

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**24-095-OLT Attachment 1**

**ISSUE DATE:** March 26, 2024

**CASE NO(S):**

OLT-21-001725

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	1312733 Ontario Inc.
Subject:	Application to amend the Zoning By-law – Refusal or neglect to make a decision
Description:	To permit a redevelopment of single detached dwellings, townhouses, and condominium townhouse dwellings
Reference Number:	ZAC-20-043
Property Address:	1036-1090 Barton Street and 262 McNeilly Road
Municipality:	City of Hamilton
OLT Case No.:	OLT-21-001725
OLT Lead Case No.:	OLT-21-001725
OLT Case Name:	1312733 Ontario Inc. v. Hamilton (City)

**PROCEEDING COMMENCED UNDER** subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	1312733 Ontario Inc.
Subject:	Proposed Plan of Subdivision – Failure of Approval Authority to make a decision
Description:	To permit a redevelopment of single detached dwellings, townhouses, and condominium townhouse dwellings
Reference Number:	25T-202009
Property Address:	1036-1090 Barton Street and 262 McNeilly Road
Municipality:	City of Hamilton
OLT Case No.:	OLT-21-001726
OLT Lead Case No.:	OLT-21-001725
OLT Case Name:	1312733 Ontario Inc. v. Hamilton (City)

**Heard:** December 14, 2023 by video hearing

**APPEARANCES:**

**Parties**

1312733 Ontario Inc.

City of Hamilton

**Counsel**

Jennifer Meader  
Nancy Smith

Paula Boutis

**MEMORANDUM OF ORAL DECISION DELIVERED BY C.I. MOLINARI ON  
DECEMBER 14, 2023 AND FINAL ORDER OF THE TRIBUNAL**

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[Link to the Final Order](#)

**INTRODUCTION AND BACKGROUND**

[1] This settlement hearing is related to appeals filed by 1312733 Ontario Inc. (“Appellant”) against the failure of the City of Hamilton (“City”) to make a decision on Zoning By-law Amendment (“ZBA”) and Draft Plan of Subdivision (“DPS”) applications (“Applications”) pursuant to s. 34(11) and 51(34) of the *Planning Act* (“Act”) within the prescribed timeframe. The Applications apply to the lands known municipally as 1036-1090 Barton Street and 262 McNeilly Road (“Property”) in the Stoney Creek area of the City.

[2] The Property is located on the south side of Barton Street east of McNeilly Road and is comprised of five parcels of land that have merged on title and are under one ownership. The Property is currently vacant other than two detached dwellings along Barton Street, and has frontage of approximately 528.7 metres (“m”) on Barton Street as well as 20.1 m on McNeilly Road with an area of approximately 21.03 hectares.

[3] To the north of the Property are lands designated for light industrial uses in the Urban Hamilton Official Plan (“UHOP”). To the northeast is a commercial building and detached dwellings fronting on Lewis Road. To the east is an elementary school and

lands owned by the City which are designated in the Fruitland-Winona Secondary Plan (“FWSP”) for a public park. To the south lands fronting onto Highway No. 8 are commercial uses and residential lots, occupied by detached dwellings. Barton Street and Highway No. 8 are identified as Major Arterial Roads and McNeilly Road is identified as a Collector Road in the FWSP.

[4] The Property is within the Greenfield Area in the UHOP, being within the Urban Boundary but outside of the Built-Up Area. Schedules E Urban Structure and E-1 Urban Land Uses Designations of the UHOP identifies the Property respectively as part of the ‘Neighbourhood’ urban structure and designated ‘Neighbourhood’. Additionally, Barton Street is identified as a ‘Secondary Corridor’ on Schedule E.

[5] The Property is subject to Zoning By-law 3692-92 (Stoney Creek) (“ZBL 3692-92”) and Zoning By-law 05-200 (Comprehensive) (“ZBL 05-200”). The ZBA proposes to rezone the Property under ZBL 05-200 to site-specific ‘R1’ (Low Density Residential) Zones, a site-specific ‘TOC 3’ (Multiple Residential) Zone, a ‘P1’ (Neighbourhood Park) Zone and a ‘P5’ (Conservation/Hazard Land) Zone. Following the approval of the ZBA, the City would then repeal ZBL 3692-92 as it applies to the Property.

[6] As applied for, the Applications were to facilitate the development of 154 single detached dwellings, 206 street townhouse dwellings, and 185 condominium townhouse dwellings. The Applications were filed with the City in November 2020, and deemed complete as of December 9, 2020. The Appellant filed a revised submission on December 15, 2021, subsequent to community consultation and in response to feedback received through the review of the original proposal. The revised Applications did not change significantly from the original submission and included increasing the size of the stormwater management pond (“SWMP”) block thereby reducing the total unit yield from 545 units to 542 units.

[7] The Tribunal received correspondence from the Appellant in advance of the hearing advising that the Parties have reached a settlement (“Settlement”) and requesting that the Tribunal convert the proceedings to a settlement hearing. The

Parties in attendance confirmed that they consented to the conversion of the proceedings.

[8] In accordance with Rule 12 of the Tribunal's Rules of Practice and Procedure, the Tribunal convened the proceedings as a hearing on the terms of the Settlement.

[9] The Settlement resulted in further revisions to the DPS including the increase in the SWMP block, the access from Street E to Barton Street has been removed and replaced with a cul-de-sac, and a temporary access block to Barton Street to provide secondary access to the development until the road network is complete, at which time the temporary access is to be converted to a pedestrian connection ("Proposed Development").

[10] The Parties further advised the Tribunal that they were seeking Final approval in for both the ZBA and the DPS based on the Settlement, pending receipt by the Tribunal of the special conditions ("Conditions") for the DPS.

## **LEGISLATIVE FRAMEWORK**

[11] When considering appeals filed pursuant to s. 34(11) and 51(34) of the Act, the Tribunal must have regard to the matters of provincial interest pursuant to s. 2 of the Act, and the criteria for draft plans of subdivisions pursuant to s. 51(24) of the Act. Section 3(5) of the Act requires decisions of the Tribunal affecting planning matters to be consistent with the Provincial Policy Statement, 2020 ("PPS") and, in this case, conform to the Growth Plan for the Greater Golden Horseshoe ("Growth Plan"). The Tribunal must also be satisfied that the Applications conform with the UHOP.

[12] In consideration of the statutory requirements set out above, the Tribunal must be satisfied that the Applications represent good land use planning and are in the public interest.

## **EVIDENCE**

[13] Prior to the commencement of the hearing, the Tribunal received the Affidavit of

Mark Condello in support of the Proposed Development. The Tribunal qualified Mr. Condello, on consent, to provide opinion evidence pertaining to this matter in the area of land use planning.

[14] With respect to the regulatory and policy context, Mr. Condello opined that the Applications have regard for the applicable matters of provincial interest pursuant to s. 2 of the Act and the criteria for draft plan of subdivisions pursuant to s. 51(24) of the Act, and support the policies in the PPS and the Growth Plan including policies pertaining to the efficient use of urban land with existing services and planned or existing transit, policies for meeting a broad range of housing types and densities, the provision of a complete community.

### ***The Planning Act***

[15] It is Mr. Condello's opinion that the Proposed Development and Applications have regard for the matters of provincial interest in s. 2 of the Act as:

- the Proposed Development does not contemplate development in natural areas, features or function and thus provides protection of ecological systems;
- the Archaeological Assessment prepared in support of the Proposed Development concludes no archaeological resources on the Property;
- the Proposed Development will be fully serviced with municipal sanitary, water and stormwater management services to the satisfaction of the City;
- the Proposed Development will result in the development of an underutilized parcel of land with residential uses in an efficient and compact urban form which will contribute to a wider range of housing options than currently exists in the neighbourhood;
- the Property is located within an existing neighbourhood with access to a full range of schools, health care facilities, community services and recreational facilities;

- the Proposed Development will generate new development charges and tax revenue for the City;
- the Property is located within the City's Urban Boundary and is identified as greenfield development, as defined by the Growth Plan;
- the Urban Design Brief prepared in support of the Proposed Development provides a detailed description of the urban design direction and the overall configuration; and
- the Proposed Development will be required to comply with the Energy Efficiency Design requirements of the Ontario Building Code. Meeting such requirements will assist in reducing the impact of climate change through the introduction of buildings which are required to function more efficiently than older building stock. Increased energy efficiency of buildings assists in mitigating greenhouse gas emissions and adapting to the impacts of climate change.

[16] Mr. Condello also opined that the Proposed Development and Applications have appropriate regard to, and satisfy, the criteria set out in s. 51(24) of the Act as:

- The DPS creates blocks that are in keeping with the existing and planned context for the surrounding area. The public interest is protected as the Proposed Development does not negatively impact servicing and road network capacity and natural heritage resources, and builds on the principles of complete communities as established in the UHOP;
- The proposal conforms with the UHOP and implements the FWSP, both of which designate the Property for residential development;
- The Proposed Development will facilitate approximately 524 - 571 dwelling units, consisting of single detached dwellings, street townhouses and condominium townhouses (back-to-back townhouses, dual frontage townhouses and townhouse dwellings);
- The proposed public roads have been designed to municipal standards to

ensure adequate and safe vehicle circulation and to accommodate required infrastructure, and right-of-way widenings along Barton Street and McNeilly Road will be dedicated to the City;

- The dimensions and shapes of the proposed lots are appropriate to facilitate the development of single detached dwellings, street townhouses and condominium townhouses;
- Restrictions and regulations for the development of the subdivision are included in the ZBA and in the Conditions;
- No substantial natural resources are evident on site, and flood control will be addressed through stormwater management plans that will be required through the Conditions;
- Adequate municipal services will be available, the particulars of which will be established through the Conditions and a corresponding Subdivision Agreement;
- The DPS has been designed to accommodate development in a logical pattern that will support the efficient installation of energy infrastructure; and
- The DPS includes two blocks along Barton Street that will facilitate a future condominium townhouse development which will be subject to Site Plan Control.

[17] Further, Mr. Condello noted that s. 51 (25) of the Act allows an approval authority to impose conditions of DPS approval and that the Parties have reached an agreement on the Conditions, which include the City's Standard Form Subdivision Agreement as approved by City Council and special conditions. In his opinion, the Conditions have sufficient regard for matters of provincial interest.

### **Provincial Policy Statement, 2020**

[18] In his Affidavit, Mr. Condello opined that the Proposed Development is consistent with the PPS, and in particular, supports policies 1.1.1, 1.1.3.2, 1.1.3.6, 1.6.3, and 1.7.1

pertaining to promoting efficient development and land use patterns, accommodating a range of housing types, requiring residential intensification, densities and a mix of land use that efficiently use resources, infrastructure and services, promoting active transportation and supporting long-term economic prosperity.

### **Growth Plan for the Greater Golden Horseshoe**

[19] In his Affidavit, Mr. Condello further opined that the Proposed Development conforms with the Growth Plan, including several of the guiding principles in section 1.2.1, including supporting the achievement of complete communities, the provision of a wider range of dwelling types than currently exists within the neighbourhood, and supporting a range and mix of housing options to serve all sizes, incomes, and ages of households.

[20] Mr. Condello noted that the Proposed Development conforms to policies 2.2.1.2, 2.2.1.4 pertaining to directing growth to settlement areas with existing municipal water and wastewater systems, the achievement of complete communities by providing a diverse range of housing options, and section 2.2.7 related to requiring new development to support the achievement of complete communities, transit services and active transportation opportunities. He noted that the Property is located within the City's Settlement Area and is supported by existing and planned infrastructure. He added that the proposal will facilitate development that supports the achievement of a complete community by providing a mix and range of housing options and supporting public health and mobility through access to public open space and trails.

### **Urban Hamilton Official Plan**

[21] Mr. Condello opined that the Proposed Development conforms to the UHOP 'Neighbourhood' designation, maintains the general intent of the 'Urban Corridor' policy framework of Section E.2.4 of the UHOP for the lands fronting on Barton Street and meets the Growth Management objectives.



[22] In particular, Mr. Condello noted that Section E.2.4 of the UHOP outlines that Urban Corridors are a separate structural element from the Neighbourhoods, yet function as an integral part of the surrounding neighbourhood, and serve as a central focal point for a community. He advised that policy 2.4.3 provides that Urban Corridors be planned to accommodate “a range of higher density land uses” and policy 2.4.10 provides that the “built form along a[n] Urban Corridor shall generally consist of low to mid rise forms, but will vary along the length of the corridors with some areas permitted to accommodate high density and high rise built form.” Further, he noted that the policy framework also identifies that “Secondary Corridors shall generally accommodate retail and mixed use forms in small clusters along the corridors with medium density housing located between the clusters.”

[23] In Mr. Condello’s opinion, the proposal maintains the general intent of the ‘Urban Corridor’ policy framework provided in Section E.2.4 of the UHOP.

[24] In addition, Mr. Condello stated that the lands fronting on Barton Street are also designated ‘Medium Density Residential 2’ in the FWSP in keeping with the Urban Corridor policies as it permits multiple dwelling units and increased densities and heights. Further, he stated that the UHOP defines a ‘multiple dwelling’ as including “block townhouse dwellings, stacked townhouse dwellings, and apartment dwellings” and Blocks 181 and 182 on the DPS form part of the lands subject to the ‘Secondary Corridor’ and designated ‘Medium Density Residential 2’ and will be developed through a future Site Plan Application.

[25] Section E.3.0 of the UHOP outlines the ‘Neighbourhood’ designation policies and Mr. Condello advised that the policy framework supports complete communities, including a full range of residential types and densities as well as supporting uses. He assessed the criteria for development of lands within the “Neighbourhood” designation in policy E.3.2.7 as follows:

The proposed road network generally follows a grid system which allows for efficient connectivity for vehicles and pedestrians. The Urban Design Brief defines two character areas consisting of typical suburban neighbourhood and the condominium-promenade intersection on the north side of the site.

More specifically it states, “most of the Proposed Development falls within what can be characterized as a “suburban neighbourhood”, with peripheral and internal dwellings facing internal streets. This area is proposed to include a mix of single detached homes and street townhomes in a variety of sizes. The Proposed Development incorporates driveways/ greenspaces at the frontage of these units to keep with the ‘front yard character’ seen in single family neighbourhoods.

The implementing Zoning By-law proposes zoning regulations to step back garages so that they do not dominate the streetscape.

The Proposed Development forms part of a larger planned community. The proposal provides for pedestrian connectivity to planned parks. A conceptual Landscape Plan was prepared in support of the Proposed Development. Landscaping details are determined at the Detail Design stage of the project following draft approval.

The Proposed Development will improve existing landscape features and overall landscape character of the surrounding area.

The Proposed Development complies with the UHOPs urban design policies.

[26] With respect to the DPS, Mr. Condello drew attention to the UHOP policies for the division of land and referenced policy F.14.1.2 that provides the criteria to be met for the approval of a DPS. He addressed each criteria as follows:

- the proposed plan of subdivision conforms to the Neighbourhood policies of the UHOP and the land use policies of the FWSP;
- the DPS and the Conditions appropriately implement the City’s staging of development and the logical and orderly development of the Property will be determined through the detailed design phase of the DPS, as required to clear the Conditions;
- The Property is located within a community with access to services and community facilities;
- No adverse impacts to the transportation system and the natural environment have been identified;
- The DPS is generally in keeping with the municipal road network as identified in the FWSP and allows for future connections with neighbouring lands;

- The DPS will not adversely impact municipal finances, as appropriate mechanisms for funding development are available; and
- the DPS meets all the requirements of the Act.

[27] With respect to the 'Integrated Transportation Network' policies in the UHOP, Mr. Condello noted that, through the settlement discussions, the DPS was revised with a permanent cul-de-sac at the north end of Street 'E' and with a temporary secondary access to Barton Street. He added that the temporary access will be converted to a pedestrian connection and that this arrangement is secured through the Conditions.

[28] Mr. Condello noted that the overarching policies of the UHOP provide no specific distinction between low, medium and high-density residential uses. Instead, the form and function of each residential density is determined based on location, scale and design direction for the purpose of secondary planning and zoning.

[29] In conclusion, it was Mr. Condello's opinion that the Proposed Development and implementing ZBA and DPS conform to the relevant UHOP policies.

[30] The Province approved a new UHOP ("New UHOP") on November 4, 2022, which requires single detached, semi-detached, duplex, triplex, fourplex and street townhouse dwellings to be permitted in all low-density residential areas. Mr. Condello noted that the Applications are not subject to the New UHOP but that he considered and concluded that the intent has been fulfilled as the ZBA rezones a majority of the lands to the 'R1' Zone, which allows for a wider range of permitted built forms.

### **Fruitland-Winona Secondary Plan**

[31] With respect to the FWSP, Mr. Condello opined that the Proposed Development meets policy B.7.4.3 d) which provides criteria for the evaluation of development applications including:

- i. Compatibility with adjacent land uses including matters such as shadowing, grading, overlook, noise, lighting, traffic and other nuisance effects;

- ii. Transition in height and density to adjacent and existing residential development; (OPA 142)
- iii. The relationship of the proposed lot(s) with adjacent and existing lot pattern and configuration; and,
- iv. The policies in Section 7.4.14 – Block Servicing Strategy and all other applicable policies of this Secondary Plan. (OPA 142)

[32] Mr. Condello proffered that Barton Street is identified as a Pedestrian Promenade in the FWSP and it was his opinion that the Proposed Development meets policy B.7.4.3 e) which directs development on Barton Street adjacent to the Barton Street Pedestrian Promenade to be integrated visually and functionally into Barton and that an Urban Design Report will be required. He confirmed that an Urban Design Brief was submitted which provides design criteria and objectives for the Proposed Development.

[33] Mr. Condello further submitted that the Proposed Development meets the general policy framework of the residential policies of the FWSP and that the proposed development is anticipated to accommodate a population in keeping with the Province's and City's Growth Management objectives. He specified that the Proposed Development provides an overall density of approximately 43.8 to 47.7 units per net hectare and that, on an individual land use basis, it complies with the density and built form requirements of each applicable land use designation.

[34] Mr. Condello opined that the Proposed Development also meets the policies in the FWSP related to the Parks and Open Space designations, the 'Block Servicing Strategies' and stormwater management.

[35] In conclusion, Mr. Condello opined that the Proposed Development conforms to the relevant policies contained within the FWSP.

## **Conclusions and Recommendations**

[36] Mr. Condello proffered his professional planning opinion that the Proposed Development and corresponding planning instruments have appropriate regard to matters of provincial interest, are consistent with the PPS, conform to the Growth Plan

and conform to the relevant policies of the UHOP and the FWSP. He furthered that the ZBA and DPS are appropriate, represent good planning and are in the public interest.

## **ANALYSIS AND FINDINGS**

[37] The Tribunal accepts the uncontroverted testimony and evidence of Mr. Condello.

[38] The Tribunal finds that the Proposed Development will fit harmoniously with the existing and planned built form context and will enhance the area by intensifying an underutilized site which is well-served with municipal infrastructure.

[39] The Proposed Development will be an efficient use of the land and will support the achievement of the PPS and Growth Plan policy directions promoting intensification within a built-up urban area. The Proposed Development will result in a desirable mixed-use intensification project having convenient access to transit, and providing a range of housing types.

[40] In consideration of the evidence of Mr. Condello and the revisions resulting in the Proposed Development, the Tribunal is satisfied that the ZBA and DPS have sufficient and proper regard for those matters of provincial interest as set out in s. 2 of the Act and the criteria in s. 51(24) of the Act. The Tribunal finds that the ZBA and DPS are consistent with the PPS, conform to the policies of the Growth Plan and the UHOP, are appropriate and desirable from a land use planning perspective and represent good land use planning.

[41] The Tribunal approves the ZBA and DPS, subject to the Conditions as set out in the Final Order.

## **FINAL ORDER**

[42] **THE TRIBUNAL ORDERS** that the appeal is allowed and Zoning By-law 05-200 (Comprehensive) of the City of Hamilton is hereby amended as set out in **Attachment 1** to this Order. The Tribunal authorizes the municipal clerk of the City of Hamilton to

assign a number to this By-law and insert dates for record-keeping purposes.

[43] **THE TRIBUNAL ORDERS** that the appeal is allowed and the draft plan shown on the plan prepared by Glen Schnarr & Associates Inc. dated December 12, 2023, comprising Part of Lots 7 & 8, Concession 2, (Geographic Township of Saltfleet) City of Hamilton is approved, subject to the fulfillment of the conditions contained in the City of Hamilton's Standard Form Subdivision Agreement and the special conditions all as set out in **Attachment 2** to this Order.

[44] **AND THE TRIBUNAL ORDERS** that pursuant to subsection 51(56.1) of the *Planning Act*, the City of Hamilton shall have the authority to clear the conditions of draft plan approval and to administer final approval of the plan of subdivision for the purposes of subsection 51(58) of the *Act*. In the event that there are any difficulties implementing any of the conditions of draft plan approval, or if any changes are required to be made to the draft plan, the Tribunal may be spoken to.

[45] **The TRIBUNAL ORDERS** that, in accordance with Rule 24.3 of the Tribunal's *Rules of Practice and Procedure*, this Order is effective as of December 14, 2023.

*"C. I. Molinari"*

C. I. MOLINARI  
MEMBER

**Ontario Land Tribunal**

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

**ATTACHMENT 1**

Schedule "4"

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**CITY OF HAMILTON****BY-LAW NO. 24-095-OLT**

**To amend Zoning By-law No. 05-200 with respect to lands located at 262 McNeilly Road, 1036, 1038, 1054 and 1090 Barton Street**

**WHEREAS** the City of Hamilton's new comprehensive Zoning By-law being Zoning By-law No. 05-200 came into force on May 25, 2005;

**AND WHEREAS** the Ontario Land Tribunal, in its Decision/Order No. OLT-21-001725, dated the 26<sup>th</sup> day of March 2024, approved the amendment to Zoning By-law No. 05-200 (Hamilton), as herein provided.

**AND WHEREAS** this By-law conforms to the Urban Hamilton Official Plan of the City of Hamilton;

**NOW THEREFORE** the Ontario Land Tribunal enacts as follows:

1. That Map Nos. 1309 and 1310 of Schedule "A" - Zoning Maps are amended by adding the Low Density Residential (R1, 882) Zone, the Low Density Residential (R1, 883) Zone, the Transit Oriented Corridor Multiple Residential (TOC3, 880) Zone, the Neighbourhood Park (P1) Zone, and the Conservation/ Hazard Land (P5) Zone to the lands identified in the Location Map attached as Schedule "A" to this By-law.
2. That Schedule "C" - Special Exceptions is amended by adding the following new Special Exceptions:
  - "880. Within the lands zoned Transit Oriented Corridor Multiple Residential (TOC3, 880) Zone, identified on Map No. 1309 and 1310 of Schedule "A" - Zoning Maps and described as 262 McNeilly Road, 1036, 1038, 1054 and 1090 Barton Street, the following special provisions shall apply:
    - a) The lands zoned Transit Oriented Corridor Multiple Residential (TOC3, 880) Zone shall be deemed to be one lot for the purposes of applying the provisions of the By-law. Zoning provisions shall apply only to the external lot lines of the overall lands, and not the individual property boundaries of any lots created by registration of Condominium Plan, Part Lot Control or Consent.
    - b) Notwithstanding Section 3: Definitions as it relates to the definition of "Front Lot Line", for the purpose of this By-law, the lot line abutting Barton Street shall be deemed to be the front lot line.

Schedule "4"

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- c) No direct vehicle access shall be provided to individual townhouse or maisonette dwelling units from a public right-of-way with the exception of a private road.
- d) Notwithstanding Section 4.23 d), all buildings or structures located on a property shall have a minimum setback of 1.2 metres from a P5 Zone boundary.
- e) Section 4.35 shall not apply.
- f) Notwithstanding Section 5.1 d) i), required parking for multiple dwellings shall not be located between the facade and the front lot line. In no case shall any parking be located within the required front yard.
- g) Section 5.6 e) shall not apply.
- h) Notwithstanding the regulations of Paragraphs (d), (e) and (f) of Subsection 4.6 "Permitted Yard Encroachments", the following encroachments shall be permitted:
  - i) A porch, deck or canopy may encroach into any required front yard a maximum of 2.0 metres or into a required rear yard to a maximum of 3.0 metres.
  - ii) Balconies may project into a required front yard a distance of not more than 2.0 metres and may project into a required rear yard a distance of not more than 3.0 metres.
  - iii) A bay window or alcove, without foundation, may encroach into any required yard to a maximum of 0.9 metres. No such feature shall have a width greater than 3.0 metres.
- i) Notwithstanding Sections 11.3.1.1, 11.3.2 and 11.3.3, the following shall apply:
 

i) Minimum Density	60 units per net hectare.
ii) Maximum Density	75 units per net hectare.
iii) Minimum Lot Area	Shall not apply.
iv) Minimum Front Yard Setback	2.0 metres.
v) Building Setback from a Street Line	1.2 metres; any dwelling located at the intersection of two or more roads will



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be permitted a minimum yard to a hypotenuse of a daylight triangle of 0.5 metres to a building and 0.3 metres to an unenclosed porch or deck.

vi) Minimum Side Yard	1.2 metres.
vii) Minimum Rear Yard	6.0 metres.
viii) Minimum width of a Townhouse Unit	4.8 metres.
ix) Minimum landscaped Area	10% of the lot area.
x) Minimum Amenity area for Dwelling Units	5.0 square metres per unit, in which the amenity area shall be provided on attached balcony, privacy area adjacent to the dwelling, or rooftop amenity area.
xi) Minimum Building Height	11 metres.
xii) Maximum Building Height	15 metres.

882. Within the lands zoned Low Density Residential (R1, 882) Zone, identified on Map 1309 and 1310 on Schedule "A" - Zoning Maps and described as 262 McNeilly Road, 1036, 1038, 1054 and 1090 Barton Street, the following special provision shall apply:

- a) Notwithstanding Section 4.23 d), all buildings or structures located on a property shall have a minimum setback of 1.2 metres from a P5 Zone boundary.
- b) Notwithstanding Section 4.35, the entire yard areas shall be landscaped area other than a driveway, an encroachment or an accessory building permitted by this by-law.
- c) Notwithstanding the regulations of Paragraphs (a), (b), (c), (d), (e) and (f) of Subsection 4.6 "Permitted Yard Encroachments", the following encroachments shall be permitted:

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- i) The usual projections of window sills, chimney breasts, belt courses, cornices, eaves, troughs and other similar architectural features, ductwork, venting and other similar appurtenances may be permitted in any required front yard, rear yard, flankage yard, or side yard 1.2 metres wide or greater, provided that no such feature shall project more than 0.6 metres into the required yard, or to a maximum of half the distance of the required yard, whichever is the lesser.
  - ii) Eaves, troughs or gutters may project into a required side yard a distance of not more than 0.55 metres.
  - iii) A fire escape or exterior staircase may encroach into a required rear yard to a maximum of 1.5 metres, or to a maximum of half the distance of the required rear yard, whichever is the lesser.
  - iv) An unenclosed ramp for wheelchair access may encroach into any required yard, except a required side yard, to no maximum distance.
  - v) A porch, deck or canopy may encroach into any required front yard or rear yard to a maximum of 3.0 metres.
  - vi) Balconies may project into a required front yard a distance of not more than 2.0 metres and may project into a required rear yard a distance of not more than 3.0 metres.
  - vii) A bay window or alcove, without foundation, may encroach into any required yard, except a required side yard, to a maximum of 0.9 metres. No such feature shall have a width greater than 3.0 metres.
- d) Notwithstanding Sections 15.1.2.1 a), b), c), d), e), f) and g), the following special provisions shall apply to "Single Detached Dwelling:
- i) Minimum Lot Area 270.0 square metres.
  - ii) Minimum Lot Width 10.0 metres.
  - iii) Minimum Setback from the Front Lot Line 4.5 metres to the dwelling, except 6.0 metres to an attached garage.
  - iv) Minimum Setback from a Side Lot Line
    - i) 1.2 metres on one side and 0.6 metres on the

Schedule "4"  
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other side provided that the combined total for each interior lot is 1.8 metres.

ii) 0.6 metres for a corner lot abutting another interior lot with a side yard of 0.6 metres or 1.2 metres, for a minimum total of 1.2 metres between buildings.

iii) minimum yard to the hypotenuse of the daylight triangle of 0.5 metres for a building; 0.3 metres for an unenclosed porch and deck.

v) Minimum Setback from a Flankage Lot Line 2.4 metres.

vi) Minimum Setback from a Rear Lot Line 7.0 metres.

vii) Maximum Building Height 13.5 metres.

e) Notwithstanding Section 15.1.2.3 a), c), d), e), f) and g), the following special provision shall apply to "Street Townhouse Dwelling":

i) Minimum Lot Area 160.0 square metres for each dwelling unit.

ii) Minimum Setback from the Front Lot Line 4.5 metres to the dwelling, except 6.0 metres to an attached garage.

iii) Minimum Setback from a Side Lot Line i) 1.2 metres except for the side yard related to the common wall of the street townhouse dwelling unit, in which case a minimum 0.0

## Schedule "4"

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metre side yard shall be permitted.

- ii) minimum yard to the hypotenuse of the daylight triangle of 0.5 metres for a building; 0.3 metres for an unenclosed porch and deck.

iv) Minimum Setback from a Flankage Lot Line 2.4 metres.

v) Minimum Setback from a Rear Lot Line 6.0 metres.

vi) Maximum Building Height 13.5 metres.

883. Within the lands zoned Low Density Residential (R1, 883) Zone, identified on Map 1309 and 1310 on Schedule "A" - Zoning Maps and described as 262 McNeilly Road, 1036, 1038, 1054 and 1090 Barton Street, the following special provision shall apply:

- a) In addition to Section 3: Definitions the following shall be added to the definition of "Lot Width":

Provided, however, in the case of a corner lot where a daylight triangle or a radius has been established, the lot width is to be determined by measuring along the front lot line after the side lot line and the front lot line have been extended to the point of intersection of the two streets.

- b) Notwithstanding Section 4.23 d), all buildings or structures located on a property shall have a minimum setback of 1.2 metres from a P5 Zone boundary.
- c) Notwithstanding Section 4.35, the entire yard areas shall be landscaped area other than a driveway, an encroachment or an accessory building permitted by this by-law.
- d) Notwithstanding the regulations of Paragraphs (a), (b), (c), (d), (e) and (f) of Subsection 4.6 "Permitted Yard Encroachments", the following encroachments shall be permitted:
  - i) The usual projections of window sills, chimney breasts, belt courses, cornices, eaves, troughs and other similar architectural

Schedule "4"  
Page 7 of 9

features, ductwork, venting and other similar appurtenances may be permitted in any required, front yard, rear yard, flankage yard, or side yard 1.2 metres wide or greater, provided that no such feature shall project more than 0.6 metres into the required yard, or to a maximum of half the distance of the required yard, whichever is the lesser.

- ii) Eaves, troughs, or gutters may project into any required side yard a distance of not more than 0.55 metres.
  - iii) A fire escape or exterior staircase may encroach into a required rear yard to a maximum of 1.5 metres, or to a maximum of half the distance of the required rear yard, whichever is the lesser.
  - iv) An unenclosed ramp for wheelchair access may encroach into any required yard, except a required side yard, to no maximum distance.
  - v) A porch, deck or canopy may encroach into any required front yard or rear yard to a maximum of 3.0 metres.
  - vi) Balconies may project into a required front yard a distance of not more than 2.0 metres and may project into a required rear yard a distance of not more than 3.0 metres.
  - vii) A bay window or alcove, without foundation, may encroach into any required yard, except a required side yard, to a maximum of 0.9 metres. No such feature shall have a width greater than 3.0 metres.
- e) Notwithstanding Sections 15.1.2.3 a), b), c), d), e), f) and g), the following special provisions shall apply:
- i) Minimum Lot Area 105.0 square metres for each dwelling unit.
  - ii) Minimum Lot Width 4.6 metres.
  - iii) Minimum Setback from the Front Lot Line 4.5 metres to the dwelling, except 5.8 metres to an attached garage.
  - iv) Minimum Setback from a Side Lot Line 1.2 metres when abutting side lot line coincides with two exterior walls, 0.0 metres when abutting side

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lot lines coincide with a common wall between two dwellings.

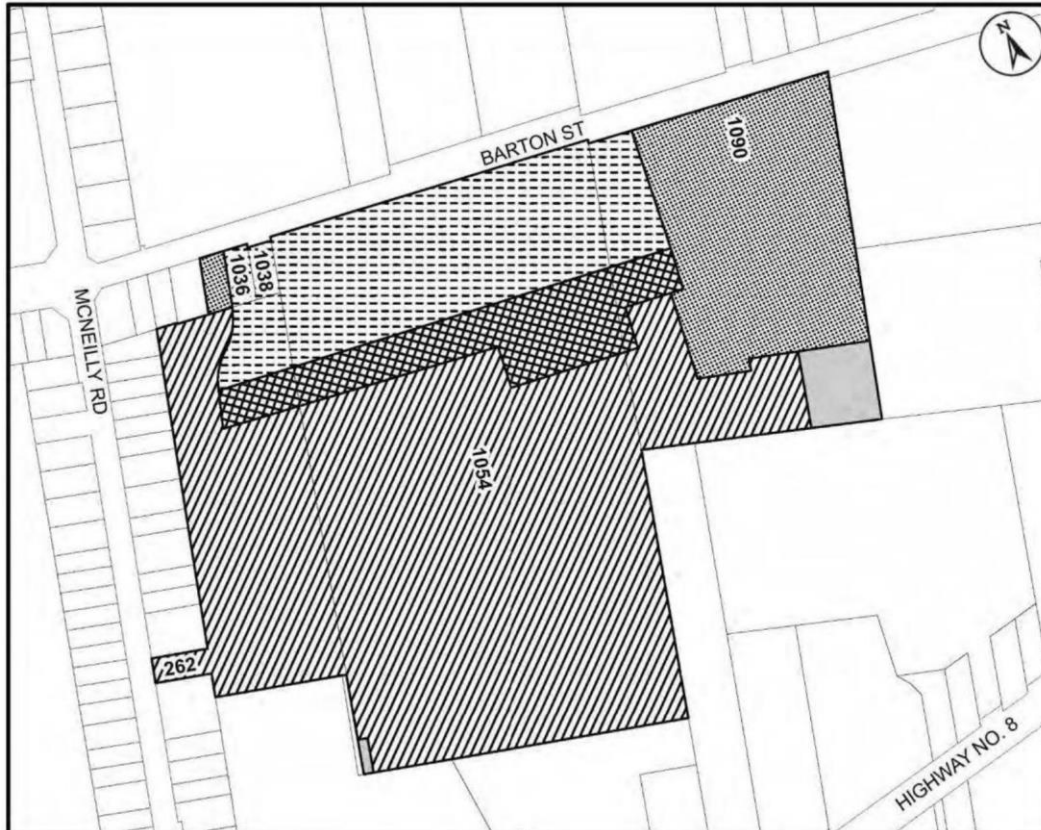
Minimum yard to the hypotenuse of the daylight triangle of 0.5 metres for a building; 0.3 metres for an unenclosed porch and deck.

- v) Minimum Setback from a Flankage Lot Line 2.4 metres.
  - vi) Minimum Setback from a Rear Lot Line 6.0 metres.
  - vii) Maximum Building Height 13.5 metres."
3. That no building or structure shall be erected, altered, extended, or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, except in accordance with the provisions of the Low Density Residential (R1, 882) Zone, the Low Density Residential (R1, 883) Zone, and the Transit Oriented Corridor Multiple Residential (TOC3, 880) Zone, subject to the special requirements referred to in Section No. 2 of this By-law.
  4. That this By-law No. 24-095-OLT shall come into force and be deemed to come into force in accordance with Sub-section 34 (21) of the *Planning Act*, either upon the date of passage of this By-law or as otherwise provided by the said Sub-section.

**APPROVED** this 26<sup>th</sup> day of March, 2024.

ZAC-20-043

Schedule "4"  
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This Is Schedule "A" to By-law No. 24-095-OLT

Passed the ....26th... day of March, 2024.

Mayor

Clerk

## Schedule "A"

Map forming Part of  
By-law No. 24-095-OLT

to Amend By-law No. 05-200  
Map 1309 & 1310

### Subject Property

1036, 1038, 1054 & 1090 Barton Street and  
262 McNeilly Road Stoney Creek (Ward 10)

Lands to be zoned Low Density Residential  
(R1, 882) Zone

Lands to be zoned Low Density Residential  
(R1, 883) Zone



Lands to be zoned Conservation/Hazard  
Land (PS) Zone

D

Lands to be zoned Transit Oriented Corridor Multiple  
Residential (TOC3, 880) Zone

CJ

Lands to be zoned Neighbourhood Park (P1) Zone

Scale:

N.T.S

Ale Name/NOOId>er:

ZAC-20-043 / 25T-202009

Date:

December 14, 2023

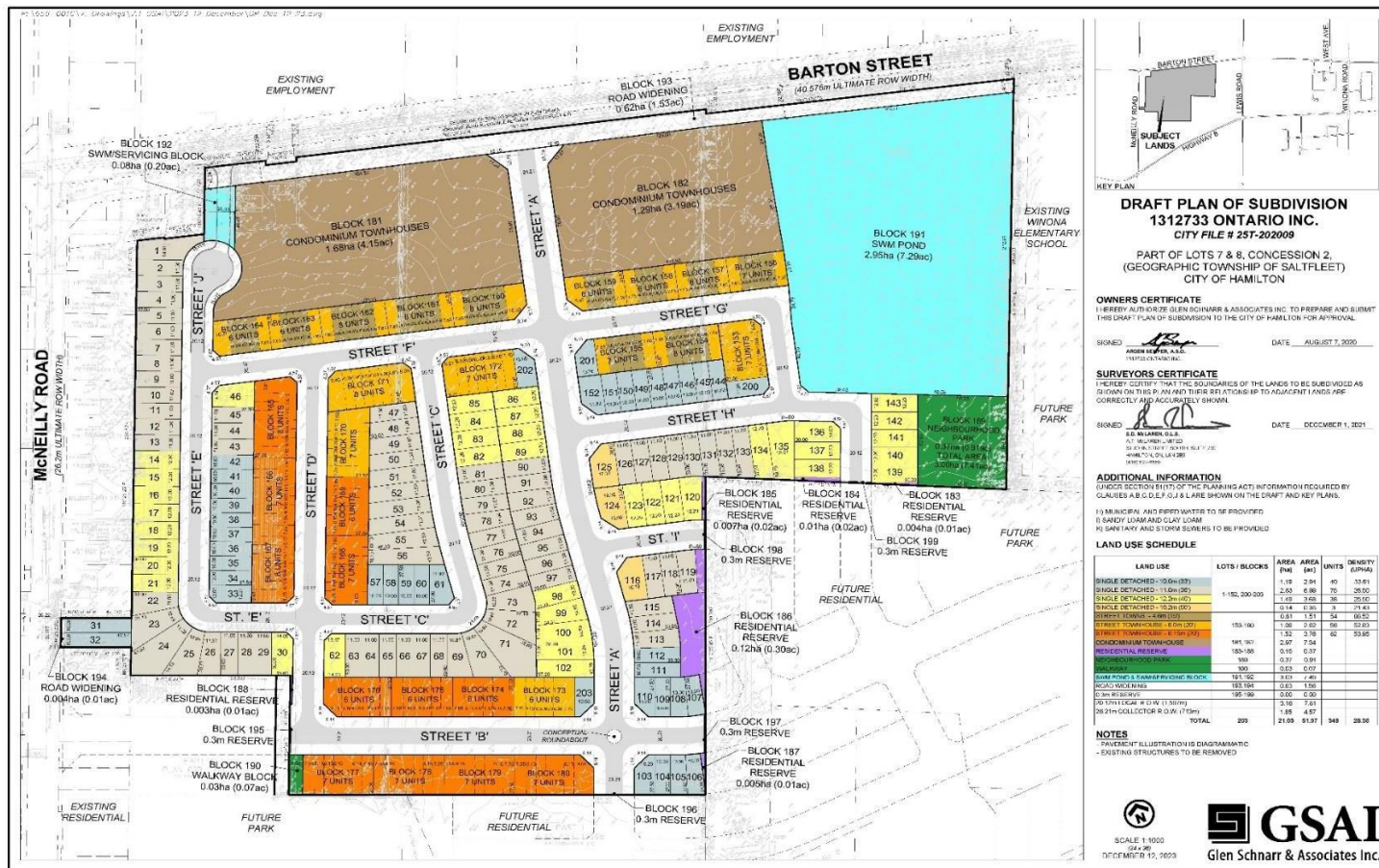
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PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

## ATTACHMENT 2





2  
Revised 18JAN2022

### SUBDIVISION AGREEMENT

**THIS AGREEMENT DATED** as of the            day of            20            A.D.

**BETWEEN:**

(hereinafter referred to as the "Owner")  
of the First Part,

- and -

**CITY OF HAMILTON**  
(hereinafter referred to as the "City")  
of the Second Part,

- and -

(hereinafter referred to as the "Mortgagee")  
of the Third Part,

**WHEREAS:**

- (a) the Owner is the registered owner in fee simple of the lands described in Schedule "A" appended hereto (hereinafter referred to as the "Land"); and,
- (b) the Owner has made an application to the City pursuant to Section 51 of the Planning Act, R.S.O. 1990, c. P. 13, as amended, for approval of a plan of subdivision for the Land; and,
- (c) the City has granted conditional approval of the plan of subdivision depicted in Schedule "B" appended hereto (hereinafter referred to as the "Draft Plan"); and,
- (d) the Owner is required to enter into this Agreement with the City to record the conditions under which the Owner may develop the Land in accordance with the Draft Plan; and,
- (e) certain conditions are general conditions which shall remain in force and effect until such time as this Agreement may be discharged from the title of the Land; and,
- (f) certain conditions are required to be fulfilled within certain time frames or prior to the happening of certain events as hereinafter specified.

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT,** in consideration of the premises, and of the sum of FIVE (\$5.00) DOLLARS now paid by the City to the Owner, and the Mortgagee(s) (the receipt and sufficiency whereof is hereby acknowledged), and of the approval of the Owner's plan of subdivision on the conditions hereinafter set out, and of other good and valuable consideration, the Parties hereto covenant and agree each with the other as follows, namely:

# **SUBDIVISION AGREEMENT**

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## DEFINITIONS

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

- a) **'Above Base Park Works'** includes sports facilities, creative play structures/ equipment, sun shelters, multi-purpose courts, walkways, plantings, site furnishings, sod and other amenities, including associated utilities.
- b) **'Acceptable Road Access'** means an asphalt surface road, or a road that has been accepted as an access road by the City.
- c) **'Acceptance'** means the date upon which construction of the Works or any portion thereof, has been completed to the satisfaction of the Director of Growth Management Division and the maintenance period for the Works has commenced.
- d) **'Agreement'** means this Agreement including each of the Schedules attached hereto, together with such approved plans and specifications as are specified herein.
- e) **'Assumption'** means the transfer to the City of all maintenance obligations and liabilities associated with any of the Works required to be constructed, installed or completed by the Owner pursuant to this Agreement, in accordance with the provisions of Section 1.39 hereof. "Date of Assumption" means the end of the maintenance period for the Works and the effective date of the said transfer of obligations and liabilities and "assume" and "assumed" have corresponding meanings.
- f) **'Base Park Works'** includes stormwater catch basins and stormwater leads, sanitary service stubs to inside property line, water service line stubs to inside property line, electrical service line stubs to inside property line, clearing and grubbing, surface drainage works, topsoil stripping, screening and stockpiling, soil and topsoil testing, rough grading, fine grading, spreading of topsoil and seeding.
- g) **'City'** means the City Of Hamilton.
- h) **'Cost Estimate Schedule'** means a schedule prepared by the Owner's Engineering Consultant containing a detailed description of the Works to be carried out by the Owner, based on the engineering design drawings approved by the City to service the Draft Plan lands and includes an estimate of the total cost of the works as well as the portion of the cost to be paid by the Owner as "Owner's Share" and by the City as "City's Share".
- i) **'Chief Building Official'** means the Director of the Building Division for the Planning and Economic Department for the City of Hamilton or designate.
- j) **'Director of Planning'** means the Director of Planning Division in the Planning and Economic Development Department for the City of Hamilton or designate.
- k) **'Draft Plan'** means the plan of subdivision depicted on Schedule "B" approved by the City, subject to the provisions of this Agreement, in accordance with the provisions of the Planning Act, R.S.O. 1990, c. P.13, as amended.
- l) **'Easement'** with respect to the conveyance of parkland to the City under s.42 or s.51.1 of the Planning Act, means any right by one party to use the parkland for any utility, above ground and below ground, or otherwise which are not solely for the benefit of the park, that are located within the lands dedicated For the purposes of parkland.
- m) **'Encumbrance of Title'** with respect to the conveyance of parkland to the City under s.42 or s.51.1 of the Planning Act, means any clouds and liabilities of title, charges, restrictions, mortgages, easement, property tax liens, etc. that limits the transferability of the property and restricts its free use until the encumbrance is lifted.
- n) **'Encumbrance of Development'** with respect to the conveyance of parkland to the City under s.42 or s.51.1 of the Planning Act, means any infrastructure, including but not limited to retaining walls, stormwater management facilities above or below grade, compensation planting which are not solely for the benefit of the park, that are located within the lands dedicated for the purposes of parkland.

## DEFINITIONS

Continued

- o) **'Engineering Consultant'** means a qualified Professional Engineer or Engineering Firm, registered under The Professional Engineers Act of Ontario, hired by the Owner to perform the engineering services required of the Owner pursuant to this Agreement.
- p) **'Engineering Submission'** means any drawings, plans, studies, reports or other documents submitted by the Engineering Consultant to the City for approval to carry out all required works related to the Owner's development of the Land.
- q) **'Environmental Lands'** with respect to conveyance of parkland under s. 42 or s.51.1. of the Planning Act, means any valley lands, being lands located below the "top of bank" as defined by the appropriate Conservation Authority, but shall not include any buffer land above the top of bank; Provincially significant lands including Areas of Natural or Scientific Interest (ANSI); Wetlands; Environmentally Significant Areas (ESA); and Woodlots.
- r) **Grading Plan**
  - i) **'Preliminary Grading Plan'** means the plan showing grading for the area within the Draft Plan and any external lands affected by grading of the Draft Plan, not including single detached lots, usually showing the grades along lot lines and the direction of overland flow.
  - ii) **'Final Grading Plan'** means the grading plan approved by the Director of Growth Management Division for all the Land within a registered subdivision plan.
  - iii) **'Plot Plan'** means the grading plan reviewed for compliance by the Director of Building Division for a particular lot or block created by a registered subdivision plan.
- s) **'Land'** means the land described in Schedule "A" of this Agreement which is the geographical area of the Draft Plan. After a plan of subdivision has been registered with respect to the Land, a reference to "Land" in this Agreement shall be deemed to be a reference to the said registered plan.
- t) **'Maintenance of Works'** means a warranty period provided by the Owner against defective materials, latent defects or poor workmanship for the Works constructed by the Owner that are required to service the Draft Plan lands.
- u) **'Manager of Landscape Architectural Services'** means the Manager of the Landscape Architectural Services Section in the Environmental Services Division for the Public Works Department for the City of Hamilton or designate.
- v) **'Model Home'** means a single detached dwelling, semi-detached dwelling or townhouse block situated within the Land and used for the sole purpose of an office and/or show room and/or sales centre to promote the sale of residential units within the Draft Plan.
- w) **'Mortgagee'** means the person, company or business having a beneficial interest in the Land in the form of a registered mortgage over all or part of the Land, which person, company or business has executed this Agreement as the Party(ies) of the Third Part.
- x) **'Owner'** means the registered owner of the Land and may include an individual, an association, a partnership or corporation and their respective heirs, executors, administrators, successors, trustees and assigns.
- y) **'Phase'** means a portion of a Stage for which separate servicing is intended.
- z) **'Prime Contractor'** means the primary service provider who has been hired by the Owner to carry out installation of the Works to service the draft plan lands. Prime Contractor does not include a subcontractor or trades person hired by the prime contractor.
- aa) **'Security'** means the security defined under Section 1.41 (Security for Performance) of this Agreement.
- bb) **'Director of Growth Management'** means the Director of the Growth Management Division in the Planning and Economic Development Department for the City of Hamilton or designate.

**DEFINITIONS**

Continued

- cc) **'Stage'** means a plan of subdivision, which is registered or intended for registration to subdivide any portion of the Draft Plan.
- dd) **'Street'** is a highway or road allowance within the meaning of the Municipal Act, 2001 owned by the City or intended to be dedicated by registration of a plan of subdivision or by transfer to the City, including the traveled and un-traveled portion of the road allowance and all shoulders, boulevards and sidewalks located thereon, and also land dedicated or vested in the City for a public walk way. A roadway is that portion of a street, which is improved for use by vehicles or pedestrians.
- ee) **'Super Mailbox'** means any group or community mailbox installed or to be installed by the Canada Post Corporation in order to provide postal service to residences situated within all or part of the Land.
- ff) **'Works'** includes sanitary sewers, storm sewers, watermains and all applicable appurtenances, including service connections, surface drainage works, street lighting with attendant conductors, driveway ramps, streets, pavements, curbs, gutters, fences, boulevard landscaping, including street trees, street name signs, sidewalks, the seeding and/or surfacing of open spaces, public trails, walkways and tree planting and, where applicable, the maintenance of any of the above until assumption by the City.

## **PART 1      GENERAL CONDITIONS**

The Owner covenants and agrees as follows, namely:

- Registration**      1.01 a) This Agreement, and any subsequent amending or supplementary Agreements thereto, shall be registered on title to the Land described in Schedule "A" hereto and which is depicted on a Draft Plan as shown on Schedule "B" hereto, all at the Owner's expense.
- b) To transfer a surface drainage easement in favour of the City over all lots and blocks within each registered Stage of the Draft Plan, following registration of the Stage, not including lots or blocks transferred to City.
- c) The registration of this Agreement and any other required agreements, easements and transfers with or in favour of the City shall be free and clear of all mortgages and charges and shall be in a form satisfactory to the City Solicitor. Such registration shall be in an electronic format or in a paper format, as may be required by the Land Registry Office.
- d) Where registration is in an electronic format, the Owner acknowledges and agrees that:
- i) some or all of the Schedules that are attached to and forming part of the paper version of this Agreement, may not be attached and form part of the electronic registered Notice of this Agreement; and,
  - ii) the Owner authorizes its representative to signify its approval of the Notice of this Agreement for electronic registration; and,
  - iii) the electronic version of the Notice of this Agreement, by its nature, shall not include the signatures of the Owner or its corporate officers and directors, as the case may be; and,
  - iv) the Owner for itself its successors and assigns on title to the Land shall be bound by the electronic registered version of the Notice of this Agreement.
- e) The Owner's lawyer shall provide the City with their Lawyer's Certificate of Title to certify to the City, in a form satisfactory to the City Solicitor, that the electronic version (if any) and the paper version of this Agreement have been entered into/authorized by the registered owner of the Land which is the subject of this Agreement.
- The Lawyer's Certificate shall be provided to the City prior to the registration of this Agreement.
- Mortgagee(s)**      1.02 a) Where a Mortgagee executes this Agreement, it does so to:
- i) postpone its registered mortgage with the Owner to the Land and to this Agreement as if this Agreement had been registered prior to the mortgage; and,
  - ii) postpone all its right, title and interest in the Land to the rights of the City pursuant to this Agreement.
- b) In the event the Mortgagee enters into possession of the Land pursuant to the default provisions of its mortgage with the Owner, the Mortgagee shall be bound by each and every term, provision and condition of this Agreement.



***Changes to  
Draft Plan***

- 1.03 a) Minor changes to the Draft Plan, acceptable to the City's Director of Growth Management and not affecting the number of lots or blocks, may be permitted without an amendment to this Agreement.
- b) Major changes to the Draft Plan or changes affecting the number of lots or blocks shall require the approval of the General Manager of the Planning and Economic Development Department and an amendment to this Agreement.
- c) Changes to the Draft Plan solely for the purpose of showing the final lot pattern of lot-less blocks shall require a supplementary agreement prior to the registration of such plans.

***Plan of  
Subdivision***

- 1.04 The plan, or plans, of subdivision prepared for registration over the lands of the Draft Plan shall be prepared in accordance with the Draft Plan dated \_\_\_\_\_ under subdivision application number 25T \_\_\_\_\_ as described under Schedule "B" to this Agreement.

***Land for Park  
or Cash-in-  
Lieu of Land  
for Park***

- 1.05 a) To satisfy parkland conveyance requirements in accordance with the Planning Act and the City of Hamilton's Parkland Dedication By-Law, the Owner shall either:
- i) by transfer of land, convey to the City at no cost Block(s) XX (hereinafter referred to as the "Park Block(s)") designated in the Draft Plan for future parkland free and clear of all encumbrances of title and Environmental lands to the satisfaction of the Manager of Landscape Architectural Services; or,
  - ii) in the case where no land in the Draft Plan is to be conveyed to the City for park and where the City's Official Plan does not have any policies relating to the provision of lands for park purposes in the Draft Plan, pay to the City at such time as is required by the City's Parkland Dedication By-Law as amended, and any approved Parkland Dedication and Cash-in-Lieu Policy, a sum of money calculated by the City's Corporate Real Estate Office of the Planning and Economic Development Department, in-lieu of park dedication. The Owner shall be responsible for any appraisal costs incurred by the City.
- b) The Owner acknowledges and agrees that any encumbrances of development will not be approved, above or below grade which are not solely for the benefit of the Park Block(s)Error! **Reference source not found.**Error! **Reference source not found.**Error! **Reference source not found.**, or portion thereof. If, in exceptional circumstances an encumbrance of development must be proposed, the Owner must submit plans indicating the extent of the encumbrance, the maintenance implications and a justification letter to the Manager of Landscape Architectural Services and obtain a letter of approval from the Manager of Landscape Architectural Services to proceed with the approved plans. If approved, the Owner agrees that the encumbrance will not form part of the Planning Act parkland dedication requirements; and,



- Above Base Park Works**
- 1.07 Where the Owner agrees to design and construct the Above Base Park Works in addition to the Base Park Works, the Owner is required, and hereby agrees, to follow the process outlined in the Park and Open Space Development Guide, submit a Letter of Intent, sign a Project Charter and enter into a Parkland Development Financing Agreement (PDFA), in a form acceptable to the Manager of Landscape Architectural Service. The programming, design plans, specifications, final budget for design, tendering procedure and construction review and inspection shall be subject to approval by the City, all to the satisfaction of the Manager of Landscape Architectural Services.
- Expenses to be Paid by the Owner**
- 1.08 Every provision of this Agreement that the Owner is obligated to perform or carry out in any way shall be deemed to include the words "at the expense of the Owner" unless such provision expressly provides to the contrary.
- Where the Owner is required to carry out construction of municipal capital projects on behalf of the City to service the lands of the Draft Plan under the terms of this Agreement, the City's contribution toward the cost of capital projects shall be the lesser of either the estimated cost as identified in the capital project listing of the City's Development Charges Background Study or the actual cost of the project.
- Engineering Services**
- 1.09 a) The Owner shall engage the services of a qualified Professional Engineer registered under The Professional Engineers Act of Ontario (Engineering Consultant), to perform all required engineering services related to the Owner's development of the Land, subject to the approval thereof by the Director of Growth Management.
- b) The Engineering Consultant is authorized to act as the Owner's representative to the City with respect to the submission of all engineering services and matters subject to the review and/or approval of the City, and is authorized to receive, on behalf of the Owner, all directions, approvals and requirements of the City. Further, the Owner acknowledges and confirms that its Engineering Consultant is aware of, and will conform to, the City's engineering standards and guidelines regarding design and construction of the Works.
- c) i) The Owner shall provide to the City the full name, address, telephone & fax numbers and e-mail address of the Engineering Consultant, which shall provide the engineering services required of the Owner by the City.
- ii) For the purpose of this Agreement, any notices, directions or approvals from the City in respect of any matters arising from the approval of the said Application, may be given by the City to the Owner or to the Owner's Engineering Consultant. The Owner shall inform the City by Notice in writing of any change of Engineering Consultant made by the Owner, together with the full name, address & telephone number of the replacement Engineering Consultant subject to approval by the Director of Growth Management.
- d) The Owner agrees that, before any of the Works are commenced or any contracts for such Works are entered into, required engineering services may, in accordance with the standards and policies of the City, include, (but not be limited to), the following:
- i) preliminary investigation,
- ii) layout drawings,

- iii) estimate of costs,
  - iv) contract drawings and specifications,
  - v) calling of tenders,
  - vi) analysis of bids including recommendation to the Owner,
  - vii) application to the Ministry of Environment, Conservation and Parks for approval of sewers and watermains,
  - viii) application for other permits required to construct the Works required by this Agreement.
- e) The Engineering Consultant's services shall also include, but not be limited to, the following:
- i) setting out the work,
  - ii) full time construction inspection and quality assurance all in accordance with the approved plans and specifications of the Works, to the satisfaction for the City,
  - iii) preparation of progress certificates.

***Contract/  
Prime  
Contractor  
Approval***

- 1.1 O a) Where servicing contracts between the Owner and a Prime Contractor for Works within, or related to, the Land include works which the City is required to contribute to the cost, based on the actual cost of the constructed service, then all servicing contracts shall be with a Prime Contractor who has been bonded and subject to approval of the Director of Growth Management.
- b) Every contract between the Owner and a Prime Contractor hired by the Owner to carry out Work to service the land of the Draft Plan in accordance with this Agreement shall:
- i) be entered into with a Prime Contractor acceptable to the Director of Growth Management; and,
  - ii) contain a provision binding the Prime Contractor to file performance, material and labour bonds satisfactory to the Director of Growth Management; and,
  - iii) provide that the work of the Prime Contractor shall at all times be subject to inspection and testing by the City and be performed in accordance with the terms of this Agreement; and,
  - iv) provide that the Prime Contractor shall co-operate with the City's inspectors and engineers at all times, submit materials used for any tests required and comply with any directions given by the inspectors and engineers, to ensure compliance with the approved engineering design drawings and specifications; and,
  - v) provide that the Prime Contractor shall supply a work calendar for approval of the Director of Growth Management, which work calendar shall provide for the work to be carried forward expeditiously and which work calendar shall be adhered to so far as it is reasonably possible; and,
  - vi) include an acknowledgement by the Prime Contractor that the Prime Contractor looks only to the Owner and not the City for payment for the Works pursuant to this Agreement.

- |   |      |   |
|---|------|---|
| <b>Storm &amp;<br/>Sanitary<br/>Sewers and<br/>Watermains</b> | 1.11 | <p>a) The Owner shall carry out all subdivision storm and sanitary drainage and watermain Works to the satisfaction of the City and in accordance with the approved construction drawings and specifications and all other relevant provisions of this Agreement and in accordance with the Ministry of the Environment, Conservation and Parks' approval.</p> <p>b) The City agrees that, at the request of the Owner, it will join with the Owner to make the necessary applications to the Ministry of the Environment, Conservation and Parks' for approval of the plans for sewers, private drains, watermains, water service connections and all other applications required by any authority for other City services and improvements.</p>   |
| <b>Service<br/>Connection<br/>Restrictions</b>                | 1.12 | <p>All service connections to be installed as a result of the development of the Land shall be subject to the City's standards and no connection shall be made to lands not directly abutting a street containing such service without the express written consent of the City.</p>   |
| <b>Roadways</b>   | 1.13 | <p>a) The Owner shall construct, install and complete the roadways, including all temporary or permanent barricades &amp; sign and guide rails, where required, on all streets within the Draft Plan in accordance with:</p> <ul style="list-style-type: none"> <li>i) the recommendations of a soils report prepared by a qualified engineer and approved by the City; and,</li> <li>ii) the drawings and specifications thereof approved by and satisfactory to the City; and,</li> <li>iii) the time tables contained in this Agreement; and,</li> <li>iv) the Draft Plan of subdivision.</li> </ul> <p>b) The roadway Works described in the above paragraph shall be installed and tested by the Owner's Geotechnical Engineer at the Owner's expense, all to the satisfaction of the City.</p> <p>c) No temporary barricade &amp; sign or guide rail may be removed, or its position changed without the written consent of the City.</p> |
| <b>Temporary<br/>Access Roads<br/>/ Turning<br/>Circles</b>   | 1.14 | <p>The Owner agrees:</p> <ul style="list-style-type: none"> <li>a) to construct, at its own cost, any and all temporary access or emergency access roads or turning circles in locations approved by the Director of Growth Management; and,</li> <li>b) to transfer sufficient land to the City as public highway by the Owner's Certificate on the final plan of subdivision, upon which such temporary roads or turning circles will be located to the satisfaction of the Director of Growth Management. The City agrees to stop-up, close and transfer such lands back to the Owner when the land is no longer required by the City for the temporary road and/or turning circle; and,</li> <li>c) to convey sufficient 0.30 metre reserves to the City, by deed, adjacent to the lands abutting the temporary road in locations to be approved by the Director of Growth Management; and,</li> </ul>                                      |

- d) that temporary access or emergency access roads or turning circles shall remain in place until a second permanent access is available. No building permits shall be accepted for lots or blocks affected or encumbered by temporary or emergency access roads or turning circles until such roads are no longer required as determined by the Director of Growth Management and are removed to the satisfaction of the Director of Growth Management.
- e) to install a sign at the point(s) where the temporary road or turning circle meets the City's permanent road allowance, notifying the public that the road is temporary and will be either removed or extended, as the case may be, in the future when development of adjacent lands proceeds. Such sign shall be installed to the satisfaction of the Director of Growth Management.

***Placement of  
Final Layer of  
Asphalt***

- 1.15 a) Prior to placement of the final layer of asphalt pavement on any roadway within a Phase of construction, the Owner shall:
  - i) wait until at least one year has passed after placement of the base asphalt; and,
  - ii) wait until at least 80% of the dwellings within a Phase of Construction are completed; and,
  - iii) remove any base asphalt or granular base course that, in the opinion of the Director of Growth Management Division, has deteriorated; and,
  - iv) repair or replace such deteriorated base asphalt and/or granular base course to the satisfaction of the Director of Growth Management Division; and,
  - v) give the City five (5) clear business days prior notice, in writing, of its intention to place final layer of asphalt pavement.
- b) Construction of the final layer of asphalt pavement shall be undertaken and completed by the Owner in accordance with the criteria in this section, unless otherwise directed by the City. No final layer of asphalt pavement shall be laid in any year before the first day of May or later than the first day of November, unless otherwise directed by the Director of Growth Management.

***Staging/  
Phasing***

- 1.16 The Owner agrees that
  - a) registration of a Stage of the Draft Plan and phasing of services within a registered Stage shall be established to the satisfaction of the Director of Planning and the Director of Growth Management; and,
  - b) any and all temporary facilities required as a consequence of staged registration and/or phased servicing such as roads, emergency access and/or turning circles shall be included on the Owner's engineering design drawings to the satisfaction of the Director of Growth Management.

***Orderly  
Servicing***

- 1.17 The Owner shall proceed diligently with construction and installation of the Works in accordance with good engineering practice. The Owner covenants and agrees that the Director of Growth Management Division may specify which portion of the Land and in what order the Works are to be installed and may require that the Owner take steps, which in the opinion of the Director of Growth Management, are necessary to protect Works previously installed under this Agreement.

- Relocation of Services** 1.18 Where the abandonment, relocation and/or reconstruction of any existing storm sewers, sanitary sewers, sewer private drains, watermains, private water services, roadways, sidewalks and/or utility installations is necessary by reason of development of the Land, the Owner shall carry out and pay the cost of such abandonment, relocation and/or reconstruction in accordance with the engineering drawings and cost estimate schedules approved by the Director of Growth Management.
- Works Outside the Land** 1.19 a) Where the Land adjoins an existing road or, where municipal services must be brought from some distance to the Land or be taken some distance to a suitable outfall, the Works herein may include Works to be done outside of the Land, and in this event, such Works shall be identified as Works to be carried out by the Owner in accordance with the same requirements and be subject to the same obligations in favour of the City as provided for in this Agreement for the other Works to be carried out within the Land.
- b) Where work is performed by the Owner, pursuant to this Agreement, on existing roads outside the Land, such roads shall be reinstated by the Owner to the satisfaction of the City. The Owner is required to obtain all necessary road cut permits from the appropriate road authority. Access shall be maintained at all times to properties abutting such roads and the traveling public shall be protected. All Works and services shall be carried out to the satisfaction of the Director of Growth Management.
- c) The Works required to be carried out by the Owner outside the Land, shall be completed according to the engineering design drawings, construction specifications and cost estimate schedules approved by the Director of Growth Management Division.
- Servicing in Public Interest** 1.20 Where the Owner has not completed servicing of the Draft Plan lands and where the Director of Growth Management considers completion of such servicing to be in the public interest to secure orderly development within the City, the City may in its sole discretion, proceed with engineering design and construction of any and all services necessary within the lands of the Draft Plan at the Owner's expense. The Owner covenants and agrees to:
- a) incur all costs associated with such engineering design and construction upon receipt of a notice from the City of its decision to complete servicing. This provision shall not extend to servicing of adjacent privately held lands under usual circumstances; and,
- b) grant any additional easements or land required for roadway to the City that may be required by the City,
- Additional Work** 1.21 The Owner shall be responsible for and perform any and all additional work found to be necessary due to site conditions. Where additional drawings or specifications are necessary, the Owner's Engineering Consultant shall prepare same and the Owner and its Prime Contractor will conform thereto.
- Utility Installations** 1.22 For all utilities, including but not limited to, hydro (which includes street lighting), telecommunication cables, gas mains and television co-axial cables (hereinafter referred to as "Utilities" or "Utility") permitted at law or, where the City's approval is required, the Owner shall:
- a) provide and install all required Utilities underground and appurtenances in locations, and according to specifications, approved by the City and the relevant utility authority; and,

- b) install all Utility service connections underground from the Utility distribution system to lots and blocks within the Draft Plan and appurtenances at locations approved by the City and the relevant utility authority; and,
- c) transfer any easement(s) required by a Utility authority, for the installation of any appurtenances of a utility distribution system, on, across, or under the land of the Draft Plan without charge and with clear title thereto, prior to registration of any transfer of a lot or block within a registered Stage of the Draft Plan, for any utility locations not within the street(s) and not within land(s) dedicated by Plan, or conveyed by separate Transfer Deed, to the City.

**Signs**

- 1.23 a) All signs required to be erected by the Owner under this Agreement are subject to the approval of the City. The design of each sign shall be satisfactory to the City and shall comply with, where applicable, the City's Sign By-laws or site plan agreement(s). Upon the expiration of the maintenance period for each sign, (the time period between erection and removal of the sign) the Owner shall remove it. The erection, alteration, maintenance and removal of each sign shall be carried out by the Owner.
- b) In the event that any uses of Land shown on any such sign are changed, or in the event that any Land is re-subdivided, the Owner shall make appropriate changes on the signs to reflect the new information within one month after approval is granted to the changed uses or re-subdivision of Land.

**Noise Study** 1.24 Where it is a requirement for the Owner to undertake a noise study for submission to, and approval by the City, and where an approved noise study requires mitigation measures that will affect the grading of the Land, the Owner shall include the specific measures to be implemented on the Final Grading Plan.

**Final Grading Plan**

- 1.25 a) The Owner shall make the approved Final Grading Plan available to all prospective purchasers, including builders.
- b) Notice is hereby given that the City may subsequently approve amendments, revisions and adjustments to the approved Final Grading Plan, such that the reader is advised to examine the plans on file with the City to determine current approved grades.

**Final Grading** 1.26 a) The owner of any lot or block within the Land shall carry out and complete final grading, which includes provision of topsoil and sod, in accordance with the Plot Plan approved by the City, within six (6) months after the insulation inspection date. For the period between November 30 and April 1, the grading shall be completed by June 15 of the same year following April 1 for each lot or block located within the Land, to the satisfaction of the City and, after at least one (1) winter has passed, shall submit to the Director of Building Division, or designate, a Certificate stamped by a qualified professional including an as-built plot plan, as specified by the City's lot grading policy, stating that the "as built" grading of the lot or block within the Land conforms to the approved Plot Plan.

b) The Owner covenants and agrees to carry out grading, including application of topsoil and seed for those blocks on the Draft Plan which are intended to be merged and developed with abutting lands of others.

c) All buildings erected on the lots or blocks within the Land are to conform to the grades shown on the Final Grading Plan.



- d) In the event that the final grading of a lot or block is not completed in accordance with this Agreement, the City may:
  - i) enter upon the lot or block and carry out the work necessary to complete the final grading; and,
  - ii) draw upon the security to pay the City's cost to complete the final grading.
- e) The owner of any lot or block within the Land covenants and agrees not to construct an accessory building, an addition or structural alteration to an existing building or a pool, or pool enclosure, until the City has accepted a Grading Certificate certifying that final grading has been completed in accordance with the approved Plot Plan on such lot or block.
- f) The Owner agrees to remain primarily liable for full compliance with all provisions of this Agreement dealing with final grading. The City agrees that when construction of a dwelling unit on any lot or block within a registered Stage of the Draft Plan is completed, the grading of the land is brought into compliance with the Plot Plan reviewed for compliance by the Director of Building Division and a lot grading certificate is accepted by the City for such lot or block, the City shall release the Owner's obligation under this Agreement with respect to grading. Such release by the City shall in no way relieve an owner of any lot or block within a registered Stage of the Draft Plan of their obligation and liability to maintain the grading of the lot or block as approved by the City.

**Building  
Levels**

- 1.27 a) The Owner agrees that the basement floor elevations of all buildings hereafter erected on any lots or blocks within the lands of the Draft Plan shall not be set below the lowest allowable floor elevation as prescribed on the Final Grading Plan approved by the City.
- b) Prior to proceeding with construction of any dwelling unit beyond and above the foundation wall footings, the owner of a lot or block, within a registered stage of the Draft Plan, shall make available to the City's Director of Building Division a certificate prepared by a qualified professional, as specified by the City's lot grading policy, confirming that the elevation of the top of the footings conforms with the top of the footing elevation(s) as shown on the Plot Plan approved by the City. Further, the owner of a lot or block, within a registered stage of the Draft Plan agrees that no further construction of a dwelling unit, beyond the foundation wall footings, will proceed until such a certificate has been accepted by the City's Director of Building Division.

**Occupancy of  
Buildings**

- 1.28 The Owner agrees that no building on any lot or block within the Land shall be occupied by any person, unless and until:
- a) the City has received from the Owner a registered Ontario Land Surveyor's Plan showing the location of the constructed building on the lot or block and the City has determined that the location of such building complies with the requirements of the City's Building, Zoning and Health By-law; and,
  - b) the building has passed a final inspection for occupancy to the satisfaction of the City's Chief Building Official, or designate, pursuant to the conditions for occupancy in the Building Code Act and Regulations hereunder.

**Sodding**

- 1.29 a) The Owner shall:
- i) upon installation of sidewalk or, where no sidewalk exists, upon acceptance of lot grading certificates by the City for lots abutting the City's road allowance, provide topsoil and lay sod of a quality acceptable to the City on the untraveled portion of the roadway shown within the subdivision plan approved for registration; within such other approved plans or as may otherwise be required by this Agreement; and,
  - ii) maintain the sod on the untraveled portion of the roadway until assumption of the Works.
- b) The owner of any lot or block within the Land shall:
- i) provide topsoil and lay sod of a quality acceptable to the City, in accordance with the time limits specified for completion of Final Grading in this Agreement, on the front, side and rear yards of each lot or block from the building face thereto produced to the boundaries of such land, except for the area designated as a driveway; and,
  - ii) maintain the sod on each lot or block until possession of the property by a third party.

**Control of Weeds**

- 1.30 The Owner agrees to control weeds on all of the Land to the satisfaction of the City.

**Prohibition Against Debris on Lands**

- 1.31 a) The Owner agrees:
- i) to not use land dedicated, transferred or vested in the City for the depositing of waste, debris, tree debris such as stumps, wood, branches, topsoil, fill material or refuse obtained from the development of the Land, except with the prior approval in writing of the City and subject to such terms as may be required by the City; and,
  - ii) that no obstructions will be placed on or allowed to remain on any City right-of-ways, easements or streets; and,
  - iii) not to damage any adjacent City property; and,
  - iv) to ensure that every lot or block within the Land and all unoccupied buildings thereon do not become unsightly by the accumulation of garbage, debris or builder's waste; and,
  - v) to restrain, by all reasonable means, all other persons from depositing waste, debris, topsoil, fill material or refuse on the Land; and,
  - vi) to remove any such wastes, debris, tree debris such as stumps, wood branches, topsoil, fill material or refuse so deposited forthwith upon being so directed by the City.
- b) Burning of garbage and debris by the Owner or any builder within the Land may be permitted only upon the written approval of the City's Fire Chief.
- c) The Owner shall not dispose or stockpile any waste or surplus fill material on the Land except in a manner and in a location approved by the City.
- d) The City may, if the Owner has not cleaned up any lot or block or municipal land upon forty-eight (48) hour notice from the City, enter on and clean up such land, charging the cost thereof against the security.

**Parkland  
Occupation**

- 1.32 The storing of equipment or stockpiling of any soils, materials, waste or debris as an interim construction staging area on park block(s) is prohibited, unless an agreement prepared by the Manager of Landscape Architectural Services has been obtained and signed by the Owner and Manager of Landscape Architectural Services, which shall address items including but not limited to testing and monitoring of soil conditions, remediation of contaminated soils, geotechnical or other reports, and records of site condition.

To obtain an agreement the Owner must submit a report and plans that detail the extent of area that will be used for stockpiling, indicate the type, source and quality of material that will be stockpiled and indicate how the process will be documented, the duration of stockpiling, extent of tree protection fencing, a restoration plan, a remediation cost estimate for the work including consulting fees and testing schedule and submit securities for the cost in the form of an irrevocable standby letter, cash or surety bond of credit.

**Deficiencies in  
Work**

- 1.33 a) Where the City determines that the Owner is not proceeding with due diligence to carry out the Works or any of them:
- i) in accordance with any timetable specified under this Agreement; or,
  - ii) in a proper workmanlike and expeditious manner in accordance with the engineering drawings approved by the Director of Growth Management Division; or,
  - iii) in accordance with other provisions of this Agreement or applicable City or other standards; then,
- the City may cause a Notice in writing to be sent by Registered Mail or delivered personally to the Owner at its last known place of business specifying such default and requiring that the default be remedied forthwith.
- b) In the event that no action is taken by the Owner satisfactory to the City to remedy such default within seven (7) clear business days after the service or mailing of such Notice (or within such greater period as may otherwise expressly be permitted in the said Notice or in this Agreement) or in the event of emergency, in addition to any other remedies hereunder, the City has and is hereby given the right of entry by the Owner to the Land and may do and perform any and all actions, matters and things that may be required to remedy the default(s) as aforesaid, and in pursuance thereof, may hire labour and equipment and purchase such materials as the City considers necessary. All expenses incurred by the City, pursuant to this subsection, shall be paid by the Owner to the City within seven (7) days from the date of an account therefore being rendered to the Owner by the City.
- c) Where, in the opinion of the City, any damage to any property has been caused directly or indirectly, or by reason of any default of the Owner under the provisions of this Agreement, the City has and is hereby given the right by the Owner to remedy such default at the expense of the Owner. The Owner shall pay such expense to the City within seven (7) days from the date of an account therefore being rendered to the Owner by the City.
- d) The expense of all remedial work done by the City pursuant to this section shall:
- i) be calculated by the City whose decision on such expense is final; and,

- ii) include a management fee and a liquidated damages payment equal to fifty percent (50%) of the cost of labour, materials and equipment to perform such work, payable to the City as a consequence of such default; and,
- iii) include such further sums as may be reasonably determined by the Director of Growth Management Division.
- e) No work, act, matter or thing done by the City, its officers, employees or contractors as an agent of the Owner, pursuant to the provisions of this section or any other sections of this Agreement shall:
  - i) give rise to any action, claim, counterclaim or demand by the Owner and/or Mortgagee or their respective executors, administrators, successors trustees or assigns for damages, costs or compensation of any kind, except where such action, claim, counterclaim or damage arises from the gross negligence of the City or those for whom it is responsible; and,
  - ii) constitute an acceptance of any municipal service or improvement by the City.

**State of Site** 1.34 The Owner agrees that if construction of Works within the Land ceases for a minimum period of forty-five (45) days, the Owner shall take all necessary steps to place the Land in a condition so as to prevent erosion of the Land. In the event such remediation is not undertaken by the Owner, the City has and is hereby given the right of entry by the Owner to the Land and may do and perform any and all actions, matters and things that may be required to remedy the default(s) as aforesaid, and in pursuance thereof, may hire labour and equipment and purchase such materials as the City considers necessary. All expenses incurred by the City, pursuant to this subsection, shall be drawn from the Owner's security required under this Agreement.

**Stop Work** 1.35 The Director of Growth Management Division may cause work to be stopped, when in their opinion the Owner is in default under this Agreement or the Prime Contractor is in default under its agreement with the Owner subject to a period of notice that is reasonable considering the circumstances giving rise to the default. When work has been stopped it shall not be resumed until conditions are satisfactory or safe or any necessary remedial work has been done, as the circumstances require.

**Maintenance of Works** 1.36 a) The Owner shall maintain to the satisfaction of the City during the period between the first occupancy of any permanent building within the Land and the placement of the final layer of asphalt pavement on the roadways of the Land:

- i) the asphalt base for such roadways in a well-graded and dust and muck free condition, fit for normal traffic at all times; and,
- ii) all curbs and gutters.

b) The Owner shall maintain, against any defective materials, latent defects or poor workmanship, at its own expense and to the satisfaction of the City:

- i) all sewer and watermain works and appurtenances installed by it under the provisions of this Agreement from the time of installation and continuing for a period of two (2) years after acceptance of sewer and watermain works by the City; and,

- ii) all base course and final layer of asphalt, curb and sidewalks installed by it under the provisions of this Agreement from the time of installation and continuing for a period of one (1) year after acceptance of final layer asphalt by the City.
- c) The City agrees that acceptance of the Works as complete and commencement of the maintenance periods described in this Agreement shall take place upon fulfillment of the following conditions by the Owner:
  - i) the Owner has registered a plan of subdivision in the Registry Office for the Land Titles Division of Wentworth for a Stage of the Draft Plan which relates to a Phase of Works to be accepted; and,
  - ii) the Works, which the Owner is required to construct pursuant to this Agreement, are substantially complete, in the opinion of the Director of Growth Management Division; and,
  - iii) the Works, which the Owner is required to construct pursuant to this Agreement, have been inspected to the satisfaction of the Director of Growth Management Division; and,
  - iv) the City has not identified any major deficiencies in the Works constructed pursuant to this Agreement.
- d) The required security to be deposited by the Owner in accordance with this Agreement shall include an amount to secure this maintenance obligation and shall be no less than ten percent (10%) of the estimated cost of Works or \$ 10,000, whichever amount is greater.
- e) Notwithstanding the obligation of the Owner to maintain the said Works for the periods of time herein prescribed, title to the Works together with all materials, pipes, pumps, machinery and other equipment connections and things appurtenant thereto, shall vest in the City immediately upon their installation and the Owner shall execute and deliver to the City when requested by the City, such other assurance(s) of title as the City may require.
- f) Where the Owner is required to construct a storm water management facility(s) as a result of development of the Draft Plan lands the Owner shall:
  - i) operate and maintain, in an acceptable manner, the storm water management facility(s) throughout the construction of all stages of registration of the Draft Plan or until a time as established by the Director of Growth Management Division and monitor such operation and effects thereof; and,
  - ii) submit an operation and maintenance manual at the time of assumption of the storm water management facility(s) by the City.
- g) Where the Owner is required to construct a park block to Base Park Works, the Owner shall:

- i) upon completion of work for the park block submit to the satisfaction of the Manager of Landscape Architectural Services as-built drawings indicating spot elevations, contour lines, features on-site such as fences and location and size of underground services, a closed circuit television inspection (CCTV) report, a Certificate of Seed Analysis for the seed mix, a Certificate of Compliance for placed **fill** material, testing for imported fill and imported topsoil, if used and the Ministry of the Environment, Conservation and Parks' Letter of Acknowledgement of Filing of the RSC, if required; and
- ii) notify the Manager of Landscape Architectural Services to complete an initial inspection of the completed Base Park Works. Should this inspection identify any deficiencies, then the City shall inform the Owner, who shall correct such deficiencies within 15 days, or such other time as determined by the Manager of Landscape Architectural Services; and
- iii) agree that acceptance of the Base Park Works as complete and the commencement of the maintenance period shall take place only after the Manager of Landscape Architectural Services has accepted the correction of deficiencies described in subsection 1.36(g)(ii) above and issued a written notice of the commencement of the maintenance period; and
- iv) agree that the 100% Security for Performance shall be released to the Owner provided that the Base Park Works have been accepted as complete by the Manager of Landscape Architectural Services; and,
- v) maintain, against any defective materials, latent defects or poor workmanship, at its own expense and to the satisfaction of the Manager of Landscape Architectural Services, all Base Park Works installed by it under the provisions of this Agreement for a period of (2) years from the commencement of the maintenance period; and,
- vi) agree that upon the expiry of the maintenance period, the 10% Security for Warranty Performance shall be released to the Owner provided that all deficiencies have been rectified to the satisfaction of the Manager of Landscape Architectural Services; and,
- vii) agree that where the Owner has failed to rectify the deficiencies identified by the Manager of Landscape Architectural Services during the two (2) year maintenance period and after receiving written notice by the City, the City may apply and use the security to carry out the Base Park Works.

***Inspection,  
Testing and  
Emergency  
Repairs***

- 1.37 Employees, contractors or agents of the City may, at any time and from time to time prior to assumption of the Works and Base Park works by the City, enter upon the Land without notice to the Owner to:
- i) inspect any of the Works or Base Park Works. Such inspection by the City shall in no way relieve or replace the City's requirement for the Owner's Engineering Consultant to provide full time inspection of the Works under this Agreement; and,
  - ii) conduct any tests that in the opinion of the Director of Growth Management Division are necessary to confirm or verify quality of materials and construction; and,

- iii) make emergency repairs in the event the Works or Base Park Works do not function or do not function properly, or in the opinion of the Director of Growth Management Division, require necessary immediate repairs to prevent damage or hardship to any persons or to any property. Such undertaking of repairs by the City shall in no way be deemed as acceptance or assumption of the Works by the City.

The Owner hereby expressly consents to such entry by the City's employees, contractors or agents. The cost of all such emergency repairs and testing as determined by the City shall be paid forthwith by the Owner upon receipt of a written demand by the City. In the event the Owner fails to make payment within thirty (30) days of receipt of such written demand, the City may recover its cost from the Owner's security.

***Snow Removal and Use of Works by City or Authorized Persons***

- 1.38 a) The Owner agrees:
  - i) that pending completion of the said Works and/or acceptance thereof by the City, the Works, or any of them, may be used by the City or by any persons authorized by the City for the purposes for which such Works are designed; and,
  - ii) that the City and any and all persons authorized by the City may enter upon all streets within the Plan with all necessary machinery and equipment and plow or remove snow or perform any other work which may be deemed necessary or expedient to make such streets safe and more convenient for the use of persons or vehicles; and,
  - iii) to consent to such entry by the City personnel and authorized persons for the purposes set out herein.
- b) Notwithstanding the provisions of the above section:
  - i) the use of the Works or any of them or such snow plowing or removal of snow or the performance of other work shall not constitute an acceptance of the Works or any of them by the City; and,
  - ii) the use of the Works or the snow plowing or removal of snow or the performance of such other work as the City considers necessary does not relieve or discharge the Owner of its obligations in respect of the construction and maintenance of the said Works or any of them, or of any other obligation of the Owner pursuant to the provisions of this Agreement.

***Assumption of Works by the City***

- 1.39 a) Before the Works intended to belong to the City are assumed by the City, the Owner shall:
  - i) have complied with all of the terms and conditions of this Agreement in respect of the Works; and,
  - ii) have corrected all deficiencies in the Works identified under the maintenance periods described in this Agreement, to the satisfaction of the Director of Growth Management Division; and,
  - iii) have provided to the City a duly sworn statutory declaration of the Owner that it has paid all accounts in connection with the supply, installation of and maintenance of the Works and, that there are no outstanding debts, claims for lien and that any and all preserved and perfected claims for lien have been discharged in respect of the installation, or maintenance, of the Works; and,

- iv) have provided to the City a Certificate of Substantial Completion signed by its Engineering Consultant prepared and advertised as prescribed by the Construction Act and any regulation thereto; and,
  - v) have provided to the City a Certificate by an Ontario Land Surveyor stating that he has made visible all standard iron bars on all corners and at all points where there occurs a horizontal change of direction in every street, easement and/or other lands dedicated to the City and along the outside perimeter of the land; and,
  - vi) have provided to the City such additional assurances (such as a solicitor's opinion) as may be required by the City.
  - vii) upon the commencement of construction of any dwelling within the Land, keep the street adjacent to which the dwelling is situate, and all streets affording access to that street, clear of earth, debris and building materials in accordance with the requirements under Section 3.06 of this Agreement. Where earth, debris and building materials are allowed by the Owner to accumulate on any of the aforementioned streets, either inside or adjacent to the land, the Owner shall forthwith clean the said streets and remove the debris and materials.
  - viii) remove any and all stockpiled material within the phase of servicing and/or stage of plan registration as required by the City.
  - ix)
    - 1) incorporate any job changes on the plans for the Phase of construction to which the Works pertain; and
    - 2) within six (6) months following acceptance of the sewer and watermain works and prior to assumption of these works, deliver one (1) complete set of such revised "as constructed" drawings in mylar form, certified by the Owner's Engineering Consultant, as well as in a digitized electronic format acceptable to the City,
  - b) Where the Owner has fulfilled the requirements for assumption of the Works by the City, the Engineering Consultant shall submit his Certificate confirming that all of the Works have been installed and maintained as required by the City. The Director of Growth Management Division shall acknowledge in writing that the Works have been assumed by the City. The Date of Assumption shall be the date of the writing, unless otherwise specified therein.
- Liability of Owner and Indemnification of the City**      1.40      a) The City shall not be responsible for or liable for:
- i) any loss or damage that may happen to the Works or Base Park Works, or to any part or parts thereof installed by the Owner pursuant to this Agreement and not yet assumed by the City; or
  - ii) any of the materials or other things used and employed in finishing and completing the Works or Base Park Works by the Owner or any part or parts thereof where such materials or other things have not been specified or specifically approved by the City; or,
  - iii) any injury to any person or persons, including workers and the public, during the construction of the said Works or Base Park Works or the maintenance thereof by the Owner pursuant to the provisions of this Agreement; or,



- iv) damage caused by the storage, handling or use of explosives by the Owner or its employees, agents or contractors; or,
  - v) the unapproved disposal of surface water from the Land; or,
  - vi) damage by the Owner to the property of any person while the Owner is carrying out any of its Works or Base Park Works in respect of the development; or,
  - vii) damage caused by the construction or operation of the Works or Base Park Works under this Agreement prior to assumption thereof by the City; or,
  - viii) any loss or damage caused by the disposal or escape of surface water from the Land prior to assumption of the streets by the City.
- b) The Owner covenants and agrees, at the Owner's expense, to defend, indemnify and forever save harmless the City, its employees, personnel, servants, contractors and agents from and against all actions, causes of action, interest, claims, demands, costs, (including legal costs) charges, damages, including any damages for which the City may be held liable on account of a violation or alleged violation of a construction industry collective agreement, expenses, prosecutions, fines, rights of contribution, and loss which the City may, at any time, bear, incur, be liable for, sustain or be put to for any reason, on account of or by reason of or in consequence of, arising directly or indirectly from:
- i) the City entering into this Agreement; and,
  - ii) the implementation of the provisions of this Agreement by the Owner, the Engineering Consultant, or the Owner's employees, agents, assignees or contractors; and,
  - iii) the services provided by the Engineering Consultant as required in this Agreement; and,
  - iv) any failure by the Owner to fulfill its obligations under this Agreement.
- c) Notwithstanding any provision of this Agreement, the City shall not be liable for, and no provision of this Agreement shall be construed as imposing upon the City any liability arising directly or indirectly out of the provisions of this Agreement for any loss, damage or damages suffered by the Owner, the Engineering Consultant or any employee, servant or agent of the Owner, or to any property of the Owner or any other person by reason of:
- i) any inspection carried out by the City or by a duly authorized employee, servant, contractor or agent of the City under any By-law of the City, under this Agreement or otherwise; or,
  - ii) the failure of the City or of any duly authorized employee, contractor or agent of the City to carry out any inspection under any By-law of the City, this Agreement or otherwise; or,
  - iii) the approval or failure to approve of any matter or thing, including but not limited to the approval of any drawings or other matters submitted by the Engineering Consultant, arising directly or indirectly out of the provisions of this Agreement, by the City or any duly authorized employee, servant, contractor or agent of the City.

- d) The City, in connection with this Agreement and engineering approvals, has reviewed and relies on the engineering submission by the Owner and his Engineering Consultant, including but not limited to the engineering drawings submitted therewith. The City makes no guarantees, warranties or representations as to the completeness and/or accuracy of the engineering submission, and specifically does not certify the content, completeness or accuracy of any aspect or component of the engineering submission. The Engineering Consultant who stamped, signed and dated the submission and the Owner are responsible for all aspects of its quality, content completeness and accuracy. Any engineering submission submitted by the Owner and their Engineering Consultant shall acknowledge the foregoing responsibilities of the Engineering Consultant bearing their stamp.

**Insurance**

- 1.41 a) In accordance with the indemnification and save harmless covenants in favour of the City from the Owner in this Agreement, and prior to construction of any Works or Base Park Works required to service the Land, the Owner shall:

- i) obtain at its own expense, including the cost of deductibles, its own policies of Insurance as specified below in this Agreement, in a form and with limits and deductibles acceptable to the Director of Growth Management Division, and maintain such policies in force until assumption of the Works or Base Park Works by the City (including the maintenance period); and,
- ii) obtain from the Contractor(s) hired by the Owner to carry out the Works or Base Park Works or any portions of them under this Agreement, the said specified policies of Insurance, in a form and with limits and deductibles acceptable to the Director of Growth Management Division and shall maintain such policies in force until acceptance of the Works or Base Park Works by the City.

- b) The said policies of insurance required under this Agreement shall include the following:

- i) Commercial General Liability Insurance, providing coverage in an amount of not less than Two Million Dollars(\$ 2,000,000) per occurrence; including but not limited to, blanket contractual liability, products liability, completed operations liability, owners/contractor's protective liability, non-owned automobile liability.

Where the works to be carried out include any one of the following activities, the policy shall not contain any exclusions or limitations with respect to such activity:

shoring, storage, handling and use of explosives; underpinning; raising or demolition of any building or structure; pile driving; caisson work; collapse of any structure or subsidence of any property or structure from any cause.

The Owner's policy shall:

- 1) insure the Owner and shall include all contractors, agents, sub-trades and subcontractors employed or used by the Owner while engaged in any activities under this Agreement; and,
- 2) name the City as an additional insured; and,

- 3) contain cross-liability and severability of interest provisions.

The Contractors' policy shall:

- 1) insure the Contractor, and shall include all agents, sub-trades and subcontractors employed or used by the Contractor while engaged in any activities under this Agreement; and,
  - 2) shall name the Owner and the City as additional insured; and,
  - 3) contain cross-liability and severability of interest provisions.
- ii) Automobile Liability Insurance, being a standard owners form automobile insurance policy, including third party liability coverage in an amount of not less than Two Million Dollars(\$ 2,000,000) per occurrence; to cover all licensed vehicles owned and/or leased, as may be used in conjunction with this Agreement.
  - iii) Any other form of insurance coverage(s) in such amounts and deductible levels, or increased limits of the aforementioned coverage(s), as the City may require, taking into consideration the Works to be done and industry standards.
- c) Evidence, Acceptability, Cancellation, Termination/Non-Renewal
    - i) Prior to execution of this Agreement by the City and prior to construction of the Works or Base Park Works by the Contractor, the Owner shall deposit with the City original Certificates of Insurance, or if required by the City, certified copies of each of the above noted insurance policies and, thereafter during the term of this Agreement, shall provide Certificates of all policy renewals at least 15 days prior to the expiry date of such insurance.
    - ii) All insurance policies shall be in terms, form and amount acceptable to the City and with Insurers licensed to carry on business in Ontario.
    - iii) Insurance policies shall contain a provision that in the event of cancellation/termination/non-renewal, insurers shall provide prior written notice to the City of not less than 30 days for Commercial General Liability Insurance and 15 days for Automobile Liability insurance.
  - d) In the event the required insurance is not received or not maintained in force by the Owner, the City may, but is not obliged to, pay premiums for such insurance or substitute insurance. In such event, the Owner shall reimburse the City forthwith for all premiums so paid by the City. In the event of the failure of the Owner to so reimburse the City, within ten (10) days of the Notice of payment by the City, the City may, without further Notice, realize upon the security or may recover same as a debt in a court of competent jurisdiction.
- Security for Performance**
- 1.42 a) The security deposit(s) required by this Agreement shall be issued by a financial institution in the form of an irrevocable letter of credit, surety bond, cash or such other equivalent security satisfactory to the City Solicitor.
  - b) The security is required to secure:

- i) completion of the said Works by the Owner in conformity with the provisions of this Agreement; and,
  - ii) performance of all other obligations of the Owner under this Agreement; and,
- c) The security received from the Owner, or issued by a financial institution to secure the Owner's financial obligations and held by the City in accordance with this Agreement;
  - i) may be used, applied and drawn upon by the City not only for the matters for which the security is expressly required, but may also be applied, used and drawn upon by the City in accordance with the remedial provisions of this Agreement, to any other matter, expense or obligation of the Owner, related to the Draft Plan, or arising in any way out of the implementation of any provision of this Agreement, notwithstanding that such security was not expressly received for such purpose; and,
  - ii) may be used, applied and drawn upon by the City pursuant to the remedial and/or enforcement provisions in this Agreement regardless of whether any lots or blocks in the Draft Plan have been transferred following registration of the Draft Plan, unless the City in its sole discretion consents, on such conditions as are satisfactory to the City, that a subsequent property owner may post new security to replace the Owner's security for the particular transferred lots or blocks on a pro rata basis or on the basis of such other scope of responsibility as determined by the City as a condition to granting consent for the posting of the new security, in which latter event the City will be entitled to apply, use and draw upon the new security in the exercise of any remedial and/or enforcement provision in this Agreement.
- d) The security deposited as required by the provisions of this section may be reduced in amounts from time to time at the discretion of the City following receipt, in a form satisfactory to the City, of a Progress Certificate from the Engineering Consultant and proof of payment to the Prime Contractor in respect of the Works and grading certificates in respect of lot grading covered by the said security. In no case shall the amount of the security be reduced to less than an amount equivalent to the cost of the uncompleted Works as estimated by the Engineering Consultant, plus ten percent (10%) of the estimated cost of Works or\$ 10,000, whichever amount is greater and in the case of lot grading, the value of uncompleted lot grading or\$ 5,000, whichever amount is greater and in the case of future works, the estimated cost of the future works, plus indexing.
- e) The financial security received and held by the City pursuant to this Agreement, whether such security be in the form of an irrevocable letter of credit, surety bond, cash or approved equivalent may, in this Agreement (including its Schedules) be referred to as the "security". Any reference to "security" in this Agreement (including its Schedules) shall be deemed to be a reference to the security deposited by the Owner with the City's Finance Department pursuant to this section of the Agreement.

**Default and Remedies**

- 1.43 a) The City's Chief Building Official may refuse to grant Building Permits within the Land at any time when advised in writing by the Director of Planning or the Director of Growth Management Division that the Owner is in default of any provision of this Agreement. Prior to forwarding such advice to the Director of Building Division, the Director of Planning, or the Director of Growth Management Division, as the case may be, shall provide to the Owner notice in writing of the said default and of their intent to so advise the Director of Building Division. The period of the said notice shall be reasonable having regard to the circumstances giving rise to the default.
- b) The waiver or acquiescence by the City of any default by the Owner under any obligation to comply with this Agreement shall not be deemed to be a waiver of that obligation or any subsequent or other default under this Agreement.
- c) In the event of default by the Owner of any of its obligations provided for in this Agreement, the City at its discretion, may enforce the provisions of this Agreement and in enforcing this Agreement the City, its employees, agents or contractors, may enter onto the Land to perform any of the Owner's obligations on behalf of the Owner at the Owner's expense and the Owner shall reimburse the City for such expenses forthwith upon being invoiced therefore. Any amount remaining unpaid thirty (30) days from the date of the invoice may be deducted from the security lodged pursuant to this Agreement or pursuant to Section 446 of the Municipal Act, 2001, S.O. 2001, c.25, as amended may be added to the tax roll for the Land and collected in the same manner as property taxes.

**House Numbers**

- 1.44 The Owner shall affix a municipal number (address) in accordance with the City's municipal numbering policy and guidelines and to the satisfaction of the City on each dwelling unit that has been constructed on a registered lot or block within the Draft Plan.

**Groundwater**

- 1.45 In the event groundwater is encountered during any construction within the Draft Plan lands, including but not limited to house construction, the Owner will submit a Hydrogeological report to the City, prepared by a qualified professional, to assess impacts, to identify any significant recharge and discharge zone, to provide recommendations to mitigate the groundwater impacts and to undertake the works as recommended including monitoring, all to the satisfaction of the Director of Growth Management Division.

**Agreements of Purchase and Sale**

- 1.46 The Owner shall include in any and all Agreements of Purchase and Sale and registered as a notice on title for lots and blocks within the Draft Plan:
- a) in respect of sidewalks, a notice advising prospective purchasers and tenants that a sidewalk will, or will not, be constructed within the street right-of-way fronting the lot or block.
- b) in respect of the Lot Grading, Drainage and Rear Yard Catch basins:
- i) a statement acknowledging that the Owner under this Agreement reserves the right, notwithstanding completion of the sale, to enter upon the lot or block sold for a period of one (1) year after the completion of the sale, or until expiration of the maintenance period for the Works specified in this Agreement, whichever date is later, to alter the land's grading to comply with the Plot Plan reviewed for compliance by the Director of Building Division for the said lot or block; and,

- ii) where roof leaders are not connected to the storm sewer a statement by the purchaser acknowledging that the purchaser understands and agrees that there are continuing lot/block grading obligations and requirements. In addition, the following restrictive covenants shall run with the Land:

The Transferee covenants with the Transferor to observe and comply with the following restrictions, the burden of which shall run with the lands and the benefit shall run with the adjacent lands. These covenants shall be binding on and inure to the benefit of the respective heirs, executors, administrators, successors and assigns of the Transferee.

1. As roof leaders from the dwelling situated within the herein lands are not connected to the storm sewers, the Transferee understands and agrees that there is an obligation and responsibility on the part of the Transferee to maintain the City's requirements with respect to Final Grading of the herein lands in accordance with the City's Lot Grading Policy and the grading plans approved by the City, for the lands herein; and,
  2. Rainwater from roof leaders shall discharge directly onto splash pads, then, at a distance of no less than 0.60 metres away from any building face, enter onto only a grassed or landscaped area; and,
  3. Rainwater from roof leaders shall not, under any circumstances, discharge onto a sidewalk or a driveway, as may be defined by the City; and,
  4. The Transferee shall not interfere with the final lot grading of the lands herein as shown on the Grading Plan approved by the City. In the event, that the Transferee breaches this covenant, as determined by the City, the said Transferee shall carry out, at his/her expense, such works as may be necessary to correct such interference and shall restore all damaged property to its original condition as determined by and to the satisfaction of the City.
- iii) a statement that the purchaser is aware of and shall comply with all provisions of this Agreement which specifically deal with grading.
  - iv) a statement by the purchaser acknowledging the location of rear yard catch basins within the said lot or block and that the owner of the lot or block with a rear yard catch basin is responsible for the operation and maintenance of the rear yard catch basin on that lot or block and that the owner of the lot or block agrees not to interfere, alter, change or remove the catch basin or its connection to the City's main sewer; and,
  - v) a statement by the Owner that, as of the date of execution of the Agreement of Purchase and Sale, the lot or block has or will have, as the case may be, a rear yard catch basin upon it; or,
  - vi) where the purchaser of the lot or block is a builder that has purchased the property for the purpose of constructing a dwelling unit on the property and its re-sale to a homebuyer, a covenant by the builder that, prior to the sale of the property to a homebuyer who intends to occupy the premises as a residence, the builder shall, at its own expense, notify, in writing, the homebuyer that the property has or will have, as the case may be, a rear yard catch basin.



**Further  
Obligations of  
Owner and  
General  
Provisions**

- 1.47 The Owner charges the Land with the performance of this Agreement and all terms, covenants, obligations and conditions in this Agreement are and shall be deemed to be covenants running with the Land. The parties to this Agreement hereby agree that:
- a) each shall do everything within their power to carry out this Agreement to secure a development of good quality without adversely affecting surrounding development.
  - b) every term, covenant, obligation and condition in this Agreement inures to the benefit of and is binding upon the Parties hereto and their respective heirs, executors, administrators, successors, trustees and assigns.
  - c) the Owner herein named under this Agreement is and remains liable to the City for the performance and completion of all requirements, works and maintenance obligations as required by the City under this Agreement, notwithstanding the fact that the Owner may have transferred title of any lot or block within a registered plan of subdivision which forms part or all of the Draft Plan as described under Schedule 'A' of this Agreement to a third party.
  - d) the Owner hereby undertakes, covenants, promises and agrees that it shall perform and abide by and be bound by at all times all of the terms, covenants and conditions and obligations on the part of the Owner contained in this Agreement and that the City shall be entitled to all remedies in respect of breaches of covenants and conditions as if the Owner were still registered on title to the lot(s) and block(s) notwithstanding the fact that the Owner may have transferred title of any lot or block within a registered plan of subdivision forming part or all of the Draft Plan.
  - e) the City is entitled by this Agreement to enforce all the terms of this Agreement against the Owner. However, the City in its sole discretion may elect to take enforcement action against any subsequent owner of a lot or block within a registered plan of the Draft Plan in respect of any breach of action or against the Owner and a subsequent owner.
  - f) when the context so requires or permits, the singular number is to be read as if the plural were expressed, and the masculine gender as if the feminine, as the case may be, were expressed.
  - g) the headings to the paragraphs in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or of any provision hereof.
  - h) notices may be given to the Owner at the address set out on the signing page of this Agreement. Notices to the City may be addressed as follows (until the City gives notice otherwise);

City of Hamilton,  
Attention: City Clerk,  
71 Main Street West, 1st Floor  
Hamilton ON L8P 4Y5



- i) subject to the provisions of this Agreement regarding changes to the approved construction drawings that may be subsequently approved by the City and regarding the plans and drawings to be prepared and submitted to the City for approval and subject to the fact that some or all of the Schedules of this Agreement may not form part of the version of this Agreement registered in an electronic format, this Agreement contains the entire agreement between the Owner and the City. There is no condition precedent or warranty of any nature; no warranty or covenant exists collateral to this Agreement; and this Agreement supersedes all prior agreements, arrangements, promises, representations or other understandings.
- j) notice is hereby given that unregistered amendments, revisions and adjustments may subsequently be authorized by the City to:
  - i) the approved schedules and construction drawings either required and/or referred to by this Agreement; and,
  - ii) the Schedules listed in this Agreement;
  - iii) such that the reader is advised to examine the approved Schedules and construction drawings on file with the City to determine current requirements.
- k) if any of the provisions of this Agreement or their application to any person or circumstance are to any extent illegal, invalid or unenforceable at law, the remainder of this Agreement shall be construed as if such illegal, invalid or unenforceable provision were not part of the Agreement.
- l) this Agreement may not be modified or amended except by instrument in writing signed by the Owner and the City.
- m) time shall be of the essence of this Agreement.

**Applicable  
Law**

- 1.48 a) In constructing, installing or providing the Works and Base Park Works required under this Agreement to service the Land, the Owner shall comply with all statutes, laws, by-laws, regulations, ordinances, orders and requirements of governmental or other public authorities having jurisdiction at any time and from time to time in force. Without limiting the foregoing, the Owner agrees 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 Ontario Safe Drinking Act or Environmental Protection Act or the Ontario Water Resources Act or any regulations, policies and guidelines relating thereto. The Owner further agrees to handle and dispose all materials in accordance with the foregoing legislation.
- b) The Owner shall do, cause to be done or refrain from doing any act or thing as directed by the City if at any time the City considers that any situation or condition is unsafe damaging to the environment or contrary to the provisions of any applicable laws above. If the Owner fails to comply with such direction, the City may take action to remedy the situation at the expense of the Owner and in this regard the City shall also be entitled to draw upon any security filed by the Owner under this Agreement.
- c) Nothing in this Agreement shall relieve the Owner from compliance with all applicable city by-laws laws and/or regulations or laws and/or regulations established by any other government

body which may have jurisdiction over the Land.

**Pay  
Assurance**

- 1.49 a) Where the Owner is required under this Agreement to construct Works to service the Land as described under Schedule "B" of this Agreement and where the Owner is required to post security ("Owner's security") with the City for such Works and where the Owner has entered into a written contract with a Prime Contractor, who is operating at "arms-length" to the Owner and is not otherwise under the control of, or an affiliate of, the Owner (within the meaning of the Securities Act (Ontario)) to carry out construction of the Works required by this Agreement for which the Owner's security has been placed with the City, the Owner acknowledges and agrees that the City may, over the objections of the Owner, make payments from the Owner's security to the Prime Contractor or in to escrow in the case of a dispute between the Owner and Prime Contractor, for construction of the Works, subject to fulfillment of the following requirements:
- i) The Works which relate to the outstanding invoice are the Works to be installed under this Agreement and the installation of such works has occurred on a date after the date of registration of this Agreement;
  - ii) The Prime Contractor has delivered to the City true copies of its written contract and an invoice, addressed to the Owner, for payment of installation of the Works in which the unpaid amount on the invoice is in excess of twenty-five thousand dollars (\$25,000);
  - iii) The Prime Contractor has certified that payment of the invoice has been owing to the Prime Contractor for a period of at least ninety-one (91) calendar days or such longer period of time as may be set out for payment in the contract between the Owner and Prime Contractor;
  - iv) The Prime Contractor has delivered to the City's Director of Growth Management Division proof that the Prime Contractor has made a written demand for payment to the Owner and a response has not been received by the Prime Contractor from the Owner for a period of time that is thirty (30) calendar days beyond the ninety one (91) day period set out in iii) above;
  - v) The Owner's Consulting Engineer has certified that the Works invoiced to the Owner by the Prime Contractor for which payment is sought from the City has been completed satisfactorily in accordance with the Owner's obligations under this Agreement and has further certified the date upon which the Prime Contractor invoice became due and payable under the Owner's contract with the Prime Contractor and has further confirmed that the Prime Contractor has performed and continues to perform its obligations under the terms of its contract with the Owner;
  - vi) The Director of Growth Management Division is satisfied that the Works, which relate to the outstanding invoice, have been completed in accordance with the Owner's obligations under this Agreement;
  - vii) Prior to any money being released from the security held by the City under this Agreement the Prime Contractor shall execute and provide to the City a Release and Indemnity, in a form satisfactory to the City Solicitor, releasing the City, its Councilors, officials, employees, servants and agents (the "Indemnified Parties") from any and all claims the Prime

Contractor and Owner may have against the City, and indemnifying the City against any and all claims for loss arising from any source whatsoever resulting from the City's: payment of monies to the Prime Contractor or into escrow pursuant to this section and agreement to be bound by the dispute resolution process pursuant to the Arbitration Act, S.O. 1991, c.176, as amended;

- viii) The Prime Contractor has paid a fee of five thousand dollars (\$ 5,000) to the City for administration of security payments under the pay assurance provisions of this Agreement;
- ix) The Prime Contractor has provided the City with a statutory declaration declaring that all its sub-contractors and suppliers have been paid in full in relation to the Works which are subject to overdue payment by the Owner;
- x) The Prime Contractor has provided the Owner with a notice, within thirty (30) calendar days from the time a Prime Contractor has made a claim to the City, stating that a claim for pay assurance has been filed with the City.
- b) The Owner covenants and agrees to be bound by the above clauses in any contract it enters into with a Prime Contractor to carry out construction of the Works required by the City to service the Land under Schedule "B" of this Agreement.
- c) The Owner agrees that it shall not make any claims against the Indemnified Parties and hereby releases and indemnifies the Indemnified Persons of and from any claims arising from the release of any money drawn from the Owner's security or as a result of any action taken under this Agreement provided that the provisions herein are met.
- d) The City shall have no obligation to pay the Prime Contractor.
- e) The Owner hereby acknowledges that the City's Director of Growth Management Division is authorized to call for the reduction of the Owner's security and to authorize payments to the Prime Contractor in accordance with the terms of this section.
- f) The City shall not pay out any monies in excess of the estimated value of Works, as shown in a schedule of works prepared by the Owner's Consulting Engineer and approved by the City;
- g) Under no circumstances will the City be obliged to draw down and pay the full amount of the Owner's security it holds under this Agreement. Where the City makes payment to the Prime Contractor from the Owner's security, at no time will the security be reduced below the value of incomplete Works, plus the full value of the Owner's maintenance obligation for the Works under this Agreement;
- h) The procedure set out in this section shall have no application in cases where and to the extent the installation of the Works is performed prior to the execution of this Agreement;
- i) Notwithstanding the foregoing provisions, in the alternative, where the Director of Growth Management Division is notified in writing by the Owner prior to any payment to the Prime Contractor that a dispute exists between the Owner and the Prime Contractor regarding the Owner's payment obligation to the Prime Contractor then:
  - i) any monies from the Owner's security deemed to be paid to the Prime Contractor shall be paid by the City into escrow;

and

- ii) the Owner and Prime Contractor shall submit to arbitration pursuant to the Arbitration Act, S.O. 1991,c. 17, as amended; and
- lii) the City shall pay monies out of escrow in accordance with the final award under the Arbitration Act, S.O. 1991,c. 17, as amended.
- j) The parties agree that if for any reason the City has released securities or is unable to cash or access the Owner's securities, there shall be no claim against the City available to the Prime Contractor.

**Specific Requirements**

1.50 a)

**List of Schedules to this Agreement**

1.51 It is understood and agreed that the following Schedules "A" and "B", appended hereto, are included in and form part of this Agreement and shall consist of:

Schedule "A" - Legal Description of the Lands within the Draft Plan

Schedule "B" - Description of Approved Draft Plan

**PART 2**

**PRIOR TO REGISTRATION**

**Prior to registration of any Stage of the Draft Plan**, the Owner agrees to fulfill each of the following conditions:

**Registration of Agreements**

2.01 This Agreement shall be executed by all parties and registered on title to the lands described in Schedule "A", attached hereto.

**Above Base Park Works**

2.02 Where the Owner has agreed to construct the Park Block(s) to Above Base Park Works in addition to the Base Park Works, prior to registration of the Phase in which the park block is located, the Owner shall submit a Letter of Intent, sign a Project Charter and enter into a Parkland Development Financing Agreement as described in Section 1.07 with the City with respect to the design, construction, installation, financing, maintenance and transfer of park facilities on and together with the Park Block(s) of the Draft Plan.

**Commutation of Assessed Charges and Taxes**

2.03 The Owner shall commute and pay to the City all assessed charges and on the tax roll of the land within the Draft Plan.

**Cash-in-lieu of Control Survey Monumentation**

2.04 The Owner shall pay to the City a cash payment-in-lieu of control survey monumentation prior to registration of any stage of the Draft Plan. The total cash payment to be made by the Owner shall be the sum of \$ 1,000.

**Street Names and Street Name Signs**

- 2.05 a) For any and all streets created by any registration of the Draft Plan, or any Stage of the Draft Plan, the Owner shall select a street name from the City's Reserved Street Name Index or the Owner shall submit street names to the City in accordance with the City's street naming guideline for approval by the City's Director of Growth Management.
- b) The Owner shall pay the cost of all street name signs required for each street intersection created by registration, or stage of registration, of the Draft Plan. The City shall supply and erect all street name signs at locations satisfactory to the City.

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| <b>Zoning Compliance</b>                | 2.06 | The Owner covenants and agrees that no plan of subdivision shall be registered on the lands of the Draft Plan until the Owner has provided the City's Director of Growth Management with a list certified by an Ontario Land Surveyor showing the net area and width of each lot and block created by registration of a subdivision plan, including the gross area of the plan to be registered, and that the City's Director of Growth Management has confirmed to the Owner that the lots and blocks within the plan comply with the City's requirements for zoning.   |
| <b>Tele-communication Servicing</b>     | 2.07 | The Owner covenants and agrees to provide the Director of Growth Management Division with evidence that satisfactory arrangements, financial and otherwise, have been made with a telecommunication service provider approved by the Canadian Radio and Telecommunication Commission (CRTC) to provide adequate telecommunication service to the lands within the approved Draft Plan including 9-1-1 emergency calling service that identifies, at a minimum, the caller's name and location information.   |
| <b>Conveyance of Land and Easements</b> | 2.08 | <p>The Owner covenants and agrees:</p> <ul style="list-style-type: none"> <li>a) that prior to, or immediately following, registration of any stage of the Draft Plan, as the case may be, it shall: <ul style="list-style-type: none"> <li>i) convey any lands to, and/or grant the right of any easements in favour of the City, which are required by the City as a consequence of subdividing such stage to provide for the orderly development of neighbouring lands dependent on provision of works within the approved draft plan, and;</li> <li>ii) prepare and/or deposit, at its expense, all necessary legal survey plans and transfer documents in accordance with the requirements of the City Solicitor and this Agreement, and;</li> </ul> </li> <li>b) to include a dedication to the City of Hamilton of all lands within the draft plan required for public highway and public walkway under the Owner's Certificate on the final plan of subdivision and transfer, free and clear of all mortgages and charges those lands which are required to be so transferred by the conditions of approval or as specified on the approved Draft Plan.</li> <li>c) Where any land or easement is to be transferred to the City in relation to development of the Draft Plan lands, the Owner shall first submit to the City Solicitor, electronically wherever possible, a draft of each required transfer and a Tax Certificate which confirms there are no arrears of realty taxes for the land.</li> </ul> |
| <b>Street Trees</b>                     | 2.09 | <ul style="list-style-type: none"> <li>a) The Owner shall pay to the City, in cash, the cost to the City to plant street trees for each lot within a Plan of subdivision to be registered on the Draft Plan land. Such cash payment shall be based on the City's flat rate cost per street tree in effect at the time of plan registration and at a planting rate of one street tree for the front yard of each lot and two trees for the side yard of each corner lot within a registered subdivision Plan.</li> <li>b) The Owner shall pay to the City, in cash, the cost to the City to plant street trees along all public road allowances abutting the Park Block(s) within a Plan of subdivision to be registered on the Draft Plan land. Such cash payment shall be based on the City's flat rate cost per street tree in effect at the time of plan registration and at a planting rate of one tree every 8m on center along all public road allowances abutting the Park Block(s) within a registered subdivision Plan.</li> </ul>  |

- Subdivision of Blocks** 2.10 The Owner covenants and agrees to pay an "additional cost per unit charge" to the City in accordance with the City's User Fee By-law, as amended, for each additional parcel created from subdivision of a Draft Plan block.
- Approved Servicing Design** 2.11 The Owner shall obtain approval from:
- a) the City of an engineering design to support the servicing requirements for the subdivision plan to be registered and place a security deposit with the City in an amount equal to one hundred per cent (100%) of the estimated cost of the approved engineering design; and,
  - b) Canada Post that satisfactory Planning and Engineering arrangements, have been made with Canada Post Corporation for the location and installation of all required Community Mail Boxes (CMB). The approved locations shall be posted on appropriate maps, information boards and plans by the Owner.
- Billboard Signs** 2.12 Prior to registration of any Stage of the Draft Plan lands, the Owner shall obtain approval of, the location for, and, the time for erection of:
- a) a General Land Use billboard sign displaying the design of the Draft Plan. Such sign is to be prepared by the Owner and approved by the Director of Growth Management in accordance with the requirements of the City's Subdivision General Land Use Sign Specifications and Procedure. The Owner shall maintain the General Land Use billboard sign until all lots and blocks within the Draft Plan have been developed at which time the Owner shall remove the sign.
  - b) a Utility Locate Sign for the purpose of informing the public, including contractors, subcontractors and new property owners of the necessity for calling a central number for information as to the location of underground utilities. Such sign shall be obtained by the Owner from the applicable utility companies and shall be installed and maintained by the Owner, at its expense, until construction on all lots and blocks has been completed.
  - c) an Availability of Schools sign advising that students of the Hamilton-Wentworth District School Board system are likely to be redirected to schools outside the area with available capacity and that students may be transported as governed by the Board's transportation policy. Such sign shall be prepared and erected by the Owner in accordance with the Hamilton-Wentworth District School Board's specifications, where required to do so by the School Board.
  - d) a Parkland Designation sign on undeveloped parkland and/ or open space for parks being constructed to Above Base Park Works or Base Park Works shall be prepared by the Owner and approved by the Manager of Landscape Architectural Services. The sign shall be in accordance with park detail PK.500 and erected by the Owner at the street frontage of the Park Block(s) and open space block(s). The sign shall:
    - i) Advise the public of the type of park, open space and/or trail of the park and/or open space block. Specific detailed information shall be provided by the Manager of Landscape Architectural Services upon review of the first submission;
    - ii) Clearly state that maintenance of the park block(s) and / or open space block is the responsibility of the Owner until such time as the City assumes the park and/ or open space block and provide the Owner's contact information; and,

- iii) Clearly state that no dumping, no removal of soils or vegetation are permitted.

The signage must be maintained by the Owner until acceptance of the block by the City or at a date agreed to by the Manager of Landscape Architectural Services. Post holes are to be reinstated after removal of the signs. All works for the Parkland Designation Sign shall be completed at the Owner's expense, including any necessary permitting fees.

The Owner further agrees that the agreed to park and open space block layouts will be identified on any marketing or promotional materials at the request of the City.

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| <b>Reserves</b>              | 2.13 | Where registration of the Draft Plan, or any stage therein, results in dead-ending or open sides of the City's road allowance or remnant blocks which must be merged with adjacent and abutting lands to create building lots the Owner covenants and agrees to: |
|                              |      | a) terminate all dead-ends and open sides of the road allowance(s) abutting lands outside a registered stage of the Draft Plan with 0.30 metre reserves; and,  |
|                              |      | b) establish 0.30 metre reserves to separate remnant blocks created by the Plan from any public highway, and,  |
|                              |      | c) shown each 0.30 metre reserve on the final Plan of subdivision as a separate block; and,  |
|                              |      | d) transfer to the City, by deed in fee simple without cost and free from encumbrances, all 0.30 metre reserve lands, immediately following registration of the final Plan of subdivision encompassing the reserve(s).   |
| <b>Payment of Fees</b>       | 2.14 | The Owner shall pay to the City a fee for final approval and registration of the subdivision plan in amount as specified under Schedule "B" of the City's User Fee By-law, as amended.   |
| <b>Final Release</b>         | 2.15 | The Owner covenants and agrees to provide the City with a written final release from any and all agencies, external to the City, where such release is required as a condition of registration of the Draft Plan or any stage thereof.                           |
| <b>Specific Requirements</b> | 2.16 | a)   |

### **PART 3      PRIOR TO PRELIMINARY GRADING**

**Prior to any preliminary grading of the lands within the Draft Plan**, the Owner agrees to fulfill each of the following conditions:

- |                                  |      |   |
|----------------------------------|------|---|
| <b>Registration of Agreement</b> | 3.01 | This Agreement shall be executed by all parties and registered on title to the lands described in Schedule "A", attached hereto.  |
| <b>Preliminary Grading Plan</b>  | 3.02 | The Owner shall prepare a Preliminary Grading Plan to the satisfaction of the Director of Growth Management Division and any and all applicable regulatory agencies as determined by the Director of Growth Management Division in accordance with the conditions of final release of the Draft Plan. |
| <b>Erosion and</b>               | 3.03 | The Owner covenants and agrees to:  |

**Sedimentation  
Control Plan**

- a) obtain approval from the City, and where required, approval from the Conservation Authority of an erosion and sediment control plan to be prepared in accordance with the City's engineering guidelines, as amended, for the subject property;
- b) install all erosion and sediment control measures, prior to development and maintain such erosion and sediment control measures throughout the construction process, including inspection after each rainfall, to the satisfaction of Conservation Authority staff, until **all** disturbed areas have been re-vegetated;
- c) provide any disturbed areas, not scheduled for further construction within forty-five (45) days, with a suitable temporary mulch and seed cover, within seven (7) days of the completion of a phase of construction;
- d) submit to the Conservation Authority, for review and approval, detailed sedimentation and erosion controls to be implemented both during and after construction;
- e) revegetate all disturbed areas with permanent cover immediately following completion of construction.

**Grading  
Authorization**

- 3.04 a) The Owner agrees that no preliminary grading shall occur on the Land until such time as the Owner has:
- i) received final zoning approval from the City to implement the approved "Draft Plan"; and,
  - ii) carried out and completed an archaeological assessment of the Land and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. No demolition or soil disturbances shall take place on the subject property prior to the approval of the City's Director of Growth Management, the Ministry of Citizenship, Culture and Recreation confirming that all archaeological resource concerns have met licensing and resource conservation requirements; and,
  - iii) identified and plotted all trees within the lands of the Plan, and on lands immediately adjacent to the Plan, that are required to be protected in accordance with a tree management plan that has been reviewed and approved by the City; and,
  - iv) obtained the authorization of the City's Director of Planning to preliminary grade land, which has been designated under the Ontario Heritage Act, listed as a non-designated property on the City's Municipal Heritage Register or included in the City's Inventory of Built Heritage Resources and Cultural Heritage Landscapes; and,
  - v) submitted original Certificates of Insurance for the Owner and any Prime Contractor hired by the Owner to perform Work pursuant to this Agreement; and,
  - vi) Where the Owner is proposing to stockpile topsoil or surplus fill material for future use, the Owner agrees to:
    - 1) submit a plan showing the location where stockpile material will be located for approval by the City; and
    - 2) remove or relocate such stockpiled material prior to the installation of final layer asphalt and upon receipt of a written request by the City.





**Dumping of 3.07** The Owner covenants and agrees that no fill from the Draft Plan Land may be dumped in any area regulated by a Conservation Authority without the prior written permission of the appropriate conservation authority.

**Specific Requirements** 3.08 a)

#### **PART 4 PRIOR TO SERVICING**

**Prior to servicing of each, or any portion of a Stage of the Draft Plan**, the Owner agrees to fulfill each of the following conditions:

- Requirements Prior to Servicing** 4.01 Prior to providing the City with written notice of intention to commence construction for any Phase of servicing within the Draft Plan, the Owner shall:
- a) complete to the satisfaction of the City requirements 3.01, 3.02, 3.03, 3.04 a) and 3.06 under Part 3, "Prior to Preliminary Grading", of this Agreement; and,
  - b) submit a storm water management report prepared by a qualified professional engineer, for review and approval by the Director of Growth Management Division, demonstrating how quality and quantity control criteria will be handled in accordance with the MOE Storm Water Management Planning & Design Manual - 2003, the local master drainage plans and the City's storm water management policies; and,
  - c) obtain written approval from the City, and where required, approval from the Conservation Authority, of engineering design drawings for the works to be constructed, including receipt of M.O.E. Certificate of Approval, a detailed grading plan and an erosion and sedimentation control plan; and,
  - d) where required, obtain approval from the Conservation Authority of a storm water management plan, prepared by the Owner in accordance with Provincial guidelines and a sub-watershed study (where applicable) to address storm water quantity and quality on the Land; and,
  - e) obtain the approval of the City's Director of Growth Management of the subdivision Stage proposed for registration in which the Works will be constructed; and,
  - f) submit a streetscape plan prepared by a full member of the Ontario Association of Landscape Architects (OALA) for approval by the Director of Planning and Director of Capital Planning and Implementation, Public Works, detailing enhanced boulevard landscape treatment, roundabouts, traffic circles, gateway features, traffic medians, fencing and street lighting for the required streets; and,
  - g) obtain written approval from the City of a detailed cost estimate & description of Works to be installed by the Owner to service a Phase of construction; and,
  - h) Include in the engineering design drawings and detailed cost estimate & description of Works, where required, concrete pads to facilitate the placement of community mail boxes in locations approved by Canada Post. The pads are to be poured at the time of the sidewalk and/or curb installation.

- i) ensure all sedimentation and erosion controls are in place prior to any earthworks on the site; and,
- j) conduct a pre-condition survey of residences within 100 metres and notify residents of rock removal within 200 metres of the Phase of construction, where services are to be constructed in rock; and,
- k) arrange for all required site inspections and materials testing for the Works; and,
- l) arrange for a pre-construction meeting for construction of the Works; and,
- m) deliver a copy of the approved construction drawings in a digitized electronic format acceptable to the City; and,
- n) submit a servicing report to the satisfaction of the Director of Growth Management Division; and,
- o) submit a security deposit, as required by the terms of this Agreement, in an amount equal to seventy-five per cent (75%) of the estimated costs of installation of the phased Works, or any other Works which, in the opinion of the Director of Growth Management Division, may be required to be constructed or installed in conjunction with, or as a result of, the approval of the said phase, or such other amount as may be mutually agreed upon, in accordance with City financial policy and to the satisfaction of the General Manager, Finance and Corporate Services or designate; and,
- p) pay to the City any and all processing fees required to be paid prior to start of construction in accordance with the City's User Fee By-law, as amended.
- q) install anti-tampering devices on all fire hydrants within the Plan to the satisfaction of the Director of Growth Management.

**Supplementary  
Subdivision  
Agreement**

4.02 Where a supplementary subdivision agreement is required by the City's Director of Planning to establish the final lot pattern of lot-less blocks, or for any other purpose, such agreement shall be executed and registered on title to the Schedule "A" Land or any portion thereof.

**Lotless Blocks**

4.03 The Owner agrees to submit a draft survey plan showing proposed lot layout for lot-less blocks, intended to be subdivided in the future, to the Director of Planning for review and approval, prior to approval of servicing drawings for such lot-less blocks, by the City.

**Notice of Servicing**

- 4.04 The Owner shall give to the City, a minimum of two (2) clear business days written notice of intention to commence construction of any Works or Base Park Works. Commencement of construction shall not begin until the Owner receives written acknowledgement from the Director of Growth Management Division authorizing the start of construction.

Should any significant work stoppage occur in the prosecution of Works or Base Park Works, the Owner shall give to the City, prompt notice of the stoppage of such Works, and shall give two (2) clear business days written notice prior to the re-commencement of construction of such Works or Base Park Works.

In the event the Owner initiates work outside the City's standard business hours including evenings and weekends, the Owner shall give to the City, a minimum of one (1) clear business day written notice of its intention to undertake the Works or Base Park Works to ensure that the City, its employees, contractors or agents are available for inspection and the Owner shall reimburse the City for any additional costs incurred by the City to inspect the Works unless the City requires the work to be undertaken beyond the City's standard business hours. Such requests shall be subject to the approval of the Director of Growth Management and the availability of City staff. The overtime cost of providing such service by the City shall be paid by the Owner upon receipt of written invoice from the City. In the event the Owner fails to make payment within thirty (30) days of receipt of such written invoice, the City may recover its cost from the Owner's security.

**Soil Stabilization**

- 4.05 Where structural fill has been placed in areas intended for installation of municipal infrastructure the Owner shall submit to the Director of Growth Management Division a certificate prepared by a qualified geotechnical engineer verifying that areas which contain structural fill are stable and have achieved sufficient bearing capacity for installation of municipal infrastructure within and/or on the area of structural fill.

**Driveway Location Plan**

- 4.06 a) The Owner shall submit a plan for the approval of the Director of Growth Management Division showing the following:
- i) The pairing of driveways for lots having widths of nine (9) metres or less, except where considered impractical by the Director of Growth Management Division; and,
  - ii) Where lots in the Draft Plan abut a park entrance or a public walkway, driveways for said lots shall be located on the side of the lot furthest from the park entrance or public walkway as the case may be; and,
  - iii) The location of concrete transit pads and community mailbox pads, where the location has been determined by the appropriate authorities.
  - iv) Where a lot has a daylight triangle, driveways for said lots shall be located on the opposite side of the lot, outside the limits of the daylight triangle.
- b) The Owner's covenants and agrees to have its engineering consultant sign-off on the plan(s) indicating that there are no conflicts with the Final Grading Plan or approved utility locations.

**Fee for Engineering Services**

- 4.07 For the City's review and supervision of the Owner's engineering services and administration of security in connection with the construction and installation of the Works, the Owner shall pay to the City, prior to commencement of any phase of construction, a fee in accordance with the City's current Tariff of Fees By-law.

**Specific  
Requirements** 4.08 a)

## **PART 5 PRIOR TO ACCEPTANCE OF**

### **A BUILDING PERMIT APPLICATION**

**Prior to acceptance of a Building Permit Application by the City in each registered Stage of the Draft Plan,** except as otherwise entitled prior to plan registration, the Owner of a Lot or Block within the Land agrees to fulfill each of the following conditions:

**Requirements  
of Building  
Permit**

5.01 No building permits shall be accepted by the City for any lot or block within the Land until;

- a) the subdivision Plan, to which the lot or block relates, has been registered on title; and,
- b) such time as the Owner's Engineering Consultant has confirmed that storm and sanitary sewers, watermain, including fully serviceable and operative fire hydrants, together with a roadway, which includes granular base and base asphalt, have been installed in accordance with the approved drawings to the satisfaction of the Director of Growth Management Division; and,
- c) such time as the Owner's Engineering Consultant has confirmed that the lots or blocks have been pre-graded in accordance with the requirements of this Agreement; and,
- d) a Plot Plan indicating the site of the building, the proposed main floor and top of footing and top of foundation wall elevations, and the proposed grading according to the approved Final Grading Plan has been prepared by a qualified professional as specified by the City's current lot grading policy and standards and the Plot Plan has been reviewed for compliance by the Director of Building Division, or designate; and,
- e) such time as all permits from the Conservation Authority have been issued and all flood control structures are in place and operational.

**Copy of  
Registered  
Plan**

5.02 The Owner shall lodge both a mylar and digital copy of the registered subdivision plan for each and every Stage of the Draft Plan with the Director of Planning immediately upon registration of any Stage.

**Sub-surface  
Soil  
Investigation  
and  
Stabilization**

5.03 Where the approved Preliminary Grading Plan requires areas of cut and fill the Owner shall take all steps necessary to ensure that soil conditions are adequate and acceptable for building foundations and municipal infrastructure. Upon completion of preliminary grading, the Owner shall:

- a) submit to the Director of Building Division, soils and engineering reports prepared by a qualified geotechnical engineer. Such reports shall contain details of preliminary grading operations, including specific areas containing structural fill, and a summary sheet and plan designating all lots and blocks within the plan proposed for registration on the Land in the following categories:
  - i) lots and blocks with proposed footing elevations in native undisturbed soil; and,

- ii) lots and blocks with proposed footing elevations in and/or on structural fill material, placed under supervision and tested to determine that adequate bearing capacity was achieved; and,
  - iii) lots and blocks with proposed footing elevations in and/or on structural fill material, which requires further testing by a qualified geotechnical engineer, prior to the footings being poured; and,
  - iv) proposed footing elevations are defined as a minimum of 1.2 metres below the proposed finished grade as shown on the approved Final Grading Plan.
- b) provide plans for clauses ii) and iii) above illustrating the limits of the structural fill material placed if the structural fill is less than the total lot or block area.

All material imported for use as "fill" material must not exceed the maximum allowable limits in Table "B" (Residential/Parkland Land Use) of the Ministry of the Environment, Conservation and Parks (MOECP) Guideline for Use at Contaminated Sites in Ontario. Prior to importing of any fill material to the site a written report prepared by a qualified engineer documenting the environmental sampling and chemical testing of the fill material must be submitted to the City for approval. All fill material, must be compacted to not less than 95% Standard Proctor Density.

The Director of Building Division may withhold the granting of building permits until any required work such as soil stabilization, placement of structural fill, installation of flood protection, special foundations, retaining walls or other work is completed to the satisfaction of the City and has absolute discretion to refuse to grant building permits on any lots or blocks in a registered Stage of the Draft Plan, which in the opinion of the Director of Building Division are unstable for building because of their rocky, low lying or marshy or unstable characteristics or which may be subject to flooding, until such time as all work which may be required to make such land stable for building or protected from flooding, is completed to the satisfaction of the Director of Building Division.

**Part-lot  
Control  
Exemption**

- 5.04 The Owner agrees that the division of any lots or blocks for single family residential development by exemption from part-lot control shall be subject to the following requirements:
- a) The Owner shall submit a draft reference plan for each lot or block and obtain approval of the draft reference plan from the Director of Planning; and,
  - b) The Owner shall make an application for and receive approval of a Part-lot Control application from the City; and,
  - c) The Owner shall submit a Final Grading Plan showing the detailed grading within all lot-less blocks, in accordance with the City's current requirements for review and approval by the Director of Growth Management Division; and,
  - d) The Owner shall pay all outstanding taxes to the City, prior to submission of a part-lot control exemption By-law to the City's Council; and,
  - e) No building permits shall be accepted by the City until steps a) to d) (inclusive) have been completed and the lots and blocks are in compliance with the approved reference plan and the approved servicing and Final Grading plans; and,

- f) The Owner shall deposit the approved draft reference plan in accordance with the Land Titles Act and forward three deposited copies to the Director of Growth Management Division.
- One Dwelling  
Part-lot  
Control** 5.05 Notwithstanding sub-section 5.04 e) above, in the event that only one dwelling is constructed on a block in advance of final approval of a part-lot control exemption by-law, in order to ensure that the proper and orderly ultimate development of the block is not compromised, the Owner agrees prior to acceptance of any building permit by the City to:
- a) Submit a draft reference plan for each lot or block, showing all required maintenance easements and eave encroachments if the lots or blocks are proposed for reduced side yard dwellings and obtain approval of the draft reference plan from the City's Director of Planning; and,
  - b) Obtain approval of plans showing final lot pattern for each lot or block illustrating proposed service connections street utility hardware and proposed grades together with building envelopes and driveway locations where required in conformity with the approved draft reference plans set out above from the Director of Growth Management Division.
- Model/Home  
Provision** 5.06 Notwithstanding the foregoing provisions of this section, the Parties agree that:
- a) the Owner may construct Model Homes on the lands of the Draft Plan prior to registration of a plan of subdivision over all or a Stage of the Draft Plan in accordance with the provisions of the applicable Zoning by-law, provided that:
    - i) the Owner receives Site Plan Approval for all temporary sales centre and/or pavilion; and,
    - ii) the Owner receives a Building Permit from the City's Director of Building Division for each model home to be constructed; and,
    - iii) the Owner confirms that there is adequate water supply and pressure with fully operational hydrants to within one hundred and fifty (150) metres of any building erected on the lands of the Draft Plan for fire protection; and,
    - iv) the Owner confirms that there is road access, acceptable to the City's Director of Building Division, to within ninety (90) metres of any building erected on the lands of the Draft Plan for emergency access; and,
    - v) the Owner certifies to the City's Director of Building Division that lots designated for model home construction, have been pre-graded to the elevation shown on the Final Grading Plan, for the Land, making due allowance for the final application of top soil and sod and for material to be excavated for foundations and basements of Model Homes to be constructed, and all provisions set out in Section 3.04 of this Agreement requiring completion prior to commencement of servicing have been satisfied.

- b) The maximum number of Model Homes permitted by the City for construction by the Owner on the lands of the Draft Plan under the provisions of this section shall not exceed ten percent (10%) of the total dwelling units intended for single-detached, semi-detached or townhouse development within a plan of subdivision proposed for registration on the lands of the Draft Plan, to a maximum of twenty (20) dwelling units, all in accordance with the provisions of the City's relevant Zoning By-law, as amended.

For the purposes of determining the maximum number of dwelling units permitted under this provision, each unit within a townhouse block shall count as one (1) dwelling unit.

- c) In order to guarantee compliance with all the terms and conditions contained within this section, the Owner covenants and agrees to place security with the Director of Building Division in an amount of \$ 3,000 for each and every model home in a form satisfactory to the City, prior to issuance of a Building Permit for construction of any model home permitted by this Agreement.

The security deposit is required to secure, but is not limited to:

- i) demolition of any number of Model Homes beyond that which is permitted by the relevant Zoning By-law for the lands of the Draft Plan in the event a plan of subdivision for such land is not registered in accordance with the terms of this Section; and/or,
- ii) maintenance and/or clean-up of the City's roads in the event that they become damaged or soiled with earth and debris as a result of model home construction.

The City shall release the security deposit required under this Section, or remaining balance thereof, without interest, to the Owner provided:

- i) a plan of subdivision has been registered on the lands of the Draft Plan; and,
  - ii) there are no outstanding obligations required of the Owner with respect to the security held under this Section.
- d) All Model Homes constructed under the provisions of this Section shall be used for the sole purpose of an office and/or show room and/or sales centre to promote the sale of residential units on the lands of the Draft Plan and shall not be occupied as a dwelling unit until:
- i) a plan of subdivision has been registered against all or a stage of the lands of the Draft Plan; and,
  - ii) the City has received from the Owner a Surveyor's Real Property Report prepared by an Ontario Land Surveyor showing the location of the constructed building on the lot and the City has determined that the location of such building complies with the requirements of the Building, Zoning and Health By-laws of the City; and,
  - iii) the building has passed an inspection for occupancy to the satisfaction of the City's Director of Building Division, or designate, pursuant to the conditions for occupancy in the Building Code Act and Regulations there under.



- e) The Owner shall register a plan of subdivision on the land of the Draft Plan, within six (6) months of issuance of a building permit for the first model home.

In the event that the Owner cannot register the plan of subdivision within six (6) months of the date of issuance of a Building Permit for the first model home, the Owner may upon written request to the City's Director of Building Division, apply for an extension, provided the request for such extension is received by the City within twelve (12) months of the date of issuance of a Building Permit for the first model home.

- f) Where the Owner has not registered a plan of subdivision on the lands of the Draft Plan and no written request for extension to register a plan of subdivision has been received by the City within twelve (12) months of the date of issuance of a Building Permit for the first model home, then the City may, upon written notification to the Owner, require the Owner to immediately:
  - i) demolish any number of Model Homes, which are beyond the maximum number permitted by the relevant Zoning By-law on the lands of the Draft Plan; and,
  - ii) remove any and all appurtenances used to service the said model home(s), which shall include, without limiting the generality of the foregoing, connections to the water and sewer services as well as electrical service connections, telecommunication cables, gas mains and television co-axial cables; and,
  - iii) to restore the land to its original state to the reasonable satisfaction of the Director of Building Division.
- g) In the event that no action is taken by the Owner, satisfactory to the City, to remove such Model Homes within thirty (30) days after the mailing of such Notice, the City has, and is hereby given, the right of entry by the Owner to the land and may do and perform any and all actions, matters and things that may be required to demolish any number of Model Homes which are beyond the maximum number permitted by the relevant Zoning By-law on the land of the Draft Plan and in pursuance thereof, may hire labour, equipment and purchase such materials as the City considers necessary. Costs incurred by the City pursuant to this subsection may be charged against the security deposit required under this Section.

***Final Grading  
Plan***

5.07 The Owner shall, before the first application is made for a building permit for construction of a single detached, semi-detached or street townhouse dwelling on any lot or block within a Phase of construction for a registered Stage of the Draft Plan:

- a) prepare and submit to the City for the City's review and approval a Final Grading Plan which the Owner shall procure pursuant to the Owner's engineering design for the Works in respect of a Phase of construction; and,

- b) deposit with the City security, the amount of which shall be determined by the City in accordance with the City's Lot Grading Policy ("Owner's Grading Deposit"). The parties acknowledge and agree that the Owner's Grading Deposit shall be held by the City in addition to any other security which the Owner may be required to provide to the City pursuant to this Agreement. The Owner's Grading Deposit shall be held by the City to ensure completion of pre-grading and correction of any problems which may arise regarding completion of final lot grading, which problems may include but are not limited to final grading of the Land as a whole and those grading problems which cannot be resolved by modification to a single lot alone.

The parties acknowledge and agree that the Owner's Grading Deposit, or remaining balance thereof, shall not be released to the Owner until acceptance by the City of Grading Certificates for all lots or blocks within a registered Stage to which the grading deposit relates; and,

- c) remove the top soil from the entire lot or block and stockpile it at locations approved by the City; and,
- d) pre-grade the entire lot or block to the elevation shown on the Final Grading Plan making due allowance for the final application of top soil and sod and for the material to be excavated for the foundations and basements of buildings to be constructed; and,
- e) submit a Certificate for all the lots or blocks within a registered Stage where single, two family and street townhouse dwellings will be constructed, issued by its Engineering Consultant in which the Engineering Consultant certifies to the City, without qualification, that the pre-grading as required in this section, has been duly fulfilled.

***Building  
Parcel Grading  
Deposit and  
Inspection Fee***

- 5.08 a) Prior to issuance of a Building Permit for construction of a single detached dwelling, semi-detached or street townhouse dwelling, the owner of any lot or block within the Land shall:
- i) place a cash deposit with the City for each lot or block, the amount of which deposit shall be determined by the City in accordance with the City's Lot Grading Policy, which deposit shall be held by the City as security for the purpose of implementing the approved Plot Plan ("Builder's Grading Deposit"). The parties acknowledge and agree that the Builder's Grading Deposit shall be held by the City in addition to any other security which the Owner may be required to provide to the City in this Agreement. The Builder's Grading Deposit shall be held by the City to ensure completion of, or correction to, any grading problems which may arise in respect of final lot grading of individual lots or blocks.
- The parties acknowledge and agree that the Builder's Grading Deposit, or remaining balance thereof, shall not be released until the City has accepted a Grading Certificate for the lot or block, to which the Certificate relates; and,
- ii) pay to the City a fee for inspection of final lot grading by the City, which amount shall be determined in accordance with the City's current User Fee By-law.

- Planting Strips** 5.09 a) Where registration of a stage of the Draft Plan results in creation of lots in which the rear lot-line abuts directly adjacent to an existing arterial or major collector road, the Owner shall obtain approval of plans from the Director of Planning showing a planting strip having a minimum width of 4.60 metres, a soil depth of 0.36 metres and a 1.80 metre high chain link fence. Construction of such planting strip shall be at the Owner's expense and in accordance with plans approved by the Director of Growth Management Division.
- b) Such approved planting strips shall be installed by the Owner within the affected lots prior to transfer of any affected lot to a first-time occupant. For transfers which occur within the period between November 30 and April 1, the planting Strip shall be completed by June 15 of the same year following April 1.
- c) The Owner shall include a copy of the approved planting plan to all agreements of purchase and sale of lots in which the required planting strip has not been installed due to winter conditions.
- d) Where a physical noise attenuation barrier is required, such barrier shall substitute for a planting strip and fence.
- Tree Management/Enhancement Plan** 5.10 All trees to be preserved on a lot or block shall be satisfactorily protected in accordance with the grading or Tree Management/Enhancement Plan approved by the City.
- Maintenance Easements** 5.11 The Owner covenants and agrees to carry out and complete the following requirements **prior to acceptance of a building permit** for Lots to (inclusive) of the subdivision Draft Plan which have been approved for reduced lot line development:
- i) A part-lot-control application shall be submitted to the Director of Growth Management together with a reference plan showing easements which shall include sufficient width on adjacent lots and/or lands to provide in total a minimum of 1.2 metres free access for the benefit of the affected lots extending the full length of the building, plus a minimum of 1.5 metres beyond at least one end of the building for maintenance purposes; and,
- ii) A transfer/deed of all the lots shown on such reference plan and all maintenance and eave encroachment easements to be created shall be registered to create the Property Identification Numbers (PIN's) for such lots and create parcels for subsequent transfer/deeds for any of the lands shown on such reference plan; and,
- iii) A letter of verification shall be provided by the Owner to the City Solicitor and Director of Building and Licensing that the easement documentation meets the City's standard form requirements; and,
- iv) Transfer of such easement shall be registered at the time of sale to a purchaser of either the lot granting an easement or the lot to be granted the favour of an easement.
- Sanitary Sewer Dye Test** 5.12 Prior to occupancy inspection the Owner of a Lot or Block within the Land shall:
- a) dye test all sanitary drains in newly constructed dwellings in order to ensure that they have been properly connected to the sanitary sewer system; and,
- b) provide the Director of Building Division and the Director of Growth Management with a certificate prepared by a professional engineer confirming that all sanitary drains for each dwelling unit have been dye tested and are properly connected to the City's sanitary sewer

system.

**Specific Requirements** 5.13 a)

## **PART 6 RELEASE OF THE AGREEMENT**

**Final Release** 6.01 At the discretion of the City and upon satisfactory completion of all works and services in the affected phase or stage of the Draft Plan, the completion of any remedial or maintenance work required and the payment in full of all City accounts, the City may, upon request and payment of any required fee, give a release of this Agreement, or any part thereof, on the Plan or individual lots and blocks thereof. The Owner acknowledges that releases will not be available for certain sections hereof, including but not limited to, any grading and restrictive covenants and warning clauses.

**IN WITNESS WHEREOF** the Parties hereto has duly executed this Agreement.

**SIGNED, SEALED AND DELIVERED** in the Presence of

**CITY OF HAMILTON**

\_\_\_\_\_  
Andrea Horwath, Mayor

\_\_\_\_\_(c/s)  
Andrea Holland, Clerk  
I/We have authority to bind the corporation.

Where Owner is not a company,  
the Owner's signature was signed  
In the presence of:

\_\_\_\_\_  
Witness (signature)

\_\_\_\_\_  
Print name of Witness

\_\_\_\_\_  
Address of Witness

Per: \_\_\_\_\_

\_\_\_\_\_(c/s)  
I/We have authority to bind the corporation.

## **ADDRESS FOR OWNER**

Where Owner is a corporation, also

above signature line, print corporation name

- ii) belc,w signature line, print officer's/director's and their title;
- iii) affix corporate seal, if available.

And, Where Owner is an individual also

have witness(es) sign;

- ii) cross out phrase, "I/We have authority to bind the corporation."

**SCHEDULE "A"**

To the Subdivision Agreement dated:

**LEGAL DESCRIPTION OF THE LANDS WITHIN THE DRAFT PLAN**

Being composed of Part of Lot\_\_\_\_. Concession ~~Geographic~~ Township of  
 " former City/Town ~~of ----- north~~ of Hamilton, being more  
 particularly described as Parts .1! to 2!, inclusive, as shown on a survey plan  
 registered in the Land Registry Office of the Land Titles Division Of Wentworth as  
 Plan 62R-\_\_\_\_ .

**SCHEDULE "B"**

To the Subdivision Agreement dated:

**DRAFT PLAN**

The Draft Plan for  
is hereby described as

as approved by the General Manager of Planning and Economic Development  
for the City of Hamilton on the \_day of \_200\_.

A full-size copy of the approved draft plan may be viewed between the hours of  
8:30 am to 4:30 pm Mon. to Fri. at the Planning and Economic Development  
Department located on the 5<sup>th</sup> Floor of City Hall at 71 Main Street West,  
Hamilton, Ontario.

### **Special Conditions for Draft Plan of Subdivision Approval for 25T-202009**

That this approval for the Draft Plan of Subdivision, 25T-202009, certified by S. D. McLaren, O.L.S., dated December 1, 2021, consisting of 152 lots for single detached dwellings (Lots 1 to 152), 28 blocks for street townhouse dwellings (Blocks 153 to 180), two blocks for condominium townhouse dwellings (Blocks 181 and 182), six blocks reserved for future residential development (Blocks 183 to 188), one block for a neighbourhood park (Block 189), one block for a walkway (Block 190), one block for a stormwater management pond (Block 191), two blocks for road widenings (Blocks 193 and 194), two blocks for services (Blocks 192 and 195), five blocks for 0.3 metre reserves (Block 196 to 200), new local roads (Streets "C", "D", "E", "F", "G", "H", "I", and "J"), and new collector roads (Streets "A" and "B"), be received and endorsed by City Council with the following special conditions:

#### **Development Engineering:**

#### **Part 1 of the Subdivision Agreement - General Conditions to be included**

1. The Owner shall agree to include in all agreements of purchase and sale and/or lease of residential units, the following warning clauses:
  - i) "Purchasers of Lot 1 are advised that an overland flow route has been provided on the north side yard of the lot conveying flow from upstream areas which may overflow and potentially cause flooding during severe storm events. No alterations or obstructions are permitted within the easement."
  - ii) "Purchasers of units in Block 182 are advised that there may be a potential backwater condition in the stormwater management (SWM) infrastructure on Block 182 due to the SWM pond operating level for various storm events up to and including 100-year storm event."
  - iii) "Purchasers are advised that on-street, public parking in the surrounding neighbourhood will be limited and cannot be guaranteed in perpetuity. Garage space for each single detached dwelling is provided and intended for the purposes of parking vehicles."
  - iv) "Purchasers of two easterly units within Block 156 are advised that due to the orientation of the driveways the purchasers agree to share the driveway ramp within the right of way."
2. That, **prior to assumption**, the Owner agrees:
  - i) To submit an operation and maintenance manual, as per the City of Hamilton Operation and Maintenance Report for Stormwater Management Facilities (May 2009), for approval by the Director and Chief Development

Engineer, Growth Management, and inspect and monitor the stormwater management facility upon commencement of construction or pre-grading of the subject lands through to assumption of the facility;

- ii) To keep detailed logs concerning stormwater management facility performance and maintenance, including costs for cleaning and removal of sediment, and submit such logs to the City during pre-grading and construction activities in accordance with the operation manual;
- iii) To construct, operate, and maintain at the Owner's expense, the stormwater management facility, in a manner acceptable to the City, in accordance with all conditions included in the Environmental Compliance Certificate (ECA) issued by MECP, throughout servicing of all stages of the registration of the draft plan and development of all registered lots and blocks, or until such time as determined by the Director of Growth Management and Chief Development Engineer; and,
- iv) To remove sediment from the stormwater management facility attributed to the development, carry out a survey and verify volumetric capacity of the stormwater management facility, prior to release of the Owner's operation and maintenance responsibilities for the stormwater management facility;

All to the satisfaction of the Director of Growth Management and Chief Development Engineer.

3. The Owner acknowledges that the storm water management design shall include a filter media-landscaped based Low Impact Development (LID) technique on Block 181 and Block 182 in accordance with the City and MECP Guideline for Low Impact Development, as applicable. The future Owners of these two blocks will be responsible to maintain, develop and implement a compliance and performance monitoring plan for all LID systems proposed within Block 181 and Block 182 for a minimum of 5 years, all to the satisfaction of the Director of Growth Management and Chief Development Engineer.
4. That, **prior to registration of the final plan of subdivision**, the Owner agrees that they will perform all required Winter Maintenance activities on all Public Highways within the registered Plan in accordance with Ontario Regulation 239/02 - Minimum Maintenance Standards for Municipal Highways under the Municipal Act, 2001 (MMS) until the criteria for municipal Winter Maintenance activities are met. Additionally, the Owner commits to submitting an application to the City for assuming Winter Maintenance responsibilities before September 15th, including the following criteria:
  - i) Sites are easily accessible;



- ii) Roads are free of all construction debris and have at least the base course asphalt completed;
- iii) Trucks can enter and exit without backing up; and,
- iv) Utility chambers are either ramped at a minimum of 2 meters from each chamber or set to grade;

All to the satisfaction of the Manager of Roadway Maintenance.

5. That, **prior to registration of the final plan of subdivision**, the Owner agrees that until an application for Waste Collection Services has been submitted and approved as per the City of Hamilton Waste Requirements for the Design of New Developments and Collection, the Owner shall make the appropriate arrangements for the collection and disposal of household waste, entirely at owner's expense, all to the satisfaction of the Manager of Waste Collection.
6. That, **prior to registration of the final plan of subdivision**, the Owner agrees that prior to the installation of the permanent Street Name Signs by the City, the Owner shall install temporary street name signs, consisting of a painted and legible sign on wooden backing, fastened securely to a post 2.6 metres above ground level (to bottom of sign) which shall be erected at all street intersections within the subdivision immediately following base course asphalt placement. The signs shall be visible from both directions (i.e. double sided). The street name signs shall be maintained until such time as all boulevard grading has been completed, all to the satisfaction of the Director of Growth Management and Chief Development Engineer.
7. That, **prior to registration of the final plan of subdivision**, the Owner agrees to design, install and energize the street lighting system, entirely at the Owner's expense, all to the satisfaction of the Director of Growth Management and Chief Development Engineer.
8. That, **prior to registration of the final plan of subdivision**, the Owner agrees, at their expense, to remove, relocate, as may be required, all affected utility poles, hydrants, pedestals, hydro vaults, etc., on Barton Street and McNeilly Road, to the satisfaction of the Director of Growth Management and Chief Development Engineer.
9. That, **prior to registration of the final plan of subdivision**, the Owner agrees to provide the City with a minimum 4.5 metre access easement for the swale/overland flow route along the north property limit of Lot 1, to the satisfaction of the Director of Growth Management and Chief Development Engineer.
10. That, **prior to registration of the final plan of subdivision**, the Owner shall pay for the future urbanization of Barton Street and McNeilly Road based on the City's

"New Road Servicing Rate" in effect at the time of payment in accordance with the City's financial policies, along Barton Street (from the west limit of Block 192 to the east limit of Block 191) and McNeilly Road from the south limit of Lot 32 to the north limit of Lot 31, to the satisfaction of the Director of Growth Management and Chief Development Engineer.

11. That, **prior to registration of the final plan of subdivision**, the Owner agrees that Blocks 182 and 156 shall remain undevelopable until such time as the stormwater management facility design including shape, footprint and the outlet structure have been approved by the City, to the satisfaction of the Director of Growth Management and Chief Development Engineer.
12. That, **prior to registration of the final plan of subdivision**, if required for drainage and grading purposes, the Owner shall provide a minimum 6 metre wide access easement on the abutting external lands from the west property limit along the southern and the easterly perimeter limits to facilitate the grading, drainage and proposed SWM infrastructures in accordance with the grading plan. In addition, the Owner agrees to maintain all SWM infrastructures within the access easement including any liability due to potential flooding and impacts to the neighbouring properties, all at the Owner's cost, to the satisfaction of the Director of Growth Management and Chief Development Engineer.
13. That, **prior to registration of the final plan of subdivision**, the Owner acknowledges and agrees that the residential reserves Blocks 183 to 188 inclusive shall remain undevelopable until such time as they are merged with the adjacent lands, to the satisfaction of the Director of Growth Management and Chief Development Engineer.
14. That, **prior to registration of the final of subdivision**, the Owner agrees to dedicate a 9 metre wide multiuse pathway block (Block 190) to accommodate a minimum 3 metre wide multiuse pathway and storm sewer to service the future park south of block 190, to the satisfaction of the Director of Growth Management and Chief Development Engineer.
15. That, **prior to registration of the final plan of subdivision**, the Owner agrees that Lots 103, 110, and the corner units of Blocks 173 and 180 shall remain undevelopable until such time as the design for the roundabout at the intersection of Street "A" and Street "B" has been approved, to the satisfaction of the Director of Growth Management and Chief Development Engineer.
16. That, **prior to preliminary grading**, the Owner agrees to demonstrate the ratio of 40% on-street parking can be achieved, to the satisfaction of the Director of Growth Management and Chief Development Engineer.

17. That, **prior to preliminary grading**, the Owner shall submit a detailed stormwater management report prepared by a qualified Professional Engineer including the following parameters:
- i) Demonstrate how stormwater quality, quantity , erosion control and water balance for the subject development will be handled through a centralized SWM facility in accordance with the Block 3 Servicing Study for Fruitland Winona Secondary Plan Policy; Functional Servicing Report and Stormwater Management Report, 1054 Barton Street, prepared by Urbantech, dated: September 2023; City of Hamilton Drainage policy, City of Hamilton current Comprehensive Development Guidelines and the MECP Stormwater Management Planning and Design Manual (2003);
  - ii) Verify that the proposed SWM facility (SWMF) Block 191 shall be of sufficient size with shape/geometry acceptable to the City to adequately accommodate an ultimate facility, including maintenance access road and decanting areas as per City of Hamilton current Comprehensive Guidelines and Financial Policies Manual;
  - iii) The Stormwater Management Facility shall be designed to control post development flow rates up to and including the 100 year design storm in accordance with Block 3 Servicing Strategy of Fruitland Winona Secondary Plan and Functional Servicing Report and Stormwater Management Report, 1054 Barton Street, prepared by Urbantech, dated: September 2023;
  - iv) Demonstrate an appropriate minor and major system storm outlet in the interim and ultimate conditions for all external drainage areas along the entire perimeter of the subject development;
  - v) The SWMF design shall demonstrate a suitable overland flow route to the SWMF main cell such that the above overland flow route does not conflict with the proposed on-street parking on Street "G" and the proposed driveway of eastern units of Block 156 and incorporates appropriate erosion protection measures along the side slope of the pond;
  - vi) The design shall demonstrate that the 5 year hydraulic grade line (HGL) in the storm sewer shall not exceed the obvert of the sewer based on a 5 year pond operating level and the 100 year HGL should be a minimum of 0.3 metre below the lowest inlet top of grate elevation based on a 100-year pond operating level; and,
  - vii) Include within the engineering design drawings and cost estimate schedules, a landscape design of the Stormwater Management Facility as per City of Hamilton Landscape Design Guidelines for stormwater management facilities (May 2009);

All to the satisfaction of the Director of Growth Management and Chief Development Engineer.

18. That, **prior to preliminary grading**, the Owner agrees that Lot 31 and Lot 32 shall remain undevelopable until such time as the Owner demonstrates an adequate width for a self-contained drainage swale along the north limit of Lot 31 and the south limit of Lot 32 showing how the proposed grades will reconcile with the existing grades along the adjacent existing properties, to the satisfaction of the Director of Growth Management and Chief Development Engineer.
19. That, **prior to preliminary grading**, the Owner shall submit an updated Hydrogeological Report to the City, prepared by a qualified professional, to assess impacts, identify any significant recharge and discharge zone, provide recommendations to mitigate the groundwater impacts during any construction within the subdivision including, but not limited to, house construction, address the impacts of the pond bottom elevation below the groundwater table, and the Owner further agrees to undertake any mitigative works, as recommended, including any recommended monitoring. If, in the opinion of the project expert, it is required, the report shall include a groundwater contingency plan to ensure that an appropriate mitigation strategy is available to be implemented if:
  - i) An aquifer is breached during construction.
  - ii) Groundwater is encountered during any construction within the subdivision including but not limited to, house and pond construction.
  - iii) Basement is located below groundwater table.
  - iv) Water supply and sewage disposal systems, and any surface and groundwater related infrastructure, are negatively impacted.

All to the satisfaction of the Director of Growth Management and Chief Development Engineer.

20. That, **prior to preliminary grading**, the Owner, through a geotechnical engineer or other qualified professional, shall: check if any existing wells which provide potable water supply to other properties located within 500 metre radius of the subject lands to establish the existing depth of water within wells prior to the commencement of construction; monitor these wells during construction; and monitor wells for a period of one year after the completion of construction. If any problem arises, the monitoring program shall be extended, and the Owner shall address and resolve all issues, to the satisfaction of the Director of Growth Management and Chief Development Engineer.

21. That, **prior to preliminary grading**, the Owner shall verify and confirm the existing drainage channel abutting the east limit of Block 191 can convey flow from all external drainage areas remaining after drainage diversion works along south side of Hwy# 8 are completed. The Owner further agrees to mitigate any impact to the neighbouring properties along east property limit, all at the Owners cost, to the satisfaction of the Director of Growth Management and Chief Development Engineer.
22. That, **prior to preliminary grading**, the Owner acknowledges that the pre-grading works shall not be permitted within the regulated floodplain areas associated Watercourse 9 until the drainage diversion storm sewer works within Highway 8 and Lewis Road right of ways have been completed and in operation, to the satisfaction of the Director of Growth Management and Chief Development Engineer.
23. That, **prior to preliminary grading**, the Owner shall provide a dewatering plan in accordance with the recommendations of the hydrogeological report, to the satisfaction of the Director of Growth Management and Chief Development Engineer.
24. That, **prior to preliminary grading**, the Owner shall verify and confirm a suitable sanitary outlet with sufficient capacity available to service the proposed development including any upgrades to the existing sanitary trunk sewer network on McNeilly Road and Lewis Road in accordance with the City's Financial policies, to the satisfaction of the Director of Growth Management and Chief Development Engineer.
25. That, **prior to preliminary grading**, the Owner shall prepare and submit a Construction Management Plan and Report that provides:
  - i) Details on any construction activity that will encroach into the municipal road allowance such as construction staging, scaffolding, cranes, etc.;
  - ii) Location and maximum dimensions of stockpiling;
  - iii) Identification of any required sidewalk and/or lane closures and the estimated length of time for such closures;
  - iv) Details on heavy truck routing;
  - v) Alternate arrangements of any City or school bus routing and stop locations that may be impacted; and,
  - vi) Procedure for dealing with issues concerning dust control and street cleaning (external roads included) throughout construction within the subdivision. This document will also include first point of contact, a

schedule for regular cleaning of streets that is specific to the methods to be used, the source of water, and the contractor or agent to be used to undertake the works as well as contractor/agent contact information so that the City can direct the work to be completed as necessary;

All to the satisfaction of the Director of Growth Management and Chief Development Engineer.

26. That, **prior to preliminary grading**, in the event that phasing occurs and phasing necessitates the requirement of temporary turning circles in accordance with City Guidelines, the Owner agrees to include in the engineering design and cost estimate schedules the construction and future removal of temporary turning circles to permanent City standards. The Owner further agrees that all lots impacted by the construction of the temporary turning circles shall remain undevelopable until such time as the temporary turning circles are no longer deemed necessary by the City. The final M-Plan shall show the blocks required to be dedicated to the City for the temporary turning circle(s). Upon extension of the subject right-of-ways, the blocks no longer deemed necessary for the temporary turning circles shall be closed by By-Law and the lands returned to the original Owner, entirely at the Owner's expense, all to the satisfaction of the Director of Growth Management and Chief Development Engineer.
27. That, **prior to preliminary grading**, the Owner agrees to provide an Excess Soil Management Plan to demonstrate how the development will comply with 0. Reg. 406/19, addressing registration, assessment, sampling, and analysis, characterization, source/destination, reporting and tracking requirements, to the satisfaction of the Director of Growth Management and Chief Development Engineer.
28. That, **prior to servicing**, the Owner shall include in the engineering design and cost estimate schedules the urbanization of Lewis Road from Highway 8 to Barton Street including the installation of storm sewers outletting to the open channel located at 1119 Barton Street which shall convey up to 100-year external flows in accordance with Fruitland Winona Secondary Plan Block 3 Servicing Strategy and the 1054 Barton Street Functional Servicing Report and Stormwater Management Report (Urbantech, September 2023). All costs for the Lewis Road urbanization will be borne by the City, and the cost for the installation of storm sewer including restoration works will be shared equally (50/50 split) between City and the Owner, subject to available funding in the approved Capital Budget and land dedication from 286 Lewis Road including urbanization cost from the property owner, all to the satisfaction of the Director of Growth Management and Chief Development Engineer.
29. That, **prior to servicing**, the Owner agrees to include in the engineering design and cost estimate schedules the provision for a temporary access from the north limit of Street "J" to Barton Street including a minimum 1.8 metre wide sidewalk,

as a secondary access required for development of more than 100 dwelling units. At such time as the Collector Road network connecting to Highway 8 as identified in the Fruitland Winona Secondary Plan has been fully established, the Owner agrees to remove the temporary access and shall restore/regrade the disturbed areas including sodding to City standards, all at the Owner's cost to the satisfaction of the Director of Growth Management and Chief Development Engineer.

30. That, **prior to servicing**, the Owner shall include in the engineering design and cost estimate schedules provision for the installation of a minimum 1.8 metre wide concrete sidewalk on both sides of Street "A" and Street "B", all to the satisfaction of the Director of Growth Management and Chief Development Engineer.
31. That, **prior to servicing**, the Owner shall include in the engineering design and cost estimate schedules the provision for installation of a 13.0 metre pavement radii along the inside curb line and 15 metre radii along the outside curb line at the 90- degree bend of Street "C", Street "E", Street "G", Street "H", all to the satisfaction of the Director of Growth Management and Chief Development Engineer.
32. That, **prior to servicing**, the Owner agrees to include in the engineering design and cost estimate schedules the installation of new sanitary sewer including restoration along Barton Street (in accordance with the recommendations in Block 3 Servicing Strategy of Fruitland Winona Secondary Plan; and Functional Servicing Report, 1054 Barton Street, prepared by Urbantech; dated: September 2023) at the following locations:
  - i) From the intersection of Street "A" and Barton Street westerly to McNeilly Road; and,
  - ii) From the intersection of Street "A" and Barton Street easterly to Lewis Road;

All to the satisfaction of the Director of Growth Management and Chief Development Engineer.
33. That, **prior to servicing**, the Owner shall prepare and submit an on-street parking plan showing:
  - i) The location of driveways based on achieving on-street parking for 40% of the total dwelling units on Street "A", Street "B", Street "C", Street "D", Street "E", Street "F", Street "G", Street "H", Street "I" and Street "J";
  - ii) The driveway aprons and curb openings for all lots;
  - iii) The pairing of driveways (where required);

- iv) Where lots in the subdivision abut a park entrance or a public walkway, as the case may be;
- v) The location of transit pads, community mailbox pads and fire hydrants, where the location has been determined by the appropriate authorities; and,
- vi) Parking on one side of the street only;

All to the satisfaction of the Director of Growth Management and Chief Development Engineer.

- 34. That, **prior to servicing**, the Owner shall indicate all driveway locations on the engineering drawings for all lots and blocks and that no driveway shall be located within a daylight triangle. Further, all driveway locations at bends and corners shall be situated to ensure that the driveways are completely located within their own lot frontages and the driveway aprons shall not cross in front of adjacent lots (except for Block 156, in accordance with Condition 1 (iv)). Further, all end units with daylighting triangles shall have the driveway located on the internal side of the lot or block, all to the satisfaction of the Director of Growth Management and Chief Development Engineer.
- 35. That, **prior to servicing**, the Owner agrees to provide a plan or procedure for dealing with issues concerning dust control and street cleaning (external roads included) throughout the construction within the subdivision, including homes. This document will also include, first point of contact, a schedule for regular cleaning of streets that is specific to the methods to be used, the source of water, and the contractor or agent to be used to undertake the works as well as the contractor/agent contact information so that the City can direct works to be completed as necessary, to the satisfaction of the Director of Growth Management and Chief Development Engineer.
- 36. That, **prior to servicing**, the Owner shall include in the engineering design and cost estimates provision for the construction of a 1.5 metre high black vinyl coated heavy duty chain-link fence along following locations:
  - i) East limit of Block 191;
  - ii) West and South limit of Block 189;
  - iii) North limit of Lot 143;
  - iv) East limit of Block 156;
  - v) East limit of Block 182;



- vi) West limit of Block 192; and,
- vii) East and west limit of Block 190;

All to the satisfaction of the Director of Growth Management and Chief Development Engineer.

- 37. That, **prior to servicing**, the Owner shall include in the engineering design and cost estimate schedules provision for the installation of a 3.0 metre wide temporary multi-use path along Barton Street from the west limit of Block 192 connecting to the existing sidewalk east side of block 191 at the Owner's cost, to the satisfaction of the Director of Growth Management and Chief Development Engineer.
- 38. That, **prior to servicing**, the Owner shall submit an updated geotechnical report including the pavement design recommendations and implement the report's final recommendations to address any previous City comments and to confirm the design of the proposed liner within the Stormwater Management Pond, to the satisfaction of the Director of Growth Management and Chief Development Engineer.
- 39. That, **prior to Servicing**, the Owner agrees to include in the engineering design and cost estimate schedules the construction of a temporary turning circle at the east terminus of Street "I" and south terminus of Street "H" and the future removal of the temporary turning circles. The Owner further agrees that all lots impacted by the construction of the temporary turning circles shall remain undevelopable until such time as the temporary turning circles are no longer deemed necessary by the City. The final M-Plan shall show the blocks required to be dedicated to the City for the temporary turning circles. Upon the extension of subject right-of-ways, the blocks no longer deemed necessary for the temporary turning circles shall be closed by By-Law and the lands returned to the original Owner, entirely at the Owner's expense, all to the satisfaction of the Director of Growth Management and Chief Development Engineer.
- 40. That, **prior to servicing**, the Owner agrees to include in the engineering design and cost estimate schedules the construction of a minimum 3 metre wide pedestrian walkway and storm sewer within Block 190 at the Owner's expense, to the satisfaction of the Director of Growth Management and Chief Development Engineer.
- 41. That, **prior to servicing**, the Owner agrees to include in the design and cost estimate schedules the provision for future works related to pre-grading of Block 189 (neighboring park) to meet the future proposed grades for the park development adjacent to the east and south limits of Block 189, to the satisfaction of the Director of Growth Management and Chief Development Engineer.

**Development Planning**

42. That, **prior to registration of the final plan of subdivision**, the Owner agrees to include the following warning clauses for Lots 1 to 152 and Blocks 152 to 188 in all purchase and sale and / or lease agreements, and registered on title to the satisfaction of the Director of Planning and Chief Planner:

Warning Clause "C":

"Purchasers/ tenants are advised of the proximity of adjacent commercial facilities, the sound from which may at times be audible."

43. That, **prior to registration of the final plan of subdivision**, the Owner agrees to include the following warning clauses for Lots 31 and 32 and Blocks 181 and 182 in all purchase and sale and / or lease agreements, and registered on title to the satisfaction of the Director of Planning and Chief Planner:

Warning Clause "A":

"Purchasers/ tenants are advised that sound levels due to the increasing road traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels exceed the sound level limits of the Ministry of the Environment and Conservation and Parks' noise criteria."

Warning Clause "B":

"Purchasers/ tenants are advised that this dwelling unit has been fitted with a forced air heating system and the ducting etc., was sized to accommodate central air conditioning. Installation of central air conditioning will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the Municipality's and the Ministry of the Environment, Conservation and Parks' noise criteria. (Note: The location and installation of the outdoor air conditioning device should be done so as to minimize the noise impacts and comply with criteria of Ministry of the Environment, Conservation and Parks publication NPC-300.)"

**Forestry and Horticulture**

44. That, **prior to preliminary grading**, the Owner shall submit a revised Tree Management Plan, to the satisfaction of the Director of Environmental Services and the Director of Heritage and Urban Design.

45. That, **prior to preliminary grading**, the Owner shall submit any applicable fees for any municipal trees related to the subdivision, to the satisfaction of the Director of Environmental Services.

**Growth Management (Legislative Approvals):**

46. That, **prior to registration of the final plan of subdivision**, the owner and agent shall work with Legislative Approvals/ Staging of Development staff to name the proposed Streets and finalize municipal addressing for the individual Blocks, to the satisfaction of the Director of Growth Management and Chief Development Engineer.

**Transportation Planning**

47. That, **prior to servicing**, the Owner shall provide a Transportation Impact Study, to the satisfaction of the Manager, Transportation Planning. Any improvements recommended by the results of the Transportation Impact Study to be made to the surrounding road network are the responsibility of the Owner.
48. That, **prior to servicing**, the Owner shall provide an on-street parking plan for the overall subdivision, to the satisfaction of the Manager, Transportation Planning.
49. That, **prior to servicing**, the Owner shall provide a pavement marking and signage plan for the overall subdivision, to the satisfaction of the Manager, Transportation Planning and the Manager, Transportation Operations and Maintenance.
50. That, **prior to servicing**, the Owner shall acknowledge Street "A" and Street "B" as a collector road with a right-of-way width of 26.213 metres, to the satisfaction of the Manager, Transportation Planning.
51. That, **prior to registration of the final plan of subdivision**, the Owner shall agree to provide a terminating cul-de-sac at the termination of Street "B", Street "I", Street "J", and Street "H", to the satisfaction of the Manager, Transportation Planning.
52. That, **prior to registration of the final plan of subdivision**, the Owner shall agree to dedicate a right-of-way dedication along Barton Street East of approximately 9.3 metres to 11.5 metres to bring the ultimate right-of-way to 40.576 metres, to the satisfaction of the Manager, Transportation Planning.
53. That, **prior to registration of the final plan of subdivision**, the Owner shall agree to dedicate a right-of-way dedication along McNeilly Road of approximately 3.1 metres to bring the ultimate right-of-way to 26.213 metres, to the satisfaction of the Manager, Transportation Planning.

54. That, **prior to registration of the final plan of subdivision**, the Owner shall agree to dedicate a daylight triangle of 9.14 metres x 9.14 metres at all intersections with collector roads Street "A" and Street "B", to the satisfaction of the Manager, Transportation Planning.
55. That, **prior to registration of the final plan of subdivision**, the Owner shall agree to dedicate a daylight triangle of 4.57 metres x 4.57 metres at all intersections of local road, to the satisfaction of the Manager, Transportation Planning.
56. That, **prior to grading**, the Owner shall include in the engineering design and cost estimate schedule for the provision of all required works for the design and construction of a roundabout at the intersection of Street "A" and Street "B", to the satisfaction of the Manager, Transportation Planning and the Manager, Transportation Operations and Maintenance.

#### **Heritage and Urban Design**

57. That, **prior to preliminary grading and servicing**, the Owner shall prepare and implement a Tree Protection Plan prepared by a tree management professional (i.e., certified arborist, registered professional forester, or landscape architect) in accordance with the City's Council adopted Tree Protection Guidelines (revised October 2010), to the satisfaction of the Director of Planning and Chief Planner. Removal of trees is not to occur until this condition has been satisfied.
58. That, **prior to preliminary grading and servicing**, the Owner is to be aware of the Migratory Birds Convention Act, 1994 and agrees that the removal of any vegetation on the subject lands is to occur during Sept. 1 to March 30 by placing notations related to breeding birds on the Tree Protection Plan. In the event that vegetation removal is proposed during the restricted breeding period, the Owner/Developer shall have a qualified biologist conduct a nest search of the vegetated area with City of Hamilton Natural Heritage Planning staff, prior to any work commencing. Accordingly, removal may occur if it is determined that active nests are not in the proximity of the removal area, to the satisfaction of the Director of Planning and Chief Planner.
59. That, **prior to preliminary grading and servicing**, the Owner/Developer shall prepare a revised Carolina Wren Technical Memo to the satisfaction of the Director of Planning and Chief Planner.
60. That, **prior to registration of the final plan of subdivision**, the Owner shall prepare a Landscape Plan by a certified Landscape Architect showing the placement of compensation trees for any tree removals, completed in accordance with the Tree Protection Plan, to the satisfaction of the Director of

Planning and Chief Planner. Native trees, shrubs, and flowering plants are to be considered within the Landscape Plan.

**Hamilton Conservation Authority**

61. That, **prior to grading**, the Owner shall prepare and implement an erosion and sediment control plan, grading plan, drainage plan, and servicing plan for the subject property, all to the satisfaction of the Hamilton Conservation Authority.
62. That, **prior to grading**, the Owner shall complete and submit a full stormwater management report and associated engineering drawings (grading, drainage, servicing), all to the satisfaction of the Hamilton Conservation Authority.
63. That, **prior to grading**, the Owner shall submit a Downstream Flood Plain Impact Assessment, for review and approval by the Hamilton Conservation Authority, demonstrating that the current downstream flood plain mapping will be maintained.

**Bell Canada:**

64. That, **prior to registration**, the Owner acknowledges and agrees to convey any easement(s) as deemed necessary by Bell Canada to service this new development and the Owner further agrees and acknowledges to convey such easements at no cost to Bell Canada, to the satisfaction of Bell Canada.
65. That, **prior to registration**, the Owner agrees that should any conflict arise with existing Bell Canada facilities where a current and valid easement exists within the subject area, the Owner shall be responsible for the relocation of any such facilities or easements at their own cost, to the satisfaction of Bell Canada.

**Canada Post:**

66. That, **prior to registration of the final plan of subdivision**, the Owner shall include in all offers of purchase and sale and lease or rental agreements, a statement that advises the prospective purchaser:
  - a. that the home/ business mail delivery will be from a designated Centralized Mail Box; and,
  - b. that the developers/ owners be responsible for officially notifying the purchasers of the exact Centralized Mail Box locations prior to the closing of any home sales.
67. That, **prior to registration of the final plan of subdivision**, the Owner agrees to:

- a. work with Canada Post to determine and provide temporary suitable Centralized Mail Box locations which may be utilized by Canada Post until the curbs, boulevards and sidewalks are in place in the remainder of the subdivision;
  - b. install a concrete pad in accordance with the requirements of and in locations to be approved by Canada Post to facilitate the placement of Community Mail Boxes;
  - c. identify the pads above on the engineering servicing drawings. Said pads are to be poured at the time of the sidewalk and/or curb installation within each phase of the plan of subdivision;
  - d. determine the location of all centralized mail receiving facilities in co-operation with Canada Post and to indicate the location of the centralized mail facilities on appropriate maps, information boards and plans; and,
  - e. maps are also to be prominently displayed in the sales office(s) showing specific Centralized Mail Facility locations.
68. Canada Post's multi-unit policy, which requires that the owner/developer provide the centralized mail facility (Lock Box Assembly) at their own expense (less than 100 units will require a front loading Lock Box Assembly and more than 100 units will require a rear loading Lock Box Assembly which will require a mail room) will be in effect for buildings and complexes with a common lobby, common indoor or sheltered space.

#### **NOTES TO DRAFT PLAN APPROVAL**

- 1. Pursuant to Section 51 (32) of the *Planning Act*, draft approval shall lapse if the plan is not given final approval within three years. However, extensions will be considered if a written request is received two months before the draft approval lapses.

#### **Recycling and Waste Disposal:**

- 2. The developer is responsible for all waste removal until the area is ready for municipal waste collection service.
- 3. Dwellings receiving service on private property will not be serviced until an "Agreement for On-site Collection of Solid Waste" is finalized. The developer is responsible for all waste removal until the area is ready and the Agreement is in place.

4. The developer must provide a signed letter from a professional engineer certifying that the road base along the access route can support at least 35,000 kilograms.