

PRE-SERVICING AGREEMENT

THIS AGREEMENT dated the ____ of _____, _____.

BETWEEN:

CASSEL HOMELANDS DEVELOPMENT INC.

(hereinafter called the "Owner")

- and -

THE CORPORATION OF THE MUNICIPALITY OF CASSELMAN

(hereinafter called the "Municipality")

WHEREAS the Owner is the registered owner of lands described in Schedule "A" (the "Lands");

AND WHEREAS the Owner proposes to develop a new municipal watermain, sanitary sewer, stormwater works and utilities to service the Lands set out in Schedule "A";

AND WHEREAS the Owner desires to commence the installation, construction and provision of certain works on the Lands within the subdivision 030-S-19-003 prior to the execution of the subdivision agreement with the Municipality, as such works are more particularly set out in Schedule "B" (the "Works");

AND WHEREAS the parties to this Agreement declare that the recitals herein are true.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of other good and valuable consideration and the sum of TWO DOLLARS (\$2.00) of lawful money of Canada now paid by each of the parties hereto to each of the other parties hereto the parties hereto hereby covenant, promise and agree with each other as follows:

1. **Permission to Construct**

The Municipality grants permission to the Owner to commence construction and installation of the Works, as more particularly set out in Schedule "B", on the Lands in advance to the execution of a subdivision agreement between the Owner and the Municipality.

2. **Construction of Works**

The Owner covenants and agrees to:

- (a) retain a professional consulting engineer experienced in the municipal engineering field who will carry out all necessary engineering requirements associated with the construction and installation of the Works;
- (b) construct and install the Works in a good and workmanlike manner and in accordance with all of the Municipality's standards and practices along with all statutes and regulations applicable to the Works and only in accordance with the approved plans for the Works;
- (c) not undertake any construction or installation of the Works between the hours of 9 pm to 7 am Monday to Saturday, Sundays and statutory holidays or such other dates and times as may be established by the Municipality from time to time;
- (d) comply with all provisions of the Corporation of the Municipality of Casselman by-law no. 2007-198;
- (e) The Municipal Engineer or designate shall have the right at all time to inspect the installation of Works. If at any time the Municipal Engineer is of the opinion that Works are not being carried out in accordance with approved plans and specifications or in accordance with good engineering practice, he may stop all or any part of the work until it has been placed in satisfactory condition. In following good engineer practice, all of the testing and inspections referred to in this Agreement to be carried out by the Municipal Engineer shall be carried out at the Owner's expense.

3. Owner's Acknowledgments

Owner acknowledges and agrees that:

- (a) it is being given permission to commence construction and installation of the Works prior to the execution of the subdivision agreement and that any work it undertakes in furtherance thereof will be at its sole and absolute risk;
- (b) it will construct and install the work following the Municipality's standard conditions and requirements pertaining to the installation of public works and to fully comply with all applicable conditions of approval of the plan of subdivision;
- (c) it may be required to modify, alter, relocate and reconstruct certain of the Works based on the final drawings and plans approved by the Municipality;
- (d) it will comply with every direction issued or given by the Municipality during the course of pre-servicing related to the Work included in this agreement, including but not limited to the cessation of work, rectification of deficiencies or the phasing of the Works construction in the interest of the proper development of the Lands or to protect the safety of citizens of the Municipality;
- (e) it is not being given any permission to carry out any works or to enter upon any lands not owned by it, except for lands owned by the Municipality (where the Municipality has consented to such works or entry in writing), without the written consent of the owner and that such consent shall be filed with the Municipality;
- (f) it cannot connect any Works to any public services on any municipal right-of-way unless the Municipality has consented to such works or entry in writing or otherwise;
- (g) the Municipality will be under no obligation whatsoever to complete all or any portion of the Works if the Owner fails to complete them but that, notwithstanding the foregoing, the Municipality shall, to safeguard the health and safety of its residents, at its sole and absolute discretion, be entitled to enter onto the Lands and complete any Works or portion of the Works and to take any action it deems necessary all at the Owner's expense as outlined in Section 8 (security) of this agreement.

4. Inspection and Right of Entry

The Owner covenants and agrees that the Municipality and any of its employees or agents may enter onto the Lands at any time upon reasonable notice being provided to the owner in accordance with Section 11 in order to make all necessary inspections and to correct any deficiencies or remedy any other defects arising from or relating to the construction and installation of the Works to safeguard the health and safety of its residents.

5. Compliance with all Laws and Regulations

The Owner covenants and agrees to comply with all federal, provincial, and municipal laws, rules, by-laws, and regulations in constructing, installing or otherwise providing the Works.

6. Insurance

Automobile Liability Insurance

Automobile liability insurance covering third party property damage and bodily injury, including accident benefits as may be required by Applicable Laws arising out of any licensed vehicle operated by [REDACTED] in connection with this agreement with an inclusive limit of liability of two million dollars (\$2,000,000).

Installation Floater

An Installation Floater written on an "All Risk" basis in an amount equal to the value of the goods to be transported and installed (building materials, components, tools & equipment). Coverage is to apply while property is in transit to the installation site, while stored at a temporary location awaiting installation at the work site, during loading and unloading as well as the course of installation until completed.

Professional Liability Insurance

Should the work involve professional design, the Owner shall ensure that any Professionals hired shall carry Professional Liability Insurance in the amount not less than \$1,000,000.00 providing coverage for acts, errors and omissions arising from their professional services performed under this Agreement. The policy SIR/deductible shall not exceed \$100,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per claim limit. The policy shall be underwritten by an insurer licensed to conduct business in the Province of Ontario and acceptable to the (Municipality). The policy shall be

renewed for 3 years after contract termination. A certificate of insurance evidencing renewal is to be provided each and every year. If the policy is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the Municipality. The Municipality has the right to request that an Extended Reporting Endorsement be purchased by the Professional at the Professional's sole expense.

Environmental Liability Insurance

At the discretion of the Municipality the Owner may be required to purchase an Environmental Policy to cover injury to or physical damage to tangible property including loss of use of tangible property, or the prevention, control, repair, cleanup or restoration of environmental impairment of lands, the atmosphere or any water course or body of water on a sudden and accidental basis and on a gradual release. The policy shall include bodily injury, including sickness, disease, shock, mental anguish, and mental injury. The policy is to be renewed for 3 years after project completion and a Certificate of Insurance evidencing renewal shall be filed with the Municipality. If the policy is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the Municipality. The Municipality has the right to request that an Extended Reporting Endorsement be purchased by the contractor at the contractor's sole expense.

Primary Coverage

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

Certificate of Insurance

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

Before commencing any of the Works, the Owner shall supply the Municipality with a public liability and property damage insurance policy and a certificate of insurance evidencing liability insurance coverage in the amount of \$5,000,000.00 per occurrence and a minimum aggregate amount of \$5,000,000.00 per year exclusive of interest and cost in a form satisfactory to the Municipality, indemnifying the Municipality against loss or damage resulting from bodily injury to, or death of one or more persons and loss of or damage to property or any other public or private property resulting from or arising out of any act or omission on the part of the Owner or any of its servants or agents during the construction or installation or maintenance of any work to be performed prior to the Subdivision Agreement. The policy shall include blanket written contractual liability, cross liability, contingent employer's liability, personal injury endorsement, liability with respect to non-owned licensed vehicles and have no exclusion pertaining to shoring, blasting, excavating, underpinning, demolition, pile driving, caisson work and work below ground surface including tunneling and grading. The policy shall name the Municipality as an additional insured. The policy shall be maintained in full force and effect until the Works are assumed by the Municipality. In the event any renewal premium is not paid, the Municipality, in order to prevent the lapse of such liability insurance policy, may pay the renewal premium or premiums and the Owner agrees to pay the cost of such renewal or renewals within thirty (30) days of the account being rendered by the Municipality. Such policy shall provide that the Municipality shall get thirty (30) days written notice of any proposed cancellation. In addition to the above, the owner shall provide to the Municipality a letter from its insurer confirming that the policy of insurance complies with this section and which letter shall acknowledge that the Municipality may rely on the said letter.

7. Indemnification and Release

The Owner covenants and agrees to indemnify, defend and save the Municipality completely harmless from and against all costs, disbursements, actions, suits, claims or demands which may arise either directly or indirectly by reason of the permission granted hereunder and the construction and installation of the Works on the Lands or by reason of the maintenance or lack of maintenance of the Works or by reason of any defect in workmanship or material. The Owner further covenants and agrees to release and forever discharge the Municipality from and against any and all costs, disbursements, actions, suits, claims or demands which may arise either directly or indirectly by reason of the permission granted hereunder and the construction and installation of the Works on the Lands in advance of the execution of the subdivision agreement.

8. Security

In order to guarantee compliance with all conditions contained herein, the Owner covenants and agrees to file with the Municipality, upon execution of this Pre-Agreement, security in the amount of \$100,000.00. The security shall be in a form approved by the Municipality. The Owner acknowledges and agrees that should there be a deficiency in or failure to carry out any

work or matter required by any clause of this Agreement or to pay the cost of any matter for which the Owner is liable as a result of the Works or this Agreement whether such costs are in relation to construction or installation of any works or service or any defects or required maintenance and the Owner fails to comply within Fifteen (15) days after a written notice with a direction to carry out such work or matter, the Municipality may draw on the security, in whole or in part, and enter onto the Lands and complete all outstanding Works or associated matters, and pay all costs and expenses incurred thereby from the proceeds so drawn. The Owner acknowledges that the Municipality reserves the right to draw on the security to complete any Works or associated matters required to be done by the Owner pursuant to this Agreement. The Municipality may at the expense of the Owner, enter upon the lands and do all such matters and things as are in default. The Municipality may authorize the use of any or all of the cash or letters of credit deposited with the Municipality pursuant to this provision, to pay for the cost to the Municipality of carrying out of such matters or things. "Cost" and "expense of the Owner" in this Clause shall be actual cost incurred by the Municipality plus twenty-five percent (25 %) of such cost as a charge for overhead. Any costs incurred by the Municipality pursuant to this clause which are in excess of the amount of a deposit held by the Municipality shall be paid by the Owner to the Municipality within thirty (30) days of the mailing of an invoice by the Municipality addressed to the Owner at its last known address for such amount in excess and any costs referred to in this clause may be recovered by the Municipality in like manner as municipal taxes pursuant to the provisions of Section 446 of the *Municipal Act*, 2001, S.O. 2001, c.25 as amended.

Wherever security is required to be filed with the Municipality, the Owner may deposit cash or a certified cheque to be cashed or an irrevocable letter of credit (in a form approved by the Municipality) in an amount equal to the total security required and such deposit shall be held by the Municipality as security in accordance with this Agreement provided that no interest shall be payable on any such deposit. The Owner acknowledges that upon the transfer of ownership other than the Municipality, of any of the subject lands, the Municipality will not return any security required under this Agreement until the new Owner(s) files substitute security in the required amounts.

On final acceptance of the said Works by the Municipal Engineer or designate the Owner may be entitled to have released to it by the Municipality all deposits then held by the Municipality subject to the terms of the Agreement. Partial deposits may be released, in whole or in part, at the discretion of the Municipality. Any security moneys left in account upon the signing of the subdivision agreement for the same plot of land and project will be transferred as part of the security requirements.

9. Withdrawal of Permission

The Owner acknowledges and agrees that the Municipality is entitled to withdraw its permission granted herein for the installation and construction of the Works if it is determined, in the sole and absolute discretion of the Municipality that such withdrawal is to safeguard the health and safety of its residents. Upon notification of such withdrawal of permission, the Owner covenants and agrees to immediately cease any further construction, installation or other work in respect of the Works until the health and safety of the residents is no longer at risk.

10. Transfer of the Lands and Construction of Dwellings

The Owner covenants and agrees that in the event it transfers or conveys the Lands to a third party prior to the execution of the subdivision agreement, that it shall, prior to completing the transfer, provide the Municipality with an executed agreement from the third party in a form satisfactory to the Municipality whereby the third party agrees to complete assumption of the terms of this Agreement and to be bound by this Agreement as if it had been the original signatory. Further, the Owner covenants and agrees that the construction of the individual residential dwelling units shall not be commenced until the Subdivision Agreement with the Municipality has been registered on title to the Lands and all necessary authorizations and permits have been received.

11. Notice

- (a) If any notice is required to be given by the Municipality to the Owner with respect to this Agreement, such notice shall be mailed, delivered, or sent by facsimile transmission:

Cassel Homelands Development Inc.
5-2800 Laurier Street
Rockland, Ontario

K4K 1A2
T: 613-229-1626

or such other address of which the Owner has notified the Clerk, in writing, and any such notice mailed or delivered shall be deemed good and sufficient notice under the terms of this Agreement.

- a. If any notice is required to be given by the Owner to the Municipality with respect to this Agreement, such notice shall be mailed, delivered, or sent by facsimile transmission to:

The Corporation of the Municipality of Casselman
751 St-Jean Street, P.O. Box 710
Casselman, Ontario
K0A 1M0
T: 613-764-3139

or such other address of which the Municipality has notified the Owner, in writing, and any such notice mailed or delivered shall be deemed good and sufficient notice under the terms of this Agreement.

12. Termination of Agreement

If the Works proposed to be installed or constructed pursuant to this Agreement are not commenced within two (2) years/twenty-four (24) months from the date of execution of this Agreement, the Municipality may, at its option and on one Hundred and Twenty (120) days written notice to the Owner in accordance with Section 11, declare this Agreement to be null and void and of no further in effect. The Owner will have to complete the work within twenty-four (24) months from the date of the commencement of the work or the execution of the subdivision agreement in relation the project. The commencement of the work will be considered upon execution of this Agreement,

13. No Fettering of Discretion

Notwithstanding any other provision of this Agreement, the Owner expressly acknowledges and agrees 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 the discretion of the Municipality and its Council in the exercise of any of its discretionary power, duties or authorities, including without limitation, the authority to approve, approve with conditions or deny draft plan approval of the application for approval of a draft plan of subdivision filed by the Owner. The Owner expressly acknowledges and agrees that it will not obtain any advantageous planning or other consideration or treatment, including approval of a draft plan of subdivision for the Lands, by virtue of it having entered into this Agreement.

14. Applicable Laws

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

15. Successors and Assigns

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

IT IS HEREBY DECLARED THAT this Agreement and the covenants, provisions, conditions, and schedules herein contained shall be binding upon the parties hereto, their successors and assigns.

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

Dated at _____, this ____ of _____, _____.

**SIGNED, SEALED AND
DELIVERED**

) **CASSEL HOMELANDS
DEVELOPMENT INC.**
)
) Per: _____
) Name: Mr. Martin Bourgeois

) Per: _____
) Name: Mr. Luc Bourgeois

) I have authority to bind the corporation
)

) **THE CORPORATION OF THE
MUNICIPALITY OF CASSELMAN**
)
) Per: _____
) Name: Ms. Linda Bergeron-Desjardins
) Chief Administrative Officer

DRAFT

SCHEDULE "A"

DESCRIPTION OF LANDS

All of PIN 69023-0245 being part of Lot 12 in Concession 6 of the Geographic Township of Cambridge, now in the Municipality of Casselman, in the County of Russell, designated as Part 1 on Plan 50R-6751.

DRAFT

SCHEDULE "B"

WORKS TO BE CONSTRUCTED

Phase 1, including the stormwater management pond and the works along the Du Boisé Street Right-of-Way. As per the plans and specifications prepared by Lascelles Engineering & Associates Limited, under Project # 170043, signed and dated October 29, 2020, and deposited at the Municipality of Casselman.

REINSTATEMENT OF EXISTING ROADS AND SIDEWALKS

Where work is performed on existing Municipal roads or sidewalks outside the Plan of Development, such roads and sidewalks shall be reinstated to the satisfaction of the Municipal Engineer.

DRAWINGS

- 170043-PH-1, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-NL-1, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-ES-1, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-ES-2, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-GR-1, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-GR-2, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-GS-1, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-GS-2, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-GS-3, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-PES-1, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-PES-2, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-SWM-1, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-SWM-2, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-SWM-3, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-SWM-4, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-SAN-1, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-PP-1, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-PP-2, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-PP-3, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-PP-4, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-PP-5, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-PP-6, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-PP-7, Revision 02, prepared by Lascelles Engineering & Associates Limited.

- 170043-PP-8, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-PP-9, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-DT-1, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-DT-2, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-DT-3, Revision 02, prepared by Lascelles Engineering & Associates Limited.
- 170043-CUP-1, Revision 02, prepared by Lascelles Engineering & Associates Limited.

The work shall be performed as per the contract document.

DRAFT

SCHEDULE "D"

FORM OF LETTER OF CREDIT

The Corporation of the Municipality of Casselman
751 St-Jean Street, P.O. Box 710
Casselman, Ontario
K0A 1M0

RE: Guarantee No.:
Amount \$: 100,000.00
Expiry Date:

Dear Sirs:

At the request of Cassel Homelands Developments Inc. (the "Customer"), the _____ (the "Bank"), for valuable consideration, the receipt whereof is hereby acknowledged, by this letter of guarantee (the "Guarantee") irrevocably and unconditionally guarantees payment to you, The Corporation of the Municipality of Casselman (the "Municipality"), of a total amount of \$100,000.00.

This guarantee is issued in connection with the performance by the ___ of _____, ___ of all the terms of a Pre-Servicing Agreement (the "Agreement") dated the ___ of _____, _____. A payment under this Guarantee shall be made before the expiry hereof upon your presenting to the "Bank":

- (a) Your written demand for payment in the form described below.
- (b) This Guarantee.
- (c) Either:
 - (i) Vouchers paid by the Municipality certified by its Treasurer as having been paid by him on account of the Customer, for work services or materials required to be performed or supplied under the said Agreement, or
 - (ii) a letter from the Municipality certifying that the "Customer" is in default in performing or supplying work, services or materials required to be performed or supplied under the said Agreement whether or not the Municipality has itself already performed or supplied the same. The said demand shall refer to this Guarantee by the above number, shall state the amount demanded and shall certify:
 - (a) That the amount is due and payable to you by the Customer, and
 - (b) That you have requested payment of the said amount from the Customer and have not received payment, and
 - (c) That the amount remains unpaid thirty (30) days after mailing of written demand.

Upon receipt by the "Bank" of the said demand and the other document(s) referred to above on/or before the Expiry Date, the Bank shall pay to you the amount stated in the said demand to be payable to you by way of the Bank's draft without enquiring whether you have a right to such amount as between yourself and the Customer, provided that such amount, together with other amounts paid to you under this Guarantee, if any, does not exceed in the aggregate the amount of this Guarantee.

The Bank may note on this Guarantee the amount and date of any payment made to you under this Guarantee and shall retain this Guarantee if the aggregate amount of this Guarantee has been paid to your of the Expiry Date has occurred.

This letter of Guarantee is irrevocable but automatically renews from year to year, unless the Bank gives sixty (60) days' notice that it does not propose to renew it. This letter of credit may be reduced from time to time if the Municipality certifies to the "Bank" that part of the work has been completed. The amount by which this letter of credit shall be reduced, shall be one-half (1/2) of the value of the work done and materials supplied as certified in writing by the Corporation.

Yours truly,

(Authorized Signature)