homes

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

PART VI

ADMINISTRATION

6.1 Indemnity and Release

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

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

6.2 Transfer of Lands

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

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

The Town of The Blue Mountains

32 Mill Street,

Box 310, Thornbury, ON, N0H 2P0

Attention: The Director of Planning and Development Services

Facsimile: (519) 599-3664

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

- (c) Any Notice shall be deemed to have been given to and received by the party to which it is addressed;
 - (i) if delivered, on the date of delivery;
 - (ii) if mailed, on the fifth day after mailing thereof; or
 - (iii) if faxed, on the date of faxing, as confirmed

6.4 Waiver

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

6.5 Extension of Time

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

6.6 Enforcement

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

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

6.8 Governing Law

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

6.9 Registration of Agreement

The Developer agrees that this Agreement may be registered upon the title to the Lands at the Developer's expense and the Developer agrees, at its own expense to obtain and register such documentation from its mortgagees or encumbrances as may be deemed necessary by the Town to postpone and subordinate their interests in the Lands to the Town to the extent of this Agreement.

6.10 Successors & Assigns

It is hereby agreed by and between the Parties hereto that this Agreement shall be enforceable by and against the Parties hereto, their heirs, executors, administrators, successors and assigns and that the Agreement and all the covenants by the Developer herein contained shall run with the Lands.

6.11 No Fettering of Discretion

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

LIST OF SCHEDULES

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

"SCHEDULE A" being a description of the Lands;

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

"SCHEDULE C"; being a list of Special Provisions

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

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.

**WINDFALL LIMITED PARTNERSHIP
By its General Partner
WINDFALL GP INC.**

[REDACTED]

Name J. DAVID BUNSTON

Title PRESIDENT.

I have authority to bind the corporation

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

[Signature]
Director of Planning and Development
Services

[REDACTED]

c/s

Clerk

Corrina Gier

[REDACTED]

Mayor Alar Soever

SCHEDULE "A"

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

DESCRIPTION OF THE LANDS

(Geographic Township of Collingwood),

Town of The Blue Mountains, County of Grey,

Part of Block 38, Plan 16M - 42

Town of The Blue Mountains (formerly Township of Collingwood) County
of Grey

ADDRESS OF THE DEVELOPER FOR SERVICE

Windfall GP Inc.
c/o Georgian International Limited
85 Bayfield Street,
Suite 500
Barrie, Ontario
Canada, L4M 3A7

DESCRIPTION OF THE DRAFT PLAN AND CONDITIONS

1. DESCRIPTION OF THE DRAFT PLAN

Draft Plan 42T-2010-03 dated August 24, 2011 as red line revised March 19, 2012 prepared by Bousfields Inc. DWG. #: 0765-116dp – 609 dwelling units

2. Description of the Conditions

Approval Authority's Conditions for Draft Plan 42T-2010-03 set out in the Approval Authority's Decision dated November 15, 2011 as amended by the Approval Authority's Decisions dated May 10, 2012, September 16, 2014 and October 13, 2016.

(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 between the Developer
and
The Corporation of the Town of The Blue Mountains**

ACCEPTED PLANS FOR THE PRE-SERVICING WORKS

All the studies, reports, designs, plans, drawings and specifications for the installation of the Works which have been signed and stamped "Accepted for Construction- Pre-Servicing Only" by the Town on August 14th, 2019

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

All of 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.

Accepted Plans - Pre-Servicing Works

Engineering Drawings

All the Engineering Drawings prepared, signed and sealed by:
Tatham Engineering - Consulting Engineers
Project No: 111179-4
Name: Windfall Limited Partnership – Windfall Phase 4
Dated: May 2019,
Revised Date: 4th Submission August 12, 2019
And all Accepted for Pre-Servicing Construction by the Town: August 14th,
2019

Public Works

All Works shown on the Accepted Plans

Private Services

Nil

SCHEDULE "C"

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

SPECIAL PROVISIONS

1. Temporary Drainage Ditch

The Developer agrees that the Temporary Drainage Ditch shown on Accepted Plans PP- 26 and PP-27 (the "Ditch") shall be installed complete with vegetation, silt and sediment controls, rock and straw check dams to the satisfaction of the Town.

The Ditch shall be maintained by the Developer to the satisfaction of the Town throughout Phase 4 and any remaining phases until the Town determines that the Ditch is no longer required.

DCMH401 shown on accepted Plan PP-27 shall be completely removed from the Phase 4 works or will need to be removed and replaced in the installation of works in any remaining phases to the satisfaction of the Town.

SCHEDULE "D"

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

FEES AND SECURITIES

Estimated Cost of Pre-Servicing Works \$ [redacted]

Fees

1. Agreement Preparation Fee (section 4.1)

\$ [redacted]

Previously paid.

2. Works Fee (Section 4.2)

[redacted]

(0.54% of \$ 5,433,036.)

123

[Signature]

Securities

1. Pre-Servicing Security (Section 4.4)

[redacted]

