

SUBDIVISION AGREEMENT
TYROLEAN VILLAGE RESORTS LIMITED

Town File Number

P1597

Town of the Blue Mountains

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SUBDIVISION AGREEMENT

THIS AGREEMENT made the *1st* day of June, 2017

BETWEEN:

TYROLEAN VILLAGE RESORTS LIMITED

(Hereinafter referred to as the "Developer")

- And -

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

(Hereinafter referred to as the "Town")

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

AND WHEREAS the Developer has made applications Nos. B13-2009, B14-2009, B15-2009, B16-2009, B17-2009 and B18- 2009 (the "First Applications") to the Town pursuant to Section 53 of the Planning Act, R.S.O. 1990, c.P.13, as amended, (the "Act") for consents as defined in the Act to subdivide part of the Lands into residential lots:

AND WHEREAS the Town, by decisions dated December 14, 2009 approved all of the First Applications and granted provisional consents which had the effect of creating seven (7) residential lots fronting on Arlberg Crescent shown on Plan 824 (the "New Lots") subject to the conditions set out in the decisions being satisfied;

AND WHEREAS the Developer has made application No. B10-2016 (the "Second Application") to the Town pursuant to Section 53 of the Planning Act, R.S.O. 1990, c.P.13, as amended, (the "Act") for consents as defined in the Act to subdivide part of the Lands into residential lots:

AND WHEREAS the Town, by a decision dated December 19, 2016 approved the Second Application and granted a provisional consent which had the effect of creating two (2) residential lots fronting on Arlberg Crescent shown on Plan 824 (the "Additional Lots") subject to the conditions set out in the decisions being satisfied;

AND WHEREAS the conditions of approval for the First and Second Applications require the Developer to enter into this Agreement that provides for the development and servicing of the New Lots, the Additional Lots and other works and requirements as hereinafter provided;

AND WHEREAS the Parties are also parties to the subdivision agreement for Plan 1107 dated October 19, 1995 and registered as Instrument No.363281 (the "Existing Subdivision Agreement") which provides for, among other things, the servicing Phase 3 of Plan 1107 as described in the Existing Subdivision Agreement.

AND WHEREAS included in the description of the Lands are Lots 9 to 16, both inclusive, Plan 1107 which also front on Arlberg Crescent shown on Plan 824 (the "Existing Lots") and the Existing Lots and the New Lots are included in Phase 3 of Plan 1107;

AND WHEREAS the Parties have agreed that this Agreement shall replace and supersede all of the provisions of the Existing Subdivision Agreement for which relate to servicing of Phase 3 of Plan 1107.

AND WHEREAS this Agreement also provides for the development and servicing of the Existing Lots and other works and requirements as hereinafter provided.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the covenants hereinafter expressed, other good and valuable consideration and the sum of TEN DOLLARS (\$10.00) of lawful money of Canada now paid by each of the Parties hereto to each of the other Parties hereto, the receipt whereof is hereby acknowledged, the Parties hereto hereby covenant and agree with each other as follows:

PART I

DEFINITIONS AND BASIS OF AGREEMENT

1.1 Definitions

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

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

“Acceptable Standard” shall mean, generally, with respect to the maintenance and repair of the Works in a good state of repair in accordance with the requirements of this Agreement, the Engineering Standards, the Accepted Plans and with all applicable laws, regulations and requirements of the Town and any relevant Governmental Authority that may be prescribed, from time to time, for the appropriate maintenance and repair of the Works. “Acceptable Standard” shall also mean and include, with respect to the operation, maintenance, repair of the Storm Water Management Works, the removal of silt material and the periodic cleaning of the filters therein and the storm flow outlets;

“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 or maintenance of any part of the Works or the erection of buildings or structures on the Lands;

“Basic Services” means the Water Distribution Works, the Storm Sewer, Storm Drainage and Storm Water Management Works, all road crossings for the Utility Services, Road Works up to and including curbs and base course asphalt, Rough Grading, electric power, street lights, permanent regulatory traffic signs and street name signs, all as shown on the Accepted Plans;

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

“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;

“Certificate of Completion” means certificate issued by the Town stating that all of the Works have been installed in accordance with the Engineering Standards, the Accepted Plans and the requirements of this Agreement to the Town’s satisfaction, other than as may be specified on the Certificate;

“Certificate of Preliminary Acceptance” means a certificate issued by the Town, as a condition precedent to the issuing of building permits, stating that the Basic Services and such other Works as may be described therein have been installed in accordance with the Engineering Standards, the Accepted Plans and the requirements of this Agreement, to the Town’s satisfaction, other than as may be specified on the Certificate such that the Maintenance Period for the Works described in the certificate may commence;;

“Certificate of Final Acceptance” means a certificate issued by the Town stating that all of the Works described therein have been installed in accordance with the Engineering Standards , the Accepted Plans and the requirements of this Agreement to its satisfaction, the Maintenance Period for the Works described in the certificate has expired and no other obligations under the Agreement remain outstanding with respect to the Works described in the certificate or any matters provided for in this Agreement, other than as may be specified in writing by the Town on the date of Final Acceptance;

“Completion” means the date the Town has issued a Certificate of Completion;

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

“County” means the County of Grey;

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

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

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

"Final Acceptance" means the date on which the Town has passed an Assumption By-law for all of the Public Works in accordance with Section 3.12;

“Final Lot Grading Certificate” has the meaning ascribed to it in Section 2.28;

“Fire Chief” means the person holding the title of Fire Chief for the Town or his designate;

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

“Highway” means land dedicated as a public highway by the Plan 824 and includes a highway under the jurisdiction of the Town or the County;

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

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

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

“Lot Grading Plan” has the meaning ascribed to it in Section 2.27:

“Lot Owner” means the registered owner of a lot and includes the Developer when it is the registered owner of a lot;

“Maintenance Period” means a minimum period of two (2) years following Preliminary Acceptance and continuing until Completion and a further minimum period of one (1) year following Completion and continuing until Assumption.

“Notice” means any written notice, demand, request, direction or instructions given and received in accordance with the provisions of Section 12.2;

“Parkland or Parkland Dedication” means land which is to be conveyed to the Town for park or other public recreational purposes;

“Parkland Payment” means the sum of money calculated in accordance with Town policy which the Developer is required to pay to the Town in lieu of the conveyance to the Town of lands for park or other public recreational purposes;

“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;

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

“Preliminary Acceptance” means the date upon which the Town has issued a Certificate of Preliminary Acceptance;

“Public Works” means those Works described in Part 2 of Schedule “D” which are to be owned, operated and maintained by the Town following Final Acceptance;

“Rough Grading” means grading the Lands such that all grades are within 0.3 metres of the final grade and all swales and drainage works are within 0.05 metres of the final grade in conformity to the Accepted Plans to the satisfaction of the Town to achieve positive drainage and prevent ponding of water on the Lands;

“Security” has the meaning ascribed to it in Section 3.1:

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

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

“Utility Services” means all of the utility services for 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;

“Works” means all of the works, services, grading and drainage, facilities, landscaping, fencing, matters and things shown on the Accepted Plans and 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 (i.e. the Grading and Drainage Works, the Storm Water Management Works, etc);

“Works Fee” has the meaning ascribed to it in Section 8.2;

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

- (a) This Agreement shall be administered on behalf of the Town by the Director, unless another Town official is specifically referred to in this Agreement. Where under the terms of this Agreement, decisions, approvals, Notices and certificates are to be made, given or issued by the Town, such decisions, approvals, Notices and certificates shall be made, given or issued by the Director or other Town official, in their sole and absolute discretion, acting reasonably.
- (b) Where the Town corresponds with the Consultants with respect to any matter arising out of this Agreement, such correspondence shall be deemed to be correspondence received by the Developer.
- (c) The Parties acknowledge that Parts I to XII of this Agreement constitutes the Town's Standard Form of Subdivision Agreement and that some provisions of Parts I to XII may not apply to the subdivision, development and servicing of the Lands. This Agreement shall be administered by the Town on the understanding that if the Town determines that a particular provision of this Agreement does not apply to the subdivision, development and servicing of the Lands, it will not apply such provision, without the necessity of amending this Agreement to delete the non- applicable provision from this Agreement.
- (d) In the event of a conflict between:
 - (i) any provisions in Parts I to XII of this Agreement with any provision in the Schedules, including anything shown on the Accepted Plans, the provisions in the Schedules and shown on the Accepted Plans shall govern: or
 - (ii) any provisions in Schedule "G" with anything shown on the other Schedules and the Accepted Plans the provisions in the Schedule "G" shall govern.

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 Conditions of Consents

The conditions which the Town has imposed in accordance with the provisions of Section 53 of the Planning Act with respect to the consents for the creation of the New Lots and the Additional Lots are described in Schedule "B".

1.8 Phasing

The Parties agree that Lands shall be developed in such phases as described in Schedule "C".

PART II

WORKS

DESIGN AND INSTALLATION OF THE WORKS

2.1 Consultants

The Developer shall retain one or more Engineers (the "Consultant") to carry out all the necessary engineering 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.

The Consultant 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 the Consultant.

The Developer's agreements or contracts with the Consultant shall require the Consultant 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.
- (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 Lien 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.

2.2 Applicable Law 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.

2.3 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 Engineering Standards for any of the Works which the Developer;

- (a) is required to install before the particular Works are installed, the Developer shall, at its own expense, if required by Notice given by the Town redesign and install the particular Works referred to in the Notice in accordance with the new Engineering Standards; or
- (b) is required to maintain, if installed before the start of the Maintenance Period, the Developer shall, if required by Notice given by the Town maintain the particular Works referred to in the Notice in accordance with the new Engineering Standards.

2.4 Permits and Approvals Installation of the Works

- (a) The Developer shall, prior to commencing any work on the Lands including the erection of any buildings or structures thereon, obtain
 - (i) all of the necessary permits and approvals from any required Government Authority for such work; and
 - (ii) all the necessary Permits from the CBO for the Works shown on the Accepted Plans that are governed by the Building Code Act.

- (b) Despite anything contained in this Agreement the Developer shall, with respect to Works shown on the Accepted Plans that are governed by the Building Code Act, comply with all of the requirements of the Building Code Act to the satisfaction of the CBO. In the event of a conflict between any provision of the Building Code Act and any provision of this Agreement, the Building Code Act shall prevail to the extent of the conflict.
- (c) The Developer shall, at its own expense unless otherwise provided by this Agreement and within the time limits specified by this Agreement, design, pay for, install and complete in a good and workmanlike manner to the satisfaction of the Town, the CBO and all Government Authorities all of the Works in strict accordance with all Applicable Laws, the Engineering Standards, the Accepted Plans and the requirements of this Agreement.

2.5 Accepted Plans

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

2.6 Amendments to the Accepted Plans

All Works shall be installed and maintained in strict 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" 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.

2.7 Cash in Lieu of the Installation of Works

The Town may by Notice given at any time and from time to time prior to installation of any particular Works, require the Developer to pay to the Town an amount equal to the cost of installing that particular Work shown on the Accepted Plans as estimated by the Town in lieu of the Developer installing that particular Work. These payments are non-refundable and the Developer shall make payment to the Town, within twenty (20) Business Days of receipt of the Notice demanding payment.

2.8 Works Not Functioning

If at any time and from time to time prior to Final Acceptance of the Works the Town decides that a particular Work or Works are not functioning satisfactorily, the Developer shall, at its own expense, if required by Notice given by the Town redesign and reinstall the particular Work or Works which do not function satisfactorily, or design and install such additional Works as may be necessary to insure that the Works required by this Agreement function satisfactorily.

2.9 Additional Works Fee and Security

The Developer shall, when given Notice by the Town, pay to the Town the Works Fee and deposit the Security in accordance with sections 8.2 and 3.1 respectively for the redesigned works or additional works referred to in Sections 2.3 or 2.8 or the Works or additional Works shown on the amended plans referred to in Section 2.6, within twenty (20) Business Days of receipt of the Notice demanding payment of the Works Fee and deposit of the Security.

2.10 Utility Services

- (a) The Utility Services shall be installed as a total underground installation 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. 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 the execution of this Agreement by the Town, enter into a secured agreement with the Power Utility which requires the electrical distribution system for the Lands to be installed and energized prior to the occupancy of the first dwelling to be constructed on the Lands. A copy of such agreement shall be delivered to the Town prior to Final Approval.
- (c) The Developer shall, prior to the execution of this Agreement by the Town, make arrangements in writing with the other utility providers who will be providing Utility Services to the Lands which require these Utility Services to be installed and energized prior to the occupancy of the first dwelling to be constructed on the Lands. 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 Lands.
- (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 Lands, 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

2.11 Prior to Commencement of Installation

No work shall be commenced on any of the Works and Utility Services until the designs for all the Works and soil tests have been accepted by the Town and all necessary approvals and permits have been obtained from any required Government Authority, including the CBO. The Town may stop any work that is commenced without its acceptance or the necessary permits or direct that such work be stopped. Any Works installed by the Developer prior to this Agreement coming into force, except the Pre-Servicing Works, shall not be accepted by the Town until such time as the Consultants have certified to the Town in writing that such Works have been carried out in strict accordance with the Engineering Standards, the Accepted Plans and the requirements of this Agreement. The Developer shall provide all the information and expose or reconstruct any Works which the Town may require. The cost of all such reconstruction, including required testing and the Town's costs shall be paid by the Developer.

2.12 Commencement of Installation

The Developer shall prior to the installation of any Works, including the installation of Utility Services, give to the Town five (5) Business Days Notice of the date upon which installation of any Works, including Utility Services, is scheduled to commence.

2.13 Site Meetings

During the installation of the Works the Developer shall hold such site construction meetings as the Town may require by Notice, commencing with a pre-construction meeting, with the Town, the Consultants and the Developer's contractors to discuss, among other things, any concerns any party may have with respect to the installation of the Works. The Developer shall provide minutes of each meeting to the Town within five (5) Business Days from the date of the meeting.

2.14 Completion of Works

It is the intention of this Agreement that all of the Works shall be installed or otherwise provided expeditiously and continuously and completed within the times set out in the completion schedule set out in Schedule "F" unless such times are extended in writing by the Town. If the work is not performed in accordance with the completion schedule, the Developer shall be considered to have failed to proceed with reasonable speed, provided however that if the work is delayed by an unavoidable delay, the completion date shall be extended by the period of such delay. If, in the opinion of the Town, the installation of some of the Works should be delayed, the Town, by Notice may direct that such work be delayed until the date specified in the Notice.

REQUIREMENTS FOR THE WORKS

2.15 Water Supply and Watermains

- (a) The Developer shall not connect any part of the Water Distribution Works to an existing municipal watermain unless authorized by Notice given by the Town.
- (b) After the Water Distribution Works, including the fire hydrants have been commissioned to the satisfaction of the Town, the Town shall be solely responsible for operating these Works and the Developer shall not open or close any valve, hydrant or gate in Water Distribution Works or Town's system of water supply or alter or interfere with the Water Distribution Works or Town's system of water supply in any manner, unless authorized by Notice given by the Town.
- (c) The Developer shall adjust the grade of any or all water service boxes, valve chambers, valve boxes and hydrants as may be required by the Town.

2.16 Location of Water Service Boxes

Water services boxes for each lot are not to be located in a proposed driveway unless otherwise directed in writing by the Town. The Developer shall relocate any water service box out of any proposed driveway that has not been approved by the Town in writing.

2.17 Fire Hydrants

The Developer acknowledges and understands that it shall be responsible to pay the cost of maintaining all fire hydrants shown on the Accepted Plans until Final Acceptance.

2.18 Use in Accordance with Water By-law

The Developer acknowledges and agrees that the use of water, watermains, valves, water services and hydrants and all appurtenances shall be subject to the Town's Water By-law then in force. The Developer agrees not to use any existing

watermain systems, including hydrants, for the purpose of flushing or testing any watermain required to be constructed and installed under this Agreement without the prior written approval of the Town and until a temporary water meter has been installed by the Town, at the Developer's expense, to record the amount of water used for flushing or testing. The Developer shall be responsible for the cost of installing and subsequently removing such temporary water meter as well as the costs of the water used for such flushing and testing at the rates applicable from time to time and levied by the Town. The Developer shall also be responsible for all costs associated with the maintenance of the temporary water meter.

2.19 Storm Sewers

The Developer shall:

- (a) connect and drain all storm sewers to outlets approved by the Town or such other Government Authorities as may be applicable;
- (b) not connect any sewer to the existing sewer system unless authorized by Notice given by the Town;
- (c) not connect the roof drainage system or the foundation drainage system to either the storm sewer system or the sanitary sewer system.

2.20 Sewer Video Inspection Program

The Developer shall:

- (a) prior to commencing any works, undertake and pay for a sewer video inspection programs for the existing gravity sanitary sewer on Arlberg Crescent. This program shall be undertaken by a qualified provider, to be approved by the Town prior to video inspections being undertaken. Any defects found, will be noted as a pre-existing condition, and the Town's responsibility to correct. The Town may, at its sole discretion, utilize the Developer's Consultant & Contractor to rectify any defects, if suitable financial arrangements can be made between the Town and the Developer's Consultant & Contractor.
- (b) provide the Town with video tapes and written reports in a format as specified by the Town.
- (c) remove all silt and debris from the sewers prior to the video inspections taking place.
- (d) prior to Applying for Preliminary Acceptance of Basic Services, the Developer will undertake and pay for a second sewer video inspection for the existing gravity sanitary sewer on Arlberg Crescent. This programs shall be undertaken by a qualified provider, to be approved by the Town prior to video inspections being undertaken. Any defects found, that were not noted in the initial inspection, or that have worsened, will be noted as new damage, and the Developer's responsibility to correct to the satisfaction of the Town.

2.21 Highways

The Developer shall:

- (a) prior to installing the granular and stone bases for all Highways, install all the underground Works required for Basic Services plus all road crossings for the Utility Services;
- (b) undertake proof rolls of sub-grade, sub-base granular and base granular plus provide relevant geotechnical inspection reports and obtain the

approval of the Director prior to placing the subsequent layer of granular material and prior to laying the base course of asphalt;

- (c) obtain the approval of the Director to lay the top course of asphalt, which approval will not be given for at least two (2) years from the date of Preliminary Acceptance of the Basic Services.
- (d) maintain all Highways for vehicular traffic and shall maintain all sidewalks on all Highways for pedestrian traffic during all phases of construction until such Highways been assumed by the Town.

2.22 Winter Maintenance of Highways

- (a) The Developer shall, until Final Acceptance, snowplow, sand and carry out winter maintenance on unassumed Arlberg Crescent to the satisfaction of the Town.
- (b) Prior to Final Acceptance, the Developer may, if the Town so agrees, make arrangements to have the Town carry out winter maintenance at the expense of the Developer on unassumed Arlberg Crescent that are connected by asphalt to assumed public highways if manholes and catch basins are ramped on the base course asphalt and to have the Town carry out winter maintenance at the expense of the Developer on sidewalks on Town Lands. The Developer acknowledges and agrees that such winter maintenance shall not constitute Final Acceptance of any Highways and it specifically absolves and indemnifies the Town from any and all loss or liability of every nature and kind whatsoever in connection with such winter maintenance.
- (c) The Developer shall pay a fee based on rates established by the Town for such work and that nothing herein shall be construed as being maintenance by the Town for the purposes of creating any statutory duty on the Town for the maintenance of the Highways or with respect to the Final Acceptance of the Highways as public highways, it being understood and agreed that the Town's status in undertaking this work is as a subcontractor or agent of the Developer and not as a municipality.

2.23 Traffic Control Devices

The Developer shall erect permanent regulatory traffic control devices conforming to the Accepted Plans Town prior to Preliminary Acceptance of the Basic Services and maintain all the permanent traffic control devices until Final Acceptance.

2.24 Street Name, Parking and Fire Route Signs

The Developer shall erect permanent street name, parking and fire route signs conforming to the Town's specifications, at locations approved by the Town prior to Preliminary Acceptance of the Basic Services and maintain the permanent street name, parking signs and fire route signs until Final Acceptance.

2.25 Pavement Markings

The Developer shall install and maintain all the pavement markings on the Highways required by the Engineering Standards.

2.26 Grading and Drainage

The Developer shall:

- (a) until Final Acceptance,
 - i. 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;

- ii. correct or rectify any drainage problems on the Lands by altering the grade of or by constructing Works such as catchbasins, swales, retaining walls or other structures as may be deemed necessary by the Director to correct or rectify such problems, if, in the opinion of the Director, such problems occur due to improper grading, design errors or omissions, or due to non-compliance with the Accepted Plans by the Developer; and,
 - iii. correct or rectify any grading deficiencies, weather permitting, on the Lands within twenty (20) Business Days' of being given Notice to do so;
- (b) not alter the grading or change the elevation or contour of the Lands as shown on the Accepted Plans except in accordance with amended grading and drainage plans accepted by the Director.

2.27 Lot Grading and Drainage – Individual Lots

The Lot Owners shall be bound by and adhere to the Accepted Plans and shall:

- (a) prior to a making an application for a building permit for the construction of any buildings on a lot cause an Engineer to prepare and provide to the CBO a Lot Grading Plan for the lot for which a building permit application is made. The Lot Grading Plan shall be accepted by the CBO prior to a building permit being issued.
 - (i) The Lot Grading Plan shall show the siting of all buildings and structures on the lot, the driveway location, site servicing, and the lot grading and drainage in substantial conformity to the Accepted Plans.
 - (ii) The Engineer shall provide the CBO with a certificate certifying that the Lot Grading Plan is in substantially compliance with the Accepted Plans.
- (b) be responsible for all grading and drainage of the lot in accordance with the Accepted Plans and the Lot Grading Plan and in accordance with the Engineering Standards and accepted engineering practices;
- (c) 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 CBO, such problems occur due to improper grading or due to non-compliance with the Accepted Plans and the Lot Grading Plan;
- (d) correct or rectify any grading deficiencies with respect to the Accepted Plans and the Lot Grading Plan to the satisfaction of the CBO within three (3) weeks, weather permitting, of being given Notice by the Town to do so;
- (e) not alter the grading or change the elevation or contour of the land shown on the Accepted Plans and the Lot Grading Plan except in accordance with amended grading, drainage plans accepted by the CBO; and
- (f) The Accepted Plans and the Lot Grading Plans when accepted by the CBO shall also be deemed to be approved drainage and grading plans within the meaning of the Town's Alteration of Grade By-law 2002-78 as amended from time to time or any successor or replacement by-law thereto and all the provisions of By-law 2002-78 shall apply to them,

2.28 Final Lot Grading Certificate

The Lot Owner shall provide to the CBO a Final Lot Grading Certificate from the same Engineer who prepared the Lot Grading Plan indicating that the grading of

lot has been completed in conformity with the Accepted Plans and the Lot Grading Plan and in accordance with the Engineering Standards and accepted engineering practices. This certificate shall be delivered to the CBO for approval prior to Final Inspection.

2.29 Tree Preservation

The Developer shall,

- (a) preserve and not remove any trees or vegetation from the rear nine (9) metres of the Lands 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 by the Town;
- (b) install tree protection fencing to the satisfaction of the Town prior to the start of any construction activity within the Lands, which fencing shall remain in place until all grading, construction activity of any kind, and Landscape Works are completed;
- (c) ensure that the tree protection fencing remains in place during the entire period of construction activity of any kind within the Lands.
- (d) undertake every precaution necessary to prevent damage to existing trees and vegetated areas, include the following:
 - (i) areas within the tree protection fencing shall remain undisturbed and shall not be used for the storage of surplus soil, debris and building materials or equipment;
 - (ii) no contaminants will be dumped or flushed where feeder roots of vegetation exist;
 - (iii) no vegetation or tree limbs shall be removed, pruned or otherwise damaged during the course of construction; and
 - (iv) no rigging cables shall be wrapped around or installed in trees to be preserved.

The Developer for itself and the Lot Owners 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.

2.30 Landscape Works

There are no Landscaping Works shown on the Accepted Plans.

2.31 Siltation and Erosion Control Works

The Developer shall install the siltation and erosion control works shown on the Accepted Plans 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 and the Town has advised the Developer by Notice that these Works may be removed. The Security required for these Works set out in Schedule "E" shall not be reduced or released until 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.

2.32 Boulevards and Vacant Lots and Blocks

The Developer shall:

- (a) at all times prior to Final Acceptance keep all the boulevards of Highways within or abutting the Lands free and clear of all materials and obstructions; and
- (b) carry out continuous maintenance to the satisfaction of the Town on all vacant lots within the Lands. Such maintenance will include weed control, biannual spraying, grass and weed cutting to maintain a height not exceeding 250 millimeters, cleanliness of the lot by removal of debris and maintenance of approved drainage through grading when required by the Town.

GENERAL CONDITIONS

2.33 Existing Services

The Developer shall repair any damage to any existing municipal (including the County) services, works or facilities, including the existing sanitary sewer on Arlberg Crescent, whether assumed by the Town or otherwise and whether within the Lands or external thereto, caused by the installation and maintenance of the Works required by this Agreement 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.

2.34 Limited Means of Access

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

2.35 Inspection by Town

- (a) The Town may inspect the installation of the Works and shall have the power to stop any work or direct the Consultant 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 installation of any Works, but such inspection shall in no way relieve the Developer from its responsibility to inspect the said installation itself. If the installation of the 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.

2.36 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 it as to the proper installation and maintenance of the Works.

2.37 Town May Repair Works

In the event that the Developer, at any time prior to Final Acceptance, fails to keep any of the Works in a proper state of repair as required by this Agreement, including without limitation Section 3.3, 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.

2.38 Emergency Repairs

At any time prior to Final Acceptance, if any of the Works, including the Water Distribution 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 a Preliminary Acceptance of the Works by the Town or a Final Acceptance by the Town of any liability in connection therewith and shall not release the Developer from any of its obligations under this Agreement.

2.39 Applicable Laws

- (a) In installing and maintaining the Works, the Developer shall comply with all Applicable Laws. Without limiting the foregoing, the Developer agree to comply with, and cause to be complied with, the provisions of the Occupational Health and Safety Act, the Environmental Protection Act and the Ontario Water Resources Act and any regulations, policies and guidelines relating thereto, including all obligations of the constructor and employer under the Occupational Health and Safety Act and regulations as applicable, and any obligation to obtain any approval or permit required under the Environmental Protection Act or the Ontario Water Resources Act or any regulations, policies and guidelines relating thereto. The Developer further agrees to handle and dispose of all materials in accordance with the foregoing legislation.
- (b) The Developer shall do, cause to be done or refrain from doing any act or thing as directed by the Town if at any time the Town considers that any situation or condition is unsafe, damaging to the environment or contrary to the provisions of any applicable laws above. If the Developer fails to comply with such direction, the Town may take action to rectify the situation at the expense of the Developers and in this regard the Town also shall be entitled to draw upon the Security.

2.40 Indemnity

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 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, the use of the Works by any person or any defect in workmanship or material until Final Acceptance of all of the Works by the Town, except the Private Services and in perpetuity with respect to the Private Services.

2.41 Damage and Debris

The Developer covenants and agrees:

- (a) that all Town Lands that may be used by the Developer or parties employed by the Developer or others during the installation and maintenance of the Works shall be kept in a good and usable repair and condition until Final Acceptance and if, in the sole opinion of the Town, such Town Lands are damaged in any way prior to Final Acceptance by the Developer or parties employed by the Developer, such Town Lands will be repaired or restored immediately to the satisfaction of the Town.
- (b) to maintain satisfactory personnel and equipment available to sweep the Highways within the Lands as necessary to prevent nuisance mud and dust or as directed by the Town, and this operation will continue until Final Acceptance of all of the Works by the Town.
- (c) not to foul any 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;
- (d) not to allow and to restrain, insofar as it is able to do so, all others, from depositing junk, debris, or other materials on the Lands, including Town Lands and private land.
- (e) to clear debris and garbage on any land within or adjacent to the Lands if so requested by Notice given by the Town and that the Town shall have the authority to remove such debris and garbage at the cost of the Developer if the Developer fails to do so within forty-eight (48) hours of being advised to do so;
- (f) that, if in the opinion of the Town, the requirements of this Section 2.41 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.

2.42 Rights to Enter

- (a) The Developer, for itself and its successors and assigns, hereby grants to the Town, and its employees, agents, contractors and workmen and other persons duly authorized by the Town the right at all times and from time to time, to enter on the Lands or any part thereof for the purposes of inspecting, installing, operating, altering, maintaining and repairing any of the Works, including the grading and drainage of the Lands or any part thereof in accordance with the requirements of this Agreement and for rectifying a Default of the Developer or a Lot Owner.
- (b) On the sale of any lot the Developer shall reserve such rights as may be necessary to enable the Developer or its agents to enter on the lot at all

times prior to Final Acceptance to inspect, install, operate, alter, maintain and repair any of the Works, including the grading and drainage of the Lands of any part thereof in accordance with the requirements of this Agreement and to fulfill the Developer's obligations under this Agreement.

2.43 Land Use Permit

- (a) This Section does not apply to Works shown on the Accepted Plans or to any Works or shown on any Approved Plans referred to in any Site Plan Agreement with the Town required for the development of any part of the Lands.
- (b) The Developer or a Lot Owner shall not install or alter or permit to be installed or altered any works, including culverts and driveways, berms, fencing, trees, shrubs, hedges, landscaping of any kind, signboards, construction materials or other objects on Town Lands, including a Highway or easements in favour of the Town, without first obtaining from the Town a Land Use Permit required by the Town's Land Use Permit By-law 2014-65 for such work.
- (c) A Lot Owner shall, prior to a making an application for a building permit for the construction of any buildings on the lot, obtain a Land Use Permit from the Town for the installation of any works, including culverts and driveways, on Town Lands.
- (d) As a condition of the Town issuing the Land Use Permit, the Lot Owner shall provide a non-refundable fee and a refundable security deposit in an amount outlined on the Land Use Permit application form. This deposit will be used by the Treasurer to pay for repairs of any damage caused to Town infrastructure fronting on the lot during the construction of the buildings for which the building permit was issued, and this deposit is not in any way available to, or transferrable to, the Developer to fulfill its obligations under this Agreement.

PART III

SECURITY, PRELIMINARY ACCEPTANCE, MAINTENANCE AND FINAL ACCEPTANCE OF THE WORKS

3.1 Security

- (a) In order to guarantee total performance of this Agreement by the Developer, the Developer shall provide to the Town, prior to the execution of this Agreement, a letter of credit or letters of credit in the amount or amounts determined by the Town and set out in Schedule "E" (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(s) of credit shall be kept in full force and effect and that it will pay all premiums on the letter(s) of credit as they become due until such time as the Town returns the letter(s) of credit in accordance with the provisions of this Agreement.
- (b) 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 letters of credit or deposits cash or a certified cheque to be cashed in the required amounts with the Town.

3.2 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, despite the specific allocation of costs of the Works and the Security set out in Schedule "E".
- (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 3.2(b), the Town, except in cases of emergencies, shall give Notice to the Developer of the Default and require the Developer to rectify the Default. If the Default is not rectified within Twenty (20) Business Days after receipt by the Developer of such Notice or within such time period as may be designated in the Notice by the Town, then
 - (i) the Town shall have full authority and power immediately to purchase such materials, tools and machinery and to employ such contractors or workmen as in the opinion of the Town are required for the proper rectification of the Default, to enter upon the Lands and to do all such work and things, including the installation of Works, as are necessary to rectify the Default to the satisfaction of the Town, at the cost and expense of the Developer. In cases of emergencies, such work may be done without prior Notice but the Developer shall be notified forthwith. The cost of such work will be calculated by the Town, whose decision shall be final. It is understood and agreed that such costs shall include a management fee of fifteen per cent (15%) of the cost of the labour, materials, tools, machinery, and applicable taxes; and
 - (ii) the Treasurer may, at any time draw on and use all or part of the Security to pay the cost, as calculated by the Town, of any works or things, including the installation of Works, done by the Town pursuant to the provisions of this section to rectify the Default.
- (d) The Developer agrees that any entry on the Lands and any work done by the Town pursuant to the provisions of this section shall not be an Preliminary Acceptance and/or Final Acceptance of the Works by the Town and the acceptance of any liability in connection therewith nor a release of the Developer from any of its obligations under this Agreement.

3.3 The Construction Lien Act

- (a) The Developer shall comply with all of the provisions of the Construction Lien Act (Ontario), as amended, from time to time (in this Section 3.3 called the "Act"). Without limiting the generality of the foregoing, the Developer shall hold in its possession all the statutory holdbacks and any additional funds required to be held by the Act. These hold-backs and funds shall not be disbursed except in accordance with the Act.
- (b) The Developer shall, at its own expense, within ten (10) Business Days of receiving Notice from the Town to do so, pay, discharge, vacate, and obtain and register a release of, all charges, claims, liens, and all preserved or perfected liens, made, brought or registered pursuant to the Act which affect any Town Lands and/or Public Works and which arise out of the

performance of this agreement by the Developer and its servants, employees, agents and contractors.

- (c) The Developer shall indemnify and hold harmless the Town from all losses, damages, expenses, actions, causes of action, suits, claims, demands and costs whatsoever which may arise either directly or indirectly by reason of any failure, neglect or refusal by the Developer to comply with the Act or by reason of any action brought against the Town pursuant to the Act and arising out of the performance of this agreement by the Developer and its servants, employees, agents and contractors.
- (d) Despite anything contained in this Agreement, the Treasurer may, at any time, draw on and use of all or part of the Security:
 - (i) to pay, discharge, vacate, and obtain and register a release of all charges, claims, liens, and all preserved or perfected liens, made, brought, or registered pursuant to the Act which affect any Town Lands and/or Public Works in the event the Developer defaults in the performance of subsection 3.3(b) of this Agreement; and
 - (ii) to pay to the Town any amounts owing to them pursuant to subsection 3.3(c) of this Agreement.
- (e) The Developer acknowledges that the Town shall not be required to reduce or release the Security in accordance with Sections 3.7 and 3.11 until the Town is satisfied that all of the provisions of Section 3.3 have been complied with.

3.4 Preliminary Acceptance of the Works

In this section and section 3.5 “Works” means the completed Works proposed by the Developer for a Certificate of Preliminary Acceptance.

As a condition precedent to the Town issuing a Certificate of Preliminary Acceptance the Developer shall:

- (a) in respect of the Basic Services, flush all sewers, manholes, and catch basins free of road materials, building debris, and other foreign matter to clean such materials from the system, capture all such materials to the satisfaction of the Town to ensure that they do not move off the Lands, provide video inspection and any other tests required by the Town and rectify any deficiencies the video inspection and tests may reveal;
- (b) sweep roadway pavement, including sidewalks, within the Plan free of building debris and earth deposits, and clean and remove such material from the site;
- (c) rectify and repair all known defects and deficiencies in the Works unless otherwise agreed in writing with the Town;
- (d) submit to the Town:
 - (i) a certificate by a registered Ontario Land Surveyor (OLS) that the surveyor has confirmed the areas and frontages of all lots within the Lands and has located or replaced all standard iron bars as shown on the registered plan, and has located or properly re-established all block corners, the beginnings and ends of all curves including all corner roundings and all points of change in direction of streets. The OLS will also provide the Town with an electronic file for the Plan in the Town then current standard;

- (ii) all certificates of the substantial performance of all contracts and subcontracts as required by the Construction Lien Act (Ontario) for the Works, together with the proof of publication thereof, a certificate of the Consultants certifying that the construction lien period (45 days) has expired and it has received no notice of lien in respect of the Works pursuant to the Construction Lien Act (Ontario) and a statutory declaration from the Developer stating that all contractors and subcontractors associated with the installation of the Works have been paid and that there are no outstanding lien claims in respect of the installation of the Works pursuant to the Construction Lien Act (Ontario);
 - (iii) a certificate verifying the establishment of horizontal control monuments and vertical benchmarks in the Plan, as required by the Town;
 - (iv) all required digital data, hard copy plots, and report information as specified by the Town, including red-lined "as recorded" plans of the Works;
 - (v) a certificate from the Consultants indicating the final costs of installing the Works and an updated estimate cost of completing the remainder of the Works shown on the Accepted Plans.;
 - (vi) a certificate from the Consultants stating that all the Works have been installed and are functioning in strict accordance with the Engineering Standards, the Accepted Plans and the requirements of this Agreement,
 - (vii) a certificate from the Consultants stating that all traffic control devices, street and parking signs and fire route signs within the Plan have been installed in accordance with the Engineering Standards and the Accepted Plans and the Town's by-laws to the satisfaction of the Town, and that the Town has received an inventory of all traffic control devices within the Plan; and
 - (viii) a certificate from the Consultants summarizing the certification of the grading of all the lots, blocks and units within the Plan completed to date.
- (e) if required by the Town, pay the additional Works Fee required by Subsection 8.2(b);
 - (f) provide proof of payment for the maintenance and energy costs for illumination within the Plan;
 - (g) provide proof of payment for all outstanding costs associated with snowplowing; and
 - (h) rectify and repair all street and traffic signs and traffic control devices within the Plan.

3.5 Certificates of Preliminary Acceptance and Completion

- (a) The Certificate of Preliminary Acceptance shall be issued by the Town for the Basic Services, including the Pre-Servicing Works, and any other Works described therein.
- (b) The Certificate of Completion shall be issued for all of the Works.
- (c) The Certificate of Preliminary Acceptance and Certificate of Completion shall show the cost of the Works for which the certificate is issued as determined by the Director whose decision shall be final.

- (d) The Town covenants and agrees that a Certificate of Preliminary Acceptance or a Certificate of Completion shall be issued by the Town upon fulfillment of the following conditions:
- (i) the Town has inspected the Works and the Developer has rectified and repaired all defects and deficiencies in the Works found by this inspection, unless otherwise agreed in writing with the Town; and,
 - (ii) the Developer has complied with all of the requirements of this Agreement.

3.6 Documentation to Reduce Security

Prior to the reduction of Security held by the Town for any Works, the Developer must submit the following documentation to the Town:

- (i) a request for a reduction of Security describing the completed Works for which a reduction is requested;
- (ii) a Certificate of Preliminary Acceptance for the completed Works for which a reduction is requested; and
- (iii) a statutory declaration from the Developer stating that all contractors and subcontractors associated with the installation of the completed Works described in the application for reduction have been paid and that there are no outstanding lien claims in respect of the installation of these Works pursuant to the Construction Lien Act (Ontario);

3.7 Reduction of Security

- a) Subject to the provisions of Subsections 3.7 (b) and (c), the Developer shall only be entitled to two (2) reductions in the Security prior to Final Acceptance. The first after the Town has issued the Certificate of Preliminary Acceptance and the second after the Town has issued the Certificate of Completion.
- (b) Despite anything contained in this Agreement there shall be no reduction in the Security:
 - (i) where such reduction would result in the amount of the remaining Security being less than the aggregate total of:
 - i. one hundred and five (105%) of the estimated cost as determined by the Director, whose decision shall be final, of the Works and other matters, including rectification of deficiencies or Defaults, which have not been completed or carried out; plus
 - ii. twenty-five percent (25%) of the cost of the completed Landscape Works; plus,
 - iii. twenty-five percent (25%) of the cost of the completed Sidewalks, Curbs and Gutters; plus,
 - iv. one hundred percent (100%) of the Lot Grading Security; plus
 - v. one hundred percent (100%) of the Tree Preservation Security; plus
 - vi. one hundred percent (100%) of the Siltation and Erosion Control Security for areas at risk of erosion and sedimentation; plus

- vii. six percent (6%) of the cost of uncompleted Works for Engineering; plus,
 - viii. other Security that may be outlined in Schedule E; plus
 - ix. ten percent (10%) of the cost of the other completed Works which are shown on the Certificates of Preliminary Acceptance; plus,
 - x. any outstanding payments due to the Town as an obligation under this Agreement; or,
- (ii) when the Developer is in Default.
- (c) The Developer shall not be entitled to any reduction and/or release of the Lot Grading Security, the Siltation and Erosion Control Security and Tree Preservation Security set out in Schedule "E" until Final Acceptance.

3.8 Maintenance and Repair of the Works

- (a) Despite that the Town is responsible for the operation of the Water Distribution Works as provided in Section 2.15, the Developer shall maintain and keep in a proper state of repair and operation all of the Works (including the maintenance and repair of the Water Distribution Works installed by the Developer, to Acceptable Standards and to the satisfaction of the Town, for the Maintenance Period and until Final Acceptance.
- (b) The Developer shall maintain and water in accordance with the following landscaping maintenance requirements set out in Section 3.8(c), all trees, sod, and other landscaping shown on the Accepted Plans for a period of two (2) years from the time of planting or laying and shall replace all trees, sod, and landscaping failing to establish a healthy growth within this period. The foregoing maintenance and replacement provision shall apply to all replacement trees, sod, and landscaping planted or laid pursuant to this subsection unless the Developer makes satisfactory arrangements with the Town prior to Final Acceptance of these Works by the Town to provide Security for the maintenance and replacement of the replacement trees, sod, and landscaping.
- (c) Water to maintain soil moisture conditions for optimum establishment, growth, and health of plant material without causing erosion. Cut grass monthly or as otherwise required by the Town and remove weeds monthly from planting beds and tree pits. Apply pre-emergent herbicide to planting beds and tree pits at installation and each spring or fall. Remove dead plants and plants not in satisfactory condition, as determined by the Town and make replacements in the same or next growing season. Annually remove dead or broken branches from plant material. .
- (d) The Developer shall maintain the Tree Protection Works and the Siltation and Erosion Control Works during the period when any Works and buildings are being installed or constructed on the Lands. .
- (e) The Maintenance Period for the Pre-Servicing Works shall commence at the same time as the Maintenance Period for the Basic Services commences. .

3.9 Final Acceptance of the Works

In this section and sections 3.10 and 3.12 "Works" means the completed Works proposed by the Developer for Final Acceptance.

As a condition precedent to the Town issuing a Certificate of Final Acceptance, the Developer shall:

- (a) clean all sewers, manholes, and catch basins within the Plan to be free of road materials, building debris, and other foreign matter, and clean such materials from the system, capture all such materials to the satisfaction of the Town to ensure that they do not move off the Lands, provide a sewer video inspection and any other tests required by the Town and to rectify any deficiencies the video inspection and tests may reveal;
- (b) sweep, clean and remove any debris and earth deposits from all roadway pavement within the Plan;
- (c) rectify and repair all defects and deficiencies in the Works including damages, settlements or depressions to the above ground infrastructure unless otherwise agreed in writing with the Town;
- (d) provide proof of payment for all costs required to be paid by the Developer by this Agreement.
- (e) rectify and repair grading problems associated with any lot or within the Plan;
- (f) clean out, including the removal of all silt material and rectify and repair damages to the Storm Water Management Works;
- (g) rectify and repair damage to any retaining walls within the Plan;
- (h) pay all outstanding invoices that the Town may have issued concerning emergency repairs and other matters arising out of this Agreement; and
- (i) make all plant material replacements pursuant to the conditions of the warranty period and the requirements of this Agreement. ;
- (j) submit to the Town:
 - (i) a certificate by a registered Ontario Land Surveyor (OLS) that the surveyor has confirmed the areas and frontages of all lots and has located or replaced all standard iron bars as shown on the registered plan, and has located or properly re-established all block corners, the beginnings and ends of all curves including all corner roundings and all points of change in direction of streets. The OLS will also provide the Town with an electronic file for the registered Plan in the Town then current standard;
 - (ii) a statutory declaration from the Developer stating that all contractors and subcontractors associated with the installation and maintenance of the Works have been paid and that there are no outstanding lien claims in respect of the installation and maintenance of the Works pursuant to the Construction Lien Act (Ontario);
 - (iii) a certificate verifying the establishment of horizontal control monuments and vertical benchmarks within the Plan, as required by the Town;
 - (iv) all required digital data, hard copy plots, and report information as specified by the Town;
 - (v) a certificate from the Consultants certifying that all the Works required by this Agreement have been installed and are functioning in strict accordance with the Engineering Standards , the Accepted

Plans, including the storm water management report and the requirements of this Agreement;

- (vi) the certificates required to be provided by Section 2.27;
- (vii) a composite utility plan and “as recorded” plans of all the underground Works, including Utility Services and street lighting plans depicting the location of ducts, wires, power connection points to Power Utility’s system poles and pedestals signed and sealed by the Consultants and an electronic version of the composite utility plan the “as recorded” plans all in accordance with the Engineering Standards for the review and approval of the Town; and
- (vii) a written request for the return of the unused balance of any refundable deposits paid to the Town by the Developer.

3.10 Conditions for Final Acceptance of the Works

The Town covenants and agrees that the Final Acceptance of the Works shall take place upon fulfillment of the following conditions to the satisfaction of the Town:

- (a) the Town has inspected the Works and the Developer has rectified and repaired to the satisfaction of the Town all defects and deficiencies in the Works found by this inspection, unless otherwise agreed in writing with the Town;
- (b) the Developer has complied with all of the requirements of this Agreement to the satisfaction of the Town; and
- (c) the Town has issued the Certificate of Final Acceptance.

The Town may issue a Certificate of Final Acceptance for all of the Works for the whole or for any part of the Plan.

The Town may, as a further condition of Final Acceptance of the Works, require the Developer to enter into an agreement with the Town with appropriate Security to deal with any remaining deficiencies or outstanding matters as determined by the Town including the maintenance and replacement of trees and landscaping in accordance with the requirements set out in Schedule “G”.

3.11 Release of Security at Final Acceptance

Upon the enactment of an Assumption By-law in accordance with Section 3.12 the Developer shall be entitled to a release of the Security for the Public Works in the amount set out in the by-law and return of the unused balance of any refundable deposits paid to the Town by the Developer.

3.12 Assumption By-law

After issuing a Certificate of Final Acceptance for Public Works, the Director shall submit a written report to the Town Council that the Public Works described therein have been installed in accordance with the requirements this Agreement, that all accounts in connection therewith have been paid, that all financial requirements have been met or will be met on the passing of an Assumption By-law and that the Public Works described therein are in the required condition to be assumed. When all of the requirements of this section have been fulfilled, the Town shall pass an Assumption By-law for the Public Works described in the Certificate of Final Acceptance. Upon an Assumption By-law being passed, the ownership of the Public Works described in the by-law and the responsibility for the maintenance and operation of these Public Works shall vest in the Town despite the earlier transfer of lands or easements related to these Public Works and the Developer shall have no claims or rights thereto other than those accruing

to it as an Developer of land abutting on public highways where these Public Works were installed.

PART IV

SPECIAL PROVISIONS

4.1 Special Provisions

The Parties covenant and agree to comply with all of the Special Provisions set out in Schedule "G". 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 "G" shall be deemed to be Works within the meaning of this Agreement.

PART V

BUILDING PERMITS AND OCCUPANCY

5.1 Building Permit Issuance

The Developer for itself and its successors and assigns including the Lot Owners agree that neither it nor any other person on its behalf will apply for or be entitled to receive any building permits or will appeal pursuant to Section 25 of the Building Code Act any decisions of the CBO refusing to issue building permits until:

- (a) the lot for which the building permit is applied for is zoned accordingly to permit the development, including the removal of the holding –h symbol and the requirements of the Town's site plan control area by-law have been complied with;
- (b) this Agreement has been registered against the title to the Lands;
- (c) the Town has issued a Certificate of Preliminary Acceptance for that part of the Lands which includes the lot described in the application for building permit;
- (d) the Town has confirmed that an adequate water supply for firefighting operations and satisfactory access for firefighting equipment is available to service the Lands and, if applicable, "Fire Route" signs have been installed in accordance with the Town's Fire Route By-law;
- (e) the Treasurer has confirmed that all development charges, taxes, levies, fees and other payments required under this Agreement for the lot for which the building permit is applied for have been paid in full or secured by sufficient Security;
- (f) the Town's Solicitor has confirmed that all necessary conveyances of land, easements and reserves have been received free and clear of all encumbrances and have been registered against title;
- (g) the Town has certified that, on lots on which easements have been imposed or for lots immediately adjacent to such easements, the required Works have been installed within the limits of the easements granted to the Town;
- (h) the Lot Grading Plan for the lot for which the building permit application is made has been provided to and accepted by the Town;

- (i) all other requirements of the Building Code Act and the Town Building By-law have been satisfied; and
- (j) all other applicable requirements of this or any other agreement have been satisfied, including the Special Provisions set out in Section 4.1 and Schedule "G".

5.2 Occupancy of Buildings

The Developer, for itself and its successors and assigns, which includes a Lot Owner upon becoming the registered owner of a lot, agrees that neither it nor any other person on its behalf shall occupy or permit the occupancy of any building or structure or part thereof until:

- (a) the underground electrical distribution system, the street lighting system, the telephone system and gas services, where applicable, have been installed, energized and approved by the Town;
- (b) the permanent traffic and street signs have been installed and approved by the Town;
- (c) the building, including water line and sanitary sewer and connections thereto, have been constructed in accordance with the plans approved by the Town and in accordance with the Building Code Act and any other applicable building standards;
- (d) "Record" drawings for any or all of the Works or other matters, whether they are classified as Works or not which in the reasonable opinion of the Town shall be required, are provided to the satisfaction of the Town; and
- (e) a certificate of occupancy has been issued by the CBO

PART VI

FIRE

6.1 Compliance with Fire Code

The Developer shall comply with all relevant provisions of the Ontario Fire Code and acknowledges that all fire hydrants shall be maintained in operating condition and shall be readily available and unobstructed for use at all times.

6.2 Firebreak Lots

- (a) The Parties agree that every seventh (7th) lot on the Plan shall be designated as a firebreak lot and the following provisions shall apply.
- (b) The Developer covenants and agrees that notwithstanding that a building permit has been issued for lots designated as firebreak lots, no construction shall proceed until the exterior finish cladding, roofing and windows on the building abutting each side of the firebreak lot has been completed, unless otherwise approved by the Fire Chief.
- (c) Where the Developer requests a change in the designation firebreak lots, a change may be made subject to the approval of the Fire Chief and the payment of a transfer fee as required by the Fire Chief for each change in designation in firebreak lots. .
- (d) The Developer covenants and agrees that no construction will commence on a designated firebreak lot without the written approval of the Fire Chief.

6.3 Fire Route Signs

The Developer shall install all signs required by the Town's Fire Route By-law when directed to do so by the Municipal Law Enforcement Officer.

PART VII

PLANNING

7.1 Site Plan Control

The Developer shall comply with the requirements of the Town's Site Plan Control Area By-law.

7.2 Holding Zones

The Developer acknowledges and agrees that no part of the Lands shall be developed until the -h holding symbol in the Town's zoning by-law for that part of the Lands proposed to be developed has been removed from the zoning by-law in accordance with Section 36 of the Planning Act and in compliance with the requirements of the Town's zoning by-law.

7.3 Street Names

The Developer covenants and agrees that the streets on each Plan, including Private Roads, shall bear names approved by the Town.

7.4 Building Numbers and 911 Numbers

The Developer covenants and agrees that all building numbers and 911 numbers within the Plan shall be the numbers allocated by the Town. To obtain such numbers, the Developer shall provide to the Town a copy of the Final Approval Plan, upon which the Town shall designate the number for each lot, block or unit.

PART VIII

FINANCIAL ARRANGEMENTS

8.1 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 "H".

8.2 Works Fee

- (a) 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 Fees in force at the date of this Agreement (the "Works Fee"). The amount of the Works Fee to be paid is set out in Schedule "H".
- (b) In the event that the actual cost of the Works exceeds the estimated cost of the Works set out in Schedule "E", as a result of a change in the design of the Works or otherwise, the Town shall recalculate the Works Fee using the final costs of installing the Works as certified by the Consultants and approved by the Town (the "Final Works Fee"). The Developer shall pay to the Town prior to Preliminary Acceptance an amount equal to the difference between the Works Fee set out in Schedule "H" and the Final Works Fee.

8.3 Disbursement and Expenses

- (a) In addition to the non-refundable administration fee referred to in Section 8.1, 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, the costs of other consultants, the cost of registration of this Agreement against title to the Lands, the costs of registration of all documentation related to conveyance and dedications of lands and easements under this Agreement, and all documents and all agents' fees related to such registrations (the "Agreement Costs").

- (b) As security to ensure payment of the Agreement Costs by the Developer, the Developer shall pay to the Town, upon execution of this Agreement a refundable deposit in accordance with the Town's Fees and Charges By-law related to Planning Fees in the amount set out in Schedule "H" 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.

8.4 Tax Arrears

The Developer shall pay all taxes outstanding against the Lands prior to the execution of this Agreement by the Town.

8.5 Tax Levies

The Developer agrees that it shall be solely liable to pay all taxes levied, or to be levied, on the Lands in accordance with the tax rolls until such time as the Lands have been assessed and entered on the tax roll according to the registered Plan.

8.6 Designated Fees, Charges and Rates

The Developer shall pay, upon execution of this Agreement, all designated fees, charges and rates now imposed, assessed and levied upon the Lands, including but not limited to levies under the Local Improvement Act, Ontario Water Resources Act, Public Utilities Act, Drainage Act, and Municipal Act, 2001, all as set out in Schedule "H".

8.7 Lawful Levies and Rates

Notwithstanding the Works to be constructed and installed, the services to be performed and the payments to be made pursuant to this Agreement by the Developer, the Lands shall remain liable in common with all other assessable property in the Town to all lawful rates, levies, fees and charges of the Town.

8.8 Local Services and Local Connection Charges

The Developer acknowledges and agrees that all charges, payments, Works to be installed, studies to be carried out and all other obligations contained in this Agreement or the cost thereof (except where a charge is referred to herein as a "development charge") are characterized as:

- (a) local services installed or provided at the expense of the Developer related to or within the Plan as a condition of approval under s. 51 of the Planning Act;
- (b) connections to water and sewer facilities installed at the expense of the Developer; or

- (c) services denoted on Accepted Plans or specifically noted in the Agreement for which the Developer is making no claim for credits from the development charge by-law,

and are not charges related to development within the meaning of the Development Charges Act, 1997.

8.9 Development Charges

The Developer acknowledges that the Town has enacted the development charges by-laws pursuant to the Development Charges Act, 1997 described in Schedule "H" which apply to the Lands. Subject to any special provisions with respect to development charges set out in Schedule "H", the Developer shall pay the development charges imposed by these by-laws in the amounts and at the times provided by these by-laws as set out in Schedule "H".

8.10 Development Charge Credits

The Developer hereby releases and forever discharges the Town from any and all claims for credits against development charges payable under any development charges by-laws of the Town which apply to the Lands and the Developer hereby waives all such claims for credits except for the credits that may be specified in Schedule "H". Any such credits so specified herein and the calculation thereof shall be deemed to be conclusive and binding on the Developer.

8.11 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.

8.12 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.

PART IX

INSURANCE

9.1 General Liability Insurance Policy

- (a) Prior to 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, 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] [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.

- (ii) Automobile Liability (Owned and/or Leased Vehicles) insurance with an inclusive limit of liability of not less than [REDACTED] [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] [REDACTED] exclusive of interest or costs, on a claims-made basis, or such other limit as the Town may reasonably require,

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

- (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) In Sections 9.1, 9.2 and 9.3, the term policy or policies includes a policy or policies of insurance provided the Developer's contractors.

9.2 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.

9.3 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 X

CONVEYANCE OF LANDS AND EASEMENTS TO TOWN

10.1 Parkland Dedication and Parkland Payment

The Developer shall, prior to execution of this Agreement, pay to the Town the Parkland Payment required by Schedule "H". The amount of this payment is final and not subject to adjustment.

10.2 Transfer of Lands and Easements

The Developer shall, at its own expense upon the execution of this Agreement transfer or cause to be transferred to the Town and the other persons named in Part 2 of Schedule "I", at no cost or charge and free and clear of all encumbrances, the lands and easements described in Parts 2 and 3 of Schedule "I" for purposes other than Parkland Dedication.

PART XI

11. Development Charges Notice

The Developer shall provide notice to the first purchaser of any lots, blocks or units in the Plan, upon transfer of the lots, blocks or units, of all development charges related to the Plan, including development charges already paid by the Developer or development charges that may be payable in the future.

PART XII

ADMINISTRATION

12.1 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 Developer at 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:

Town of The Blue Mountains

32 Mill Street,

Box 310, Thornbury, ON, N0H 2P0

**Attention: Planning and Development and
Development Services Department**

Facsimile: (519) 599-3664

or such other address of which the Town has by Notice 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

12.2 Nullification of this Agreement

If the installation of the Works is not commenced within two (2) years from the date of execution of this Agreement, the Town may, at its option and on twenty (20) Business Days Notice to the Developer, declare this Agreement null and void and of no further effect. Any Security held at the time of nullification of this Agreement shall be returned forthwith to the Developer, less any amounts drawn by the Town from the Security to remedy any Defaults occurring before the nullification of this Agreement and drawn to pay any costs incurred by the Town to return the Lands to a safe and presentable condition. The refund of any fees, levies or other charges paid by the Developer pursuant to this Agreement shall be in the sole discretion of the Town but the Developer acknowledges that under no circumstances will interest be paid on any refund.

12.3 Registration of Agreement

The Parties hereby covenant and agree that this Agreement shall be registered upon title to the Lands. The Developer further shall pay all costs associated with the preparation and registration of this Agreement, as well as all other costs incurred by the Town as a result of the registration of any other documents pertaining to this Agreement, including but not limited to, the transfers of the lands and easements referred to In Schedule "I" and any amendments to this Agreement notwithstanding that such registration may have been solely at the instance of the Town. The Developer hereby authorizes the Town Solicitor or his designate to execute on behalf of the Developer all documents necessary to register this Agreement in the Land Registry Office.

12.4 Postponement and Subordination

The Developer covenants and agrees, at its own expense, to obtain and register such documentation from its mortgagees or encumbrances as may be deemed necessary by the Town to postpone and subordinate their interest in the Lands to

the interest of the Town to the extent that this Agreement and the easements referred to in Schedule "I" shall take effect and have priority as if it had been executed and registered before the execution and registration of the document or documents giving to the mortgagee and/or encumbrancers their interest in the Lands.

12.5 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.

12.6 Other Applicable Laws

Nothing in this Agreement shall relieve the Developer from compliance with all applicable municipal by-laws, laws and/or regulations or laws and/or regulations established by any Government Authority.

12.7 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.

12.8 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.

12.9 Governing Law

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

12.10 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, including the Condominium Corporation and that the Agreement and all the covenants by the Developer herein contained shall run with the Lands.

12.11 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 successors 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.

PART XIII 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 the Conditions of the Consents;

"SCHEDULE C" being the Phasing Requirements for the Plan;

"SCHEDULE D" being a Description of the Accepted Plans and Private Services;

"SCHEDULE E" - being the Estimated Cost of Installation the Works and the Security Requirements;

"SCHEDULE F" being the Completion Schedule for the Installation of the Works;

"SCHEDULE G" being the Special Provisions

"SCHEDULE H" being a List of the Financial Obligations of the Developer;

"SCHEDULE I" being the Lands and Easements to be conveyed to the Town and Others;

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.

TYROLEAN VILLAGE RESORTS LIMITED

 Name *DENIS MARTINEK*
 Title *PRESIDENT*
 I have authority to bind the corporation

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

 Mayor *John McKean*
 _____ c/s
 Clerk *Corrina Giles*

SCHEDULE "A"

**This schedule forms part of a Subdivision Agreement between Tyrolean
Village Resorts Limited and
The Corporation of the Town of The Blue Mountains**

DESCRIPTION OF THE LANDS

Firstly - Existing Lots (8 Lots)

Lots 9 to 12 and 13 to 16 Plan 1107

(Geographic Township of Collingwood),

Town of The Blue Mountains, County of Grey, PIN 37146-0147

Secondly – New Lots (7 Lots)

Part of Lot 19, Concession 2

Parts 1 to 16 Plan 16R-10015

(Geographic Township of Collingwood),

Town of The Blue Mountains, County of Grey,

Thirdly – Additional Lots (2 Lots)

Part of Lot 19, Concession 2

Parts 4 and 5 Plan 16R-10861ment part of

PIN 37146-0308

(Geographic Township of Collingwood),

Town of The Blue Mountains, County of Grey,

Fourthly – Tyrolean Lowlands

Part of Lot 19, Concession 1

PIN 37313-0501

(Geographic Township of Collingwood),

Town of The Blue Mountains, County of Grey,

ADDRESS OF THE DEVELOPER FOR SERVICE

Tyrolean Village Resorts Limited
796455 Grey Road 19, Unit 1
Blue Mountains, L9Y 0N8

SCHEDULE "B"

**This schedule forms part of a Subdivision Agreement between Tyrolean
Village Resorts Limited and
The Corporation of the Town of The Blue Mountains**

DESCRIPTION OF THE CONDITIONS OF THE CONSENTS**1.1 New Lots**

Decisions dated December 14, 2009 approved all of the First Applications and granted provisional consents which had the effect of creating seven (7) residential lots fronting on Arlberg Crescent shown on Plan 824 subject to the conditions set out in the decisions being satisfied;

1.2 Additional Lots

Decision dated December 19, 2016 approved the Second Application and granted a provisional consent which had the effect of creating two (2) residential lots fronting on Arlberg Crescent shown on Plan 824 subject to the conditions set out in the decision being satisfied;

SCHEDULE "C"

**This schedule forms part of a Subdivision Agreement between Tyrolean
Village Resorts Limited and
The Corporation of the Town of The Blue Mountains**

PHASING REQUIREMENTS

GENERAL PHASING REQUIREMENTS

1. The Lands shall be developed and serviced in one (1) phase.

SCHEDULE "D"

**This schedule forms part of a Subdivision Agreement between Tyrolean
Village Resorts Limited and
The Corporation of the Town of The Blue Mountains**

ACCEPTED PLANS AND PRIVATE SERVICES

PART 1 - ACCEPTED PLANS - ALL WORKS

List of studies, reports, designs, plans, drawings and specifications for the installation of the Works which have been signed and stamped "Accepted for Construction" by the Town. The Accepted Plans are on file with the Town Clerks Office and may be viewed during normal office hours.

Consulting Engineer:

All the following Drawings prepared by R.J. Burnside & Associates Limited – Tyrolean Resorts Limited – Arlberg Crescent Subdivision Project PCG019510 and "Accepted for Construction by the Town on December 4, 2015

ENGINEERING PLANS – Final Submission September 2015

Gen - General Servicing

WM – Water Supply System

STM – Storm Drainage Plan

LGR1 –Lot Grading Plan (1 of 3).

LGR2 –Lot Grading Plan (2 of 3).

LGR3 –Lot Grading Plan (3 of 3).

ESC1 – Erosion and Sediment Control Plan (1 of 2)

ESC2 – Erosion and Sediment Control Plan (2 of 2)

P01 – Plan and Profile – Arlberg Crescent & Pilsen Way

P02 – Plan and Profile – Arlberg Crescent

P03 – Plan and Profile – Arlberg Crescent

P04– Plan and Profile & PRV Chamber – Birchview Trail

CUP1 – Composite Utility Plan (1 of 2)

CUP2 – Composite Utility Plan (2 of 2)

DET - Miscellaneous Details

DET 2 - Miscellaneous Details .

DET 3 - Miscellaneous Details

ELECTRICAL PLANS – Seventh Submission August 2015

E101 – Street Lighting Layout

E102 – Street Lighting Layout

E103 – Street Lighting Layout

E104 – Street Lighting Layout

EPH1 – Photometric Plan

EPH2– Photometric Plan

EPH3– Photometric Plan

PART 2 - DESCRIPTION OF THE PUBLIC WORKS

All of the Works shown on the Accepted Plans

PART 3 – DESCRIPTION OF THE PRIVATE SERVICES

Nil

SCHEDULE “E”

**This schedule forms part of a Subdivision Agreement between Tyrolean
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SECURITY REQUIRED

SECURITY REQUIRED FOR THE WORKS

Highways
Storm Sewers and Drainage
Storm Water Management Works – Birchview Trail

Watermain and Sanitary Sewer Work
Siltation and Erosion Control
Street lighting
Six percent (6%) Engineering



TOTAL SECURITY REQUIRED



Security based on Cost of Works Estimate prepared by R. J. Burnside & Associates Limited

SCHEDULE "F"

**This schedule forms part of a Subdivision Agreement between Tyrolean
Village Resorts Limited and
The Corporation of the Town of The Blue Mountains**

COMPLETION SCHEDULE

ALL WORKS

All Underground Works – to be completed within one (1) year from the date of this Agreement and prior to any building permits being issued.

All Aboveground Works - to be completed within three (3) years from the date of this Agreement.

Specific Completion Requirements

Nil

SCHEDULE "G"

**This schedule forms part of a Subdivision Agreement between Tyrolean
Village Resorts Limited and
The Corporation of the Town of The Blue Mountains**

SPECIAL PROVISIONS

PART 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:

“Additional Lots” means Part of Lot 19, Concession 2, Part of PIN 37146-0308 (2 Lots on former Cunningham lands)

“Existing Lots” means Lots 9 to 16, Plan 1107 (8 Lots)

“Existing Subdivision Agreement” means the subdivision agreement for Plan 1107 dated October 19, 1995 and registered as Instrument No.363281.

“Lands” shall mean the lands described Firstly, Secondly and Thirdly in Schedule “A”, which include the New Lots, the Additional Lots and the Existing Lots

“Lot or lot” includes a New Lot, an Additional Lot or an Existing Lot:

“New Lots” means Parts 1 to 7 and Parts 10 to 16 Plan 16R-10015 (7 Lots)

PART 2 - WORKS PROVISIONS

1. Existing Subdivision Agreement

1.1 The Parties agree that this Agreement shall replace and supersede all of the provisions of the Existing Subdivision Agreement which relate to the installation and maintenance of the Works for Phase 3 of Plan 1107 (15 Lots being the Existing Lots and the New Lots) as described in the Existing Subdivision Agreement.

1.2 (a) Despite Section 1.1 the Parties acknowledge and agree that the “best efforts” without guarantee obligation of the Town described in Section 54(l) of the Existing Subdivision Agreement shall remain in full force and effect with respect to the Works to be installed on Arlberg Crescent as shown on the Accepted Plans (the “Benefitting Works”).

(b) This “best efforts” obligation shall only require the Town, so far as it is legally empowered to do, to impose on the owner of any vacant lands fronting on the Benefitting Works (the “Benefitting Owner”) as a condition of developing its lands requiring the Benefitting Owner to pay to the Town, for payment to the Developer, its proportionate share of the cost of the Benefitting Works as finally determined by the Town in consultation with the Developer.

(c) The Town, as part of its “best efforts” obligation shall not be required to institute or defend any judicial or administrative proceedings to impose or defend the imposition of the condition referred to in Section 1.2(b). The

Developer shall have the right to apply to and become a party to such proceedings on its own behalf at its sole cost.

2. Storm Water Management

2.1 Despite Section 1.1 of this Part, the Parties acknowledge and agree that the stormwater management control provisions described in Section 54(j) and Schedule "J" of the Existing Subdivision Agreement shall remain in full force and effect and binding upon the Developer.

2.2 The Developer agrees to accept stormwater management flows from the Existing Lots, the New Lots and the Additional Lots onto the Tyrolean Lowland Stormwater Management Lands described Fourthly in Schedule "A" owned by the Developer.

3. Deletions from the Accepted Plans

The Watermain on Birchview Trail from Brooker Boulevard to Arlberg Crescent and the Pressure Reducing Valve and appurtenances thereto all as shown on Accepted Plan P04– Plan and Profile & PRV Chamber – Birchview Trail are deleted from the Works required to be installed by the Developer.

4. Improvements to the Existing Water Distribution System

The Parties agree that as a condition of developing the Lands improvements are required to the Town's existing water distribution system which will supply water service for the development of the Lands. These improvements consist of the installation of a new pressure reducing valve chamber and appurtenances thereto in a location to be determined by the Town (the "Improvements"). The Town agrees to install the Improvements at an estimated cost of \$84,000 and the Developer agrees to pay to the Town its proportionate share of the cost of the Improvements in the final amount of \$11,000 prior to the execution of this Agreement by the Town.

PART 3 – PLANNING PROVISIONS

Nil

PART 4- FINANCIAL PROVISIONS

Nil

PART 5 - COUNTY PROVISIONS

The Parties acknowledge County Development Charges are due at the time of Building Permit in the amount applicable at that time.

PART 6 – OTHER

Nil

SCHEDULE "H"

This schedule forms part of a Subdivision Agreement between Tyrolean Village Resorts Limited and The Corporation of the Town of The Blue Mountains

LIST OF FINANCIAL OBLIGATIONS OF THE DEVELOPER

1 - Parkland Payment (s 10.1)

8 Existing Lots @ [redacted] per lot [redacted]

2- Cash in lieu of Open Space

(See section 42 (d) and (e) of the Existing Subdivision Agreement)

8 Existing Lots @ [redacted] per lot [redacted]

3- Cash in lieu of Bonus Density

(See section 42 (d) and (e) of the Existing Subdivision Agreement)

8 Existing Lots @ [redacted] per lot [redacted]

4- Heritage Mountain Lodges Inc. – Cost Recovery

(See section 54(f) of the Existing Subdivision Agreement)

8 Existing Lots @ [redacted] per lot
7 New Lots @ [redacted] per lot
Total [redacted]

5 - Works Fee (s 8.2)

(4% of [redacted])

6 - Agreement Preparation Fee

7- Deposit for Agreement Costs (s 8.3) \$ Nil

8. Development Charges

For the purposes of this Agreement:

“By-law 2014-51” means the Town’s Development Charges By-law 2014-51 as amended from time to time or any successor or replacement by-law thereto;

8.1 The Parties agree that the provisions of By-law 2014-51 shall govern the payment of development charges with respect to dwelling units to be constructed on the Lands. (17 Units – 8 Existing Lots, 7 New Lots and 2 Additional Lots)

8.2 The Parties acknowledge and agree that the development charges for Roads and Related, Waterworks System and Sanitary Sewage System service categories were paid in July and December, 2010 for 8 Units, being 6 New Lots and 2 Additional Lots) at the Residential “B” rate as follows;

Roads - 8 units @ [redacted] per unit = [redacted]

Water - 8 units @ [REDACTED] per unit
Sewer - 8 units @ [REDACTED] per unit
Total Payments [REDACTED]

8.3 The balance of the Development Charges for the 17 units are to be paid at the time building permits are issued for each Unit in accordance with By-law 2014-51.

8.4 Prepaid Development Charges Credits

The Town acknowledges that the Developer is entitled to receive a Prepaid Development Charges credit in the total amount of [REDACTED] being [REDACTED] Sewer EA credit and [REDACTED] Water EA credit and the Town agrees to pay this amount to the Developer forthwith after the execution of this agreement by the Town.

SCHEDULE “I”

**This schedule forms part of a Subdivision Agreement between Tyrolean
Village Resorts Limited and
The Corporation of the Town of The Blue Mountains**

DESCRIPTION OF THE PLAN

LANDS AND EASEMENTS TO BE CONVEYED TO THE TOWN

Note: Lot and Block Numbers are in accordance with the Plan

PART 1 PARKLAND DEDICATION (s10.1)

Nil

PART 2 OTHER LANDS TO BE CONVEYED (s10.2)

Town

1. Highway Widenings (dedicated on the Plan) - : Nil
2. Reserves: Blocks - Nil
3. Landscaping Blocks: Nil
4. Valleylands and Other Open Space: - Nil
5. Walkways – Parts 8 and 9 Plan 16M-10015
6. Storm Water Management Lands: Nil
7. Other (such as future roads, temporary roads emergency access) Nil

Other Persons

Nil

PART 3 EASEMENTS TO BE CONVEYED (s10.2)

Town

Nil

Other Persons

Nil