

THIS OPERATION AND MAINTENANCE AGREEMENT made this ___ day of _____ 2023.

BETWEEN:

**TOWN OF CALEDON
PLANNING
RECEIVED

Mar 23, 2023**

Bolton Summit Developments Inc.

(hereinafter called the "**Developer**")

OF THE FIRST PART

- AND -

The Corporation Of The Town of Caledon

(hereinafter called the "**Town**")

OF THE SECOND PART

WHEREAS the Developer is the owner of certain lands municipally known as 13290 Nunnville Road ("**Project Lands**"), upon which the Developer intends to construct a common elements condominium project;

AND WHEREAS the Developer applied to the Town pursuant to the provisions of the Planning Act, R.S.O. 1990, Ch. P. 13, as amended, for approval of an official plan amendment, draft Plan of subdivision, draft plan of condominium, and zoning bylaw amendment, which application was prepared by WSP Canada Inc., and submitted May 5, 2022 (hereinafter called the "**Plan**");

AND WHEREAS the Plan, File No. POPA 2022-0003, RZ 2022-0004, 21T-22003C & 21CDM-22003C, was reviewed and considered by the Town, providing their comments to the Developer by its letter of November 21, 2022, and remained subject to certain conditions being fulfilled by the Developer before any final Plan approval is granted by the Town;

AND WHEREAS the Town, has identified certain lands abutting the Project Lands which are owned by the Town ("**Town Lands**"), but which provide access into the development site as currently contemplated in the Plan;

AND WHEREAS, as a condition of the Town providing its approval for the Plan, the Developer and Town entered into a development agreement pursuant to Section 37 of the *Planning Act*, RSO 1990, c. P. 13, which required the Developer to construct and maintain a driveway apron and retaining wall on the Town Lands for the benefit of the condominium residents, the adjacent land owner at 13286 Nunville Road, and the Town (the "**Entrance Area**");

AND WHEREAS this agreement is being entered into under Section 51(26) of the *Planning Act*, RSO 1990, c. P. 13. as a condition of the approval for the registration of a condominium on the Project Lands;

AND WHEREAS the Town wishes to work with the Developer to ensure the Entrance Area is constructed to the satisfaction of the Town, and the Developer wishes to further delineate the long-term maintenance and operation obligations for the surface of the Entrance Area as more particularly set out herein (“**Operation & Maintenance Obligations**”);

NOW THEREFORE THIS AGREEMENT WITNESSETH that the Parties hereto covenant and agree as follows:

SECTION I - LANDS SUBJECT TO THIS AGREEMENT

The lands to be bound by the terms of and conditions of this Agreement are located in Part of Lot 7, Concessions 7, 8 (ALB) and Part of Lot 33 on Plan ALB 4 and Parts 4 to 6 on Plan 43R-3366, in the Region of Peel, municipally known as 13290 Nunnville Road, and are more particularly described in Schedule "A" attached hereto.

SECTION II - COMPONENTS OF THE AGREEMENT

The text in Sections I through XI inclusive and the following Schedules, which are annexed hereto, constitute the components of this Agreement:

- Schedule "A" - Legal Description of Lands Affected by this Agreement
- Schedule "B" - Draft Plan of Subdivision
- Schedule "C" - Entrance Area Construction Plan
- Schedule "D" - Operation & Maintenance Plan for the Entrance Area

SECTION III - GENERAL

1. The Developer agrees to register this Agreement against the Project Lands bound by this Agreement at its sole expense.
2. The Developer agrees that this Agreement and all documents required herein shall be submitted in a form suitable to the Town and suitable for registration, as may be required.
3. The Developer will do all acts necessary to comply with and carry out the requirements in this Agreement, including all Operation & Maintenance Obligations and those items set out in Schedules "C" and "D" attached hereto.
4. The Developer has represented and does hereby represent that it has paid all the property taxes on the Project Lands and that it is the Developer of the Project Lands which are currently owned in fee simple and subject to an application for absolute title.
5. All covenants and provisions contained in this Agreement shall be binding upon the Developer and the Town, their respective successors, administrators and assigns.

6. The Developer and Town agree that any provisions of this Agreement may be altered at any time by mutual agreement of the parties. Any such alteration shall be registered by the Developer within thirty (30) days of the execution thereof by the Town at the cost of the Developer. The Developer shall deliver to the Town a true copy of the Registered Instrument.
7. The Developer shall not make any application to remove this Agreement from the Title of the lands described in Schedule "A" without having first obtained the consent in writing of the Town.
8. Upon completion of any services required under this Agreement or under any separate agreement between the Developer and the Town, a copy of the "as constructed" plans for such services shall be filed with the Town by the Developer.
9. The Town may, from time to time, when satisfied that part or all of the requirements of this Agreement have been fully and finally complied with, grant a partial or full release, as the case may be, from part or all of the requirements of this Agreement, and such release, if granted, shall be registered by the Town against the subject lands.
10. The Developer and Town agree that where the Developer fails to meet any provision or obligation of this Agreement as stated, there shall be no obligation on the Town to complete any works except at the determination of the Town.
11. The Developer agrees that the construction work will be carried out expeditiously, in a good and workmanlike manner, and in accordance with acceptable engineering practices so as to cause a minimum of nuisance to neighbours.
12. The Developer shall use such methods to prevent any dust problem to traffic or other residents as the Town shall deem necessary and for this purpose, the Town may notify the Developer in writing from time to time of the requirements of the Town.
13. Insofar as the Operation & Maintenance Obligations for the Entrance Area is concerned such responsibility shall be the Developer's obligation and shall continue into perpetuity until the common elements condominium has been registered, and this Agreement has been assumed by the resulting condominium corporation.
14. The date of execution of the Agreement shall be the date on which the Town executes the Agreement.

SECTION IV - FINANCIAL CONSIDERATIONS & SECURITY

1. The Developer agrees to pay the Town the reasonable cost for any extraordinary expenses of the Town arising from the repair and maintenance of the Entrance Area incurred as a result of the failure of the Developer to fulfill its obligations under this Agreement.
2. The Developer agrees that all costs for the construction of the Entrance Area shall be borne by the Developer.
3. The Town agrees that no securities are required of the Developer under this Agreement, but the Developer acknowledges that construction securities for the Driveway Apron or the retaining wall may be required by the Town under the subdivision agreement that needs to be entered into by the parties prior to final approval of the Plan.
4. Such future agreement will establish the terms and conditions upon which the Town will grant both initial approval of construction for the Entrance Area and the final approval of the Entrance Area once complete.

SECTION V - ENGINEERING SERVICES AND INSPECTION

1. The Developer agrees to engage registered professional engineers licensed to practice as consulting engineers in the Province of Ontario. The engineers shall perform the following services, among others:
 - a. Preliminary investigation;
 - b. Layout drawing;
 - c. Estimates of cost;
 - d. Contract drawings and specifications;
 - e. Application to the Ministry of the Environment or the Town for approval of any storm water systems, or other Town systems which may be impacted by the construction on the Project Lands, if applicable;
 - f. Application to the Town for approval of construction schedule;
 - g. General field supervision of the works being constructed and inspection and certification of the Entrance Area;
 - h. Preparation of progress certificates; and
 - i. Completion of "as constructed" drawings based on measurements taken during and upon completion of construction.
2. The plans and specifications of all services constructed by the Developer, as set out in Schedules "C" shall be subject to the approval of the Town.

3. The plan required by the Developer as set out in Schedule "D" shall be subject to the approval of the Town.
4. All plans and specifications approved by the Town engineer shall be deemed to be part of this Agreement as of the date of such approval.
5. The engineers engaged by the Developer shall file with the Town a written undertaking:
 - a. that they have been engaged by the Developer to supervise the work;
 - b. that they carry a minimum of Five Million Dollars professional liability insurance;
 - c. that the work will be done in accordance with the contract drawings and specifications and all other provisions of this Agreement and Schedules attached hereto;
 - d. that all phases of the work are subject to the approval of the Town engineer, which approval shall not be unreasonably withheld;
 - e. that prior to the Town's final acceptance of the Entrance Area as built by the Developer they will provide the Town engineer with both a digital version in AutoCad and a complete set of Mylar tracings of the works as constructed pursuant to this Agreement;
 - f. that they will prepare all certificates required under any subsequent agreement entered into by the parties attesting that both the Driveway Apron and Retaining Wall have been constructed in accordance with the approved plans and specifications; and
 - g. agreeing to consult with the professional environmental consultant engaged by the Developer for the purposes set out in Section VI in this Agreement.
6. All work done by the Developer pursuant to this Agreement may be inspected by the Town engineer from time to time during construction, as often as he shall deem necessary.
7. The Town and any of its agents, which it shall from time to time authorize, shall at all times have the right to inspect the installation of the Driveway Apron and Retaining Wall. If at any time the work and construction of the services is, in the opinion of the Town, not being carried out in accordance with the plans and specifications or in accordance with good engineering practice, then the Town may stop all or any part of the work for any length of time until such work has been completed in a satisfactory condition and, in the event that the Town, acting reasonably, deems that the work is not being proceeded with in a proper manner, it may stop the work by that contractor and require that another contractor be placed on the job to complete such works and the costs involved in such replacement and completion of the work shall be paid for by the Developer.

SECTION VI - ENVIRONMENTAL SERVICES AND INSPECTIONS

1. The Developer agrees to engage a professional environmental consultant, who shall consult with the Developer's Engineer and conduct on-going site inspections during the construction

of the Entrance Area so as to assist the Developer's Engineer in ensuring that the final design and construction of the Entrance Areas:

- a. minimizes interference with wildlife habitat;
 - b. minimizes encroachments into the natural features of the lands;
 - c. minimizes fill placement below the top-of-valley contour;
 - d. maximizes the amount of vegetation to be maintained on the lands; and
 - e. appropriately protects the natural area values associated with the land.
2. The Developer agrees that the professional environmental consultant shall secure any permits required from any government authority and to further advise the said authority when construction activities are about to commence.

SECTION VII - CONSTRUCTION, COMPLETION AND MAINTENANCE OF SERVICES

1. The Developer will construct and install all of the services, set out in detail in Schedule "C", appended hereto, in accordance with the approved drawings and specifications.
2. The engineer engaged by the Developer will advise the Town in writing of the completion of all such services as detailed in Schedule "C".
3. The Developer agrees that all costs for the maintenance of the Entrance Area shall be borne by the Developer from the date of this agreement until registration of the condominium corporation, at which time the obligations will be assumed by said condominium corporation.
4. Any action by the Town respecting the maintenance of the Entrance Area or adjacent lands which are owned by the Town or the Developer may be done without prejudice to the Town's rights to enforce the maintenance provisions herein provided.
5. In the event the Developer or resulting condominium corporation fails to maintain the Entrance Area in accordance with the Operation & Maintenance Plan in Schedule "D" hereto and such tasks are not being performed or fulfilled to the satisfaction of the Town, then the Town shall notify the Developer and/or condominium corporation registered regarding same, and if such default is not rectified within 48 hours after receiving such notice from the Town, then the Town may proceed to perform the maintenance work and to charge back or recover all costs and expenses incurred in doing so, and may add the amount of such costs so incurred to the tax roll of any or all of the Developer or condominium and said costs shall then be recovered and collected in a like manner (and to the same extent) as municipal taxes pursuant the provisions of the relevant municipal act in the relevant jurisdiction.

SECTION VIII- LIABILITY OF OWNER AND INDEMNIFICATION OF TOWN

1. Save if caused by the Town or a party for whom it is responsible at law, the Town shall not in any manner be answerable or accountable for any loss or damage that shall or may happen to the Entrance Area or to any parts thereof, or for any injury to any person or persons including workers and the public, during the construction of the same or the maintenance thereof by the Developer pursuant to the provisions of this Agreement, or for damage to any roadway, pavement or other property of the Town or to the property of any other person which shall or may be injured by the said works. The Developer shall properly guard and make good all loss and damage of whatsoever nature or origin which may arise out of or be occasioned by any cause connected with the aforesaid, and shall save harmless and indemnify and keep indemnified the Town against the same.
2. The Developer agrees that the Entrance Area may be used by the Town or other persons authorized by the Town for the purpose for which such services were designed. The employees or agents of the Town may enter onto the subject lands at any time or from time to time for the purpose of making emergency repairs to any of the services at the expense of the Developer. The exercise of these powers shall not be an acceptance of the services by the Town or an assumption by the Town of any liability in connection therewith or a release of the Developer from any of its obligations under this Agreement.

SECTION IX - LIABILITY INSURANCE

1. The Developer shall procure and maintain liability insurance issued by an insurer satisfactory to the Town, in a form satisfactory to the Town and shall file the original Certificate of Liability Insurance with the Town prior to undertaking any construction work in the subdivision or Entrance Area. The said policy of liability insurance shall obligate the insurer to indemnify and save harmless the Town from and against all those matters and things against which the Developer has agreed to indemnify the Town and without limiting the generality of the foregoing, the insurance policy shall:
 - a. have a limit of liability of not less than \$5,000,000 inclusive for any one occurrence;
 - b. name the Town as a co-insured;
 - c. be comprehensive liability insurance covering all operations of and liability assumed by the Developer and/or by the Town under this contract;
 - d. not contain any exclusions or limitations in respect of shoring, underpinning, raising or demolition of any structure, cause or any damage resulting from the construction of the Entrance Area;
 - e. be endorsed to provide that the policy not be altered, cancelled or allowed to lapse without thirty day's prior written notice to the Town.

2. The Developer shall pay all premiums on such liability insurance as they become due and in default thereof, the Town may pay such premiums and in such event, the Developer agrees to reimburse the Town forthwith in the amount of all such premiums paid by the Town.
3. Such insurance shall continue into perpetuity or until the common elements condominium has been registered, and this Agreement and its obligations have been assumed by the resulting condominium corporation.

SECTION X- OTHER PROVISIONS

1. Construction Refuse

The Developer agrees to regularly dispose of all construction refuse and debris in an orderly and sanitary fashion. If the Developer fails to remove and dispose of construction refuse and debris to the satisfaction of the Town, the Town may give written notice to the Developer. If the Developer fails to dispose of the refuse and debris within forty-eight (48) hours after having received a written request from the Town to do so, the Town may, without further notice, undertake such removal and disposition, and the cost thereof shall be paid by the Developer forthwith upon demand, which costs shall include all expenses reasonably incurred by the Town in carrying out such removal and disposition.

2. Maintenance of Access to 13286 Nunnville Road

The Developer agrees to provide safe access to 13286 Nunnville Road from the date of this Agreement until the Latter of the following:

- a. into perpetuity until the common elements condominium has been registered, and this Agreement has been assumed by the resulting condominium corporation; or
- b. Until 13286 Nunnville Road is developed and an alternate entrance is approved by the Town and is then in use by the residents thereof.

3. Estoppel

The Developer agrees to not call into question directly or indirectly in any proceeding whatsoever, in law or inequity, or before any administrative tribunal, the right of the Town to enter into this Agreement and to enforce each and every term, covenant and condition herein contained and this Agreement may be pleaded as an estoppel against the Developer in any such proceedings.

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IN WITNESS WHEREOF the Developer and the Town have hereunto affixed their respective Corporate Seals under the hands of their respective proper officers duly authorized in that behalf.

SIGNED, SEALED AND DELIVERED)
in the presence of)

Bolton Summit Developments Inc.

Per: _____
President, Salvatore Sam Morra

I have authority to bind the corporation

**THE CORPORATION OF
TOWN OF CALEDON**

Mayor -

Municipal Clerk -

We have authority to bind the corporation

SCHEDULE "A"
LEGAL DESCRIPTION OF THE LANDS AFFECTED BY THIS
AGREEMENT

Project Lands

Part of Lot 7, Concessions 7, 8 (ALB) and Part of Lot 33 on Plan ALB 4 and Parts 4 to 6 on Plan 43R-3366, in the region of Peel and geographic Township of Caledon, District Municipality of Bolton

PIN 14355-1313

Town Lands (location of Municipal Right of Way)

PIN 14355-1363

SCHEDULE "B"
DRAFT PLAN OF SUBDIVISION

A copy of the Draft Plan of Subdivision prepared by WSP Canada Inc., dated _____ may be viewed at the Town of Caledon Municipal Offices located at 6311 OLD CHURCH ROAD, CALEDON, ON, L7C 1J6 during normal business hours, generally being 8:30 a.m. to 4:30 p.m. Monday to Friday

SCHEDULE "C"
ENTRANCE AREA CONSTRUCTION PLAN PLANS

A copy of the Entrance Area Construction Plans prepared by _____, Consulting Engineers and Planners, dated _____ may be viewed at the Town of Caledon Municipal Offices located at 6311 OLD CHURCH ROAD, CALEDON, ON, L7C 1J6 during normal business hours, generally being 8:30 a.m. to 4:30 p.m. Monday to Friday.

SCHEDULE "D"
OPERATION & MAINTENANCE PLAN FOR THE ENTRANCE AREA