

*This is an example of the typical contents of a Site Plan Agreement used in the City of Waterloo. The actual agreement used for any given site plan application will be determined by the City’s Planning Approvals Division and may vary significantly from this example. This example agreement should not be relied on for decision making purposes.*

**SITE PLAN CONTROL AGREEMENT**

**BETWEEN:**

**THE CORPORATION OF THE CITY OF WATERLOO**  
(the “City”)

Party of the First Part

-AND-

**[LEGAL SERVICES - INSERT LEGAL NAME OF OWNER]**  
(the “Owner”)

Party of the Second Part

-AND-

**[LEGAL SERVICES - INSERT LEGAL NAME OF MORTGAGEE]**  
(the “Mortgagee”)

Party of the Third Part

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**SITE PLAN CONTROL AGREEMENT**

**THIS AGREEMENT made this [ ] day of [ ].**

**BETWEEN:**

**THE CORPORATION OF THE CITY OF WATERLOO**

(the “City”)

Party of the First Part

-AND-

**[LEGAL SERVICES - INSERT LEGAL NAME OF OWNER]**

(the “Owner”)

Party of the Second Part

-AND-

**[LEGAL SERVICES - INSERT LEGAL NAME OF MORTGAGEE]**

(the “Mortgagee”)

Party of the Third Part

**WHEREAS:**

1. The Owner warrants that it is the sole registered owner of the lands municipally known as **[INSERT MUNICIPAL ADDRESS]**, City of Waterloo and with legal description as set out in **Schedule “A”** to this Agreement (the “Lands”);
2. Section 3.11 of the City’s Official Plan provides that the City shall utilize its site plan powers to support and encourage a high level of urban design for both public and private developments, including through the Urban Design Manual and design and impact studies, as those terms are defined in the City’s Official Plan;
3. The Lands are located in a site plan control area pursuant to City By-law 2013-124 (the “By-law”) as authorized by Section 41 of the *Planning Act*, R.S.O. 1990, c.P.13 (the “Act”);
4. The Owner has applied to the City to construct **[PROVIDE DESCRIPTION OF PROPOSED DEVELOPMENT]** (the “Development”);
5. **[OPTIONAL CLAUSE IF APPLICABLE – MINOR VARIANCE(S) – DELETE IF NOT APPLICABLE]** The Owner made an application (**INSERT APPLICATION NUMBER**) for minor variance(s) regarding **[DESCRIBE MINOR VARIANCE(S)]**, in order to facilitate the proposed Development, which variance(s) were granted with conditions, by decision of the Committee of Adjustment, dated **[INSERT DATE OF COA DECISION]**;
6. **[IF APPLICABLE, INSERT OTHER CLAUSES DESCRIBING PLANNING CONTEXT, SUCH AS RELATED APPLICATIONS/APPROVALS/ETC – IF NOT APPLICABLE, PLEASE DELETE]**
7. The Owner made an application (**SP-XX-XX**) to the City pursuant to Section 41 of the Act for site plan approval of the Development;
8. The City’s Site Plan Review Committee (the “Committee”) recommended approval of site plan application **SP-XX-XX** to the Director of Planning on **MONTH, DAY, YEAR** subject to certain conditions (the “Recommended Site Plan”), including that: (a) the Development on the Lands be constructed in accordance with the Urban Design Manual and the Development Manual; and (b) that the Owner enter into a site plan control agreement to the satisfaction of the City (the “Agreement”);
9. Site plan approval is withheld by the Director of Planning until this Agreement is executed by all parties, and all of the final plans have been submitted to and approved by the City, being:
  - **[LIST PLANS AND STUDIES]**

- Plan Title, Date, Revision Date, prepared by Consultant Name

(the “Final Site Plan Approval” and “Final Site Plans”);

10. Subsection 41(7) of the Act permits the entering into of this Agreement in order to secure the provision of the Works as hereinafter defined, and the facilities and matters set out in this Agreement and the Final Site Plans, including the maintenance of the Lands during and after construction of the Development;
11. Subsection 41(10) of the Act permits the registration of this Agreement against the Lands;
12. The Development may result in impacts on the adjoining lands or roads owned or operated by the City or on the provision of services by the City. The Owner agrees that it is appropriate that this Agreement address the responsibilities and obligations of the Owner in such circumstances as well as his, her or its obligations pursuant to other applicable City standards and regulations; and
13. The Owner has voluntarily agreed to enter into this Agreement and to have this Agreement registered on title to the Lands at his, her or its sole expense;

**NOW THEREFORE IN CONSIDERATION** of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to the terms and conditions set forth below:

## **PART I**

### **DEFINITIONS AND SCHEDULES**

#### **1. Definitions**

In addition to the words and terms defined in the Recitals to this Agreement or the body of this Agreement, the following capitalized words and terms shall have the corresponding meaning as set out below:

**“Architect”** has the same meaning as defined in the *Architects Act*, R.S.O. 1990, c. A. 26 and is qualified to design and supervise the construction of part of the Works and who is acceptable to the Director of Planning in his or her sole discretion;

**“Building”** means the proposed development as set out in Clause 4 of this Agreement;

**“Building Permit”** means a building permit issued by the Chief Building Official under the authority of the *Building Code Act, 1992*, S.O. 1992, c. 23 (the *“Building Code Act”*);

**“City”** means The Corporation of the City of Waterloo, and where the context so applies, includes its officers, employees, servants, agents and contractors;

**“Chief Building Official”** means the City’s Chief Building Official and includes his or her designate;

**“Conceptual Workspace Management Plan”** means a construction staging plan setting out, on a scaled engineering drawing: the limits of the Lands; the proposed construction activity; equipment and material storage; construction entrance; emergency access; vehicle parking; site meeting trailer; and, any other details as required by the Director;

**“Construction Traffic Plan”** means a plan developed to the satisfaction of the Director of Transportation to authorize, manage and control the location, route, timing of any construction traffic on municipal highways including but not limited to all automobiles, light and heavy trucks, cranes, equipment, loaders, backhoes, excavators and compactors;

**“Consulting Engineer”** means an engineer licensed by the Professional Engineers Association of Ontario acceptable to the Director in his or her sole discretion who is qualified to design and supervise the completion of the Works and who will act as the agent of the Owner throughout the construction of the Development and who, prior the release of the securities required under this Agreement, will certify same to the City;

**“Development Manual”** means the City’s Development Engineering Manual as amended;

**“DGSSMS”** means the Region’s Design Guidelines and Supplemental Specifications for Municipal Services, as amended from time to time;

**“Director”** means the City’s Director of Engineering Services, Integrated Planning & Public Works and includes his or her designated representatives including construction inspectors;

**“Director of Transportation”** means the Director of Transportation Services, Integrated Planning & Public Works for the City and includes his or her designate;

**“Director of Planning”** means the City’s Director of Planning, Integrated Planning & Public Works for the City and includes his or her designate;

**“GRCA”** means the Grand River Conservation Authority;

**“Landscape Architect”** means a person accredited as a landscape architect pursuant to the *Ontario Association of Landscape Architects Act*, 1984, S.O. 1984, c. Pr12 and who is qualified to design and supervise the construction of part of the Works and who is acceptable to the Director of Planning in his or her sole discretion;

**“License Agreement”** means an agreement made pursuant to sections 8, 9 or 11 of the *Municipal Act*, 2001, S.O. 2001, c.25 (the “*Municipal Act*”), for the purposes of geotechnical control involving earth anchors, supports, piles or tie-back rods satisfactory to the City Solicitor in his or her sole discretion when using lands owned or managed by the City such as boulevards and sidewalks and the subsurface zones under such lands;

**“Maintenance Period”** means the period of time between the Consulting Engineer’s certification of Servicing Works or Surface Works as the case may be, and the release of financial securities held by the City, as determined by the Director in order to allow settlement or other defects to become apparent;

**“MOE”** means the Ontario Ministry of the Environment and includes any successor Ministry;

**“MOL”** means the Ontario Ministry of Labour and includes any successor Ministry;

**“MOT”** means the Ontario Ministry of Transportation and includes any successor Ministry;

**“OPS”** means Ontario Provincial Standards and Specifications for Roads and Public Works published by the MOT;

**“Owner”** means [LEGAL SERVICES - INSERT LEGAL NAME OF OWNER] and includes any subsequent or other beneficial and registered owner(s) of the Lands or part thereof, and their successors and assigns;

**“Region”** means The Regional Municipality of Waterloo, and where the context so applies, includes its officers, employees, servants, agents and contractors;

**“Servicing Works”** means any pipes, wires, vents, ducts, cables, conduits, sewers (both storm and sanitary), service connections, castings, manholes, catch basins, valves, backflow preventors, drains, life safety equipment, electricity transformer(s), stormwater swales, storm water collection basins and related pump(s) and equipment and conduits, stormwater quality control devices, sump pumps, sump pump pits, weeping tiles and other conduits, telecommunication signal transmission and reception facilities and lines, water mains, water meters, water meter rooms, water meter chambers, telephone cables and access transmission lines and public and private utility lines that, without limiting the generality of the foregoing, provide, measure, regulate or transmit, power, communication facilities, electricity, water, fuel, stormwater and other drainage, sewage disposal and any other public utility;

**“Surface Works”** includes but is not limited to items such as sidewalks, walkways, curbs, gutters, swales, ramps, stairs, driveways, trails, bike paths, parking lots, retaining walls, garbage and recycling enclosures, bollards, buffering, gates, handrails, fences, landscaping, lighting, transformer pads, topsoil, seed, trees, shrubs, plants, mulch and landscaping and any other constructed surfaces;

**“Treasurer”** means the City’s Treasurer and Chief Financial Officer and includes his or her designate;

**“Urban Design Manual”** means the City’s current Urban Design Manual as amended, originally adopted by City Council on September 28, 2009, as referenced in section 3.11 of the City’s Official Plan. The Urban Design Manual includes provisions with respect to accessibility and exterior and sustainable design; and

**“Works”** means collectively the Building, the Servicing Works and the Surface Works.

## **2. Schedules**

The following Schedules are attached hereto and form an integral part of this Agreement:

- (a) **Schedule “A”** being a description of the Lands affected by this Agreement;
- (b) **Schedule “B”** being a Solicitor's Certificate of Ownership of the Lands;
- (c) **Schedule “C”** being a listing of lands to be conveyed, dedicated or transferred to the City or the Region;
- (d) **Schedule “D”** being the security and letter of credit calculations;
- (e) **Schedule “E”** being a schedule concerning the reduction and release of security; and
- (f) **Schedule “F”** being a schedule defining Additional Conditions

## **PART II APPROVED SITE PLAN**

## **3. Previous Site Plan Control Agreements**

[ADVISE LEGAL SERVICES IF THERE ARE PRE-EXISTING SITE PLAN AGREEMENT(S) FOR THE LANDS THAT ARE TO REMAIN IN FORCE AND EFFECT AND NOT BE REPLACED BY THIS AGREEMENT/APPROVAL – OTHERWISE USE THIS WORDING] The parties agree that upon full execution and registration of this Agreement, it shall, unless otherwise stated herein, supersede and replace any previous site plan control agreement(s) relative to the Lands, including site plan control agreement(s) registered on title to the Lands.

## **4. Approved Structure(s)**

The Owner acknowledges and agrees that the City’s review and approval of the submitted plans and drawings comprising the Final Site Plans is on the basis of a proposal [PROVIDE DESCRIPTION OF PROPOSED DEVELOPMENT] (the “Development”).

## **5. Conformity with Agreement**

The Owner covenants and agrees that no material deviations or changes shall be made to the Final Site Plans and no work or construction shall take place contrary to this Agreement or the Final Site Plans without the prior written approval of the Director of Planning, except such changes as may be required by the City in order that said plans and drawings shall comply with all relevant provisions of the building or zoning or other by-law or laws of the City, and all regulations or laws of any other governmental body having jurisdiction.

## **6. Approvals Standards May Change**

The Owner acknowledges that the Final Site Plans are based on the City’s current guidelines, manuals, standards and zoning in effect on the date of such approval. If these standards or regulations have changed before the Owner applies for a Building Permit(s) for any part of the Development, the requirements for the issuance of the Building Permit(s) shall be based on the updated standards and regulations.

**7. Service Capacity Not Guaranteed**

The Owner acknowledges and agrees that Final Site Plan Approval, including the entering into this Agreement, does not guarantee the availability of servicing (sanitary, storm and water) capacity for the Lands and or the Development.

**8. Amendments to this Agreement, Approved Site Plan and Final Site Plans**

No amendments shall be made to this Agreement or the Final Site Plans without the written consent of the Director of Planning.

**9. Condition Precedent: Zoning**

In the event that a minor variance, rezoning or an official plan amendment is required to permit the Development of the Lands in accordance with the Approved Site Plan or the Final Site Plans, this Agreement shall be conditional upon such approval(s) coming into force, failing which this Agreement shall be null and void and not binding upon any party to this Agreement.

**PART III**  
**ACKNOWLEDGEMENTS OF THE OWNER**

**10. The Owner acknowledges having received copies of the following and agrees as follows:**

- (a) the Development Manual and Urban Design Manual. The Development and Works shall be completed in accordance with these manuals and any other applicable urban design guidelines and or studies;
- (b) the City's Noise By-Law 2010-073. The Owner shall not permit construction of the Development to occur outside of the hours set out in the Noise By-law;
- (c) the City's Highway Work Permit By-Law No. 2009-111. The Owner shall not, at any time, encroach upon or otherwise use any lands owned or managed by the City for the purposes of any construction on the Lands or related to the development of the Lands without written authorization from the Director of Transportation Services. Any use of the City sidewalk, boulevard or the public right-of-way that may restrict the right of passage by the public over the highway is also prohibited without the written authorization of the City, which authorization may be unreasonably withheld;
- (d) the City's Site Alteration By-Law No. 2010-66. The Owner shall not alter the grade of the Lands, even if in accordance with the Final Site Plans, unless it has obtained an alteration permit from the City;
- (e) the City's Demolition Control By-Law No. 2013-014. The Owner shall not demolish any residential dwelling units on the Lands without first obtaining a demolition permit from the Chief Building Official;
- (f) the Region's Sewer Use By-Law No. 90-1 or successor by-law;
- (g) the City's Sign By-law No. 2016-050. No signs are permitted on the Lands unless permitted or approved under the Sign-By-Law. Further, no signage shall be permitted on any roof without the explicit approval of the City. Any reference to signage on the elevation plans comprising part of the Final Site Plans is conceptual in nature and used specifically for the purpose of exterior design approvals. It is the Owner's responsibility to review the Sign By-law and to ensure compliance with said by-law; and
- (h) the City's Protection of Trees on City Property By-law 2014-078. Cutting, trimming or the removal of any City trees is prohibited without first obtaining the consent of the City in accordance with that By-law.



**PART IV**  
**GENERAL TERMS & CONDITIONS**

**11. Postponement of Mortgage(s)**

- (a) [IF NO MORTGAGEE OR MULTIPLE MORTGAGEES, WORDING MUST BE REVISED BY LEGAL SERVICES – FOR ONE MORTGAGEE, USE THE WORDING PROVIDED IN (A) AND (B)] The Mortgagee consents to this Agreement and agrees with the City that this Agreement shall be an encumbrance which stands as a prior interest on the Lands in the same manner and to the same effect as if this Agreement had been dated, executed, and registered prior to the mortgages held by the Mortgagee at the time of registration of this Agreement; and
- (b) The parties agree that the Mortgagee, its successors, and assigns shall not be obligated to fulfil any of the positive covenants and obligations of this Agreement unless and until the Mortgagee enters into possession of the Lands.

**12. Compliance with Building Code**

The Owner acknowledges that compliance with all of the provisions of the *Building Code Act* and associated regulations (the “Code”) is mandatory.

**13. Building Permits**

The Owner covenants and agrees that this Agreement shall constitute “other applicable law” pursuant to article 1.4.1.3 of the Code. Neither the Owner nor any person under his or her authority shall be entitled to the issuance of one or more Building Permits to construct any buildings or structures contemplated under this Agreement until this Agreement has been fully executed and registered on title to the Lands.

The Owner further agrees that, prior to the issuance of a Building Permit by the City and in addition to his, her or its other obligations under this Agreement, the Owner must:

- (a) submit and receive acceptance of all urban design, site plan, building elevations with approved exterior design finishes, sustainable design finishes, landscaping, functional engineering drawings, complete engineering drawings or other plans and drawings required by this Agreement including any documentation, studies, specifications and reports that may accompany such plans and drawings in the form of Final Site Plan Approval;
- (b) submit payment of all required fees and charges;
- (c) provide to the City the securities and letters of credit required under this Agreement;
- (d) provide proof of any clearances required from the Region, the GRCA, the MOE, Hydro One, Union Gas, Waterloo North Hydro and any other government body or agency having jurisdiction over the Development;
- (e) receive approval of the Final Site Plans by the Director of Planning;
- (f) pay all outstanding property taxes with respect to the Lands;
- (g) transfer to the City or the Region as the case may be all lands required for highway widening; and
- (h) submit payment to the City of the parkland cash in lieu payment where applicable.

**14. Construction Act**

For any Works conducted within the City’s right-of-way or on other municipally owned lands the Owner covenants and agrees that it will hold back in his, her or its payments to any contractor who may construct services, facilities or Works, such amounts as may be required under the provisions of the *Construction Act*, R.S.O. 1990, c. C.30 (the “*Construction Act*”). The Owner shall indemnify and save completely harmless the City from and against all claims, demands, actions, causes of action and costs resulting from any construction being performed by the Owner, his, her or its agents and assigns pursuant to the provisions of this Agreement, and, on demand by the

City, the Owner shall take such steps as may be necessary to immediately vacate all liens registered upon municipal lands and lands containing municipal services.

**15. Occupancy**

- (a) The Owner covenants and agrees not to permit occupancy of any building or part thereof, or use of any structure or part thereof, for which Building Permits have been issued until all Works required under this Agreement are completed in accordance with the requirements of the Code, the applicable City zoning by-law and any other applicable law, including City and Regional by-laws, and that all internal water distribution and sanitary sewer collection has been tested and approved and are operating in accordance with the Final Site Plans. Nothing in this clause shall prevent occupancy where, due to seasonal factors, landscaping cannot be installed before occupancy.
- (b) In addition to all else, to ensure compliance with this paragraph 15 and this Agreement, the Owner covenants and agrees that the City may draw upon any security the Owner has provided to the City to complete any or all Works, the failure of which to complete may, in the opinion of the Chief Building Official, have the potential to negatively affect the health and safety of the occupants and or visitors to the Building and or the Lands.
- (c) In the event that the Building or part thereof is occupied otherwise than in accordance with the provisions of this paragraph, the Owner covenants and agrees that the City shall be entitled to obtain an order from a court of competent jurisdiction prohibiting the occupancy of any Building or part thereof until such time as the terms of this Agreement have been fully complied with, and the Owner shall be estopped from opposing such application on the part of the City. Whatever the result of such court action, the Owner shall reimburse the City for all costs, including legal and consultants fees, incurred as a result of any such court action immediately upon receipt of a demand for payment of said costs. Should the Owner not immediately reimburse the City for such costs the Owner agrees that the City may recover such costs by drawing upon the letter of credit or any other security provided to the City by the Owner under this Agreement.

**16. Entry by City**

The City may, by its officers, employees, servants or agents, enter on the Lands or any part thereof as well as any building(s) erected thereon to ensure that the construction and installation of the Works complies with this Agreement, on-site inspections for site certification release, and the Final Site Plans and relating engineering drawings and reports.

**17. Emergency Entry**

If, as a result of any work undertaken or not completed by the Owner, there exists in the opinion of the Chief Building Official in his or her sole discretion an emergency situation or circumstances which may give rise to an emergency situation which requires immediate attention, the City, its authorized employees, contractors and agents, shall be entitled to enter upon the Lands and complete or repair such work at the sole expense of the Owner. The City shall provide written or verbal notice to the Owner at the earliest possible opportunity.

**18. Construction Inspection**

The Owner shall provide advanced notification of the commencement of the various stages of construction of the Works to the City's construction inspector to enable scheduling of on-site inspections. The City shall have the right, during construction, to inspect the Works at any time and without notice.

The Owner agrees that if, in the opinion of the Director, the Development is not being constructed in accordance with the Final Site Plans, the engineering and landscape drawings approved and accepted by the Director, the contract documents, or with good engineering practice or by a contractor not approved by the City, the City may direct the Consulting Engineer to stop all or any part of the construction until such time as the construction is carried out to the satisfaction of the Director in his or her sole discretion. The Owner shall undertake all corrective action required by the Director to bring the construction into conformity with this Agreement and the Final Site Plans.

The Owner agrees that the Director may request written records from the Consulting Engineer verifying his or her presence on the Lands during the completion of the Works, grading and other activities related to the inspection and certification of same. Should those records, in the opinion of the Director, not demonstrate or confirm satisfactory inspection by the Consulting Engineer, the Owner agrees that the Director may require that the Works be reconstructed in the presence of a City Inspector or that the Owner forfeit the full value of the letter of credit posted for the Works not witnessed and inspected by the Consulting Engineer and indemnify the City relative to said Works to the satisfaction of the City Solicitor. The Owner agrees to comply with every order or direction given by the Director during the course of construction, including, without limitation, the cessation of work, the carrying out of additional work or the phasing of work which the Director in his or her sole discretion deems to be necessary to further the proper development of the Lands and to mitigate impacts of development on other lands in the surrounding area.

Upon installation of the Works, the Owner agrees to deliver to the City a certificate from the Consulting Engineer certifying that the Works have been installed in accordance with the accepted engineering drawings, contract documents, and good engineering practice and are substantially performed as defined in the *Construction Act*. The Owner agrees that the Works must be completed in their entirety as approved by the Director and that partially completed Works or Works that are deemed to be deficient by the Director must be corrected or completed prior to certification and the release of applicable securities and letter of credit. The Owner agrees to have the Consulting Engineer or Architect provide the Director with “as recorded” drawings of all Works completed on the Lands. Such drawings must be provided in a format acceptable to the City prior to the release of applicable securities and the letter of credit provided under this Agreement. For Surface Works involving landscaping the Owner agrees to have a qualified Landscape Architect inspect and certify the landscaping component of those Surface Works and provide a copy of such certification to the City prior to the request for any letter of credit reduction or release.

**19. Construction Fencing**

The Owner shall erect solid hoarding (and or other construction fencing acceptable to the Director) and overhead protection (where required by the Director) surrounding all construction on the Lands as required by the City’s Chief Building Official, the Director, and or the City’s Director of Municipal Enforcement Services (or designates), and maintain same until final completion of construction as verified by the City at its sole discretion. The Owner further agrees to obtain any clearances from the MOL that may be required for said hoarding (and/or fencing) and overhead protection. The Owner shall construct, maintain and clear an unobstructed accessible pedestrian walkway(s) available to the public to use, including barrier free routes, during construction of the Development and the Works.

**20. Construction Phasing**

The Owner agrees not to conduct any site servicing, grading, excavation, filling or tree removal works until such time as a Building Permit, site alteration permit, Construction Traffic Plan and highway work permit have been obtained from the City. During all grading excavation, filling and tree removal work the Owner shall maintain all engineering and environmental controls required by the City to maintain sediment, soil, dust, dirt, runoff and mud on the Lands.

**21. Maintenance of the Lands During Construction**

To ensure that the Development proceeds in accordance with the Final Site Plans, the Owner covenants and agrees that he, she or it shall:

- i. take all of the necessary steps to prevent the raising of dust and the erosion of soil from the Lands onto adjacent lands or onto abutting City, Regional and Provincial highway allowances during construction of the Development. Should such an incident(s) occur, the Owner will (at its expense) take all necessary steps forthwith to correct said problems upon the direction of the Director;
- ii. conduct, at a minimum and more frequently as conditions dictate, scraping of the highway on a weekly basis and daily sweeping of the highway using methods approved by the City. Should the Owner fail to conduct scraping and sweeping of the highway to keep it clean and free of excessive dirt, mud, dust grit and other materials the City may, without notice to the Owner, take the necessary action to clean up the highway at the Owner’s cost and the Owner agrees to forthwith pay

the same upon demand to the City. If the Owner does not pay the City immediately upon written demand for such payment, it is agreed that any monies or securities deposited with the City may be drawn upon by the City to satisfy the required payment, and the Owner shall replace or increase said monies or securities to its original value within fifteen (15) business days of receiving notice of such draw or draws;

- iii. be fully liable for all costs and any damages incurred as a result of the raising of dust or the erosion, spillage or tracking of soil or other debris from the Lands onto adjacent lands and municipal highways, and will indemnify the City and the Region against any claim made as a result of such costs and damages;
- iv. regularly inspect the property for discarded waste material or items that may accumulate on the Lands and on surrounding lands as a result of the Development. The Owner shall collect and dispose of said waste forthwith in an appropriate manner to the satisfaction of the Director, all to prevent unsightly conditions;
- v. install erosion and silt control devices that incorporate measures to prevent the discharge of silt to waterways, open channels or City and Regional storm sewers and highways. The Owner shall provide and regularly inspect and maintain these erosion and silt control measures to ensure their continued effectiveness throughout the construction period and until such time as hard surfacing or vegetative cover has stabilized the Lands or area under development. The Owner shall provide inspection reports to the Director upon request and the Owner shall immediately repair any deficiencies identified in the inspection reports or required by the Director in his or her sole discretion;
- vi. manage any impacts resulting from the construction of the Works on any neighbouring properties to the satisfaction of the Director in his or her sole discretion. The Owner acknowledges and agrees that he, she or it is solely responsible for such impacts notwithstanding any approval of the City. The Owner shall fully indemnify and save harmless the City from any liability resulting from such impacts;
- vii. maintain, at all times, unencumbered sight lines and travel routes to and from the Lands based on the Final Site Plans; and
- viii. install and maintain tree preservation fencing on the Lands for the duration of construction.

## **22. Installation and Maintenance of the Servicing Works**

The Owner shall construct and install all of the Servicing Works to the satisfaction of the Director in his or her sole discretion, in accordance with all City specifications and in a good and competent manner. The Owner covenants and agrees that, once all of the Servicing Works have been completed to the satisfaction of the Director in his or her sole discretion, and in a good and workmanlike manner, it shall maintain the Servicing Works in that approved condition for a minimum period of one (1) year following the date of such written approval. In the event that any of the Servicing Works are not being maintained to the satisfaction of the City, or if the Owner is otherwise in default of this Agreement, the City may, on written notice to the Owner, require the Owner to comply with the terms of this Agreement and may correct the default and draw on the security provided under this Agreement to pay for such correction.

## **23. Installation and Maintenance of the Surface Works**

The Owner shall construct or install all Surface Works, services and facilities to the satisfaction of the City, in accordance with all City specifications and in a good and competent manner. The Owner guarantees the workmanship and materials for the construction and installation of such Surface Works, services and facilities and to maintain same free of defects for a period of one (1) year from the date of certification of substantial completion. The Owner covenants and agrees that it will promptly and properly repair all defects in such Surface Works, services or facilities to the complete satisfaction of the Director in his or her sole discretion, failing which the City may

correct the default and draw on any financial security provided under this Agreement to pay for such correction.

The Owner acknowledges that any action taken by the City or by its employees, agents or contractors relating to the removal of snow and ice, or sanding, or cleaning of any roads, or permitting the connection of additional services to any of the Surface Works, services or facilities herein required to be constructed or installed, during the guarantee and Maintenance Period is being done without prejudice to the City's right to enforce the guarantee and maintenance provisions of this Agreement.

#### **24. Maintaining the Portion of the Lands Not Being Developed**

The Owner agrees that all undeveloped portions of the Lands that are not contemplated for immediate development and left vacant for a period greater than ninety (90) calendar days from the date of the Final Site Plan Approval, shall be graded and seeded with a grass mixture acceptable to the City or sodded, and to maintain and water all undeveloped portions of the Lands to ensure the health and longevity of the plants and grasses thereon, to the City's satisfaction, unless otherwise agreed to by the Director in writing. Furthermore if necessary, the Owner agrees that financial securities submitted for the Development may be used towards these improvements if not satisfactorily installed and maintained within a reasonable timeframe as determined by the Director.

#### **25. Engineering Design & Site Plan Approvals**

The Owner covenants and shall retain the Consulting Engineer to prepare or oversee the design of grading, site and external servicing plans, photometric, noise and vibration reports, City service connection designs, and storm water management reports that are to be submitted to the Director for his or her approval.

The Consulting Engineer shall be required to inspect and certify to the Director that the Works have been constructed in accordance with Final Site Plans and related engineering drawings and reports, prior to the reduction of the letter of credit held for engineering-related Works. The certificate, or certificates, shall be in a format acceptable to the Director, who may, in his or her sole discretion, upon pre-qualification of such, require the use of other qualified professionals (e.g. Landscape Architect) for certain components of the design, inspection and certification process.

The Consulting Engineer shall ensure that the detailed engineering drawings for all of the Servicing Works and Surface Works required by this Agreement are completed in accordance with all applicable design requirements, including but not limited to the DGSSMS, the OPS, the Development Manual, the Urban Design Manual and associated guidelines and the MOE Requirements, such as:

- the MOE Stormwater Management Planning and Design Manual (2003);
- the MOE Design Guidelines for Sewage Works (2008) and;
- the MOE Design Guidelines for Drinking Water System,

in addition to all requirements of the *Safe Drinking Water Act, 2002*, S.O. 2002, c.32, concerning water mains. The Owner further agrees that the engineering design will be conducted to the satisfaction of the Director in his or her sole discretion and shall be completed in accordance with all applicable law, regulations, standards, guidelines and best management practices including those identified in this Agreement.

The Consulting Engineer shall confirm to the City that the complete engineering submission is in compliance with the Final Site Plans and related engineering drawings and reports. It is the Consulting Engineer's and Owner's responsibly to receive the necessary approvals if the engineering submission is not consistent with the said plans, drawings and reports.

The Consulting Engineer shall complete all engineering designs. The City reserves the right to refuse to accept engineering designs that are not consistent with municipal requirements or is not provided by the Consulting Engineer. The Owner agrees not to dispute or challenge the City, its elected officials, employees, or agents in the exercise of this provision. The Owner shall be estopped from opposing such action on the part of the City and shall reimburse the City for all costs, including legal and consultants' fees, incurred as a result of the Owner resisting such action immediately upon receipt of a demand for payment of said costs. Should the Owner not immediately reimburse the City for such costs the Owner agrees that the City may recover such

costs by drawing upon the letter of credit or any other financial security provided to the City by the Owner under this Agreement.

The Consulting Engineer shall submit to the Director the Conceptual Workspace Management Plan as part of the engineering design submission for the Works. The Conceptual Workspace Management Plan will be reviewed jointly by the Consulting Engineer and contractors prior to the commencement of any onsite construction and shall be revised and resubmitted to the City for approval, as necessary. A copy of the approved Conceptual Workspace Management Plan shall be maintained on-site at all times for review by the City's inspector.

Should the Owner seek to use lands owned by the City and/or the Region for the purposes of geotechnical control during construction the Owner shall enter into a License Agreement with the City and the Region as the case may be in a form and on terms as reasonably required by the City or the Region. The Owner recognizes that this Agreement does not obligate the City to enter into a License Agreement with the Owner.

The Owner agrees to use a qualified contractor, who has been identified to the Director in writing by the Owner prior to the issuance of a Building Permit, to undertake the Servicing Works. The Owner further agrees that he or she will not engage the services of a contractor that has not been approved by the Director and will not direct any contractor to commence the Servicing Works until all applicable City and agency clearances have been obtained.

## **26. Highway Widening**

The Owner shall convey, in fee simple and free from encumbrances, any lands which may be required by the City, Region and/or MOT, for the purpose of road widenings and for the purpose of establishing a one (1) foot (0.3 metre) reserve across that portion of the frontage of real properties herein not required for an entrance or exit, in order to ensure proper ingress to and egress from the Lands as set out in **Schedule "C"** and in accordance with the Final Site Plans to the satisfaction of the Director of Planning.

All specialized parking spaces (such as barrier free accessible parking, parent with young child parking, etc.) shall be identified with appropriate signage and surface paintings (with durable traffic paint) to the satisfaction of the Director in his or her sole discretion in accordance with the City's requirements.

The performance standards for barrier free parking and bike parking are set out in the Urban Design Manual and shall be provided by the Owner on the Lands in accordance with the Final Site Plans and drawings for the life of the Development.

## **27. Building Elevations**

The Owner shall be responsible for adhering to the approved building elevations comprising part of the Final Site Plans, including the approved massing and exterior designs.

## **28. Garbage Collection**

- i. The Owner shall not permit any refuse, junk, debris or other material to be deposited on the Lands, any adjoining lands, school lands, or park lands in the area. Any such refuse, junk, debris, or other material will be removed from such lands at the sole expense of the Owner. If the Owner fails to remove the aforesaid material within a period of forty-eight (48) hours from delivery of notice, the City may enter the Lands (and with permission adjoining lands, school lands, and park lands in the area) and remove the said material and the Owner will be charged for all expenses incurred by the City and the Owner further agrees that the City may draw against the financial security filed with the City under the terms of this Agreement.
- ii. The Owner shall, prior to construction of any part of the Development, design a waste management system for the collection, storage and disposal of waste and recyclable materials, and implement such a system and maintain same to the satisfaction of the Director of Planning in his or her sole discretion. No storage of garbage or other waste material shall be permitted on the Lands. Any waste storage facility shall be enclosed by walls or an opaque barrier of appropriate width, height and length to provide for commercial pickup at the Owner's cost as described on the Final Site Plans.

- iii. The Owner agrees that where no outdoor facility is provided on site, to provide indoor recycling and garbage areas sufficient to meet the garbage and recycling needs and requirements of the use(s).
- iv. The Owner shall install pedestrian scale garbage receptacles on site at locations near the main entrances of existing and proposed buildings, to the satisfaction of the Director of Planning.

## **29. Easements**

- i. The Owner shall convey to the City and/or the Region the easements set out in Schedule "C" free of charge and clear of all encumbrances.
- ii. The Owner shall be responsible for the relocation of any utilities and utility apparatus on the Lands and resulting from the development of the Lands, including but not limited to hydro, fibre optics, telephone, gas, cable and postal service, required as a result of the granting of such easements. The Owner shall indemnify and save harmless the City and the Region from any liability whatsoever which may arise out of the relocation of such utilities and utility apparatus.
- iii. Should the Director of Planning require any further easements following Final Site Plan Approval, the Owner shall amend the Final Site Plans to the satisfaction of the Director of Planning and convey said easements to the appropriate authority free of charge and clear of all encumbrances.

## **30. Grading and Water Disposal**

- i. The Owner shall not permit the Lands to drain otherwise than into a properly installed drainage system to the satisfaction of the Director in his or her sole discretion and the grades and drainage facilities shall be designed and constructed to implement and maintain an on-site storm water management system to limit storm run-off from the Lands to a predevelopment rate of flow. The Owner shall indemnify and save harmless the City from any liability for excess run-off as a result of construction and development on the Lands.
- ii. The Owner shall obtain approval from MOE with regard to storm water management requirements, as applicable.
- iii. The Owner shall implement and maintain, in perpetuity from the date of certification of substantial completion, an on-site storm water management system designed according to the policies and criteria of the City and to indemnify and save harmless the City from any liability which may arise out of the implementation or lack of maintenance of the storm water management system.
- iv. The Owner shall implement and monitor on-site sediment and erosion control measures during construction of the Works to the satisfaction of the Director in his or her sole discretion and shall allow the City and its agents access to the Lands in perpetuity to inspect roof drains, inlet control devices and storm water management facilities and systems.
- v. The Owner shall construct the lot grading at his, her or its sole risk and expense in accordance with this Agreement and the Final Site Plans and related engineering drawings and reports to be relied on by the City.
- vi. The Owner shall supply the City with a certificate from the Consulting Engineer stating that all grades and elevations as shown on the approved Grading Plan have been complied with. The Owner agrees that any financial securities required by this Agreement in accordance with Schedule "D" will not be released until the lot grading has been completed and the required lot-grading certificate has been provided to the satisfaction of the Director in his or her sole discretion.
- vii. If required by the City, the Owner shall submit a dewatering plan to the satisfaction of the Director in his or her sole discretion. At a minimum, the

dewatering plan will explain the hydrogeology of the Lands along with pump testing results, proposed dewatering methods for construction, anticipated pump discharge points and confirmation of permits or approvals required by the Region and MOE.

### **31. Snow/Ice Removal**

The Owner shall store snow based on the Final Site Plans. Any excess snow on site shall be removed by a private snow removal service at the cost of the Owner. It is the Owner's responsibility to ensure that snow storage locations are to be selected with the least impact to the environment and are to comply with any approved salt management plan. The Owner shall provide regular removal of snow and ice from the Lands and abutting City or Regional sidewalks as applicable, and, if not removed off- site, shall provide sufficient snow storage areas on the Lands as set out in the Final Site Plans to the satisfaction of the Director of Planning in his or her sole discretion.

### **32. Fire Protection And Access**

- i. The Owner agrees that no Building Permit involving the use of combustible materials as determined by the Chief Building Official will be issued for any development of the Lands until fire hydrant services deemed necessary by the Chief Building Official, including all necessary valves, chambers and other appurtenances, have been approved and connected to existing facilities that are in operation and, in the opinion of the Chief Building Official, capable of providing adequate fire protection services. The Owner further agrees that private hydrants, must comply with the City's specifications for water main construction and be installed, pressure and flow tested by the contractor and be accepted by the Chief Building Official prior to the issuance of a Building Permit involving combustibles.
- ii. The Owner agrees that no Building Permit involving the use of combustible materials as determined by the Chief Building Official will be issued for any development of the Lands until base gravel has been placed for the full width of all internal fire routes and extended to an existing open and publicly maintained road to the satisfaction of the Director of Planning.
- iii. The Owner agrees that, during construction of the Development, an access route shall be maintained to the Lands capable of supporting fire-fighting equipment, to the satisfaction of the Chief Building Official in his or her sole discretion. This access route shall be kept clear of all construction equipment, material and debris. The Owner shall also keep all fire hydrants accessible and operational.
- iv. The Owner shall construct and maintain fire access roads complying with the requirements of the Code, and that, fire route signs shall be posted along the required fire department access route in accordance with Division B, Article 2.5.1.4 of the Ontario Regulation 213/07 (the "Fire Code") upon completion of the Development and in accordance with the Urban Design Manual and site plan standards of the City.
- v. The Owner agrees that all fire department connections shall remain clearly identified and remain unobstructed by construction, parking, landscaping, storage or any other means.
- vi. The Owner agrees that they are responsible for maintaining all walkways from the existing City sidewalk to the Lands to provide full access to the Lands by fire fighters (especially during winter months) in accordance with the Final Site Plans.
- vii. The Owner shall display an adequate and clear unit number on the front of each unit in close proximity to the main entrance during construction and at other locations shown on the approved building elevations, and permanent unit numbering on the exterior front of each unit prior to the release of financial securities, to the satisfaction of the Chief Building Official in his or her discretion.



- viii. The Owner shall display and maintain an adequate and clear full street address on all boundary property identification signage (abutting the respective address road) after completion of construction and prior to the release of financial securities, to the satisfaction of the Chief Building Official in his or her sole discretion.
- ix. The Owner agrees that the storage and handling of all flammable and combustible liquids within the building(s) must be in full compliance with Part 4 of the Fire Code.

### **33. Provisions Respecting City Owned Lands**

The Owner shall be fully responsible, at his, her or its sole risk and expense, for:

- i. any and all damage to existing City owned property (including all boulevards, sidewalks, curbs and roads, and anything thereon) that, in the opinion of the Director, was caused as a result of the construction of the Works and or the Development shall be repaired to the satisfaction of the Director in his or her sole discretion. If the necessary repairs and restoration is not carried out by the Owner or not carried out to the satisfaction of the Director, the financial securities submitted for the Works and the Development in accordance with Schedule “D” may be applied by the City toward any such required repair and or restoration;
- ii. the capping off of all surplus existing municipal services no longer required for the development of the Lands at his, her or its sole risk and expense; and
- iii. the costs of removing and relocating any existing City, Regional or other public services requiring relocation in the course of, or in connection with, the construction, installation or provision of the Works, services and facilities required under this Agreement.

The Owner shall fully indemnify and save harmless the City from any liability arising from damage caused to City owned lands or to the capping of surplus City services, and the removal and or relocation of any existing City, Regional or other public services.

### **34. Dedication**

At the City’s sole discretion:

The Owner covenants to convey that portion of the Lands identified on Schedule “C” as Parkland to the City pursuant to the City’s Parkland Dedication By-law No. 2022-073, as applicable;

*OR*

The Owner shall pay to the City cash-in-lieu for the dedication of land for parks purposes pursuant to the City’s Parkland Dedication By-law No. 2022-073 and paragraph 13 of this Agreement, as applicable.

### **35. Tree Planting (Boulevard) Contribution**

The Owner agrees to install, at his, her or its sole cost, and to the satisfaction of the Director in his or her sole discretion, tree planting within the boulevard as per the Final Site Plans.

### **36. Traffic Plans (Construction Purposes)**

Prior to any stripping of topsoil or area grading, the Owner shall provide a construction traffic plan to the satisfaction of the Director of Transportation Services, acting reasonably, in his or her sole discretion.

The construction traffic plan shall specify construction traffic routes authorized by the City and shall require contractors and builders to use only approved construction traffic routes as their primary access in order to redirect construction traffic away from residential streets or other locations deemed necessary by the City. The Owner shall provide appropriate securities to implement the construction traffic plan, to the satisfaction of the Director of Transportation

Services, which may include financial securities to cover damage to existing municipal highways, City infrastructure, and surface works that could arise from construction on or related to the Lands.

The Owner agrees that the construction traffic plan may form part of the highway work permit and further agrees not to undertake any work on a municipal highway or within the right of way of a municipal highway without first obtaining a work permit. At no time shall the Owner, his, her or its employees, contractors, suppliers and agents fail to maintain access to private lands, driveways or routes that may be travelled by emergency vehicles unless specifically authorized by the work permit.

**37. Sanitary and Storm Sewers**

The Owner agrees to install, at his, her or its sole cost and to the satisfaction of the Director in his or her sole discretion, the necessary sewer works required for the Development in accordance with the Development Manual and the Final Site Plans.

**38. No Expansion of Services**

The Owner agrees that the Works shall not be extended, expanded or connected to other lands in any way without the prior written approval of the City.

**39. Utilities and Telecommunications**

The Owner shall verify the location of all existing and proposed utilities within the public right-of-way and on the Lands, and will be required to pay all costs associated with the relocation of utilities as may be required. The Owner shall make satisfactory arrangements for the provision of permanent (and where necessary temporary) utility and telecommunications services for the Development, to the satisfaction of the Director of Planning. The Owner agrees to grant all necessary easements for utility and telecommunication services on the Lands to the applicable utilities and telecommunication service providers free of charge and clear of all encumbrances. The Owner shall provide for the underground installation of telecommunication, natural gas, and hydro services on the Lands.

**PART V**

**FINANCIAL CONDITIONS, SECURITY AND INSURANCE**

**40. Processing, Approval and Legal Fees**

The Owner is responsible to cover the City's costs in preparing this Agreement, including legal fees and any costs incurred in conducting and reviewing title and corporate searches, and all disbursements and taxes incurred in relation to such same, and the Owner shall pay such costs to the City upon demand, prior to the execution of this Agreement.

The Owner shall fully reimburse all costs, including legal fees, incurred by the City relating to the administration, review, implementation and enforcement of this Agreement, including, without limitation, the costs of conducting and reviewing title and corporate searches, and all disbursements and taxes incurred in relation to same. The Owner shall provide such reimbursement to the City within ninety (90) calendar days of a written demand by the City for same. Any fees remaining unpaid under this provision may be added to the tax roll of the Lands pursuant to s. 398 of the *Municipal Act*.

**41. Letter of Credit**

(a) In order to guarantee compliance with all conditions contained herein, the Owner covenants and shall file with the City, following execution of this Agreement, prior to undertaking any works on the Lands or related to the development of the Lands, and prior to the issuance of a Building Permit by the City, an irrevocable standby letter of credit in the amount set out in Schedule "D". The letter of credit shall not be less than ten thousand dollars (\$10,000.00) and shall not exceed a maximum value of **[INSERT MAXIMUM VALUE OF LETTER OF CREDIT]** or such higher amount as determined by the City. The letter of credit shall be in a form approved by the City's Chief Financial Officer, and the Owner covenants and agrees that the said letter of credit shall be kept in full force

and effect and that it will pay all premiums as the said letter of credit becomes due or until such time as the City returns the letter of credit.

- (b) The Owner hereby acknowledges and agrees that should there be a deficiency in or failure to carry out or remedy any work or matter required by any clause of this Agreement, and the Owner fails to comply, within thirty (30) calendar days of written notice, with a direction to carry out such work or matter, the City may draw on the letter of credit to the extent necessary and enter onto the Lands and complete all outstanding works or matters, and pay all costs and expenses incurred thereby from the proceeds so drawn.
- (c) The Owner hereby acknowledges and agrees that the City reserves the right to draw on and use the proceeds from the letter of credit to complete any work or matter required to be done by the Owner pursuant to this Agreement. The Owner further acknowledges and agrees that in the event that the City determines that any reduction in the letter of credit will create a shortfall with respect to securing the completion of any work or matter remaining to be carried out by the Owner pursuant to this Agreement, the City will not be obligated to reduce the letter of credit until such time as such work is satisfactorily completed or the City has sufficient security to ensure that such work will be completed.
- (d) Should the City in its sole discretion determine that the amount of the letter of credit will not be sufficient to cover any increase in the cost of the Works or to meet any of the other responsibilities of the Owner under this Agreement, the City may require that the Owner increase the amount of the letter of credit to the satisfaction of the City. The Owner acknowledges and agrees that, should the Owner refuse to increase the letter of credit to the satisfaction of the City in this circumstance, the City shall be entitled to terminate this Agreement, revoke the Final Site Plans and the Building Permit(s) issued in connection with the Final Site Plans subject to, save for and except any costs to the City in regard to this Agreement which shall continue and be at the sole cost of the Owner.
- (e) Wherever in this Agreement a letter of credit is required to be filed with the City, the Owner may deposit with the Chief Financial Officer, a bank draft or certified cheque in an amount equal to the letter of credit and such deposit shall be held by the City as security in accordance with this Agreement, provided that no interest shall be payable on any such deposit.
- (f) The Owner acknowledges that, should ownership of the Lands be transferred, the City is not obligated to and will not return any letter of credit required under this Agreement until the new owner files with the City, a substitute letter of credit or such other security as may be permitted in the required amounts.
- (g) The said letter of credit shall be drawn on a Canadian Chartered Bank or other financial institution satisfactory to the City Chief Financial Officer, and shall contain an automatic renewal clause as follows:

*"It is a condition of this letter of credit that it shall be deemed to be automatically extended without amendment from year to year from the present or any future expiration date hereof, unless at least 30 days prior to the present or any future expiration date, we notify you in writing by registered mail that we elect not to consider this letter of credit to be renewable for any additional period."*
- (h) The said letter of credit shall be maintained until construction of all of the Works has been completed to the satisfaction of the Director in his or her sole discretion and has been certified by the Consulting Engineer, Landscape Architect and Architect, along with the deposit of as-recorded drawings with the City.
- (i) As the Works secured by the letter of credit progress as determined by the Director in his or her sole discretion, the amount of the letter of credit may be reduced in accordance with Schedule "E", provided that the City shall hold a minimum fifteen percent (15%) of the original amount of the letter of credit, and not less than twenty-five thousand dollars (\$25,000.00), for the purpose of guaranteeing materials and workmanship for a further Maintenance Period of at least one (1) year. This amount may be released when the one

(1) year Maintenance Period has expired and the City has received current certificates of completion from the Consulting Engineer, Landscape Architect and Architect, as applicable, attesting to the absence of defects in material and workmanship for the Works and that vegetation is in a healthy state.

- (j) The said letter of credit shall secure the obligations of the Owner to satisfactorily complete all Works required by this Agreement including without limitation, all on site Works, as well as any off site Works, or in the event of the discontinuance of the project, the restoration of the Lands to its pre-development condition, as well as the removal of all debris, waste, excavations, structures, construction materials, equipment or any other goods or materials not normally present on a greenfield lands.
- (k) Notwithstanding the foregoing, the letter of credit shall not be reduced in amount, returned to the Owner or released until the City has registered this Agreement as a first claim free and clear of encumbrances on the registered title to the Lands.

**42. Insurance**

In advance of any works of any kind on municipally-owned lands, the Owner shall provide to the City, prior to the commencement of construction, a general comprehensive liability insurance policy and certificate of insurance in an amount of not less than five million dollars (\$5,000,000.00) in a form satisfactory to the Treasurer, indemnifying the City from any loss arising from claims or damages, injury or otherwise in connection with the work done by or on behalf of the Owner. The policy shall contain a cross-liability clause naming the City as a co-insured. The policy shall be maintained in full force and effect until the works have been assumed by the City. In the event that any renewal premium is not paid, the City, in order to prevent the lapse of such liability insurance policy, may pay the renewal premium or premiums and the Owner shall pay the cost of such renewal or renewals within thirty (30) calendar days of the account therefore being rendered by the City. The issuance of such policy of insurance shall not be construed as relieving the Owner from any liability or responsibility for any claims in excess of the aforementioned policy limits.

**PART VI**  
**ADMINISTRATION**

**43. Notice**

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

Person of Contact: [INSERT MAILING ADDRESS & CONTACT PERSON]

Phone Contact: [INSERT PHONE NUMBER]

Fax Number: [INSERT FAX NUMBER]

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

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

The Corporation of the City of Waterloo  
Waterloo City Centre  
Attn: Director of Planning  
100 Regina Street South  
P.O. Box 337 STN Waterloo  
Waterloo, Ontario  
N2J 4A8  
Fax: (519) 747-8523

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

**44. Registration of Agreement**

This Agreement shall run with the Land and the Owner covenants and agrees, at his, her or its own expense, to register this Agreement, together with all of its Schedules, upon title to the Lands if so directed by the City Solicitor. The covenants, agreements, conditions and undertakings herein contained on the part of the Owner shall run with the Lands and shall be binding upon it, his, her or its successors and assigns as owners and occupiers from time to time and this covenant shall be to the benefit of the City and its lands and highways appurtenant and adjacent to the Lands.

**45. Postponement and Subordination**

[IF NO MORTGAGEE OR MULTIPLE MORTGAGEES, WORDING MUST BE REVISED BY LEGAL SERVICES – FOR ONE MORTGAGEE, USE THE WORDING PROVIDED] The Owner covenants and agrees, at his, her or its own expense, to obtain and register such documentation from the Mortgagee, as may be deemed necessary by the City to postpone and subordinate its interest in the Lands to the interest of the City to the extent that this Agreement shall take effect and have priority as if it had been executed and registered prior to the execution and registration of the document or documents giving to the Mortgagee its interest in the Lands, and the Mortgagee agrees to provide same.

**46. Enforcement**

The Owner acknowledges that the City, in addition to any other remedy it may have at law, shall also be entitled to enforce this Agreement in accordance with s. 446 of the *Municipal Act*.

**47. Other Applicable Laws**

Nothing in this Agreement shall relieve the Owner from compliance with all applicable City by-laws, laws, regulations, notices or other policies or laws and or regulations established by any other governmental body that may have jurisdiction over the Lands.

**48. Termination of Agreement**

If the Development governed by this Agreement is not commenced within two (2) years from the date of the execution of this Agreement, and more specifically if no installation of Servicing Works or Surface Works has occurred within that time, the City may, at its sole option and on sixty (60) calendar days' notice to the Owner, declare this Agreement and respective Final Site Plan Approval null and void and of no further force and effect. Any fees, levies or other charges paid by the Owner pursuant to this Agreement shall be forfeited to the City.

**49. Interpretation of Agreement**

- (a) The part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (b) This Agreement shall be construed with all changes in number and gender as may be required by the context.
- (c) Every provision of this Agreement by which the Owner is obligated in any way shall be deemed to include the words "at the expense of the Owner" unless the context otherwise requires, including the payment of any applicable taxes including HST.
- (d) References herein to any statute, regulation, by-law, policy, manual or any provision thereof includes amendments, revisions, re-enactments, consolidation and successor thereto.
- (e) All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants.

- (f) Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as “without limiting the generality of the foregoing” do not precede such list or reference.
- (g) The Owner and the City agree that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.
- (h) The language contained in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent and no rule of strict construction or interpretation shall be applied against the City on the grounds that it was the drafter of this Agreement nor shall any such principle of interpretation or construction be used to resolve any alleged ambiguity.

#### **50. Waiver**

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

#### **51. Indemnities**

In addition to and without limiting any other provision of this Agreement, the Owner shall indemnify and save harmless the City, its elected officials, employees, officers, contractors and agents from and against any and all claims, losses and damages whatsoever (including damages for personal injury or death) that may arise in any way as a result of this Agreement and any supplementary agreement hereto, or from the use and development of the Lands described herein.

Any indemnity provided by the Owner to the City pursuant to the terms of this Agreement shall be made on a substantial indemnity basis and shall include all claims, demands, actions and loss, including any third party claims, made against the City, its elected officials, employees and agents.

#### **52. Extension of Time**

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

#### **53. No Challenge to Agreement**

The Owner covenants and agrees that he, she or it shall not call into question or challenge, directly or indirectly, in any proceeding or action in court, or before any administrative tribunal, the party's right to enter into and enforce this Agreement. The law of contract applies to this Agreement and the parties are entitled to all remedies arising from it, notwithstanding any provision in Section 41 of the *Planning Act* interpreted to the contrary. The parties agree that adequate consideration has flowed from each party to the other and that they are not severable. This provision may be pleaded by the City in any action or proceeding brought by the Owner as an estoppel of any denial of such right. The Owner shall fully indemnify the City against such claims and actions on the part of the Owner, including for all legal and consultant fees and disbursements notwithstanding the result of any such action or claim.

#### **54. Governing Law**

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

**55. No Fettering of Discretion**

The Owner hereby acknowledges and agrees that it does not expect to and it will not obtain any advantageous land use planning decision or other consideration or treatment by virtue of it having entered into this Agreement or by virtue of the existence of this Agreement. The Owner further acknowledges and agrees that the City makes no representation, assurance, warranty or guarantee as to any approval or application outcome under the Planning Act and agrees that this Agreement shall not be raised as part of an objection, challenge or appeal of any decision before the Local Planning Appeal Tribunal or any other tribunal or court of competent jurisdiction. The Owner further acknowledges and agrees that the City must hold fair hearings for approvals under the Planning Act and that City's Council cannot fetter its authority and must deal with land use planning matters on their merit. This provision may be pleaded as a bar to any purported appeal, objection or challenge.

**56. Jointly and Severally Liable**

Where at any time there is more than one registered owner of the Lands, each of the Owners shall be jointly and severally liable for all of the obligations, liabilities and responsibilities set out in this Agreement.

**57. Successors and Assigns**

This Agreement and everything herein contained shall ensure to the benefit of and be binding upon the parties hereto and their successors and assigns.

**58. Counterparts and Electronic Signatures**

This Agreement may be signed in counterparts, each of which shall constitute an original and be deemed effective as if each Party had signed each of such counterparts. This Agreement may be executed and delivered by DocuSign, or any other electronic signature format deemed acceptable to the parties.

Intentionally Left Blank

IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date first written above.

THE CORPORATION OF THE CITY OF WATERLOO

PER: \_\_\_\_\_  
JOEL COTTER  
DIRECTOR OF PLANNING

I have the authority to bind the Corporation

[LEGAL SERVICES - INSERT LEGAL NAME OF OWNER]

PER: \_\_\_\_\_  
NAME: [INSERT NAME OF AUTHORIZED SIGNATORY]  
POSITION: [INSERT TITLE]

I have the authority to bind the Corporation

[LEGAL SERVICES - INSERT LEGAL NAME OF MORTGAGEE]

PER: \_\_\_\_\_  
NAME: [INSERT NAME OF AUTHORIZED SIGNATORY]  
POSITION: [INSERT TITLE]

PER: \_\_\_\_\_  
NAME: [INSERT NAME OF AUTHORIZED SIGNATORY]  
POSITION: [INSERT TITLE]

I/we have authority to bind the corporation.



Schedule “A”

LEGAL DESCRIPTION OF LAND

[LEGAL SERVICES TO INSERT LEGAL DESCRIPTION]

PIN:

Municipal Address:

Schedule "B"

**SOLICITOR'S CERTIFICATE OF OWNERSHIP**

I, **[Name of Solicitor]**, a Solicitor in Ontario, do hereby certify that **[Legal name of Owner]** is the sole registered Owner in fee simple of all land described in Schedule "A" to the Site plan Control Agreement herein referred to.

I further certify that I have conducted a full search of title of the Lands and that there are no mortgages or other encumbrances upon the said lands or any part thereof save and except the following:

***[provide list of encumbrances or indicate none]***

I further certify that **[Legal name of Owner]** is the sole Owner in fee simple of all land to be conveyed to the City pursuant to the said Site Plan Control Agreement. All easements, licenses or rights-of-way to be conveyed to the City will be so conveyed with the consent of all mortgagees or other encumbrances.

This certificate is given by me to the City for the purpose of having the said City act in reliance on it in entering into this Site plan Control Agreement.

DATED at **[CITY]** this **[ ]** day of **[ ]**.

TO:

City of Waterloo, City Hall  
Attn: Director of Planning, Integrated Planning and Public Works  
100 Regina Street South  
P.O. Box 337 STN Waterloo  
Waterloo, Ontario  
N2J 4A8

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**[NAME OF SOLICITOR]**

Solicitor for the Owner

Schedule “C”

LANDS TO BE CONVEYED TO THE CITY AND/OR REGION

- 1. Road and Highway Widening: [In favour of [ ] or OR INSERT N/A]
- 2. Public Transit Right of Way: [DESCRIBE OR INSERT N/A]
- 3. Easements: [DESCRIBE OR INSERT N/A]
- 4. Reserves: [DESCRIBE OR INSERT N/A]
- 5. Parkland Dedication: [To be determined and paid prior to the issuance of the first Building Permit on the Lands OR N/A]
- 6. Landscaping Blocks and Walkways: [DESCRIBE OR INSERT N/A]

Schedule “D”

SECURITY/LETTER OF CREDIT

<u>SECURED WORKS</u>	<u>AMOUNT</u>
1. Portion of letter of credit to be provided by the Owner to ensure completion of landscaping and planting in accordance with the Plans and Drawings based on 50% of the value of estimated landscape and planting works.	\$XXX
2. Portion of letter of credit to be provided by the Owner to ensure completion of all non-landscaped Surface Works required by this Agreement based on 50% of the estimated value of those works;	\$XXX
3. Portion of letter of credit to be provided by the Owner to ensure completion of all underground Servicing Works (e.g. storm, sanitary, water) required by this Agreement based on 50% of the value of the estimated underground works.	\$XXX
<b>REQUIRED Letter of Credit:</b>	<u>\$XXX</u>

## **Schedule "E"**

### **REDUCTION OR RELEASE OF SECURITY**

#### **1. Application for reduction of letter of credit or cash deposit**

Prior to the reduction of any security held by the City for the Works, facilities and matters set out in this Agreement, the Owner must supply the City with the following documentation as available:

- i. letter requesting a reduction; and
- ii. as-recorded drawings prior to any release beyond 80% (eighty percent) of the value of the performance securities being the letter of credit or cash deposit as the case may be.

#### **2. Application for full release of letter of credit or cash deposit**

For the full release of securities all certificates of completion as required by this Agreement confirming that all Works have been constructed and installed in accordance with the Final Site Plans and related engineering drawings must be provided to the Director and the minimum one (1) year Maintenance Period is complete. The calendar date of the commencement of the one (1) year Maintenance Period will be determined at the sole discretion of the Director. The date of the commencement of the one (1) year Maintenance Period will only be established by the Director when:

- i. a letter of request is received by the Owner;
- ii. the City has inspected the Lands;
- iii. any deficiencies or deviations with respect to the Final Site Plans and related engineering drawings are corrected; and
- iv. all certificates of completion are provided.

## Schedule "F"

### ADDITIONAL CONDITIONS

[INSERT ALL ADDITIONAL CONDITIONS]

- 1) [OPTIONAL CLAUSE RE MAXIMUM # OF BEDROOMS – WHERE INCLUDED, THE WORDING SHOULD BE STANDARD] It is acknowledged and agreed that the maximum number of bedrooms permitted within each residential unit shall conform to the issued Building Permit(s) and associated drawings for the Development on the Lands, and to the Final Site Plans as approved by the Director of Planning. Without limiting the generality of the foregoing, with the exception of bedrooms identified on the issued Building Permit(s) and associated drawings for the Development on the Lands, no floor area in a residential unit shall be used as a bedroom or converted to a bedroom without the prior written consent of the City, based on the Owner demonstrating compliance with applicable laws including the Zoning By-law and the Ontario Building Code, to the satisfaction of the City.

[OPTIONAL CLAUSES RE TREE REMOVAL – WHERE INCLUDED, THE WORDING SHOULD BE STANDARD]

- 2) (a) The Owner shall take all steps necessary to ensure the retention / preservation of all existing tree(s) to be retained / preserved in accordance with the Final Site Plans. Without limiting the foregoing, and without limiting any other remedies available to the City or to any other party at law, the Owner covenants and agrees that the Owner shall be fully responsible and liable for all injury, damage and/or destruction to existing tree(s) that are located wholly on adjacent lands, municipal highways or lands, and/or on shared property boundaries (including but not limited to costs relating thereto), that arise(s) as a result of the Works and/or the Development of the Lands.
- (b) Without limiting Clause 2(a), the Owner further covenants and agrees that they shall be fully responsible and liable for all costs related to the repair, removal, restoration and/or replacement of the tree(s) specified in Clause 2(a) above, to the satisfaction of the City.
- (c) In addition to all other indemnities herein, the Owner shall indemnify the City against all claims and costs that may arise in relation to Clauses 2(a) and 2(b) above, to the satisfaction of the City Solicitor.
- 3) Without limiting any other provision of this Agreement, the Owner acknowledges and agrees that the City shall not be responsible or liable in any way for any impact (including future impacts) to any tree(s) located on an adjacent property as a result of the Works and/or the Development contemplated herein, including but not limited to any tree health, structural integrity, stability, and/or safety.
- 4) The Owner acknowledges and agrees that approvals granted by the City for the Final Site Plans and Works do not supersede any civil or common law property rights, and the City shall not be responsible for same. In addition to and without limiting any other provision of this Agreement, it is the Owner's sole and absolute responsibility to:
- a. Determine the limits of the Lands through the services of a qualified and licensed land surveyor;
  - b. Determine ownership and coordinate and obtain approvals/consent for:
    - i. any removal of a shared boundary tree or tree located on an adjacent property; and
    - ii. any injury to a shared boundary tree or tree located on an adjacent property
  - c. Ensure that arrangements are in place from time to time, if required, to provide for lawful access, whether through easements or other consent, to enter onto the adjacent property(ies), in relation to the Works described herein;
  - d. Resolve any property disputes prior to undertaking the Works and development of the Lands; and
  - e. Ensure compliance with all applicable laws