SUBJECT: City of Hamilton New Standard Form Subdivision Agreement
(City Wide) (PED06356)

RECOMMENDATION:

(a) That Item 25 of Report 01-034 of the Committee of the Whole, approved by Council on October 30, 2001 authorizing adoption of the City’s current standard form Subdivision Agreement, be rescinded in its entirety.

(b) That the form and terms of the agreement and its schedules attached as Appendix “A” be adopted by the City as its new standard form Subdivision Agreement for all Planning Act applications approved after September 27, 2006 to subdivide land by plan of subdivision.

(c) That the City may, in its discretion, use the new standard form Subdivision Agreement, attached as Appendix “A”, for any subdivision application previously approved by the City including where only part of the draft plan lands are registered upon receipt of a written request from a subdividing land owner to do so.

(d) That the General Manager of Planning and Economic Development, or her designate, be authorized to make amendments to the standard form Subdivision Agreement, attached as Appendix “A”, without the need for Council approval where such amendments are deemed to be of a “housekeeping” nature, or to reflect changes in municipal policy and organizational structure, provincial legislation or to correct references which have become outdated or obsolete, provided such amendments do not change the intent or principles of the Agreement and are in a form satisfactory to the City Solicitor.
(e) That Section 5.9 of Part 5 of the Agreement, attached as Appendix “A”, being provisions related to backlotted arterial or collector roads, rear yard Planting Strips, be approved in principle but not be required to be implemented until the Department of Planning and Economic Development has developed appropriate design guidelines and consulted with the homebuilding industry.

(f) That the list of standardized conditions for draft plan approval adopted by Council as Item 12(f) in Report 01-033 of the Committee of the Whole on October 16, 2001 be deleted.

Lee Ann Coveyduck
General Manager
Planning and Economic Development Department

EXECUTIVE SUMMARY:

Staff has brought forward for approval by Council a new standard form Subdivision Agreement based on a revised subdivision process in order to further streamline and simplify the process and eliminate conflicts present in the existing process.

There are three main changes to the existing process and agreement. Staff is proposing to change the point in the process when the City’s Subdivision Agreement is prepared, executed and registered from the engineering and servicing stage of the process to immediately following approval of the subdivision draft plan. Registration of a single (parent) Subdivision Agreement covering all of the draft plan lands immediately following approval of the subdivision plan, and before servicing and plan registration has occurred, will eliminate the need to register multiple Subdivision Agreements for each phase of servicing and plan registration when a draft plan is developed under multiple phases. In addition, this change in process will eliminate the need for pre-servicing and pre-grading agreements, which are currently used by the City to allow a developer to commence serving upon approval of the engineering design, but prior to completion of a Subdivision Agreement by the City. All of this will contribute to major improvements working towards streamlining the subdivision approval process.

The new standard form Subdivision Agreement has a revised structure based on the main steps of the subdivision process. Each step of the subdivision process (pre-grading, municipal servicing, plan registration, building permit application) has been identified as a separate part in the Subdivision Agreement. All requirements and conditions related to a particular step in the subdivision process are organized into the part of the Subdivision Agreement that represents the step in the process when the requirement or condition must be fulfilled thereby allowing a developer to proceed with one step of the process without being encumbered by the requirements for another step in the process. For example, all requirements and conditions which must be completed by a developer, before the subdivision plan can be registered, will be found under Part 2 of the Subdivision Agreement entitled “Prior to Registration”.
With the structure of the Subdivision Agreement organized into parts that represent the steps in the subdivision process, the "special" draft plan conditions approved by Council with each application will now be inserted directly into and form the body of the Subdivision Agreement under the part of the agreement that represents the step of the subdivision process when the condition must be satisfied. In this way requirements for a particular step of the process will be more clearly defined. As well, different steps of the process can be completed without the requirements of one step conflicting with completion of another step in the process. In addition, draft plan conditions which always apply to all subdivision applications, referred to as "standard conditions", have now been included as part of the City's new standard form Subdivision Agreement. This eliminates the need to impose standard conditions on each and every subdivision application, as is done under the present process. Incorporation of the standard subdivision conditions into the City's Subdivision Agreement will streamline the review process and reduce the size of planning reports to the City’s standing committee and Council for each subdivision application since under the new process the reports will only need to contain conditions that are specific or "special" to the application proposed.

To enhance grading control in residential subdivisions, the new standard form Subdivision Agreement will now require that developers certify building footing elevations before proceeding with construction of foundation walls to properly address any discrepancies in the house elevation, which may arise, before the dwelling is completed. This way, modifications to approved grading, to compensate for incorrect house elevations, will be minimized. As well, through the new Subdivision Agreement, the City will now require that a developer grade and seed remnant blocks intended for future development at the same time as abutting lands are graded in order to minimize incompatibility with finished lots. The ongoing issue of maintenance and illegal dumping will, however, still have to be addressed through Property Standards enforcement.

The new standard form Subdivision Agreement and process represents a much more streamlined and flexible approach for the administration of subdivision development because the point in the process when the Subdivision Agreement is registered will do away with preparation of multiple agreements for multiple phasing of subdivision lands. Also, the agreement structure itself better organizes the requirements and conditions of the City, thereby eliminating conflicts between steps of the process as the structure is based on the main steps of the subdivision process.

**BACKGROUND:**

As part the City’s initiative to streamline development approvals, staff undertook a comprehensive review of the subdivision process in order reduce the amount of time required by staff to administer applications and agreements as well as address areas of concern raised by the development community with the City’s existing subdivision process.

During the review, several areas were identified for improvement. Firstly, in October of 2001, as part of a previous initiative to streamline the development process, Council approved a listing of conditions with standard wording for use by staff during review of subdivision and condominium applications. From that listing staff has determined that
many of the City's draft plan conditions, as well as other approval agencies, are conditions which apply always to every application. These conditions are known as "standard conditions" because they are common to all subdivision applications. When combined with specific or "special" conditions that are more unique to a particular subdivision application, the list of draft plan conditions for each subdivision application becomes extremely lengthy. Development and Real Estate staff is now proposing a means by which to have standard conditions apply to all subdivision applications, without the need to impose or list the condition each time in each set of draft approval conditions. This will have the effect of reducing the size of the conditions list for each application and the overall planning reports to the City's standing committees/Council.

A second area identified for improvement focused around the municipal servicing stage of the development process. At this point in the process, a developer's goal is to service land as quickly as possible first so that when the subdivision plan is registered the newly created lots will have already been serviced and homes can then be built and purchase agreements closed with minimum delay. The structure of the Subdivision Agreement and subdivision process, however, contemplates plan registration to occur before municipal servicing. This results in a conflict between actual practice and the City's structured process because in order to service land, a developer must enter into a Subdivision Agreement with the City. By doing so, the developer is forced to deal with and address development requirements that relate to registration of the subdivision plan at a stage in the development process when the focus is really on what conditions need to be completed to allow for the servicing of the land. This conflict prolongs and often delays the servicing approval stage of the development process where timing is often most critical. The City's current method to compensate for this conflict is to allow developers to enter into pre-grading and pre-servicing agreements with the City to allow grading and servicing of subdivision land to occur before completion of a Subdivision Agreement by the City. As a consequence, development staff can spend up to twice as much time preparing various agreements in order to allow servicing to commence in subdivisions in a timely manner. Time devoted by staff to prepare various agreements is further compounded when a developer registers and services subdivision lands in several phases. Under the current process, preparation of a Subdivision Agreement is triggered by servicing and/or registration of a subdivision plan. Thus, in a draft plan where the lands are registered in many phases of subdivision plans the process and number of agreements is replicated for each phase of development.

Development staff, as well as the development industry, is seeking a means by which to allow servicing in subdivisions to proceed in a timelier manner while at the same time ensuring that all requirements of the City are satisfied to allow servicing to occur.

**ANALYSIS/RATIONALE:**

In order to improve the subdivision process attention was directed to three main areas, namely; the subdivision draft plan conditions referred to as 'standard conditions', the structure of the City's standard form Subdivision Agreement and the point in the development process when the agreement is prepared and executed.
New Subdivision Process

It was determined that if a developer could enter into a “parent” Subdivision Agreement with the City at a point in the process earlier than at the time of servicing, then matters related to plan registration and servicing could be dealt with separately, and as a result, one aspect of the process would not impede advancement of another part of the process. Further, it was felt that with execution and registration of a Subdivision Agreement before the servicing stage of the process, there would no longer be a need for pre-grading and pre-servicing agreements because the Subdivision Agreement would already have been executed and registered on the subdivision lands. Therefore, staff determined the point in the process to be the most desirable, taking into consideration the City’s requirements, which must be met and a developer’s time constraints, is immediately following approval of the draft subdivision plan by the City. This point in the process presented several advantages and options to the City and the development community.

By entering into a Subdivision Agreement and registering that agreement on the lands of the entire draft plan, before the lands are serviced and subdivided, it eliminates the requirement to prepare and register separate Subdivision Agreements for each subdivision plan that is registered when a draft plan is subdivided in phases. For example; in the case of the “Meadowlands of Ancaster” under application 25T-88015, these lands were ultimately subdivided by nine plans of subdivision with each plan requiring a separate Subdivision Agreement. Under the new subdivision process all nine phases would be subdivided using only one Subdivision Agreement on all the lands. Over the past five years the average number of subdivision, pre-grading and pre-servicing agreements prepared by staff is approximately 30 per year, whereas the average number of draft plan applications approved by the City in the same time period is approximately 15. By preparing a single “parent” Subdivision Agreement for all the lands within an approved draft plan, before any portion of the plan is phased, the number of agreements prepared by the City would be approximately half the amount presently prepared by staff. This would also then allow staff to put resources towards other important workloads such as engineering design review. A comparison of the proposed and existing process is shown below.
Existing Process

- Developer submits draft plan of subdivision for review by City
- Draft Plan approved and conditions imposed
- Developer submits engineering design for approval of servicing on the lands
- City reviews engineering design and begins preparation of the Subdivision Agreement
- All conditions related to plan registration that must be incorporated into the Subdivision Agreement must be addressed before servicing can occur
- Developer requests preservicing agreement to commence servicing ahead of Subdivision Agreement preparation

Proposed Process

- Developer submits draft plan of subdivision for review by City
- Draft Plan approved and conditions imposed
- Conditions inserted into Subdivision Agreement and agreement prepared for execution by developer
- City executes Subdivision Agreement and registers the agreement on the draft plan lands
- Developer can proceed with servicing or plan registration and satisfy conditions related to that step only

Service Land  Register Subdivision Plan

Process repeated for each phase of development

New Standard Form Subdivision Agreement

By entering into and registering a Subdivision Agreement on the entire draft plan lands immediately following draft plan approval and before any other step in the subdivision process occurs, the agreement itself can be structured so that each step of the process is identified as a separate part in the Subdivision Agreement. In this way, all conditions and requirements can be organized into the part of the Subdivision Agreement which represents the step in the process when the condition or requirement must be satisfied. Thus, the Subdivision Agreement has been structured based on a “Prior To” concept whereby each part of the Subdivision Agreement specifies all conditions and requirements that must be fulfilled by a developer before that step in the process can commence. In this way, a developer seeking approval for a particular step in the subdivision process need only satisfy the requirements related to that part of the Subdivision Agreement. In organizing the Subdivision Agreement according to the steps in the process, the Subdivision Agreement can be used as a guide by the City and the developer to quickly and precisely determine which requirements must be dealt with...
and addressed for any step of the of the process to occur without conflict arising between requirement for separate steps of the process.

The structure of the Subdivision Agreement is based on three main steps in the subdivision process namely, servicing of land, registration of the subdivision plan and development of land through building permit application. There are six main parts in the City’s new standard form Subdivision Agreement and each step in the process, described above, has a separate part in the agreement. The six main parts of the Subdivision Agreement are described as follows:

**Subdivision Agreement Parts**

**Part 1 - General Conditions** - contains clauses and requirements of the City which are more general in nature and not tied to the timing of the main steps of in the subdivision process.

**Part 2 - Prior to Registration** – contains clauses and requirements which must be completed prior to registration of a plan of subdivision.

**Part 3 - Prior to Preliminary Grading** - contains clauses and requirements which must be completed prior to commencement of preliminary grading.

**Part 4 - Prior to Servicing** - contains clauses and requirements which must be completed prior to commencement of municipal servicing.

**Part 5 - Prior to Issuance of a Building Permit** - contains clauses and requirements which must be completed prior to the issuance of a building permit for dwelling units within the subdivision lands.

**Part 6 - Prior to Release of the Agreement** – specifies requirements to be completed before release of the agreement on title to the subdivision lands by the City.

**Subdivision Agreement Schedules**

**Schedule “A”** - Legal Description of the Lands within the Draft Plan.

**Schedule “B”** - Reduced size copy of the Draft Plan of Subdivision.

**Schedule “C”** - Description lands and easements within the draft subdivision plan to be transferred to the City.

**Conditions of Approval**

By preparing a Subdivision Agreement immediately following approval of the draft plan of subdivision and by structuring the Subdivision Agreement based on the steps in the subdivision process, conditions imposed on the draft plan can be inserted into the part of the agreement that represents the point in the process when the condition is most appropriate to be satisfied. In this way the list of draft plan conditions and the Subdivision Agreement, which historically have been treated as separate documents,
will now be combined into a single document which is the City’s new standard form Subdivision Agreement. Standard conditions which apply to all subdivision applications have been inserted into and now form part of the Subdivision Agreement clauses. Conditions arising out of the review of a draft plan which are unique to a particular plan will be inserted into the Subdivision Agreement for that plan at the time when the agreement is prepared by the City. It is these unique or “special” draft plan conditions that will appear and be recommended in the Department’s report to Committee and Council.

There are several advantages to this approach. Firstly, during the draft plan application stage of the process, staff can focus their review specifically on conditions that are unique to a subdivision application without the need to ensure all standard conditions have been covered and imposed. This approach also ensures consistency in the wording of all such conditions. Secondly, it eliminates the need for a separate schedule of conditions for a subdivision application because the conditions form the body and text of the Subdivision Agreement. Also, incorporating the conditions into the part of the agreement that represents the step in the process when the condition must be satisfied, clarifies from the very beginning of the process, to the City and the development industry, which conditions must be satisfied for each step of the process to proceed.

**Subdivision Servicing**

At the time when a developer is prepared to service their land under the City’s new process a Subdivision Agreement will have already been signed by the developer and City and registered on the entire draft plan lands. Review and approval of the engineering design will be carried out in the same way as the present process. Draft plan conditions which must be completed before commencement of construction will be included under Part 4 of the Subdivision Agreement and a developer will be required to satisfy these requirements “prior to servicing” the subdivision land.

Once approved by the City, the works will be secured from a developer in the form of a letter of credit held by the City based on a detailed cost estimate schedule prepared by a qualified engineer. Security will be placed with the City as a requirement of the registered Subdivision Agreement, “prior to servicing” and works will proceed by way of a written undertaking signed by the developer acknowledging that the works will be carried out in accordance with the engineering design approved by the City and the terms of the Subdivision Agreement registered on the lands. The security deposit will be held, reduced from time to time and ultimately released by the City in accordance with the terms of the registered Subdivision Agreement. In addition, acceptance and assumption of the works by the City will be carried out in accordance with the terms of the agreement in the same way as the present process.

Where a developer chooses to service the draft plan lands in separate phases, engineering design review and approval, deposit of security, acceptance and assumption of the works will be carried out in the same way for each phase of servicing, instead of each stage of plan registration, all in accordance with the terms and conditions of the registered Subdivision Agreement on the draft plan lands. Unlike the present process, however, the City will not be required to prepare separate Subdivision Agreements for each phase of servicing within a draft approved plan.
Enhanced Grading Control

To enhance grading control in new subdivisions and minimize occurrences of grading problems created when a dwelling unit has been set at an improper elevation, the Department is recommending a new requirement in its Subdivision Agreement where the elevation of a dwelling unit will be surveyed and certified at the building footing stage of construction. Before foundation walls are constructed, the City will require that a developer certify to the City that the building footing elevations have been set at, or within 150mm of, the grades of the approved final grading plan. It was agreed between the City and the development community that this stage in the construction process was at the most desirable point to determine conformity of the building elevation to final approved grading, because discrepancies could be corrected with minimal time lost and cost to a developer. In addition, this additional certification will minimize the problems of compensating for dwellings that have been set at the wrong grades with exaggerated lot grading.

Remnant Blocks in Subdivision Plans

From time to time registration of a subdivision plan will result in the creation of remnant blocks which, because of their size and shape, are unsuitable for building and are intended to be merged with adjoining lands in the future to form proper whole building lots. Consequently, over time, these remnant blocks become unsightly with weeds and debris when development of the land does not occur in a timely manner. This results in a process of complaints from abutting residents and a reactive approach by the City to address the problems.

Under the recommended new standard form Subdivision Agreement, the Department has taken a proactive approach to remnant blocks by requiring the developer to grade and seed the lands in the same way as a building lot to ensure that the lands are properly stripped and their appearance is consistent with adjacent developed lots in the subdivision plan. Under this process, the City will enforce maintenance of the graded and sodded remnant blocks through its Subdivision Agreement. Following certification for grading, the City will enforce proper maintenance of the remnant blocks through its Property Standards By-law.

ALTERNATIVES FOR CONSIDERATION:

As an alternative to the new standard form Subdivision Agreement and process, Council could consider maintaining use of the City’s existing Subdivision Agreement (see Appendix “B”) and continue with the present process by requiring execution and registration of the Subdivision Agreement at the time of each subdivision plan registration.

This alternative, however, requires a separate Subdivision Agreement to be prepared for each phased development of a subdivision draft plan, continues with duplication and inefficiency of staff workload, and does not address the problem of reducing the number of conditions imposed on a subdivision plan by incorporating standard conditions into the City’s Subdivision Agreement as proposed under the new process.
FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial: The new Subdivision Agreement and process will likely result in a minor reduction in processing fee revenue collected for preparation of the City’s Subdivision Agreement, due to the reduced number of agreements required under the new process. The reduction in revenue is estimated to be approximately $60,000 annually on overall revenues of approximately $1.5M. This represents 4% of the overall revenue. The main source of development revenue in engineering is on construction of the municipal works, which will remain unchanged under the new process.

Staffing: None.

Legal: None.

POLICIES AFFECTING PROPOSAL:

Adoption of the recommendations in this report rescinds Item 25 of the Committee of the Whole Report 01-034 which approved the City’s current standard form Subdivision Agreement and use of the agreement by staff for development applications administered under the Planning Act. In addition, as many standard worded conditions for subdivision applications, previously approved by Council on October 16, 2001, in adopting Item 12(f) of Report 01-033 of the Committee of the Whole, are now incorporated into the body of the City’s new standard form Subdivision Agreement, this list as approved is no longer required by staff.

RELEVANT CONSULTATION:

City staff from Development Planning and Development Engineering and from Legal Services was formed as a core working group for the new Subdivision Agreement and process. Also included as part of this working group were two local developers as representatives of the development community and a local consulting engineer as a representative of the development engineering community. This working group compiled a draft Subdivision Agreement which included input from various City departments such as Public Works, Building and Licensing and Finance, as well as various approval agencies involved in the review process of subdivision applications. A copy of the draft agreement was forwarded to the development community through the Hamilton-Halton Home Builders Liaison Committee for review and input into the new agreement and process. As well, the City provided updates on the status of this initiative to the development community through the Development Liaison Committee meetings on an ongoing basis. Staff from the various, relevant City Departments attended the Liaison Committee meetings and gave input throughout the review process. In addition to the above, the City held a presentation of the new Subdivision Agreement and process with the wider development community, which consisted of local area developers, consulting engineers and development lawyers. A copy of the draft agreement and process was provided by the City at the presentation, so that members of the development community could review the new process and agreement and provide feedback to the City. With input and support from the development
community a final version of the standard form Subdivision Agreement has been prepared for adoption by Council.

**CITY STRATEGIC COMMITMENT:**

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

- **Community Well-Being is enhanced.**  ☑ Yes  ☐ No
  Public services and programs are delivered in an equitable manner, coordinated, efficient and effective.

- **Environmental Well-Being is enhanced.**  ☑ Yes  ☐ No
  Human health and safety are protected.

- **Economic Well-Being is enhanced.**  ☐ Yes  ☑ No

**Does the option you are recommending create value across all three bottom lines?**

- ☑ Yes  ☐ No

**Do the options you are recommending make Hamilton a City of choice for high performance public servants?**

- ☐ Yes  ☑ No

N/A

:MI

Attachs. (2)
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 –

(Mortgage)
(hereinafter referred to as the “Mortgage”)
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:
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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) “Acceptable Road Access” means an asphalt surface road, or a road that has been accepted as an access road by the City.

b) “Acceptance” means the date upon which construction of the Works or any portion thereof, has been completed to the satisfaction of the Manager of Development Engineering and the maintenance period for the Works has commenced.

c) “Agreement” means this Agreement including each of the Schedules attached hereto, together with such approved plans and specifications as are specified herein.

d) “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 effective date of the said transfer of obligations and liabilities and “assume” and “assumed” have corresponding meanings.

e) “City” means the City Of Hamilton.

f) “Engineering Consultant” means a qualified Professional Engineer or Engineering Firm, registered under The Professional Engineers Act of Ontario, which has been hired by the Owner to perform the engineering services required of the Owner pursuant to this Agreement.

g) “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.
DEFINITIONS
Continued

h) 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 Manager of Development Engineering for all the Land within a registered subdivision plan.

   iii) "Plot Plan" means the grading plan approved by the Director of Building & Licensing for a particular lot or block created by a registered subdivision plan.

i) "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.

j) “Manager of Development Engineering" means the Manager of the Development Engineering Section of the Development and Real Estate Division in the Planning and Economic Development Department for the City of Hamilton, or designate.

k) “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.

l) “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.

m) “Owner” means the registered owner of the Land and may include an individual, an association, a partnership or corporation.

n) “Phase” means a portion of a Stage for which separate servicing is intended.

o) “Security” means the security defined under Section 3.7 (Security for Performance) of this Agreement.

p) “Stage” means a plan of subdivision, which is registered or intended for registration to subdivide any portion of the Draft Plan.

q) “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 untravelled 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.

r) “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.

s) “Works” include 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 parks, open spaces, public trails and walkways 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 1.1  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) 1.2  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.
1.3 **Changes to Draft Plan**

a) Minor changes to the Draft Plan, acceptable to the City’s Director of Development and Real Estate Division 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 lotless blocks shall require a supplementary agreement prior to the registration of such plans.

1.4 **Plan of Subdivision**

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 ________________ and attached as Schedule “B” to this Agreement.

1.5 **Discharge/Transfers/Dedications of Land/Easements**

a) The Owner shall dedicate to the City by Certificate on the Plan, or transfer, free and clear of all mortgages and charges, those lands which are required to be so dedicated or transferred by the Conditions of Approval and are specified in Schedule “C” of this Agreement. Notwithstanding Section 2.6 hereof, for all lands to be transferred to the City as a requirement of final approval of the Draft Plan, the Owner shall, where required by the City, submit:

i) a Record of Site Condition (RSC) prepared by a qualified person in accordance with Ontario Regulation 153/04, as the same may be amended or replaced from time to time hereafter, together with evidence that the said RSC has been filed in the Environmental Site Registry and an acknowledgement of filing from the Ministry of the Environment, and

ii) a reliance letter signed and stamped by a Professional Engineer, in a form satisfactory to the City Solicitor, with respect to the said RSC.

b) Draft Transfer(s):

Where, as indicated in Schedule "C", any land or easement is to be transferred to the City, 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.

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

To fulfill their obligation to dedicate land in accordance with the Planning Act requirements for park purposes, the Owner shall either:

a) by transfer of land, dedicate to the City the land(s) designated in Schedule “C” for parks, free and clear of all encumbrances; or,

b) in the case where there are no lands in the Draft Plan to be conveyed to the City for park, pay to the City at such time as is required by the City’s Parkland Dedication By-Law 03-199, as amended, and any approved Parkland Dedication and Cash-in-Lieu Policy, a sum of money, in-lieu of park dedication, calculated pursuant to the said by-law and approved policy.
Expenses to be Paid by the Owner

1.7 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.

Engineering Services

1.8 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 Manager of Development Engineering.

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 with regard to 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 Manager of Development Engineering.

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 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.

1.9 a) Where servicing contracts between the Owner and a 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 contractor who has been bonded and subject to approval of the Manager of Development Engineering.

b) Every contract between the Owner and a 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 contractor acceptable to the Manager of Development Engineering; and,

ii) contain a provision binding the contractor to file performance, material and labour bonds satisfactory to the Manager of Development Engineering; and,

iii) provide that the work of the 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 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 contractor shall supply a work calendar for approval of 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 contractor that the contractor looks only to the Owner and not the City for payment for the Works pursuant to this Agreement.

1.10 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’s approval.

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 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.
1.11 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.

1.12 a) The Owner shall construct, install and complete the roadways, including all temporary or permanent barricades & sign and guide rails, where required, on all streets within the Draft Plan in accordance with:
   i) the recommendations of a soils report prepared by a qualified engineer and approved by the City; and,
   ii) the drawings and specifications thereof approved by and satisfactory to the City; and,
   iii) the time tables contained in this Agreement; and,
   iv) the Draft Plan of subdivision.

   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.

   c) No temporary barricade & sign or guide rail may be removed or its position changed without the written consent of the City.

   d) 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.

1.13 The Owner agrees:

   a) to construct, at its own cost, any and all temporary access or emergency access roads or turning circles in locations approved by the Manager of Development Engineering; and,

   b) to grant irrevocable licenses to the City for the lands upon which such temporary roads or turning circles will be located. The City agrees to release such license to the lands when the land is no longer required by the City for the temporary road and/or turning circle; and,

   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 Manager of Development Engineering; and,

   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 issued 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 Manager of Development Engineering and are removed to the satisfaction of the Manager of Development Engineering.

   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 Manager of Development Engineering.
1.14 a) Prior to placement of surface course 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 Manager of the Engineering, has deteriorated; and,

iv) repair or replace such deteriorated base asphalt and/or granular base course to the satisfaction of the Manager of the Engineering; and,

v) give the City five (5) clear business days prior notice, in writing, of its intention to place surface course asphalt pavement.

b) Construction of surface course 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 surface course 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 Manager of Development Engineering.

1.15 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 Development and Real Estate and the Manager of Development Engineering; 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 Manager of Development Engineering.

1.16 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 Manager of Development Engineering may specify in what order the Works are to be installed and may require that the Owner take steps, which in the opinion of the Manager of Engineering, are necessary to protect Works previously installed under this Agreement.

1.17 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 the development of the Land, the Owner shall carry out such abandonment, relocation and/or reconstruction in accordance with the engineering drawings approved by the Manager of Development Engineering and pay all associated costs in accordance with Schedules “D” and “E” of this Agreement.
Works Outside the Land

1.18 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 Manager of Development Engineering.

c) The Works required to be carried out by the Owner outside the Land, shall be completed according to the drawings and specifications approved by the Manager of Development Engineering and at such cost as may be agreed upon between the Parties as set out in Schedules “D” and “E” of this Agreement.

Servicing in Public Interest

1.19 Where the Owner has not completed servicing in accordance with any approved servicing plan for the lands within the Draft Plan and where the Manager of Development Engineering 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 for a period of time up to five (5) years after acceptance of the Works by the City; and,

Additional Work

1.20 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 contractor will conform thereto.

Utility Installations

1.21 For all utilities, including but not limited to, hydro, telecommunication cables, gas mains and television coaxial 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.

**Canada Post**

1.22 The Owner covenants and agrees to provide Canada Post facilities, as required by Canada Post Corporation, and locate these facilities to the satisfaction of the City and Canada Post Corporation. The facilities are to be installed as part of the installation of Works required under this Agreement. The Owner shall identify a location for the purpose of Canada Post Corporation to install temporary facilities sufficient for the collection and delivery of mail for the Lots and Blocks of any registered stage of the Draft Plan and to make this location ready for the acceptance of these facilities.

**As-Constructed Drawings**

1.23 The Owner's Engineering Consultant shall:

a) incorporate any job changes on the plans for the Phase of construction to which the Works pertain; and,

b) 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, within six (6) months after acceptance of the sewer and watermain works for the Phase of construction to which the As-constructed drawing(s) pertain.

**Signs**

1.24 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**

1.25 Where it is a requirement of final clearance of the Draft Plan 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**

1.26 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 1.27  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, for each lot or block located within the Land, to the satisfaction of the City and shall submit to the Director of Building and Licensing, or designate, a Certificate stamped by a qualified professional engineer stating that the “as built” grading of the lot or block within the Land conforms to the approved Plot Plan within six (6) months after the insulation inspection date. For the period between November 30 and April 1, the grading shall be completed and Certificate submitted to the City by June 15 of the same year following April 1.

b) The Owner covenants and agrees to:

i) complete the grading, which includes application of topsoil and seed, for those blocks shown on the Draft Plan identified as park or trail as approved by the Manager of Development Engineering, in accordance with the Final Grading Plan, within six (6) months after completion of the base asphalt for the roads within the registered Stage in which the park or trail block was established.

ii) 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 approved by the Director of Building and Licensing 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 1.28  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 submit to the City's Director of Building and Licensing a certificate prepared by an Ontario Land Surveyor or professional engineer confirming that the elevation of the top of the footings is within 150mm of the elevation 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 certificate has been accepted by the City's Director of Building and Licensing.

**Occupancy of Buildings** 1.29 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 Director of Building and Licensing, or designate, pursuant to the conditions for occupancy in the Building Code Act and Regulations hereunder.

**Sodding** 1.30 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 roads allowance, provide topsoil and lay sod of a quality acceptable to the City on the untravelled 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 untravelled 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** 1.31 The Owner agrees to control weeds on all of the Land to the satisfaction of the City.

**Prohibition Against Debris on Lands** 1.32 a) The Owner agrees:

i) to not use land dedicated, transferred or vested in the City for the depositing of waste, debris, tree 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 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) hours notice from the City, enter on and clean up such land, charging the cost thereof against the security.

**Street Cleaning 1.33**

a) Prior to assumption by the City of any street which the Owner is required to construct under this Agreement:

i) the Owner shall prevent earth and debris from being tracked onto streets outside the Land; and,

ii) the Owner shall, 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.

b) 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.

c) In the event the Owner fails to fulfill the requirements of this section, the City is authorized to have such work done at the Owner's expense. The City shall notify the Owner in advance of the City cleaning and removal of debris and materials from the streets. The cost of any work done pursuant to this subsection may be charged by the City against the security.

**Deficiencies in Work 1.34**

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 Manager of Development Engineering; 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 Manager of Development Engineering.

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**

1.35 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 1.36 The Manager of Development Engineering may cause work to be stopped, when in their opinion the Owner is in default under this Agreement or the 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 1.37 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 and surface course 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 surface course asphalt by the City; and,

iii) all trees 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 tree planting as complete, 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 Manager of Development Engineering; and,

iii) the Works, which the Owner is required to construct pursuant to this Agreement, have been inspected to the satisfaction of the Manager of Development Engineering; 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 and thirty percent (30%) of the estimated cost of street trees 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.

1.38 Employees, contractors or agents of the City may, at any time and from time to time prior to assumption of the Works by the City, enter upon the Land without notice to the Owner to:

i) inspect any of the 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 Manager of Development Engineering are necessary to confirm or verify quality of materials and construction; and,

iii) make emergency repairs in the event the Works do not function or do not function properly, or in the opinion of the Manager of Development Engineering, 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.

1.39 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.
1.40 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 Manager of Development Engineering;

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 or liens in respect
of the installation of, 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 Lien 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.

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 Manager of
Development Engineering shall acknowledge in writing that the
Works (excluding streets) have been assumed by the City. The
Date of Assumption shall be the date of the writing, unless
otherwise specified therein. Streets within the Land shall be
assumed by the City upon the passing of a By-law with respect to
the establishment of such streets. The Date of Assumption of
streets shall be the date of final enactment of the said By-law
unless otherwise specified therein.

1.41 a) The City shall not be responsible for or liable for:

i) any loss or damage that may happen to the 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 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 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 in respect of the development; or,

vii) damage caused by the construction or operation of the 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, 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, its employees, agents, assignees or contractors; and,

iii) 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, 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, 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.

Insurance 1.42 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 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 Manager of Development Engineering, and maintain such policies in force until assumption of the 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 any portions of them under this Agreement, the said specified policies of Insurance, in a form and with limits and deductibles acceptable to the Manager of Development Engineering, and shall maintain such policies in force until acceptance of the 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/contractors 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 One Million Dollars ($1,000,000) 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 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.

1.43 a) The City’s Director of Building and Licensing may refuse to grant Building Permits within the Land at any time when advised in writing by the Director of Development and Real Estate or the Manager of Development Engineering that the Owner is in default of any provision of this Agreement. Prior to forwarding such advice to the Director of Building and Licensing, the Director of Development and Real Estate, or the Manager of Development Engineering, 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 and Licensing. 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.

1.44 Where zero lot line housing is proposed for development, the Owner agrees to the following:

a) A reference plan shall be submitted to the Director of Development and Real Estate showing a 1.2 metre wide easement extending the full length of the building, plus a minimum of 1.5 metres beyond at least one end of the building to allow free access for maintenance; and,

b) 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 prior to any building permits being issued for any of the lands shown on such reference plan; and,

c) 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 requirements; and,
d) Transfer of such easement shall be registered at the time of the sale to the purchaser of either the lot granting the easement or the lot to be granted the easement. At such time the Owner shall provide a copy of the deposited reference plan to the Director of Development and Real Estate; and,

e) This condition shall constitute part of the draft approval, and as such, Consent applications shall not be required to establish such maintenance or eave encroachment easements.

**Reserves**

1.45 Where registration of the Draft Plan, or any stage therein, results in dead-ending or open sides of the City’s road allowance, 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) shown each 0.30 metre reserve on the final Plan of subdivision as a separate block; and,

c) 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).

**House Numbers**

1.46 The Owner shall affix a house number, to the satisfaction of the City on each dwelling that has been constructed on a registered lot within the Draft Plan.

**Agreements of Purchase and Sale**

1.47 The Owner shall include in any and all Agreements of Purchase and Sale 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 Catchbasins:

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 approved by the Director of Building and Licensing 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 and a restrictive covenant regarding the discharge of roof leaders to the ground, which shall run with the Land.

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 catchbasins within the said lot or block; 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 catchbasin 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 catchbasin.

1.48 Interpretation of Agreement

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; and,

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; and,

c) 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; and,

d) 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; and,

e) 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,
Hamilton ON L8P 4Y5
f) 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; and,

g) 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; and,

h) 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; and,

i) this Agreement may not be modified or amended except by instrument in writing signed by the Owner and the City, and,

j) time shall be of the essence of this Agreement.

List of Schedules to this Agreement

1.49 It is understood and agreed that the following Schedules "A", "B" and "C" 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” - Draft Plan
Schedule “C” - Conveyance of Lands and Grant of Easements
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 Agreement

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

Commutation of Assessed Charges and Taxes

2.2 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

2.3 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 based on an amount of $xx.xx per hectare of the Draft Plan.

Street Names

2.4 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 Director of Development and Real Estate.

Zoning Compliance

2.5 The Owner agrees that no plan of subdivision shall be registered on the lands of the Draft Plan until the Owner has provided the Director of Development and Real Estate 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 Director of Development and Real Estate has confirmed to the Owner that the lots and blocks within the plan comply with the City’s requirements for zoning.

Telecommunication Servicing

2.6 The City shall receive written confirmation from Bell Canada or other telecommunication service provider that the Owner has made satisfactory arrangements, financial and otherwise, for any telecommunication facilities which are required by the City to be installed underground.

Conveyance of Land and Easements

2.7 The Owner covenants and agrees:

a) that prior to, or immediately following, registration of any stage of the Draft Plan, as the case may be, it shall 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, and in doing so, shall 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.

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.

Street Trees

2.8 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.

Final Release

2.9 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.
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:

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

Preliminary Grading Plan
3.2 The Owner shall prepare a Preliminary Grading Plan to the satisfaction of the Manager of Development Engineering and any and all applicable regulatory agencies as determined by the Manager of Development Engineering in accordance with the conditions of final release of the Draft Plan.

Erosion and Sedimentation Control Plan
3.3 The Owner covenants and agrees to:

a) obtain approval from the Conservation Authority of an erosion and sediment control plan 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.

Grading Authorization
3.4 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, where an archaeological assessment is a condition of final release of the Draft Plan for registration. No demolition or soil disturbances shall take place on the subject property prior to the approval of the Director of Development and Real Estate, the Ministry of Citizenship, Culture and Recreation confirming that all archaeological resource concerns have met licensing and resource conservation requirements; and,

iii) identified 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 preservation plan that has been reviewed and approved by the City, where tree preservation is a condition of final release of the Draft Plan for registration; and,

iv) obtained the authorization of the City’s Director of Development and Real Estate to preliminary grade land, which has been designated under the Ontario Heritage Act or listed on the City’s Inventory of Heritage Buildings, as including a heritage resource; and,
v) submitted a Phase 1 Environmental Site Assessment to the Manager of Development Engineering, and if required, a Phase 2 Environmental Site Assessment; and,

vi) submit original Certificates of Insurance for the Owner and any contractor hired by the Owner to perform Work pursuant to this Agreement; and,

vii) deliver cash, security and fees as required by this Agreement for the Phase of construction; and,

b) The Owner agrees that in addition to the requirements above, pre-grading shall not commence until the Owner has received a letter of authorization from the Manager of Development Engineering to proceed and then, only in accordance with the Preliminary Grading Plan approved by the City.

c) In the event the Owner fails to comply with the above requirements, the Owner shall be responsible to re-grade the Land at its own cost, as directed by the City.

Topsoil Future 3.5 Where the Owner has carried out preliminary grading on areas of the Land not intended for immediate development, the Owner shall topsoil and seed all such areas immediately following the completion of preliminary grading. For the period between November 30 and April 1, top soil and seeding shall be completed by June 1 of the same year following April 1.
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

4.1 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 3.2, 3.3 and 3.4 a) under Part 3, “Prior to Preliminary Grading”, of this Agreement; and,

b) 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,

c) where required, obtain approval from the Conservation Authority of a storm water management plan, prepared by the Owner in accordance with Provincial guidelines to address storm water quantity and quality on the Land; and,

d) obtain the approval of the Director of Development and Real Estate of the subdivision Stage proposed for registration in which the Works will be constructed; and,

e) obtain written approval from the City of a detailed cost estimate and description of the Works to be installed by the Owner to service a Phase of construction; and

f) ensure all sedimentation and erosion controls are in place prior to any earthworks on the site; and,

g) 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,

h) arrange for all required site inspections and materials testing for the Works; and,

i) arrange for a pre-construction meeting for construction of the Works; and,

j) deliver a copy of the approved construction drawings in a digitized electronic format acceptable to the City, and;

Supplementary Subdivision Agreement

4.2 Where a supplementary subdivision agreement is required by the City’s Director of Development and Real Estate Division to establish the final lotting of lotless blocks, or for any other purpose, such agreement shall be executed and registered on title to the Schedule “A” Land.

Lotless Blocks

4.3 The Owner agrees to submit a draft survey plan showing proposed lot layout for lotless blocks, intended to be subdivided in the future, to the Director of Development and Real Estate for review and approval, prior to approval of servicing drawings for such lotless blocks, by the City.
4.4 Notice of Servicing
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. Commencement of construction shall not begin until the Owner receives written acknowledgement from the Manager of Development Engineering authorizing the start of construction.

Should any significant work stoppage occur in the prosecution of 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.

4.5 Billboard Signs
a) prior to commencement of any Phase of construction, the Owner shall obtain approval of, and, the location for, and, the time for erection of:
   i) a General Land Use billboard sign displaying the design of the Draft Plan. Such sign is to be prepared by the Owner 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 at least 85% of the homes constructed within the Draft Plan have been built on; and,
   ii) 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.
   iii) 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.

4.6 Security for Performance
a) Prior to commencement of any phase of construction, the Owner shall deposit with the City security in an amount which is at least seventy-five percent (75%) of the estimated costs of installation of the phased Works, or any other Works which, in the opinion of the Manager of Development Engineering, 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..

b) The required security shall be issued by a financial institution in the form of an irrevocable letter of credit, cash or such other equivalent security satisfactory to the City Solicitor.

c) 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.
d) The security received and held by the City in accordance with this Agreement may be applied and used by the City not only for the matters for which the security is expressly required, but may also be applied and used 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.

e) 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 contractor in respect of the Works 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 and thirty percent (30%) of the estimated cost of planted trees or $10,000, whichever amount is greater.

f) 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, 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.

**Soil Stabilization**

Where structural fill has been placed in areas intended for installation of municipal infrastructure the Owner shall submit to the Manager of Development Engineering 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**

a) The Owner shall submit a plan for the approval of the Manager of Development Engineering showing the following:

i) The pairing of driveways for lots having widths of nine (9) metres or less, except where considered impractical by the Manager of Development Engineering; 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.

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**

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.
PART 5 PRIOR TO ISSUANCE OF A BUILDING PERMIT

Prior to receipt of a Building Permit from 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

5.1 No building permits shall be issued 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 watermains, 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 Manager of Development Engineering; 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 foundation wall elevations, and the proposed grading according to the approved Final Grading Plan has been prepared by an Ontario Land Surveyor or a qualified professional engineer in accordance with the City's current grading policy and standards and the Plot Plan has been approved by the Director of Building and Licensing, or designate; and,

Copy of Registered Plan

5.2 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 Development and Real Estate immediately upon registration of any Stage.

Sub-surface Soil Investigation and Stabilization

5.3 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 and Licensing, prior to issuance of building permits by the City, 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 (MOE) 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 and Licensing 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 and Licensing 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 and Licensing.

5.4 The Owner agrees that the division of any lots or blocks 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 Development and Real Estate; 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 an Final Grading Plan showing the detailed grading within all lotless blocks, in accordance with the City’s current requirements for review and approval by the Manager of Development Engineering; 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 issued 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.

f) The Owner shall deposit the approved draft reference plan in accordance with the Land Titles Act and forward three deposited copies to the Manager of Development Engineering; and,

5.5 Notwithstanding sub-section 4.5 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 issuance 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 zero lot-line housing and obtain approval of the draft reference plan from the City’s Director of Development and Real Estate; and,

b) Obtain approval of lotting plans for each lot or block illustrating proposed lotting 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 Development and Real Estate.

Model Home Provision 5.6 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 a Building Permit from the City’s Director of Building and Licensing for each model home to be constructed; and,

ii) 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,

iii) the Owner confirms that there is road access, acceptable to the City’s Director of Building and Licensing, to within ninety (90) metres of any building erected on the lands of the Draft Plan for emergency access; and,

iv) the Owner certifies to the City’s Director of Building and Licensing 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 3.5 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 lots intended for single-detached dwellings, semi-detached dwellings or townhouse purposes 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.

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 and Licensing 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 and Licensing, or designate, pursuant to the conditions for occupancy in the Building Code Act and Regulations thereunder.

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 and Licensing, 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 and Licensing.

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 5.7

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**

5.8 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, and in addition to any other security which the Owner’s builder may be required to provide to the City pursuant to 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 by the property owner or builder.

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**

5.9 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 Development and Real Estate showing a planting strip having a minimum width of 4.60 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 Development and Real Estate.

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/
Tree Preservation
Enhancement Plan

5.10 Where the detailed vegetation plan required under this Agreement has identified that there are trees to be retained or require further study, the Owner shall submit a Tree Preservation/Enhancement Plan to the City’s Director of Development and Real Estate.

All trees to be preserved on a lot or block shall be satisfactorily protected in accordance with the grading or Tree Preservation/Enhancement Plan approved by the City.

PART 6 RELEASE OF THE AGREEMENT

Final Release 6.1 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 have duly executed this Agreement.

SIGNED, SEALED AND DELIVERED in the Presence of

CITY OF HAMILTON

____________________________
Larry Di Ianni, Mayor

____________________________(c/s)
Kevin C. Christenson, Clerk

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

Witness (signature)

____________________________
Per:

____________________________
Print name of Witness

____________________________(c/s)
Address of Witness

We have authority to bind the corporation.

ADDRESS FOR OWNER

Where Owner is a corporation, also
i) above signature line, print corporation name
ii) below signature line, print officer’s/director’s and their title;
iii) affix corporate seal, if available.

And, Where Owner is an individual also
i) 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 ________________, now in the City of Hamilton, being more particularly described as Parts x to x, 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
SCHEDULE "C"

to the Subdivision Agreement dated:

TRANSFER OF LAND AND GRANT OF EASEMENTS

Description of lands in the Draft Plan to be transferred and easements to be granted to the City, pursuant to Sections 1.5 and 1.6 of this Agreement.

TRANSFER OF LAND:

GRANT OF EASEMENTS:
SUBDIVISION AGREEMENT

THIS AGREEMENT DATED as of the day and date specified in Schedule "B" of this Agreement.

BETWEEN:

THE OWNER
(specified in Schedule "B" of this Agreement)
(hereinafter may be referred to as the "Owner")
of the First Part,

- and –

CITY OF HAMILTON
(hereinafter may be referred to as the “City”)
of the Second Part,

WHEREAS:

(a) the City of Hamilton was incorporated as of January 1, 2001 by the City of Hamilton Act, 1999 (S.O. 1999, Chapter 14, Schedule C), and the City is the successor to the former regional municipality, The Regional Municipality Of Hamilton-Wentworth and to the former area municipalities, namely The Corporation of the Town of Ancaster, The Corporation of the Town of Dundas, The Corporation of the Town of Flamborough, The Corporation of the Town of Glanbrook, The Corporation of the City of Hamilton, and, The Corporation of the City of Stoney Creek; and,

(b) all references to the "City" in this Agreement shall be deemed to also include where required, references to the former area municipality as the case may be, or to the former regional municipality, The Regional Municipality Of Hamilton-Wentworth; and,

(c) the Owner is the registered owner in fee simple of the land described in Schedule "A" appended hereto; and the Owner has represented that there are no arrears of realty taxes on the said land and that the current municipal address and legal description of such land is set out in Schedule "A" of this Agreement, (hereinafter such land may be referred to as the "Land"); and,
the Owner is required to enter into this Agreement with the City to record the terms and conditions under which the Owner may, with the approval of the City, provide for one or more of the following:

(i) the terms and conditions under which the Owner, who has made an application to the City pursuant to Section 51 of the Planning Act, R.S.O. 1990, c. P.13, for approval of a draft plan of subdivision, (the name and Application number of which subdivision are set out in Schedule "B") may develop the Schedule “A” Land in accordance with a plan of subdivision; and,

(ii) the terms and conditions under which the Owner, who has made application to the City pursuant to the Condominium Act, (R.S.O. 1990, chap. C.26) for approval of a draft plan of condominium, (the name and Application number of which condominium are set out in Schedule "B") may develop the Schedule “A” Land in accordance with a plan of condominium; and,

(iii) the terms and conditions under which the Owner, who has made application to the Committee of Adjustment for the City of Hamilton — for Consent to sever the Schedule “A” Land into two or more parcels, may develop such Land in accordance with the Decision of the Committee and the Consent(s) it has conditionally authorized; and,

(iv) the terms and conditions under which the Owner, who has made application to the City for another approval under the Planning Act, and specified in Schedule “B” of this Agreement, may receive such approval and develop and use its Land in accordance with such approval and its conditions; and,

(e) the said Application, its Application Number (where assigned) the nature of the Application, the name of the plan of subdivision or plan of condominium (where applicable) — that are the subject of this Agreement, are specified in Schedule “B” of this Agreement; and,

(f) the said Application in respect of the Land did receive conditional approval and the decision and its conditions of approval, are included in Schedule "C", and,

(g) the said Application by the Owner was approved on the condition that the Owner comply with and carry out the conditions and requirements listed in Schedule “C”, including the required details thereof and the Owner's obligations in relation to recorded in this Agreement.

NOW THEREFORE, THIS AGREEMENT WITNESSETH that in consideration of the premises and of the terms and covenants and conditions hereinafter set forth, the parties hereby mutually covenant and agree each with the other as follows:
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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) “Acceptable Road Access” means an asphalt surface road, or a road that has been accepted as an access road by the City.

b) “Acceptance” means the date upon which the maintenance period for the Works has commenced, pending completion of all requirements, which relate to the construction of the Works.

c) “Agreement” means this agreement including each of its Schedules, attached hereto, and forming part of this agreement, together with the required plans and specifications required by this agreement and approved by the City in accordance with the provisions of this agreement.

d) “Assumption” means the date when the Works have been completed, the maintenance periods have expired and no other obligations under this agreement remain outstanding with respect to the Works.

e) "Block" means a parcel of land laid out by a draft or registered plan of subdivision and designated by the Plan as a Block.

f) “City” means the City Of Hamilton.

g) “City Engineer” means the Manager of the Engineering Section in the Development and Real Estate Division of the Planning and Economic Development Department for the City of Hamilton, or their designate.

h) “Consulting Engineer” means a qualified Professional Engineer or Engineering Firm, registered under The Professional Engineers Act of Ontario which has been hired by the Owner to perform all engineering services related to development of the Land required of the Owner.

i) "Detailed Grading Plan" means the grading plan for a particular lot, unit, block or severed parcel approved by the Director of Building & Licensing.

j) “Draft Plan” or draft plan, means the proposed plan of subdivision or condominium comprised of the Land described in Schedule “A”. The details of the Plan are set out in Schedule "A". The Plan was approved by the City, subject to the provisions of this Agreement; draft plan does not include a plan under Site Plan Control.
DEFINITIONS
Continued

k) "Land" subject to the exception which follows, Land means the land described in Schedule "A" of this agreement; exception, after the plan of subdivision or the plan of condominium which is the subject of this agreement has been registered on title to the Schedule "A" Land, a reference to "Land" in this agreement shall be deemed to be a reference to the said registered plan;

l) "Lot" means a parcel of land laid out by a draft or registered plan of subdivision and designated by the Plan as a Lot;

m) "Model Home" means a single detached dwelling, semi–detached dwelling or townhouse block used in the interim for the sole purpose of an office and/or show room and/or sales centre to promote the sale of residential units within a draft approved Plan of subdivision proposed for registration.

n) "Mortgagee" means the person, company or business having a beneficial entitlement to an interest in the Land in the form of a registered mortgage over all or part of the Land.

o) "Others" means all utilities and telecommunication systems, excluding the Hydro authority, including but not limited to telecommunication cables, gas mains and television co-axial cables.

p) "Overall Grading Plan" means the grading plan for all of the Land approved by the City Engineer.

q) "Owner" means the registered owner of the Land described in Schedule “A” and may include an individual, an association, a partnership or corporation. The Owner's name is set out in Schedule “B” of this Agreement.

r) "Plan" means the Final Plan of Subdivision or Condominium identified in Schedule “A” and registered on title to the Land; and "plan" has the same meaning unless otherwise required by the context; Plan or plan does not include plans which are the subject of Site Plan Control.

s) "Property" includes a lot, block, unit or severed parcel;

t) "Security" means the security defined under Section 5 (Security for Performance) of this agreement.

u) "Severed Parcel" means a parcel of land that is, was or may be transferred as a result of the severance of the Schedule “A” Land within which the severed parcel is located, with the Consent of the Committee of Adjustment; and, severed parcel includes a parcel of the Schedule “A” Land which remains or will remain in the owner's name after the owner is no longer the owner of any abutting land.

v) "Street" is a highway or road allowance owned by the City or intended to be vested by registration of a plan of subdivision or dedicated by transfer to the City, and includes both the traveled and untravelled portion of the street and all shoulders, boulevards and sidewalks located thereon, and includes land dedicated or vested in the City for a walk way. A roadway is that portion of a street, which is improved for use by cars and pedestrians. Street does not include an internal private road laid out within a plan of condominium.

w) "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.

x) "Unit" means a portion of land laid out by a draft or registered plan of condominium and designated by the plan as a Unit.

y) "Works" means all municipal or other services to be constructed by the Owner under this agreement. These municipal services are referred to on the construction drawings listed under Schedule “E” (List of Approved Construction Drawings) and the estimated costs of such municipal services are set out in Schedule “F”
EXECUTION AND REGISTRATION

1.1 Before this Agreement is executed by the City, the Owner shall have:

(a) executed and delivered at least four copies of this Agreement to the City; and,
(b) delivered to the City cash and security as required by this Agreement; and,
(c) delivered to the City the insurance policies as required by this Agreement.

1.2 (a) Where the Land which is the subject of this Agreement is being developed by a plan of subdivision, the Owner shall register at its expense on title:

Firstly, the land(s) or easement(s) identified in Schedule "I" that are external to the Plan and to be transferred to the City; ("external transfers"), the registration of which shall be prior to approval being endorsed on the Plan; and,
Secondly, the plan of subdivision identified in Schedule "A" on title to the Land — within thirty days of the City's approval being endorsed on the Plan; and,
Thirdly, this Agreement on title to every Lot and Block of the registered Plan — within ten days of registration of the Plan and prior to the transfer of any Lot and Block of the registered Plan; and,
Fourthly, the land(s) or easement(s) identified in Schedule "I" that are internal to the Plan and are to be transferred to the City. ("internal transfers"); and,
Fifthly, the transfer of the surface drainage easement to the City as described in Schedule "I", on title to every Lot and Block of the registered plan other than block(s) transferred to City.

(b) Where the Land which is the subject of this Agreement is being developed with the Consent of the Committee of Adjustment, the Owner shall register at its expense on title:

Firstly, the land(s) or easement(s) identified in Schedule "I" that are intended for the City and are required as a condition of the Decision of the Committee of Adjustment, including those dedications that are external to the Land ("external transfers") or are from within the Land; and,
Secondly, this Agreement (the registration of which shall be prior to:
(i) the endorsement of the Committee of Adjustment Consent to any permitted transfer of a severed parcel or of an easement, or,
(ii) prior to the issuance by the Committee of any Certificate of its Decision); and,
Thirdly, the transfer of the surface drainage easement to the City as described in Schedule "I" on title to the Land other than any Land transferred to City; and,
Fourthly, any severed parcel and/or easement, the transfer of which by the Owner to a person is intended to be the subject of the Committee’s Consent.
(c) Where the Land which is the subject of this Agreement is being developed by a plan of condominium:

(i) the Owner shall register at its expense on title the following:

Firstly, any land(s) or easement(s) identified in Schedule "I" that are external to the plan and are to be transferred to the City; ("external transfers") the registration of which shall be prior to approval being endorsed on the Plan; and,

Secondly, this Agreement on title to the Land; and,

Thirdly, the plan of condominium on title to the Land — within thirty days of the City's approval being endorsed on the plan of condominium; and,

Fourthly, the land(s) or easement(s) identified in Schedule "I" that are internal to the Plan and are intended to be transferred to the City ("internal transfers"); and,

Fifthly, the transfer of the surface drainage easement to the City as described in Schedule "I" on title to the Plan other than any Land transferred to City; and,

Sixthly, a Condominium (assumption) Agreement on title to the registered plan of condominium (— prior to registration of a transfer of any unit of the registered condominium plan).

(ii) the Owner shall, following registration of the condominium plan, cause the new condominium corporation to enter into a further "Condominium (assumption) Agreement with the Owner and with the City in which the condominium corporation covenants to the City to comply with the provisions of this subdivision agreement and the site plan agreement registered in respect of the Land. The further Condominium Agreement shall also include the Condominium Corporation’s other obligations in favour of the City in a form and in accordance with terms satisfactory to the City.

(d) The Owner's registration of this Agreement, the 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 registered in a form satisfactory to the City's Corporate Counsel. Such registration shall be in an electronic format or in a paper format, as may be required by the Land Registry Office.

1.3 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.
1.4 Where the Mortgagee(s) either execute this Agreement or authorize its electronic registration, 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 (their) right, title and interest in the Land to the rights of the City pursuant to this Agreement.

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.

1.5 The Owner's lawyer shall provide the City with their Lawyer's Certificate of Title and Registration to certify to the City, in a form satisfactory to the City's Corporate Counsel, 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 and that this Agreement has been registered, as required herein, on title to the Land.

Such Certificate shall be the minimum evidence of completion of such registration by the Owner where completion of such registration is a requirement of this Agreement. Where a time frame is not specified for completion of such requirement, the Lawyer's Certificate shall be provided to the City within thirty (30) days of such registration.

1.6 The land(s) and easement(s) required in Schedule "I" to be transferred by the Owner to the City free of charge and with clear title thereto shall be registered as required in Clause 1.2 of this Agreement and its related provisions and schedules by and at the expense of the Owner.

TRANSFERS / DEDICATIONS OF LAND / EASEMENTS

2.1 (a) Draft Transfer(s):

Whether, as indicated in Schedule "I", any land or easement is to be transferred to the City, either following the registration of the Plan (where applicable) or prior to the registration of this Agreement, the Owner shall first submit to the City, a draft, in paper, of each required transfer and a Tax Certificate which confirms there are no arrears of realty taxes for the land.

(b) Registration:

After each draft transfer has been reviewed and approved by the City, the Owner's lawyer shall, with the participation of the City's Teraview representative, register the required transfer(s) (either prior to or after the registration of this Agreement, as may be required in Schedule "I").

(c) Lawyer's Certificate of Title:

Following registration of the required transfer(s), the Owner's lawyer shall provide their Certificate of Title in a form satisfactory to the City's Corporate Counsel regarding the registration of the transfer(s).

Such Certificate shall be the minimum evidence of completion of such registration by the Owner where completion of such registration is a requirement of this Agreement. Where a time frame is not specified for completion of such requirement, the Lawyer's Certificate shall be provided to the City within thirty (30) days of such registration.
2.2 To fulfill their obligation to dedicate land in accordance with the Planning Act requirements for park purposes, the Owner shall either:

(i) by transfer of land, dedicate to the City the land(s) designated in Schedule “I” for parks, free and clear of all encumbrances; or,

(ii) in the case where there are no lands in the Draft Plan to be conveyed to the City for park, pay to the City at such time as is required by the City’s Parkland Dedication By-Law 03-199, as amended, and any approved Parkland Dedication and Cash-in-Lieu Policy, a sum of money, in-lieu of park dedication, calculated pursuant to the said by-law and approved policy.

2.3 The Owner shall, where the Land is to be subdivided by a plan of subdivision or by a plan of condominium, dedicate to the City by Certificate on the Plan, those land(s) as required by the Conditions of Approval in Schedule "C" and/or in Schedule "I" and/or in the balance of this Agreement.

2.4 The Owner shall transfer and/or dedicate the land(s) and easement(s) to the City as required by the Conditions of Approval in Schedule "C", and/or in the provisions of Schedule "I" and/or in the balance of this Agreement.

SIGNS

3.1 Prior to commencement of construction, the Owner shall erect at each main entrance to the Land:

i) a General Land Use billboard sign displaying the design of the Plan, zoning, proposed and surrounding land use, sidewalk locations and pedestrian connections and other special site features; with the sign contents and sign size all firstly approved by the City's Director of Development. The Owner shall maintain the General Land Use billboard sign until all the lots, blocks, units or severed parcels have been built on; and,

ii) 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, blocks, units or severed parcels has been completed.

3.2 The Owner shall affix, in a conspicuous position, on each lot, block, unit or severed parcel where there is no dwelling, a lot or unit number, where applicable, to the satisfaction of the City. Where a dwelling has been constructed on a plan of subdivision or on a severed parcel, the Owner shall affix a house number on each dwelling, to the satisfaction of the City.

3.3 All signs required to be erected under this section 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.

3.4 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 final approval is granted to the changed uses or re-subdivision of Land.

EXPENSES TO BE PAID BY OWNER

4. 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.
SECURITY FOR PERFORMANCE

5.1 Prior to the execution of this Agreement by the City, the Owner shall deposit with the City security in an amount which is seventy-five percent (75%) of the estimated costs of installation of the Works set out or referred to in Schedule "F". The amount of the required security is specified in Schedule "G".

5.2 The required security shall be issued by a financial institution in the form of an irrevocable letter of credit(s), cash or such other equivalent security satisfactory to the Finance Department.

5.3 The letter of credit shall be irrevocable and valid for an initial term of not less than one (1) year. The Owner shall keep the Letter of Credit in full force and in effect and shall be renewed from time to time until the City determines such security is no longer required.

5.4 The security is required to secure:

a) completion of the said Works by the Owner in conformity with the provisions of this Agreement; and,

b) performance of all other obligations of the Owner under this Agreement.

5.5 The security received and held by the City in accordance with this Agreement may be applied and used by the City to not only the matters for which the security is expressly required, but may also be applied and used by the City in accordance with the remedial provisions of this Agreement, to any other matter, expense or obligation of the Owner, notwithstanding that such security was not expressly received for such purpose.

5.6 The security deposited as required by the provisions of this section shall be reduced in amounts from time to time at the discretion of the City following receipt, satisfactory to the City, of a progress certificate from the Consulting Engineer and proof of payment to the contractor, in respect of the Works covered by the said security; but 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 Consulting Engineer, satisfactory to the City, plus ten percent (10%) of the estimated cost of Works and thirty percent (30%) of the estimated cost of trees as set forth in Schedule "F" or $ 10,000, which ever amount is greater.

5.7 The financial security received and held by the City pursuant to this section of the Agreement, whether such security be in the form of an irrevocable letter of credit(s), cash or such other 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 pursuant to this section of the Agreement.

COMMUTATION OF FRONTAGE CHARGES

6. Prior to execution of this Agreement by the City, the Owner shall commute and pay to the City all frontage charges and assessments on the tax roll of the Land, including those charges set out in Schedule "H".

FEE FOR ENGINEERING SERVICES AND AGREEMENT ADMINISTRATION

7. 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 the City's execution of this Agreement, a fee in accordance with the City's User Fee By-law, which amount is set out in Schedule "G".
DEVELOPMENT CHARGES

8. The Owner acknowledges that it is required, at the time of the issuance of a building permit by the City, for residential or non-residential land within the Land, to pay such development charges as may be levied by Development Charges By-laws authorized by the Development Charges Act, S.O. 1997, c.27, ss. 1 to 68, as amended.

INTEREST

9. Interest at the prime rate of the Bank of Canada, plus 2% adjusted quarterly, accrues and shall be paid by the Owner to the City from and after the expiration of thirty (30) days from the date when any sum becomes due and payable by the Owner to the City under the provisions of this Agreement. This provision does not apply to arrears of realty taxes, local improvements and other municipal and non-municipal levies of local or general application, which have their own provisions in respect of interest on arrears.

ENGINEERING SERVICES

10.1 The Owner shall have engaged the services of a qualified Professional Engineer registered under The Professional Engineers Act of Ontario, to perform all required engineering services related to the Owner's development of the Land, subject to the approval thereof by the City Engineer.

10.2 a) The Owner shall provide to the City the full name, address, telephone & fax numbers and e-mail address of the Consulting Engineer, which shall provide the engineering services required of the Owner by the City.

b) 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 Consulting Engineer. The Owner shall inform the City by Notice in writing of any change of Consulting Engineer made by the Owner, together with the full name, address & telephone number of the replacement Consulting Engineer subject to approval by the City Engineer.

10.3 The Owner agrees that before any of the Works described under Schedule “F”, are commenced or any contracts for such Works are entered into, such engineering services shall, in accordance with the standards and policies of the City, include, (but not be limited to) the following services:

a) calling of tenders,

b) analysis of bids including recommendation to the Owner,

c) application to the Ministry of Environment for approval of sewers and watermains,

d) application for other permits required to construct the Works required by this Agreement.

10.4 The Consulting Engineer's services shall include, but not be limited to, the following obligations:

a) setting out the work,

b) full time construction inspection and quality assurance all in accordance with plans and specifications of the Works, to the satisfaction of the City,

c) preparation of progress certificates.
10.5 a) The Owner covenants to the City that:

(i) the Works shall be carried out in accordance with the approved construction drawings and specifications and all other relevant provisions of this Agreement; and,

(ii) all phases of the Works described in this Agreement are subject to the prior approval of the City Engineer; and,

(iii) the Consulting Engineer shall provide to the City, at the expense of the Owner:

   Firstly, prior to commencement of the Works - a copy of the approved construction drawings in a digitized electronic format acceptable to the City; and,

   Secondly, within six (6) months of acceptance of the sewer and watermain works - “as constructed” drawings in a manner consistent with the requirements under this Agreement for “as constructed” drawings as well as inspection field records and reports of the constructed Works; and,

(iv) its Consulting Engineer is authorized to act as its representative to the City, including the submission of all engineering services and matters subject to the review and/or approval of the City and its consulting engineer is authorized to receive on behalf of the Owner, all directions, approvals and requirements of the City.

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 for approval of the plans for sewers, private drains, watermains, water service connections and all other applications required by an authority for other City services and improvements.

c) The Owner shall not commence construction of any Works pursuant to this Agreement prior to the issuance of a related Certificate of Approval by the Ministry of the Environment or other authority.

COMMENCEMENT OF WORKS

11.1 The Owner shall give to the City, a minimum of two (2) clear business days written notice prior to the commencement of construction of any of the Works provided for under this Agreement. Should any significant work stoppage occur in the prosecution of 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.

11.2 The Owner shall, in addition to and without limiting the application of any other terms of this Agreement, commence the Works described in the Schedules within six (6) months from the date of registration of this Agreement and diligently continue construction and installation of the Works, failing which the City may, upon 14 (fourteen) days written notice to the Owner, draw upon the security and complete the Works.

11.3 For the purpose of paragraph 11.2 above, the Owner shall be deemed to have commenced the Works when the Owner has actually undertaken construction and installation or completed part of the Works described in Schedule “F”.

11.4 Before commencement of Works on the Land the Owner shall:

a) obtain approval from the City and, where required, approval from the Conservation Authority of engineering design drawings for the works to be constructed to service the subdivision, including receipt of M.O.E. certificates and an erosion and sedimentation control plan; and,
b) obtain Director of Development approval of the proposed final plan of subdivision for confirmation of zoning compliance and conformity to road pattern and road alignment to the approved draft plan; and,

c) obtain approval of a Tree Preservation Plan by the appropriate agency, when such plan is required, including implementation of all necessary protection measures; and,

d) ensure all sedimentation controls are in place prior to any earthworks on the site; and,

e) submit written verification that an archeological survey has been conducted and the site is free and clear for construction, when the requirement for an archeological survey is a condition of draft plan approval; and,

f) submit written verification that the subdivision lands have been decommissioned, when the requirement for decommissioning is a condition of draft plan approval; and,

g) conduct a pre-blast survey of residences within 100 metres and notify residents of blasting within 200 metres of the subdivision lands, where services are to be constructed in rock; and,

h) arrange for all required site inspections and materials testing for the works to be constructed to service the subdivision; and,

i) arrange for a pre-construction meeting for construction of the works to service the subdivision; and,

j) submit originally signed certificates of insurance for the Owner and the contractor as proof that both Owner and contractor have obtained adequate insurance coverage in accordance this Agreement.

k) executed and delivered at least four copies of this Agreement to the City; and,

l) delivered to the City cash and security as required by this Agreement; and,

ORDER OF INSTALLATION OF WORKS

12.1 The Owner shall proceed diligently with construction and installation of the Works in accordance with the following timetable:

a) Commencement of storm sewers, sanitary sewers, storm and sanitary private drains, watermains and water service connections —

   within three (3) months of registration of this Agreement;  

b) Commencement of preliminary roads, including base course asphalt, barricades and guide rails, traffic signs and street lighting —

   within three (3) months of the completion of services as set forth in paragraph a) above;  

c) Commencement of curbs and gutters and fencing —

   within twelve (12) months of the completion of the Works as set forth in paragraph b) above;  

d) Commencement of sidewalks and tree planting —

   as directed by the City and in any event, no later than completion of the final asphalt on the roads within the Land.

12.2 The Owner shall commence the installation of all Works within the time limits prescribed in this section. Upon the written application of the Owner to the City to extend the time for completion of the said Works or any of them, the City, in its discretion, may extend the time for completion for such period of time and upon such terms and conditions as it deems reasonable.
EROSION AND SEDIMENT CONTROL

13. The Owner agrees to:
   a) install all erosion and sediment control measures approved by the local Conservation Authority and the City, prior to development, and maintain such measures throughout the construction process, until all disturbed areas have been re-vegetated; and,
   b) inspect and maintain all erosion and sediment control measures after each rainfall to the satisfaction of the City and maintain a diary for review upon request by the City; and,
   c) provide suitable temporary mulch and seed cover within seven (7) days of the completion of a particular phase of construction for any disturbed area not scheduled for further construction within forty-five (45) days; and,
   d) re-vegetate all disturbed areas with permanent cover immediately following completion of construction.

WORKS OUTSIDE THE LAND

14. The Owner agrees that:
   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 in the Schedules of this Agreement and such Works shall 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 travelling public shall be protected. All Works and services shall be carried out satisfactory to the City.
   c) the Works required to be carried out by the Owner outside the Land, shall be completed according to the drawings and specifications set out under Schedule “E” and at such cost as may be agreed upon between the Owner and the City under Schedules “D” and “F”.

RELOCATION OF SERVICES

15. 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 the development of the Land, the Owner shall carry out such abandonment, relocation and/or reconstruction in accordance with the approved engineering drawings noted on Schedule “E” and pay all associated costs in accordance with Schedule “F”.

STORM & SANITARY SEWERS, STORM & SANITARY SEWER DRAIN CONNECTIONS, WATERMAINS AND WATER SERVICE CONNECTIONS

16. The Owner shall carry out all subdivision storm and sanitary drainage and watermain Works as one of its developmental responsibilities to the satisfaction of the City and in accordance with the Ministry of the Environment’s approval.
ROADWAYS

17.1 The Owner shall construct, install and complete the roadways on all streets within the Land in accordance with:
   (i) the recommendations of a soils report prepared by a qualified engineer and approved by the City; and,
   (ii) the drawings and specifications thereof approved by and satisfactory to the City; and,
   (iii) the time tables contained in this Agreement; and,
   (iv) the approved plan of subdivision or condominium of the Land, as the case may be.

17.2 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.

17.3 Prior to installation of the final layer of asphalt pavement on any roadway, the Owner shall:
   a) wait until at least one year has passed after placement of the base asphalt; and,
   b) wait until at least 80% of the dwellings in the Land are constructed; and,
   c) remove any base asphalt or granular base course that in the opinion of the City Engineer has deteriorated; and,
   d) repair or replace such deteriorated base asphalt and/or granular base course to the satisfaction of the City Engineer; and,
   e) give the City five (5) clear business days prior notice, in writing, of its intention to install the final layer of asphalt pavement.

17.4 The 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.

HYDRO-ELECTRIC AND OTHER UTILITY INSTALLATIONS

18.1 The Owner shall arrange with and satisfactory to the Hydro authority:
   a) for the design, provision and installation of all required electrical power transmission, distribution and street lighting systems and facilities, which shall be located and installed according to specifications approved by the City; and,
      (i) to install underground such Hydro facilities that, in the opinion of the City, are capable of being installed underground; and,
      (ii) to assume the costs involved in providing and installing the described facilities, as determined by the Hydro authority and to pay such authority those costs; and,
   b) for installation of all electrical service connections and appurtenances from the Hydro distribution system to lots, blocks, units and severed parcels within the Land at locations approved by the City; and,
      (i) the wiring of such service connections shall be underground; and,
      (ii) the entire cost of providing and installing such service connections and appurtenances shall be borne by the Owner and paid to the Hydro authority.
c) for any locations not within the street(s) and not within land(s) dedicated by Transfer or vested by a Plan into the City's name, the transfer of easements required by the Hydro authority, for the installation of poles and guy wires, subterranean cables, transformers and other appurtenances of an electric distribution system, on, across, or under the Land without charge and with clear title thereto, prior to registration of any transfer of a lot, block, unit, or parcel severed within the Land;

18.2 Regarding all other utilities and telecommunication facilities, (hereinafter referred to as "others") permitted at law or, where the City's approval is required, with the City's approval, (as the case may be) including telecommunication cables, gas mains and television co-axial cables,

a) the Owner shall ensure that such “others” are installed underground in a manner as may be required at law and in a manner and in locations satisfactory to the others and to the City; and,

b) the Owner shall, prior to registration of any transfer of a lot, block, unit, or parcel severed within the Land and after the transfer of any land or easement required by the City, grant, (in respect of locations not within public highways or walkways,) easements, as may be required, by such "other" company, to permit installation of side and rear of parcel utility services by such "other" company.

SIDEWALKS AND DRIVEWAY APRONS

19.1 The Owner shall construct sidewalks and driveway aprons leading up to any required sidewalk in all locations and in accordance with the drawings and specifications referred to in Schedule "E".

19.2 The Owner covenants and agrees that prior to entering into any agreement of purchase and sale relating to any lot, block, unit or severed parcel within the Land, the Owner shall display in the site sales office/model home the approved grading or engineering plan(s) which clearly indicate the location of sidewalks and boulevard areas and any known street furniture locations within the Land.

STREET NAME SIGNS

20.1 a) The Owner shall pay the amount specified under Schedule “G” for all street name signs required on those streets created or affected by development of the Land.

b) The City shall supply and erect all street name signs in accordance with the standard design of the City at locations satisfactory to the City.

20.2 The Owner shall supply, erect and pay for all temporary or permanent barricades and guide rails on streets as may be required by the City and no such barricade or guide rail may be removed or its position changed without the written consent of the City.

BUILDING LEVELS

21. The Owner agrees that the basement floor elevations of all buildings hereafter erected on any lots, blocks, units or severed parcels within the Land shall not be set below the lowest allowable floor elevation as prescribed on the Overall Grading Plan as referred to in Schedule "E".

PREGRADEING OF BUILDING PARCELS (FIRST STAGE GRADING CONTROL)

22. The Owner shall, before an application is made for a building permit for construction of a single detached or semi-detached dwelling on any lot, block, unit or severed parcel within the Land:

a) prepare and submit to the City for the City's review and approval an Overall Grading Plan which the Owner shall procure pursuant to the Owner's engineering design for the Works in respect of all of the Land; and,
b) deposit with the City security for the purpose of first stage grading control, the amount of which deposit 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 to ensure the correction of any issues which may arise regarding completion of final lot grading, which issues may include but are not limited to overall grading of the Land as a whole and those grading issues 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 receipt by the City, of Grading Certificates for all lots, blocks, units or severed parcels within the Land, which certificates are satisfactory to the City; and,

c) remove the top soil from the entire lot, block, unit or severed parcel and stockpile it at locations approved by the City; and,

d) pre-grade the entire lot, block, unit or severed parcel to the elevation shown on the Overall 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, blocks, units and severed parcels within the Land where single and two family dwellings will be constructed, issued by its Consulting Engineer in which the Consulting Engineer certifies to the City, without qualification, that the pre-grading as required in this section, has been duly fulfilled.

**FINAL GRADING (SECOND STAGE GRADING CONTROL)**

23.1 Prior to issuance of a Building Permit for construction of a single detached dwelling or semi-detached dwelling, the owner of any lot, block, unit or severed parcel within the Land shall:

a) prepare and submit to the City, for the City’s review and approval, a Detailed Grading Plan for each lot, block, unit or severed parcel, which the owner of any lot, block, unit or severed parcel shall prepare in accordance with the Overall Grading Plan for the Land which has been approved by the City Engineer; and,

b) deposit with the City cash security for each lot, block, unit or severed parcel, the amount of which deposit shall be determined by the City in accordance with the City’s lot grading policy. Such cash deposit shall be held by the City as security for the purpose of second stage grading control (“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, and in addition to any other security which the Owner’s builder may be required provide to the City pursuant to this Agreement. The Builder’s Grading Deposit shall be held by the City to ensure completion of, or correction to, any grading issues which may arise in respect of final lot grading of individual lots, blocks, units or severed parcels by the property owner’s builder.

The parties acknowledge and agree that the Builder’s Grading Deposit, or remaining balance thereof, shall not be released until receipt by the City of a grading certificate for the lot, block, unit or severed parcel, which certificate is satisfactory to the City, as required under this section; and,

c) 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 User Fee By-
23.2 Upon receipt of a Building Permit for construction of a single detached dwelling or semi-detached dwelling the owner of any lot, block, unit or severed parcel within the Land shall:

a) carry out and complete final grading, which includes provision of topsoil and sod, in accordance with the Detailed Grading Plan, approved by the City, for each lot, block, unit or severed parcel located within the Land, to the satisfaction of the City, within six (6) months after the insulation inspection date with the exception of the period between November 30 and April 1, the grading shall be completed by June 15 of the same year following April 1; and,

b) submit to the Director of Building and Licensing, or designate, a certificate stamped by a qualified professional engineer stating that the “as built” grading of the lot, block, unit or severed parcel within the Land conforms to the approved Detailed Grading Plan.

23.3 The Owner covenants and agrees to complete the grading of parks and other areas within the Land as approved by the City Engineer, in accordance with the Overall Grading Plan, within six (6) months after completion of the base asphalt for the roads within the Land.

23.4 All buildings erected on the lots, blocks units or severed parcels located within the Land are to conform to the grades shown on the Overall Grading Plan.

23.5 In the event that the final grading of a lot, block, unit or severed parcel is not completed in accordance with this Agreement, the City may:

a) enter upon the lot, block, unit or severed parcel and carry out the work necessary to complete the final grading; and,

b) draw upon the security to pay the City’s cost to complete the final grading.

23.6 Notice is hereby given that the City may subsequently approve amendments, revisions and adjustments to the Overall Grading Plan, as referred to on Schedule “E” of this Agreement, such that the reader is advised to examine the plans on file with the City to determine current requirements.

23.7 The owner of any lot, block, unit or severed parcel 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 received a Grading Certificate certifying that final grading has been completed in accordance with the approved Detailed Grading Plan on such lot, block unit or severed parcel.

ISSUANCE OF BUILDING PERMITS

24.1 No building permits shall be issued for any lot, block, unit or severed parcel within the Land by the City;

a) until the Plan, if any, has been registered on title; and,

b) until this Agreement has been registered on title; and,

c) until such time as the Owner's Consulting Engineer has certified that watermains, including fully serviceable and operative fire hydrants, together with a roadway, which includes granular base and base asphalt, have been installed in accordance with municipal standards to the satisfaction of the City Engineer; and,

d) until such time as the Owner’s Consulting Engineer has certified that the lots, blocks, units or severed parcels have been pre-graded in accordance with the requirements of this Agreement for pre-grading; and,
e) until a Detailed Grading Plan indicating the site of the building, the main floor and top of foundation wall elevations, and the proposed grading according to the Overall Grading Plan has been prepared by an Ontario Land Surveyor or a qualified professional engineer and filed with the Director of Building and Licensing, or designate; and

f) all trees to be preserved on the lot, block, unit or severed parcel have been satisfactorily protected in accordance with the standards established by the City; and,

g) unless otherwise prescribed in Schedule "D" (Specific Provisions).

24.2 Notwithstanding the forgoing provisions of this section, the Owner Agrees that:

a) In accordance with the provisions of the relevant Zoning By-law, the Owner may construct Model Homes on the Land prior to registration of the Plan of subdivision provided that:

i) the Owner receives a Building Permit from the City's Director of Building and Licensing for each model home to be constructed; and,

ii) the Owner confirms that there is adequate water supply and pressure with fully operational hydrants to within 150 metres of any building erected on the Land for fire protection; and,

iii) the Owner confirms that there is road access, acceptable to the City's Director of Building and Licensing, to within 90 metres of any building erected on the Land for emergency access; and,

iv) the Owner certifies to the City's Director of Building and Licensing that lots designated for model home construction, have been pre-graded to the elevation shown on the Overall 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 11.4 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 Land under the provisions of this section shall not exceed ten percent (10%) of the lots intended for single-detached dwellings, semi-detached dwellings or townhouse purposes within the Plan of subdivision proposed for registration to a maximum of twenty (20) dwelling units, all in accordance with the provisions of the City's relevant Zoning By-law, as amended.

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 and Licensing in an amount of $3,000 for each and every model home in an 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 Land 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 Land; 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 Land and shall not be occupied as a dwelling unit until:

i) a Plan of subdivision has been registered against the Land; 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,

f) Where the Owner has not registered a Plan of subdivision on the Land 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 Land; 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, pursuant to the Building Code Act, Section 8, Subsection 4.

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 and in pursuance thereof, may hire labour, equipment and purchase such materials as the City considers necessary. All expenses incurred by the City, pursuant to this subsection, shall be charged against the security deposit required under this Section.
OCCUPANCY OF BUILDINGS

25. The Owner agrees that no building on any lot, block, unit or severed parcel 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 block, unit or severed parcel 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,

   b) the building has passed a final inspection for occupancy to the satisfaction of the City's Director of Building and Licensing, or designate, pursuant to the conditions for occupancy in the Building Code Act and Regulations thereunder.

LAND RESTRICTIONS

26. The Owner agrees regarding the lots, blocks, units and severed parcels, if any, described in Schedule "J":

   a) that they:

      (i) are unsuitable for building purposes — due to insufficient size or frontage, or because of their low-lying, rocky, marshy, or environmentally sensitive character; and,

      (ii) must be amalgamated with an adjoining lot, block, unit or severed parcel;

before the Schedule "J" parcel may be eligible for a building permit or as further provided for in Schedule "J"; and,

   b) that no application may be made by the Owner for a building permit for the erection of any building or structure on any of the said lots, blocks, units or severed parcels until such time when same becomes part of an adjoining lot, block, unit or severed parcel which larger combined parcel is suitable for development in accordance with the intent of the approved development plans and applicable zoning by-laws.

SODDING

27.1 The Owner shall:

   a) upon installation of sidewalks or where no sidewalks exist, upon installation of curbs and gutters, provide topsoil and lay sod of a quality acceptable to the City on the untravelled portion of the roadway shown within the approved Plan; within such other approved plans or as may otherwise be required by this Agreement; and,

   b) maintain the sod on the untravelled portion of the roadway until completion of the maintenance period of the Works.

27.2 The owner of any lot, block, unit or severed parcel within the Land shall:

   a) 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, block, unit or severed parcel from the building face thereto produced to the boundaries of such land, except for the area designated as a driveway; and,

   b) maintain the sod on each lot, block, unit or severed parcel until possession of the property by a third party.
CONTROL OF WEEDS

28. The Owner agrees to control, to the satisfaction of the City, weeds on all of the Land except lots, blocks, units, or severed parcels conveyed by the Owner to a third party.

PROHIBITION AGAINST DEBRIS ON LANDS

29.1 The Owner agrees:

a) to not use land dedicated, transferred or vested in the City for the depositing of waste, debris, tree 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,

b) to ensure that until all buildings to be erected on every lot, block, unit or severed parcel within the Land have been occupied, they will not become unsightly by the accumulation of garbage, debris or builder's waste; and,

c) to restrain, by all reasonable means, all other persons from depositing waste, debris, topsoil, fill material or refuse on the Land; and,

d) to remove, at its expense, any such wastes, debris, tree branches, topsoil, fill material or refuse so deposited forthwith upon being so directed by the City.

29.2 The City may, if the Owner has not cleaned up any such lot, block, unit, severed parcel or municipal lands upon forty-eight (48) hours notice from the City, enter on and clean up such land, charging the cost therefor against the security.

29.3 Burning of garbage and debris by the Owner or any builder within the Land may be permitted only upon the written approval of the Fire Chief of the City.

29.4 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.

STREET CLEANING

30.1 Until the Works intended to belong to the City which the Owner is required to construct under this Agreement are assumed by the City:

i) the Owner shall be responsible to prevent earth and debris from being tracked onto streets outside the Land; and,

ii) the Owner shall, as soon as any dwelling within the Land has been commenced to be constructed, 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.

30.2 If 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.

30.3 In the event the Owner fails to fulfill the requirements of this section, the City is authorized to have such work done at the Owner's expense. The City will notify the Owner in advance of the City cleaning and removal of debris and materials from the streets. The cost of any work done pursuant to this subsection may be charged by the City against the security.

TREES

31.1 The Owner shall:

a) provide advance notice to the Manager of Forestry, or designate and obtain all necessary underground locates, prior to commencement of tree planting; and,
b) plant one shade tree of a type acceptable to the City on the untravelled portion of the road allowance in front of each lot, block, unit or severed parcel and two shade trees at equal spacing and frequency for the flankage yard of each corner lot, block, unit or severed parcel within the Lands in accordance with Schedule “F”; and,
c) repair any damage caused to underground utilities as a result of tree planting operations; and,
d) preserve and protect all existing trees within the Land, in accordance with good arborist practices except for those trees that the City has agreed may be removed, and no trees shall be removed without such permission, and the City shall remove all municipally owned trees; and,
e) remove all trees within the Land which have died or were severely damaged during the construction process and replace damaged or dead trees with new trees, where required to do so by the City, except for municipally owned trees, which shall be removed by the City; and,
f) maintain each tree for a period of two (2) years after acceptance by the City of the work carried out by the Owner for tree planting, to ensure that each tree is living and shows signs of active growth; and,
g) place a letter of credit with the City in an amount as specified under Schedule “F”, appended hereto, to secure the maintenance obligation of the Owner under this Agreement for tree planting.

31.2 At any time during the maintenance period, the Owner shall, upon request from the City, remove any tree, which has died or is not in satisfactory condition. In the event the Owner fails to maintain the trees to the satisfaction of the City, the City may have the work carried out on behalf of the Owner with all associated costs charged against the security. The City shall release the remaining balance of the security deposit for trees to the Owner, upon assumption of the trees by the City.

31.3 In the event that the measures required for the protection of trees during building operations become unsatisfactory, in the opinion of the City, the Owner or any builder on the Land or their representatives, shall upon forty-eight (48) hours notice from the City, reinstate protection for the trees. Upon failure by the Owner or any builder on the Land or their representatives to reinstate protection for the trees, the City may have the work carried out at the Owner's expense, with all associated costs charged against the security.

FENCING

32. All parklands adjacent to other lands and abutting streets within the Plan (if any) are to be fenced in accordance with the requirements of the City and as shown on the approved drawings as referred to under Schedule “E”.

DEFICIENCIES IN WORKS

33.1 In the event that the City determines that the Owner is not proceeding with due diligence to carry out the Works or any of them:

a) in accordance with the timetable for the Order of Installation of Works specified under this Agreement; or,

b) in a proper and workmanlike manner and in accordance with Schedules “E” and “F”; or,

c) in accordance with other provisions of this Agreement;

then, in that event, 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.
33.2 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 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 Schedule “A” 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, 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 therefor being rendered to the Owner by the City.

33.3 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 therefor being rendered to the Owner by the City.

33.4 The expense of all remedial work done by the City pursuant to this section shall:
   a) be calculated by the City whose decision on such expense is final; and,
   b) 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,
   c) include such further sums for special damages as may be determined by the City.

33.5 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:
   a) give rise to any action, claim, counterclaim or demand by the Owner and/or Mortgagee or their respective executors, administrators, successors or assigns for damages, costs or compensation of any kind, except where such action, claim, counterclaim or damage arises from the negligence of the City or those for whom it is responsible; and,
   b) be an acceptance of any such City service or improvement by the City.

MAINTENANCE OF WORKS

34.1 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:
   a) the asphalt base for such roadways in a well-graded and dust and muck free condition, fit for normal traffic at all times; and,
   b) all curbs and gutters.

34.2 The Owner shall maintain, against any defective materials, latent defects or poor workmanship, at its own expense and to the satisfaction of the City:
   a) 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,
   b) all base and surface course 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 surface course asphalt by the City; and,
c) all trees 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 surface course asphalt by the City.

34.3 The City agrees that acceptance of the Works and commencement of the maintenance periods described in this Agreement shall take place upon fulfillment of the following conditions by the Owner:
   a) where the Land is being developed by a Plan, the Owner has registered the Plan in the Registry Office for the Land Titles Division of Wentworth; and,
   b) the Works, which the Owner is required to construct pursuant to this Agreement, are substantially complete, in the opinion of the City; and,
   c) the Works, which the Owner is required to construct pursuant to this Agreement, have been inspected to the satisfaction of the City; and,
   d) the City has not identified any major deficiencies in the Works constructed pursuant to this Agreement.

34.4 The required security to be deposited by the Owner in 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 and thirty percent (30%) of the estimated cost of planted trees or $10,000, whichever amount is greater.

34.5 During construction and installation of the Works and site grading, and until the streets are assumed by the City, the Owner shall, on or before the 15th day of November in each year, complete all such road Works as it has, on or before the 10th day of October in that year, been directed in writing by the City to perform — in order to place the roads in a satisfactory condition for the winter, including such work required to prevent damage to snow plows.

34.6 Notwithstanding the obligation of the Owner to maintain the said Works for the periods of time herein prescribed, the 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.

ENTRY BY CITY EMPLOYEES, CONTRACTORS OR AGENTS

35. Employees, contractors or agents of the City may, at any time and from time to time enter the Land without notice to the Owner, to inspect any of the Works and, if considered necessary by the City, may make emergency repairs thereto without notice to the Owner. The Owner hereby expressly consents to such entry by the City's employees, contractors or agents. The cost of all such emergency repairs determined by the City shall be paid forthwith by the Owner. In the event the Owner fails to make payment within thirty (30) days of receipt of the account, such cost may be recovered by the City from the security.

SNOW REMOVAL AND USE OF WORKS BY CITY OR AUTHORIZED PERSONS

36.1 The Owner agrees:
   a) 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,
   b) that where the Land is being developed by a Plan, the City and any and all persons authorized by the City may enter upon all highways 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 highways safe and more convenient for the use of persons or vehicles; and,
c) to consent to such entry by the City personnel and authorized persons for the purposes set out herein.

36.2 Notwithstanding the provisions of the above section:

a) 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 pursuant to this Agreement by the City; and,

b) 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.

“AS CONSTRUCTED” DRAWINGS

37. The Owner's Consulting Engineer shall:

a) incorporate any job changes on the plans for such Works; and,

b) deliver one (1) complete set of such revised "as constructed" drawings in mylar form, certified by the Owner’s Consulting Engineer, as well as in a digitized electronic format acceptable to the City, within six (6) months after acceptance of the sewer and watermain works.

ASSUMPTION OF WORKS BY THE CITY

38.1 Before the Works intended to belong to the City are assumed by the City, the Owner shall:

a) have complied with all of the terms and conditions of this Agreement in respect of the Works; and,

b) have corrected all deficiencies in the Works identified under the maintenance periods described in this Agreement, to the satisfaction of the City; and,

c) have furnished to the City a duly sworn statutory declaration of the Owner:

(i) that it has paid all accounts in connection with the supply, installation of and maintenance of the Works; and,

(ii) that there are no outstanding debts, claims or liens in respect of the installation of or maintenance of the Works; and,

d) have furnished to the City a progress certificate, in the form of a statutory declaration, prepared and signed by its Consulting Engineer; and,

e) provide the City with 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,

f) have furnished to the City such additional assurances (such as a solicitor's opinion) as the City may require.

38.2 Where the Owner has fulfilled the requirements for assumption of the Works by the City, the Consulting Engineer shall submit his Certificate confirming that all of the Works have been installed and maintained as required by the City. The City Engineer shall acknowledge in writing that the Works have been assumed by the City.

38.3 Upon the City's acceptance of the completion of installation and maintenance of the Works, including the streets and easements dedicated to the City hereunder,
the Works shall thereupon be deemed to have been assumed by the City, and, thereafter, the City shall be responsible for their maintenance and all liability pertaining thereto, subject to the Owner's obligations under Section 34 herein.

LIABILITY OF OWNER AND INDEMNIFICATION OF THE CITY

39.1 The City shall not be responsible for or liable for:

a) any loss or damage that may happen to the Works, or to any part or parts thereof installed by the Owner pursuant to this Agreement and not yet assumed by the City; or

b) any of the materials or other things used and employed in finishing and completing the Works by the Owner or any part or parts thereof; or,

c) any injury to any person or persons, including workmen and the public, during the construction of the said Works or the maintenance thereof by the Owner pursuant to the provisions of this Agreement; or,

d) damage caused by the storage, handling or use of explosives by the Owner or its employees, agents or contractors; or,

e) the unapproved disposal of surface water from the Land; or,

f) damage to any roadway, pavement, sidewalk or property of the City within the Land prior to assumption of the said Works by the City; or,

g) damage by the Owner to the property of any person while the Owner is carrying out any of its Works in respect of the development; or,

h) damage caused by the construction or operation of the Works under this Agreement prior to assumption thereof by the City; or,

i) 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.

39.2 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, expenses prosecutions, fines, rights of contribution, and loss which the City may, at any time, bear, incur, be liable for, sustain or be put into for any reason, on account of or by reason of or in consequence of, arising directly or indirectly from (1) the City entering into this Agreement, and (2) from the implementation of the provisions of this Agreement by the Owner, its employees, agents, assignees or contractors and (3) in respect of any failure by the Owner to fulfil its obligations under this Agreement.

39.3 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, in respect of any matter or thing arising directly or indirectly out of the provisions of this Agreement, for any damage or damages suffered by the Owner, or to any other employee, servant or agent of the Owner or to any property of the Owner or of any other person by reason of:

a) 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,

b) 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,

c) the approval or failure to approve of any matter or thing, 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.
INSURANCE

40.1 In accordance with the indemnification and save harmless covenants in favour of the City from the Owner in this Agreement, the Owner, prior to the execution of this Agreement by the City, shall:

a) 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 City Engineer, and maintain such policies in force until assumption of the Works by the City (including the maintenance period); and,

b) obtain from the Contractor(s) hired by the Owner to carry out the 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 City Engineer, and shall maintain such policies in force until acceptance of the Works by the City.

40.2 The said policies of insurance required under this Agreement shall include the following:

a) 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/contractors 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, structure or and from any cause.

The Owner's policy shall:

(i) 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,

(ii) name the City as an additional insured; and,

(iii) contain cross-liability and severability of interest provisions.

The Contractors’ policy shall:

(i) 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,

(ii) shall name the Owner and the City as additional insured; and,

(iii) contain cross-liability and severability of interest provisions.

b) Automobile Liability Insurance, being a Standard Owners Form Automobile insurance policy, including third party liability coverage in an amount of not less than One Million Dollars ($1,000,000) per occurrence; to cover all licensed vehicles owned and/or leased, as may be used in conjunction with this Agreement.

c) Any other form of insurance coverages in such amounts and deductible levels, or increased limits of the aforementioned coverages, as the City may require, taking into consideration Works to be done and industry standards.
40.3 Evidence, Acceptability, Cancellation, Termination/Non-Renewal

a) Prior to execution of this Agreement by the City and prior to construction of the Works by the Contractor, the Owner shall deposit with the City originally signed 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 all policy renewals at least 15 days prior to the expiry date of such insurance.

b) All insurance policies shall be in terms, form and amount and with Insurers (licensed to carry on business in Ontario) acceptable to the City Engineer.

c) Insurance coverage shall contain a provision that in the event of cancellation/termination/non-renewal, insurers shall endeavour to 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.

40.4 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 and 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.

REMEDIES

41. a) In addition to any other remedies in favour of the City in this Agreement, where the Owner does not proceed, satisfactorily in the opinion of the City Engineer, with the development of the Land under this Agreement within a period of one (1) year from the delivery of this fully executed agreement to the Owner or from the date of registration of this Agreement, whichever is earlier, the City may realize upon the security and apply same as may, in the opinion of the City, be required to complete and/or secure the Works commenced or the Works not commenced, but are required in the opinion of the City Engineer, to provide a satisfactory resolution of the property under development, compatible with the development and environmental concerns in the balance of the area adjacent to the Land.

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.

AGREEMENTS OF PURCHASE AND SALE

42. The Owner shall include in any Agreements of Purchase and Sale for lots, blocks, units and severed parcels:

a) in respect of sidewalks:

(i) a plan showing the location of sidewalks; and,

(ii) 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/block, unit or severed parcel.

b) in respect of the Detailed Grading Plan:

(i) a clause whereby the right is reserved, notwithstanding completion of the sale, for the Owner to enter upon the lot, block, unit or severed parcel 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, in order to alter the land's grading in compliance with the Detailed Grading Plan; 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, unit or severed parcel grading obligations and requirements and a restrictive covenant regarding the discharge of roof leaders to the ground, which shall run with the Land.

c) in respect of Super Mailboxes and/or Catchbasins:

(i) a statement by the purchaser acknowledging the location of all Super Mailboxes and/or catchbasins within the Land; and,

(ii) a statement by the Owner that, as of the date of execution of the Agreement of Purchase and Sale, the lot, block, unit or severed parcel has or will have, as the case may be, a catchbasin and/or a Super Mailbox upon or adjacent to it (and, if the Super Mailbox location is not then known, upon being so informed by the Canada Post Corporation, the Owner shall immediately, at its own expense, notify, in writing, the purchaser of this fact); or,

(iii) where the purchaser of the lot, block, unit or severed parcel is a builder that has purchased the property for the purpose of constructing a residence 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 catchbasin and/or a Super Mailbox abutting or fronting on it (or, if the location of the Super Mailbox is not then known, upon being so informed by the Canada Post Corporation, the builder shall immediately, at its own expense, notify, in writing, the homebuyer of this fact).

MISCELLANEOUS

43.1 All terms, covenants, obligations and conditions in this Agreement are and shall be deemed to be covenants running with the Land and it is hereby agreed among the parties to this Agreement that:

a) every term, covenant, obligation and condition in this Agreement inures to the benefit of and is binding upon the parties hereto and also any person or persons, corporate or otherwise, who execute this Agreement and their respective executors, administrators, successors and assigns; and,

b) 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 or neuter, as the case may be, were expressed; and,

c) 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; and,

d) notices may be given to the Owner at the address set out in Schedule "B". 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,
    Hamilton ON L8P 4Y5

e) 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; and,

f) 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 in this Agreement; and,

ii) the Schedules listed in this agreement; and,

iii) such that the reader is advised to examine the approved Schedules and construction drawings on file with the City to determine current requirements; and,

43.2 Time shall be of the essence of this Agreement.

LIST OF SCHEDULES TO THIS AGREEMENT

44. It is understood and agreed that:

(i) schedules "A", "B", "C" and "D" listed below are attached to the paper version of this Agreement, and are to be included in and form part of this Agreement; and,

(ii) schedules "E", "F", "G", "H", "I" and "J" listed below, (unless designated in Schedule "D" (the Specific Provisions Schedule) of this Agreement as "Not Applicable" or as "N/A") — are also attached to the paper version of this Agreement, and are to be included in and form part of this Agreement:

(iii) where further Schedule(s) (if any) in addition to the foregoing Schedules, are also attached to and form part of this Agreement, such further Schedules shall be listed in Schedule "D".

Schedule "A" - Legal Description
Schedule "B" - Ownership and Execution
Schedule “C” - Conditions of Approval
Schedule “D” - Specific Provisions
Schedule “E” - List of Approved Construction Drawings for the Works
Schedule “F” - Estimates of Costs of Works to be carried out by the Owner
Schedule “G” - Financial Obligations of Owner
Schedule “H” - Recovery of Costs for Existing and Future Works
Schedule “I” - Transfers/Dedications of Lands and Easements
Schedule “J” - Land Restrictions
SCHEDULE "A"

of a Subdivision Agreement between the City of Hamilton and the Owner named in Schedule "B" of the Agreement. Specific details of the Land that is the subject of this Agreement to which this Schedule is attached, are set out below.

APPLICATION NUMBER:

NAME OF SUBDIVISION OR CONDOMINIUM:
(where applicable)

DETAILS OF THE PLAN:

Plan prepared:

Plan dated:

MUNICIPAL ADDRESS OF LOCATION OF DEVELOPMENT:

LEGAL DESCRIPTION:

Being composed of Part of Lot ___, Concession ___, Geographic Township of __________, former City/Town of __________, now in the City of Hamilton, being more particularly described as Lots/Parts x to x, inclusive, Blocks x to x, inclusive and streets namely, as shown on a plan of subdivision/survey plan registered in the Land Registry Office of the Land Titles Division Of Wentworth as Plan 62M/R-_____.

Date Schedule prepared:
SCHEDULE "B"

of a Subdivision Agreement between the City of Hamilton and the Owner named below. Details of the Agreement, to which this Schedule is attached, are set out below.

APPLICATION NUMBER:

NAME OF SUBDIVISION OR CONDOMINIUM PLAN:
(where applicable)

DATE OF THIS AGREEMENT:

NAME OF OWNER:

ADDRESS OF OWNER FOR NOTICES:

The Parties to this Subdivision Agreement, to which this Schedule "B" is attached, do enter into the said Subdivision Agreement with each other and

IN WITNESS WHEREOF the Parties duly execute this Agreement, as follows:

CITY OF HAMILTON

Larry Di Ianni, Mayor

____________________________ (c/s)

Kevin C. Christenson, Clerk

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

Per:

Witness (signature)

Print name of Witness

____________________________ (c/s)

Address of Witness

I/We have authority to bind the corporation.

Where Owner is a corporation, also
(i) above signature line, print corporation name;
(ii) below signature line, print officer's/director's and their title;
(iii) affix corporate seal, if available.

And, Where Owner is an individual also,
(i) have witness(es) sign;
(ii) cross out phrase, "I/We have authority to bind the corporation."
SCHEDULE "C"

of a Subdivision Agreement between the City of Hamilton and the Owner named in Schedule "B" of the Agreement. Details of the Agreement, to which this Schedule is attached, are set out below.

APPLICATION NUMBER:

NAME OF SUBDIVISION OR CONDOMINIUM PLAN:
(where applicable)

CONDITIONS OF APPROVAL
SCHEDULE "D"

of a Subdivision Agreement between the City of Hamilton and the Owner named in Schedule "B" of the Agreement. Details of the Agreement, to which this Schedule is attached, are set out below.

APPLICATION NUMBER:

NAME OF SUBDIVISION OR CONDOMINIUM PLAN:
(where applicable)

SPECIFIC PROVISIONS
(Related to the Works, that are not addressed in the general text of this Agreement, including timing)

In the event of a conflict between this Schedule and the provisions of the Agreement, including the other Schedules, the specific provisions of this Schedule "D" set out below, shall prevail.

Schedules to this Agreement

Each of the Schedules listed in Section 44 of this Agreement are attached to and form part of the paper version of this agreement — except for the following designated Schedule(s) that are Not Applicable to this Agreement.

The following Schedules designated "N/A" are not attached to the paper version of this Agreement and do not form part of this Agreement.

Date Schedule Prepared:
SCHEDULE "E"

of a Subdivision Agreement between the City of Hamilton and the Owner named in Schedule "B" of the Agreement. Details of the Agreement, to which this Schedule is attached, are set out below.

APPLICATION NUMBER:

NAME OF SUBDIVISION OR CONDOMINIUM PLAN:
(where applicable)

LIST OF APPROVED CONSTRUCTION DRAWINGS

for Works Included in the Agreement

The following drawings as approved by the City Engineer, including any current revisions, are to be read in conjunction with and form part of the Agreement.

Construction drawings prepared by numbered to inclusive, under project number.

Date Schedule prepared:
SCHEDULE “F”

of a Subdivision Agreement between the City of Hamilton and the Owner named in Schedule "B" of the Agreement. Details of the Agreement, to which this Schedule is attached, are set out below.

APPLICATION NUMBER:

NAME OF SUBDIVISION OR CONDOMINIUM:
(where applicable)

ESTIMATE OF COSTS AND DESCRIPTION OF WORKS
TO BE CARRIED OUT BY THE OWNER

Submitted By:

[Enter Name of Consulting Firm]

[signature of Consultant]

Date: ____________________

Approved By:

CITY OF HAMILTON

Senior Project Manager,
Engineering Section,
Development and Real Estate Division,
Planning and Development Department

Date: ____________________
Continued

ESTIMATE OF COST OF WORKS TO BE CARRIED OUT BY THE OWNER

<table>
<thead>
<tr>
<th>TOTAL COST OF WORKS</th>
<th>OWNER'S SHARE</th>
<th>CITY'S SHARE</th>
</tr>
</thead>
</table>


SCHEDULE "G"

of a Subdivision Agreement between the City of Hamilton and the Owner named in Schedule "B" of the Agreement. Details of the Agreement, to which this Schedule is attached, are set out below.

APPLICATION NUMBER:

NAME OF SUBDIVISION OR CONDOMINIUM (where applicable)

FINANCIAL OBLIGATIONS OF OWNER

1. Summary of Cash Payments

The Owner shall pay to the City, prior to the execution of this Agreement by the City:

- an amount sufficient to pay or commute all costs of Works installed under the Local Improvement Act, under the Municipal Act, or under other applicable provincial legislation, together with accumulated interest, less any amounts referable to the oversizing of the City services and improvements, and all other charges and rates already assessed or imposed against the Land or against the owners or occupants thereof, in accordance with Section 6 of the Agreement and as set out in Part 1 of Schedule "H", attached to the Agreement, which actual amount is calculated to be the sum of: NIL

- an amount sufficient to pay, the cost of street name signs, at a cost of $250.00 per intersection, to be erected by the City for the streets established by the Plan or affected by the development of the Land, in accordance with Section 20 of the Agreement, which amount is calculated to be the sum of: NIL

- an administration fee 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 in accordance with Section 7 of the Agreement, which amount is calculated to be the sum of: NIL

TOTAL CASH PAYMENT required at the time of execution of the Agreement equals the sum of those amounts required by sections (a), (b) and (c) above, which amount is calculated to be the sum of: NIL
2. **Summary of Security Deposits**

The Owner shall deposit with the City prior to the execution of this Agreement a security in a form satisfactory to the Finance Department and to Corporate Counsel:

   a) Seventy five percent (75%) of the total estimated cost, including consulting engineering fees and maintenance fees, for Works to be installed by the Owner on highways and easements in accordance with Section 5 of the Agreement and as set out under Schedule “F”, attached to the Agreement, which estimated amount is calculated to be the sum of:

   

   b) The estimated cost of future City services and improvements to be installed by the City or other Owners or developers on highways and easements abutting or within the Land as set out in Part 2 of Schedule “H”, attached to the Agreement, which estimated amount is calculated to be the sum of:

   

**TOTAL SECURITY DEPOSIT** required at the time of execution of the Agreement equals the sum of those amounts required by sections (a) and (b), above, which amount is calculated to the sum of:

---

Date Schedule prepared:
SCHEDULE "H"

of a Subdivision Agreement between the City of Hamilton and the Owner named in Schedule "B" of the Agreement. Details of the Agreement, to which this Schedule is attached, are set out below.

APPLICATION NUMBER:

NAME OF SUBDIVISION OR CONDOMINIUM:
(where applicable)

RECOVERY OF COSTS FOR EXISTING AND FUTURE SERVICES

PART 1 - Recovery of Costs for Existing Works

The amount of payments for local improvement charges, sewer rates, and other charges for existing services as referred to in Section 6 of the Agreement.

STORM AND SANITARY SEWERS
N/A

WATERMAINS
N/A

SUBTOTAL FOR SEWERS AND WATERMAINS

Adjustment to Recoverable Sewer and Watermain Costs based on the "Canadata Construction Cost Index":
Adjustment period - (Index #  ) to (Index #  )

ROADS
N/A

LAND
N/A

TOTAL CASH PAYMENT FOR EXISTING WORKS

PART 2 - Recovery of Costs for Future Works

The estimated amount of payments for services and improvements the City proposes to install or proposes to have installed by other owners. The Owner shall pay in cash, the actual cost of those services and improvements noted below upon receipt of an invoice from the City.

STORM AND SANITARY SEWERS
N/A

WATERMAINS
N/A

ROADS
N/A

LAND
N/A

TOTAL SECURITY DEPOSIT FOR FUTURE WORKS

Date Schedule prepared:
SCHEDULE "I"

of a Subdivision Agreement between the City of Hamilton and the Owner named in Schedule "B" of the Agreement. Details of the Agreement, to which this Schedule is attached, are set out below.

APPLICATION NUMBER:

NAME OF SUBDIVISION OR CONDOMINIUM:
(where applicable)

TRANSFER OF LANDS AND EASEMENTS

Descriptions of land(s) and easement(s) required from the Owner,

PART “A” - TRANSFER OF LANDS TO THE CITY

1. By Certificate on the Plan to the City

Dedication(s) of land(s) to the City, by the Owner's Certificate on the Plan:

   Block(s): N/A

2. By Transfer/Deed to City — Two categories of Transfers:

   (a) To be transferred to City PRIOR to registration of this Agreement: namely,

      (i) where the required lands or easements to be dedicated to the City are located outside the limits of the Plan of subdivision or condominium, "external transfers", such external transfers shall be transferred to the City PRIOR to registration of the Plan of subdivision or of condominium; and,

      (ii) where this agreement is in respect of a Decision of the Committee of Adjustment, all of the required land(s) or easement(s) listed below shall be transferred to the City PRIOR to registration of this agreement.

   (b) To be transferred to the City FOLLOWING registration of this Agreement: namely, where the required lands or easements listed below to be dedicated to City are located within the limits of a Plan of subdivision or of a plan of condominium, "internal transfers", such internal transfers shall be transferred and registered to the City FOLLOWING registration of the Plan and this Agreement,

Five Percent (5%) Park Land Dedication:

   (i) Internal:  Block(s): N/A
   (ii) External/COA:  Parcel(s): N/A

Reserve(s):

   (i) Internal:  Block(s): N/A
   (ii) External/COA:  Parcel(s): N/A

Other Land(s):

   (i) Internal:  Block(s): N/A
   (ii) External/COA:  Parcel(s): N/A
PART "B" - TRANSFER OF EASEMENTS TO CITY

Watermain(s):
(i) Internal: Block(s): N/A
(ii) External/COA: Part(s): N/A

Sewer(s):
(i) Internal: Block(s): N/A
(ii) External/COA: Part(s): N/A

Other:
(i) Internal: Block(s): N/A
(ii) External/COA: Part(s): N/A

The Sanitary Sewer, Watermain or Storm Sewer Transfer of Easement to the City, where specified as a requirement in this Schedule, shall be prepared by the Owner and such Transfer of Easement shall have the following easement provisions attached as a Schedule to the Transfer:

1. The Transferor grants to the Transferee, its successors and assigns the free, uninterrupted and unobstructed right and easement in the land described in this transfer (hereinafter such land may be referred to as the "land") upon the following terms and conditions:

   (a) This easement in favour of the Transferee is for the purpose of: watermain, storm and sanitary sewer systems, including all appurtenances necessary or incidental thereto (hereinafter may be referred to as the "easement").

   (b) This easement includes the right of the Transferee to enter the land and lay down, install, construct, maintain, open, inspect, add to, alter, repair and keep in good condition, remove, replace, reconstruct, supplement and operate the easement on, in, across, under and through the land.

   (c) This easement includes the right of the Transferee, its employees, agents, contractors, workers and other persons duly authorized by the Transferee, at all reasonable times and from time to time, as may be necessary or incidental to this easement, to pass and re-pass the land with all plant, machinery, material, vehicles, and equipment and to keep the land clear of obstructions necessary to permit the easement.

   (d) The Transferor shall not, on, in, over or under the land (i) excavate, drill, install, erect or build; (ii) plant any tree, construct any pit, well, pavement, building or structure; and, (iii) alter the grading or any over-land drainage patterns approved by the City, without the prior written consent of the General Manager, Planning and Development Department. The foregoing is subject to the exception that the Transferor's building's footings and eaves may encroach into or over the land up to a maximum of 0.5 metres from the outer limits of the land. Subject to this and the other provisions of this easement in favour of the Transferee, the Transferor remains the owner of the land.

   (e) Sewer or water pipe(s) and all other equipment and material brought onto the land by the Transferee (i) shall at all times remain the property of the Transferee notwithstanding same may be annexed or affixed to the land; and, (ii) may at any time and from time to time, be removed in whole or in part, by the Transferee.
2. The Transferee covenants to the Transferor that the Transferee is responsible for any damage caused by its agents or employees to the land and to the property of the Transferor, including any other land of the Transferor adjacent to the said land; and, without limiting the generality of the foregoing, that the Transferee shall, as far as possible, at the Transferee's expense, replace any soil, turf or ground coverings disturbed by the Transferee; restore the existing grading and any existing overland drainage patterns; and repair any damage caused by the Transferee, its agents or employees.

3. (a) In accordance with section 91 of the Municipal Act, 2001 S.O., 2001, c. 25, it is acknowledged that because this is a municipal public utility easement, this easement in favour of the Transferee does not have to be appurtenant to or annexed to or for the benefit of any specific parcel of land of the Transferee as its dominant tenement, to be valid.

(b) The dominant tenement of this easement of the Transferee is the Transferee's municipal system of watermains, storm and sanitary sewers, including their related buildings and plant located in the City of Hamilton in the Province of Ontario.

(c) This easement shall enure to the benefit of and be binding upon the Transferor, the Transferee and their respective successors and assigns.

TRANSFER OF SURFACE DRAINAGE EASEMENT TO THE CITY

1. The Transferor grants to the Transferee, its agents, successors and assigns, the right, interest and easement in, over, along and upon the land described in the Transfer Easement to which this Schedule is attached, to be used as appurtenant to the Transferee's land described below, for the following purpose, in common with such further and other easements as the Transferor may grant from time to time:

(a) to enter, inspect and undertake, at any time, modifications to the surface drainage of the said land in accordance with the Detailed Grading Plan and the Overall Grading Plan approved in accordance with the registered Subdivision Agreement with the municipality;

(b) to clear obstructions so as to permit the exercise and enjoyment of this easement;

(c) for the servants, agents, contractors, workers and other persons duly authorized by the Transferee at all reasonable times and from time to time to pass and repass with all plant machinery, material, vehicles and equipment which may be necessary or incidental to the exercise and enjoyment of this easement.

2. The easement hereby granted,

(a) shall be of the same force and effect to all intents and purposes as a covenant running with the land;

(b) is declared hereby to be appurtenant to and for the benefit of the land of the Transferee described below;

(c) shall enure to the benefit of the Transferee and be binding upon the Transferor, its successors, assigns and successors in title.
3. The Transferor shall register this Transfer Easement on title to the land at the Transferor's expense in a form satisfactory to the Corporate Counsel prior to the first transfer of any lot, block, unit or severed parcel.

4. (a) In accordance with section 91 of the Municipal Act S.O., 2001, Chapter 25, as amended, it is acknowledged that this is a municipal public utility easement, in favour of the Transferee does not have to be appurtenant to or annexed to or for the benefit of any specific parcel of land of the Transferee as its dominant tenement, to be valid.

(b) The dominant tenement of this Transfer Easement of the Transferee is the Transferee's municipal system of watermains, storm and sanitary sewers, including their related buildings and plant located in the City of Hamilton, in the Province of Ontario.

Date Schedule prepared:
SCHEDULE "J"

of a Subdivision Agreement between the City of Hamilton and the Owner named in Schedule "B" of the Agreement. Details of the Agreement to which this Schedule is attached, are set out below.

APPLICATION NUMBER:

NAME OF SUBDIVISION OR CONDOMINIUM:
(where applicable)

LAND RESTRICTIONS

Lots, Blocks, Units and Severed Parcels listed in this Schedule are subject to the following notices and/or restrictions in accordance with Section 26 of the Agreement.

Date Schedule prepared: