

## MUNICIPAL RESPONSIBILITY AGREEMENT

**THIS AGREEMENT** dated the \_\_\_\_\_ day of \_\_\_\_\_, 2014

**BETWEEN:**

**FERN BROOK RESORT INC.**

(hereinafter called the "Owner")

- and -

**CITY OF HAMILTON**

(hereinafter called the "Municipality")

- and -

**TRUSTEE XX**

(hereinafter called the "Trustee")

**WHEREAS** the Owner warrants to the Municipality that it is the registered owner of the lands and premises described in Schedule "A" attached hereto and forming part of this Agreement (herein called the "Lands");

**AND WHEREAS** the Owner has applied to the Municipality for an amendment to the Municipality's official plan and zoning by-law so as to permit the continued use of the North Parcel of the Lands for a year-round land lease community, not to exceed a maximum of 150 sites and 20 hotel & 4 apartment units and ancillary facilities, with the South Parcel to be used for up to 100 seasonal camping sites;

**AND WHEREAS** the development on the Lands is to be serviced by means of private drinking water system and private sewage system owned by the Owner;

**AND WHEREAS** pursuant to the provisions of the *Environmental Protection Act*, R.S.O. 1990, c. E. 19 and the *Ontario Water Resources Act*, R.S.O. 1990, c. 0.40, the Owner has obtained Amended Environmental Compliance Approvals 7301-8NVJEN for the private sewage system and a Permit to Take Water #7853-97 NNKF for the private drinking water system;

**AND WHEREAS** the Owner agrees to operate and maintain the private drinking water system in accordance with the *Safe Drinking Water Act, 2002*, S.O. 2002, c. 32 and O. Reg. 170/03 applicable to Non-Municipal Year-Round Residential drinking water systems, as defined therein;

**AND WHEREAS** the Municipality requires and the Owner agrees that the Owner shall, at the Owner's expense, properly construct, operate, maintain, repair, replace and enhance the private water and sewer services that will serve the development on the Lands and will promptly remedy any default with respect to the Private Services at its own expense and will provide proper and sufficient security to enable the Municipality to operate and maintain the Private Services, at no expense to its ratepayers outside of the Lands, in the event that the Municipality is the subject of an Order pursuant to the provisions of the *Ontario Water Resources Act*, or the *Safe Drinking Water Act, 2002*, S.O. 2002, c. 32 or other related or similar legislation;

**AND WHEREAS** the Owner has agreed to enter into this Agreement for the purpose of providing the Municipality with such assurances;

**AND WHEREAS** section 23 of the *Municipal Act, 2001*, S.O. 2001, c.25, authorizes the Municipality to enter into an agreement relating to private water or sewage works;

**AND WHEREAS** at its meeting of the 26<sup>th</sup> day of March, 2014, the Council of the Municipality approved of Item XX of Report YY of the Planning and Economic Development Committee and did thereby authorize the entering into and execution of this Agreement;

**NOW THEREFORE** in consideration of the mutual agreements, covenants and promises herein contained, and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by the parties hereto), the parties hereto agree as follows:

## **1. DEFINITIONS**

For the purposes of this Agreement:

- (a) "Agreement" means this Municipal Responsibility Agreement;
- (b) "Capital Reserve Fund" means the monies held by a Trustee pursuant to Section 12 of this Agreement, for the purposes provided in this Agreement, including for the remedy of any Default;
- (c) "Capital Reserve Fund Review" means a study undertaken in accordance with section 12.3(g) of this Agreement;
- (d) "Default" means the occurrence of any event described in Section 14 of this Agreement;
- (e) "Deficiency" means a situation wherein the Private Services are not being operated, maintained, repaired, replaced or enhanced by the Owner in accordance with the requirements of this Agreement or are otherwise not in compliance with the requirements of the applicable Environmental Compliance Approval;
- (f) "Environmental Compliance Approval" or "ECA" means an approval issued by the Ministry of the Environment under the *Environmental Protection Act*, R.S.O. 1990, c. E. 19 or the *Ontario Water Resources Act*, R.S.O. 1990, c. 0.40 in respect of the construction, operation, alteration, extension or replacement of any part of the services defined as Private Services in the Agreement, including the Environmental Compliance Approval attached as Schedule "C" to this Agreement;
- (g) "Lands" means the lands and premises described in Schedule "A" hereto which consist *inter alia*, of a North Parcel containing 150 sites, an accessory clubhouse which may include as ancillary uses to the park, administrative offices, a convenience store, a hotel consisting of 20 suites, a restaurant and tavern, and fitness and leisure facilities including a pool, hot tub, sauna, showers, and fitness room, manager's residence, 3 staff apartment units, and facilities for outdoor sports and leisure, including an outdoor pool and hot tub and a South Parcel containing up to 100 seasonal camp sites and associated seasonal recreational uses;
- (h) "Ministry" means the Ministry of the Environment of Ontario and shall include any authorized representative of the Ministry of the Environment;
- (i) "Municipal Charge" means charges levied on the Owner by the Municipality, and for greater clarity, has the same meaning as in section 2 of the *Residential Tenancies Act*, 2006, S.O. 2006, c.17.
- (j) "Municipal Operations Fund" means the cash monies held by the Municipality pursuant to Section 12 of this Agreement, for the purposes provided in this Agreement;
- (k) "Municipality" means the City of Hamilton, its successors and assigns;
- (l) "Notice of Deficiency" means a written notice from the Municipality, the Ministry of the Environment or Public Health to the Owner, giving reasonable particulars of the Deficiency and a time within which, subject to any rights of appeal of the Owner, the Deficiency is to be corrected.
- (m) "Owner" means Fernbrook Resort Inc., its successors in title and permitted assigns;

- (n) "Party" means either the Municipality or the Owner and "Parties" means both the Municipality and the Owner;
- (o) "Private Services" means the existing private Non-Municipal Year-Round Residential drinking water system as defined in the *Safe Drinking Water Act, 2002*, and private sewage system and all related buildings and infrastructure, including but not limited to the water and sewage distribution lines, and any future improvement or expansion thereof;
- (p) "Projected Amount" means the amount of monies projected to be in the Capital Reserve Fund at each month determined by the Reserve Fund Study or Capital Reserve Fund Review pursuant to Schedule "F" and section 12.3(g).
- (q) "Reserve Fund Charge" has the meaning ascribed to it in Section 12 and Schedule "B" of this Agreement and is a Municipal Charge upon the Owner of the Lands;
- (r) "Reserve Fund Study" means the study described in Schedule "F" of this Agreement;
- (s) "Trust Agreement" shall mean the agreement attached as Schedule "E" herein; and,
- (t) "Trustee" shall mean a trust company licensed under the *Trust and Loan Companies Act, S.C. 1991, c.45* which has agreed to assume the obligations of the Trustee set out herein and which has been designated to act as Trustee by the Owner and the Municipality. The Owner and the Municipality may from time to time replace a Trustee appointed hereunder by a written instrument executed by them.

## 2. SCHEDULES

The following Schedules are attached, incorporated by reference into this Agreement and are deemed to be a part of this Agreement:

- (a) Schedule "A" Legal Description of the Lands
- (b) Schedule "B" Conditions of Occupancy for Land Lease Tenants
- (c) Schedule "C" Regulatory Approvals: Environmental Compliance Approval and Permit to Take Water
- (d) Schedule "D" Form of Assumption Agreement
- (e) Schedule "E" Form of Capital Reserve Fund Trust Agreement
- (f) Schedule "F" Reserve Fund Study
- (g) Schedule "G" Insurance Provisions

## 3. REGISTRATION OF AGREEMENT

The parties agree that this Agreement shall:

- (a) be registered, at the Owner's expense, against the title of the lands described in Schedule "A", and shall come into force and take effect on the date of such registration;
- (b) run with the land all covenants and provisions herein shall ensure the benefit of the parties and be binding upon their respective successors and assigns.

#### **4. CONDITIONS OF OCCUPANCY FOR LAND LEASE TENANTS**

The Owner covenants and agrees that:

- (a) it will only allow occupancy on the sites of the North Parcel of the Lands by new tenants pursuant to written leases which shall contain, as a minimum, the provisions set out in Schedule "B" to this Agreement, to the extent that they apply. It is acknowledged that the leases to be entered into by the Owner may contain additional provisions, however, the Owner covenants and agrees with the Municipality that such additional provisions shall not vary, amend or alter the provisions set out in Schedule "B" hereto;
- (b) it will enter into written leases with all existing tenants that include the applicable provisions of Schedule "B", in accordance with the following:
  - (i) where written leases already exist, the Owner will forthwith make best efforts to amend the existing leases, in accordance with the terms prescribed therein; or,
  - (ii) where no written leases currently exist, then the Owner will forthwith use best efforts to require the tenant to enter into a written lease in accordance with this section.
- (c) in the event of Default, the Owner will assign the Reserve Fund Charge in priority to all other creditors, to the Municipality forthwith; and,
- (d) it will only allow occupancy on the sites of the South Parcel of the Lands pursuant to an agreement which states that occupants of the South Parcel may be required to immediately vacate the Lands in the event of a Default, with seven (7) days' notice (or earlier if ordered through a court, tribunal or public authority with the appropriate jurisdiction).

#### **5. ASSUMPTION OF OWNER'S OBLIGATIONS**

The Owner covenants and agrees:

- (a) that it will not dispose of or transfer the whole or any part of the lands on which the works are situated without first obtaining the prior written consent of the Municipality which consent to not be unreasonably withheld; and
- (b) to be bound by the terms and conditions of this Agreement and not to seek a release from the provisions thereof until such time as the Owner's obligations hereunder have been assumed by its successor, assignee or transferee by way of written agreement substantially in the form set out in Schedule "D".

#### **6. NATURE OF DEVELOPMENT**

The Owner covenants and agrees:

- (a) that with respect to the Private Services that are existing on the Lands as of the date of execution of this Agreement which service approximately 250 residential sites, inclusive of both seasonal and permanent sites and ancillary facilities, that the Municipality has no liability nor responsibility for the design, construction and installation of such services, nor for their operation, maintenance and management to date;
- (b) that the Owner will also make all upgrades or adjustments to the existing portion of the Private Services which are required by the Municipality acting reasonably, including those described in Section 8 to this Agreement and those required to the distribution lines and associated infrastructure which will be more particularly identified through an approved site plan, in accordance with the terms of this Agreement;
- (c) that each of the sites within the Lands shall be provided with water and sanitary sewage services by means of a private water system and private sewer system. The sewage

system shall be operated and maintained in accordance with Amended Environmental Compliance Approval No. #7301-8NVJEN, copies of which approval(s) are attached as Schedule "C" to this Agreement, and any other regulatory approvals that may be subsequently issued;

- (d) the Owner acknowledges and agrees that the upgrades and adjustments to the existing Private Services required by the Municipality in (b), above, may exceed the performance standards required by the Environmental Compliance Approval or other regulatory approvals cited in (c), above;
- (e) that the Private Services shall be located totally within the Lands; and
- (f) that the Lands, including the Private Services shall be developed in phases and in accordance with an approved site plan. Prior to the issuance of a Building Permit by the Municipality for the development of the Private Services and/or any Sites in any phase, the Owner shall obtain final site plan approval for that phase and post financial security, in a form and an amount satisfactory to the Municipality, for that phase.

## 7. PRIVATE SERVICES OPERATION & MAINTENANCE

The Owner covenants and agrees:

- (a) to properly operate and maintain, at no expense to the Municipality, the Private Services within the Lands in a manner satisfactory to the Ministry and the Municipality and in accordance with the approved plans and specifications, the provisions of the Agreement and all applicable legislation, regulations, by-laws, orders and guidelines;
- (b) to monitor and keep records of the operation and performance of the Private Services, and to provide on or before March 31 in each and every year, an annual report to the Ministry and to the Municipality on the performance and operation of the Private Services in accordance with applicable environmental legislation, regulations, by-laws, ECA, orders and guidelines. In the event that the annual report identifies non-compliance with any of these, the annual report shall include the recommendations for resolving the non-compliance, which the Owner shall immediately implement and document in the subsequent annual report;
- (c) The Owner agrees that it will comply with Ministry water testing procedures and standards. If any water samples submitted to the Ministry, as required by O. Reg. 170 or the ECA, disclose non-compliance or exceedance of Ministry water quality standards or parameters, the Owner will within five (5) days of submitting those water samples to the Ministry, provide notice to the Municipality, any associated data and an action plan to resolve the non-compliance or exceedance. Further notice will be provided to the Ministry and the Municipality demonstrating that the non-compliance or exceedance has been resolved;
- (d) that proper design and construction alone will not guarantee the long-term integrity of the Private Services, that regular and proper maintenance is essential and that the provisions of annual monitoring reports to the Municipality and the Ministry is of vital importance to ensure that the Private Services are functioning as designed and not having a negative impact on the environment;
- (e) to operate and maintain the Private Services in accordance with the Environmental Compliance Approval and the terms of this Agreement;
- (f) to retain a person, company or entity to operate and maintain the Private Services and that person, company or entity shall be an operator or operators approved by the Ministry, and all applicable laws, including the *Safe Drinking Water Act, 2002*, and the *Ontario Water Resources Act*, to operate the Private Services or part thereof;
- (g) within one year of registering this Agreement, to provide the Municipality with a copy of established contingency plans and procedures, which makes available adequate equipment and material dealing with emergency and upset conditions including but not

limited to equipment breakdowns of the Private Services, to the satisfaction of the Municipality;

- (h) within one year of registering this Agreement, to provide the Municipality with a copy of established notification procedures to be used to contact the Municipality and the Ministry of the Environment and other relevant authorities in the case of all emergency and upset conditions; and,
- (i) for clarity, failure to comply with any of the provisions of this section shall be sufficient to constitute a Deficiency.

## **8. PRIVATE SERVICES CONSTRUCTION, UPGRADES & REPAIRS**

The Owner covenants and agrees to:

- (a) to forthwith undertake the following upgrades to the private drinking water system, subject to Ministry approval, which shall include obtaining all required regulatory approvals from Ministry and the Municipality, as the case may be:
  - (i) Two (2) additional third-stage filters equivalent to the existing units;
  - (ii) Two (2) additional UV units equivalent to the existing units;
  - (iii) Two (2) additional high-lift pumps equivalent to the existing units;
  - (iv) Expansion of the existing water treatment building to accommodate the equipment in (i) to (iii), above, as may be required; and,
  - (v) Additional domestic water storage in the amount of 97,000 litres.
- (b) to undertake any repairs or improvements i) to the distribution and collection systems required by the Municipality acting reasonably, Ministry or other regulatory authority having jurisdiction, and ii) required in Section 9 of this Agreement, the construction of which will be phased in accordance with an approved site plan, and shall include achieving compliance with the *Building Code Act, 1992*, SO 1992, c. 23 and associated Regulations, and obtaining any required approvals under any statute in connection with the Private Services, as well as implementation of any repairs, improvements or other measures required as aforesaid;
- (c) to prepare entirely at its own cost and expense all plans, specifications, profiles, contours, and other engineering material, drawings and data required in the opinion of the Municipality acting reasonably to implement this Agreement. The Owner shall ensure that all such plans satisfy all government requirements including, but not limited to, the applicable Ministry of the Environment design guidelines for water treatment plants and sewage treatment plants, and that all such plans are prepared in accordance with sound engineering and construction standards and practices applicable to Private Services of the kind and nature set out in this Agreement;
- (d) to comply with all laws regulating the design, construction and installation of the Private Services, including, but not limited to, the *Safe Drinking Water Act, Ontario Water Resources Act* and the *Environmental Protection Act*, all of which may be amended from time to time and to exercise due diligence at all times with respect to the Private Services systems;
- (e) that all materials to be supplied by the Owner with respect to the Private Services shall be in accordance with the design guidelines of the Municipality or an approved alternative thereto, and if no materials are specified in any particular case then the same shall be of good quality and appropriate in design and construction for the Private Services Systems to be installed, and shall be subject to the approval of the Municipality acting reasonably;

- (f) to use best efforts to ensure that all equipment for the Private Services carry a warranty which will be in effect for a minimum period of one year from the date of Substantial Completion of each phase of the Private Services Systems, and shall ensure that such warranty may be transferred to Municipality in the event of the Municipality's temporary or permanent assumption of the operation and maintenance of the Private Services Systems in the event of Default by the Owner, at no cost to the Municipality;
- (g) to comply with the *Construction Lien Act*, R.S.O. 1990, Chapter C.30 and to maintain trust funds and all statutory holdbacks as required by the *Construction Lien Act*. Such money will not be disbursed except in compliance with the *Construction Lien Act*;
- (h) to provide to the Municipality, at the Owner's sole cost and expense, mylars of the "as built" plans showing the location of the Private Services and other underground utilities, within one (1) month of the completion of the installation, repairs and/or upgrades of the Private Services or any Phase thereof. The "as built" plans shall be certified by the Owner's consulting engineer;
- (i) to supply to the Municipality copies of all operating and maintenance manuals for the Private Services Systems at the Owner's sole cost and expense and within one (1) month of the completion of the installation of the Private Services or any phase thereof. The Owner shall also supply any and all amendments or updates to said operating and maintenance manuals which may occur within one (1) month of the Owner receiving same;
- (j) where upgrades and improvements are proposed to the existing private water and sewage system, no work shall be undertaken prior to the Municipality approving, if required, the plans and specifications; and
- (k) for clarity, failure to initiate and/or comply with any of the provisions of this section shall be sufficient to constitute a Deficiency.

## 9. ENGINEER'S REPORT ON PRIVATE SERVICES

The Owner covenants and agrees:

- (a) to forthwith commence collecting detailed occupancy records for both the North and South lands;
- (b) to the private sewage treatment system, to forthwith install two (2) magnetic or other type of suitable flowmeters on the forcemain from the Main Lift Station, calibrate the flowmeters annually and provide the calibration certificate to the Municipality, and collect daily sewage flow data for at least three (3) consecutive years;
- (c) to the private water treatment system, to forthwith install two (2) magnetic or other type of suitable flowmeters on the forcemain from the High Lift Station, calibrate the flowmeters annually and provide the calibration certificate to the Municipality, and collect hourly water flow data for at least three (3) consecutive years;
- (d) to retain a qualified professional engineer on a date that is at least three (3) years after the date of execution of the Agreement, who will prepare and submit to the Owner, the Municipality and the Ministry before four (4) years following the date of execution of the Agreement, a report addressing the following issues:
  - (i) for the private sewage treatment system, the report shall analyze the flow data collected in 9(b) to calculate the average day and maximum day flowrate for the minimum three (3) year period;
  - (ii) for the private water treatment system, the report shall analyze the flow data collected in 9(c) to calculate the average day and maximum day, and peak hour, flowrate for the minimum three (3) year period;

- (iii) for both the private sewage and water systems, correlate the flow data analysis in 9(d)(i) and (ii), above, with the occupancy records collected in 9(a) to calculate the per capita sewage production and per capita water demand and confirm the ability of the water and sewage treatment facilities to accommodate the flows; and
  - (iv) if the report concludes that the either or both of the private water and sewage treatment systems cannot accommodate the flows, the report shall identify and recommend upgrades to the Private Services to remedy the deficiencies.
- (e) to implement the recommendations made in 9(d)(iv), subject to Ministry approval, within two (2) years, which timeline can be extended with the Municipality's consent if presented with reasonable reasons for the delayed implementation; and,
- (f) if the Owner does not produce a report in accordance with the requirements in 9(a) to (d), above, and as may be further described or agreed by the Parties, the Municipality may require the Private Services to be upgraded in accordance with Gamsby & Mannerow Engineers Memo entitled "Fernbrook Resort: Engineering Review of Water and Sewage Treatment Systems", dated February 18, 2014.

The Owner further covenants and agrees:

- (g) to retain a qualified professional engineer to inspect the Private Services on a date that is at least four (4) years after the date of execution of the Agreement, who will prepare and submit to the Owner, the Municipality and the Ministry before five (5) years following the date of execution of the Agreement, a report addressing the following issues:
- (i) the nature and extent of the engineer's examination of the Private Services and the sufficiency thereof;
  - (ii) the condition of the Private Services and the various components thereof;
  - (iii) the nature, extent and adequacy of on-going maintenance, monitoring and inspection procedures;
  - (iv) recommendations, if any for repairs, replacements or additions to the Private Services which are necessary or advisable to ensure their long-term viability;
- (h) that the professional engineer's report shall be completed and submitted to the Owner, the Municipality and the Ministry by the professional engineer prior to the fifth anniversary of the date of this Agreement and that the foregoing inspection and report process shall be repeated every five (5) years thereafter;
- (i) that the form and substance of the professional engineer's report shall be substantially in conformity with the Reserve Fund Study appended as Schedule "F" to this agreement and which forms the basis for the methodology and quantum of determination of the Capital Reserve Fund and charges necessary to maintain the adequacy of the Capital Reserve Fund; and
- (j) that, in the event that the Owner fails to initiate and complete such inspection and report in accordance with the foregoing provisions, the Municipality may deliver a Notice of Deficiency to the Owner or such obligation and that if the Owner fails to initiate the required inspection and report within twenty-one (21) days of receiving such notice and/or to complete and submit the report within three (3) months thereafter, the Municipality may retain a qualified professional engineer to undertake the inspection and report set out in this subsection and all costs thereof shall be paid by the Owner to the Municipality within thirty (30) days of demand.



## 10. ACCESS TO AND INSPECTION OF PRIVATE SERVICES

The Owner covenants and agrees that:

- (a) the Municipality, its employees and agents, including the Medical Officer of Health and his/her designate, shall be entitled to free and unobstructed access at all times to the private streets and Private Services within the Lands to the extent reasonably necessary to permit the Municipality, its employees and agents to ensure that the Owner is fulfilling the obligations pursuant to this Agreement; and
- (b) that the Municipality shall be entitled to engage persons who are not employees of the Municipality to assist it in reviewing and inspecting the Private Services and the annual monitoring reports and to provide advice with respect to the construction, operation, maintenance, repair, replacement, enhancement and performance of the Private Services and that the Owner shall reimburse the Municipality forthwith on demand for the reasonable costs of such review and inspection and the provision of advice based on such review and inspection.

## 11. PERMANENT EASEMENTS

- (a) The Owner covenants and agrees, at the same time that this Agreement is registered on title to the Lands, to transfer to, and register in favour of, the Municipality a temporary easement over the Lands which are required by the Municipality to inspect, monitor, enter and lay down, install, construct, operate, maintain, manage, alter, repair and keep in good condition, remove, replace, reconstruct and supplement the Private Services and all components appurtenant thereto so that such rights may be exercised by the Municipality in the event of temporary or permanent operation, maintenance and management of the Private Services as otherwise set out in this Agreement;
- (b) The Owner covenants and agrees, following completion of the improvements and upgrades described in sections 6 and 8 of this Agreement, to register a permanent easement over the Lands, for the same purposes described in 11(a), above, and until such registration occurs in the form outlined in (c), below, release of the outstanding financial securities under the site plan agreement may be withheld;
- (c) Accordingly, the Owner agrees to grant to the Municipality for nominal consideration such easements and shall provide the following easement documentation to the Municipality:
  - i. Transfer/Deed granting the easements to the Municipality;
  - ii. Reference plan of the lands on which the easements are to be located and granted, the cost and expense of preparation of which shall be borne by the Owner;
  - iii. A signed option to purchase the easements, as prepared by the Municipality.
  - iv. A tax certificate indicating that all outstanding Municipality charges have been paid to date for the Land; and
  - v. Such further and other documents required by the Municipality to evidence that the grants of easement are free and clear from all liens and encumbrances, which may include the an opinion from the Owner's solicitor, upon which the Municipality will be entitled to rely, that the transfer of all such easements covers the entirety of the Lands and the Municipality's title to the easements is free of all charges, encumbrances, construction liens or any other registered interests and that upon the completion of such conveyances, the Municipality shall have good an marketable title thereto.

## **12. FINANCIAL SECURITY**

### **12.1. *Repairs and Upgrades to Existing Private Services***

- (a) The Owner covenants and agrees to secure the cost of any repairs, upgrades, improvements or other measures to the Private Services required under subsection 8 (b) by posting financial security with the Municipality prior to site plan approval, which securities shall be phased in accordance with an approved site plan, and be in a form and amount satisfactory to the Municipality;
- (b) the Municipality will accept an irrevocable letter of credit in lieu of such total cash amounts, provided such letter of credit shall be in a form acceptable to the Municipality and contain the following provisions:
  - i. the letter of credit shall be security for any obligations of the Owner pursuant to subsection 8(b) of this Agreement and more particularly specified through a phased site plan;
  - ii. drawings on the letter of credit shall be permitted upon presentation of a letter from the Municipality to the bank claiming default by the Owner under the terms of this Agreement, and such default shall not be limited to the actions of the Owner;
  - iii. partial drawings shall be permitted;
  - iv. if the Municipality has not determined the extent of the default of the amount required to rectify the default or compensate the Municipality or third parties as a result thereof, the Municipality may draw on the full amount of the letter of credit without any requirement to justify the amount of the draw; and,
  - v. if the Municipality is not provided with a renewal of a letter of credit at least thirty (30) days prior to its date of expiry, the Municipality may forthwith draw the full amount secured and hold it upon the same terms that applied to the letter of credit.
- (c) Upon certification by the Building Services Division of the Municipality following the completion of each phase, and in consultation with any other division, staff or persons engaged by the Municipality in accordance with section 10(b), that the Owner's obligations under sections 8(a) and 8(b) of this Agreement with respect to that phase have been satisfied, the Municipality shall forthwith release to the Owner the financial security posted for that phase as outlined in subsection 12.1(a) if this Agreement; and,
- (d) If there is a conflict between any term of the site plan agreement and this Agreement with respect to the form, term and release of securities posted under the site plan agreement, the terms of the site plan agreement will apply.

### **12.2 *Municipal Operations Fund***

The Owner covenants and agrees to establish a Municipal Operations Fund to be held by the Municipality and, for clarity, administered by the Sustainable Initiatives Section, Hamilton Water, Public Works Department to secure operation and maintenance of the Private Services system by the Municipality in the event of Default by the Owner under this Agreement, in accordance with the following terms:

- (a) prior to registration of this Agreement, to deposit \$337, 275.00 with the Municipality's Finance Department by certified cheque, or bank draft, which sum equals fifteen percent (15%) of the total capital replacement cost of the Private Services plus an amount equalling three (3) years of operating costs, as identified in Schedule "F";
- (b) the sum calculated in (a) shall include the \$108,528.00 transferred from the Ministry currently held by it as security for the performance of the Owner's obligations to effect capital expenditures for repairs, maintenance and/or enhancements to the Private Services;

- (c) all of the security set out in this section, including any investment interest accrued, shall remain in place in perpetuity notwithstanding that the Municipality may have assumed the temporary or permanent operation, maintenance and management of the Private Services;
- (d) The parties agree that the total capital replacement cost shall be determined by the Reserve Fund Study in Schedule "F" of this Agreement. For clarity, the financial security posted in (a) and in accordance with Schedule "F" reflects the value of the initial upgrades specified in section 8(a) and will be subsequently amended to reflect the value of the system as a result of upgrades undertaken pursuant to sections and 8(b) and 9 of this Agreement,;
- (e) The parties agree that if the total capital replacement cost of the Private Services is either increased or reduced due to implementing engineering recommendations pursuant to section 9, and identified through the initial 5 (five)-year Capital Reserve Fund Review under 12.3(g), an adjustment shall be made to the total capital replacement costs calculation and the Owner shall post any additional financial security with the Municipality, or have any excess amounts returned by the Municipality, within six (6) months of the Review under 12.3(g) being issued.

### **12.3 Capital Reserve Fund**

The Owner covenants and agrees to establish a Capital Reserve Fund to be held by a Trustee to ensure that adequate funds are available to repair, maintain, replace and update the Private Services, in accordance with the following terms:

- (a) prior to registration of this Agreement, to deposit with the Trustee an initial contribution of \$142,180.00 to the Capital Reserve Fund to be held by the Trustee, which shall amount to no less than two (2) times the Annual Reserve Contribution provided in Schedule "F", and provide the Municipality with a report from the Trustee as proof thereof;
- (b) to pay into the Capital Reserve Fund, on a monthly basis, the total Reserve Fund Charge, which is a Municipal Charge, to be calculated and determined under Schedule "F" to this Agreement and any supplementary contributions to the Capital Reserve Fund determined by the Capital Reserve Fund assessment prepared in accordance with section 12.3(g) or otherwise required in accordance with the provisions of this Agreement;
- (c) that, at a minimum, the Capital Reserve Fund shall contain the initial sum contributed under 12.3(a),;
- (d) at any time where the amount in the Capital Reserve Fund exceeds its Projected Amount as indicated in Schedule "F" or the Capital Reserve Fund Review pursuant to 12.3(g) the Owner may apply to the Municipality to authorize the Trustee's release of monies from the Capital Reserve Fund to use for the Owner's purposes, and shall provide such information to the Municipality as may be required for the Municipality to evaluate the request, whose decision will be issued within three (3) months of receiving all documentation requested by it to evaluate the request. Subject to 12.3(h) of this Agreement, the Municipality shall forthwith pay Owner such amount;
- (e) that the Capital Reserve Fund shall be held by the Trustee for the purposes of and pursuant to the provisions of this Agreement and that the Trustee shall only invest sums in the Capital Reserve Fund in investments authorized by the *Municipal Act, 2001*, S.O. 2001, c. 25 and O. Reg. 438/97, as may be amended from time to time. The Owner and the Trustee shall agree that the Capital Reserve Fund shall not be used to personally benefit the Owner or used as a mortgage on the Lands:
  - i. without limiting the generality of this Agreement, it is acknowledged and agreed that restoring the Capital Reserve Fund shall be the Owner's responsibility and any and all successors in title to the Lands;

- ii. the obligation to restore the Capital Reserve Fund shall be joint and several;
  - iii. in the event that the Capital Reserve Fund is not restored within three (3) months, the outstanding balance shall be subject to the equivalent interest rate applicable to property tax arrears in effect in the Municipality at the time; and,
  - iv. if the outstanding balance has not been paid into the Capital Reserve Fund within one (1) year of the Trustee's annual accounting report, the Municipality may, in addition to any other remedies available herein or at law, impose all such levies, charges, taxes and/or user fees against any portion of or all of the Lands as are, in its sole discretion acting reasonably, necessary to restore the Capital Reserve Fund.
- (f) that the Trustee shall hold the Capital Reserve Fund in trust for the sole purpose of effecting capital expenditures for repairs, maintenance and/or enhancement of the Private Services and that the Trustee shall expend such Capital Reserve Fund in accordance with the terms of this Agreement;
  - (g) to undertake a Capital Reserve Fund Review to review the amount of money in the Capital Reserve Fund and further annual contributions and the amount thereof, on a date that is five (5) years after the execution of this Agreement, and continuously thereafter in five (5) year cycles, and that following each review, the amount of further contributions shall be subject to the Municipality's approval acting reasonably, it being understood that the need to have sufficient funds to repair or upgrade the Private Services is paramount;;
  - (h) prior to authorizing any withdrawal under subsection 12.3(d), the Municipality shall review the Annual Report described in subsection 7(b) and any Trustee reports described therein. The discretion as to whether or not a payout is possible and the amount is in the sole discretion of the City acting reasonably;
  - (i) to request the release of funds in the Capital Reserve Fund from the Trustee in the manner provided for in the Trust Agreement attached herein as Schedule "E" with the Trustee for the purposes described herein;
  - (j) the Owner acknowledges and agrees that the financial security set out in this section shall remain in place notwithstanding the fact that the Municipality may have assumed the temporary or permanent operation, maintenance and management of the Private Services in accordance with the provisions of this Agreement; and
  - (k) that the Capital Reserve Fund shall be funded by the Owner, irrespective of any occupancy levels, vacancies and/or defaulting tenants. For clarity, for the purposes of this Agreement, the Owner is solely responsible for the monthly Reserve Fund Charge contributions as set out in this Agreement. The mechanism, amount and frequency by which the Owner collects or recovers these funds, or any part thereof, from his tenants or by other means is outside the scope of this Agreement.

### **13. WITHDRAWAL OF FUNDS**

#### **13.1** Withdrawal from the Capital Reserve Fund shall be made in the following situations:

- (a) the Owner requests funds from the Trustee to meet its obligations under this Agreement or applicable legislation, regulations, by-laws, orders or guidelines;
- (b) the Ministry makes an order to the Owner or Municipality to carry out any work on the Private Services systems;
- (c) the Municipality requires funds to remedy any Default of the Owner;
- (d) the Municipality requires funds to replenish the Municipal Operations Fund following any withdrawals made from it for any purposes under this Agreement; or

(e) the Municipality has authorized a release of surplus funds from the Capital Reserve Fund in accordance with subsection 12.3(d) and the Trust Agreement.

**13.2** Withdrawal from the Municipal Operations Fund can be made by the Municipality, at its sole discretion acting reasonably, at any time and from time to time to:

(a) rectify any deficiency in the design, construction, installation (including but not limited to the closing of the Private Services in the event that the Owner does not complete them), operation, maintenance or replacement of the Private Services;

(b) pay the cost of any matter or obligation for which the Owner is liable under the Agreement, including but not limited to the Owner's failure to pay to the Municipality the Capital Reserve Fund amounts in accordance with this Agreement; or

(c) remedy any Default by the Owner.

**13.3** For capital expenditures made by the Municipality in the case of the Owner's Default, the Municipality shall first use funds in the Capital Reserve Fund prior to using funds in the Municipal Operations Fund.

## **14. DEFAULT**

(a) The Owner shall be in Default of this Agreement if any of the following occurs:

i. the Owner fails to maintain the Capital Reserve Fund, in accordance with Section 12 of this Agreement;

ii. the Owner fails to meet two successive deadlines established by the Municipality for compliance with any provision of this Agreement;

iii. the Municipality or Ministry of Environment determines that there is a Deficiency and the Owner fails to remedy the Deficiency, pursuant to Subsection 14(b) of this Agreement;

iv. the Owner fails to comply with an Order by the Ministry or the Medical Officer of Health and/or fails to make arrangements with the Ministry or the Medical Officer of Health to comply with an Order;

v. an act or omission by the Owner causes the operation and maintenance of the Private Services to be so faulty as, in the opinion of the Medical Officer of Health, there are reasonable grounds to believe that a health hazard, as defined in the *Health Protection and Promotion Act* exists;

vi. the Municipality receives notice of the Owner's insolvency;

vii. the Owner fails upon 5 days written notice to the Owner of its failure to meet its obligations to any third party that would affect the operation, maintenance or management of the Private Services, including but not limited to the failure of the Owner to pay any or all amounts owing to third parties relating to encumbrances on any part or all of the Private Services Systems; or

viii. the Municipality receives legal notice, or otherwise finds, that the Owner has ceased to carry on business, whether such cessation of business is voluntary or involuntary.

(b) In the event the Municipality determines that there is a Deficiency in the Private Services, the Municipality shall issue to the Owner a Notice of Deficiency and specifics for remediation. The Owner shall, at its sole expense, immediately carry out such remedial works or implement such measures as are necessary to correct the Deficiency. In the event the Owner disputes that there is a Deficiency and

- i. the costs to remedy the Deficiency are in excess of \$50,000.00; and
- ii. the Deficiency does not occur during any phase of the site plan period outlined in Section 6(f) of this Agreement,

the Owner may request that the matter be submitted to arbitration in accordance with the provisions of this Agreement. Upon a finding of the arbitrator that remedial works or measures are necessary, the Owner shall forthwith carry out such work or measures pursuant to the terms of this Agreement. Failure to carry out such work will be sufficient to constitute a Default under this section.

(c) In the event of Default, the Municipality may, at its sole option, pursue any or all of the following remedies, but shall not be bound to do so:

- i. require the Trustee to have any works or other required measures completed that were to be done by the Owner, the costs of which will be paid from the Capital Reserve Fund;
- ii. enter upon the Lands and complete or undertake any works or measures required to be done by the Owner pursuant to the terms of this Agreement and to collect the costs thereof from the Capital Reserve Fund;
- iii. enter upon the Lands and temporarily or permanently assume operations of the Private Services and fund the cost of the operations of the Private Services from either the Municipal Operations Fund or the Capital Reserve Fund, which decision will be solely within the Municipality's discretion;
- iv. make any payment which ought to have been made by the Owner and upon demand, the amount demanded shall be forthwith paid by the Owner to the Municipality;
- v. commence legal action to compel specific performance of all or any part of this Agreement and/or for damages;
- vi. exercise any other remedy granted to the Municipality pursuant to the terms of this Agreement or available to the Municipality in law including, but not limited to, the provisions of the *Municipal Act, 2001*.

(d) If, as a consequence of the failure of the Owner to properly operate, repair, maintain, replace and/or enhance the Private Services in accordance with the requirements of the provisions of this Agreement, the Municipality is required by a Direction with the Ministry, pursuant to the *Environmental Protection Act*, the *Ontario Water Resources Act*, the *Safe Drinking Water Act, 2002* or any related legislation to assume responsibility for the operation and maintenance of the Private Services, the following provisions shall apply:

- i. the Municipality shall be entitled to draw on the Municipal Operations Fund or require the Trustee to pay from the Capital Reserve Fund all costs and expenses incurred by the Municipality with respect to the operation and maintenance of the Private Services, and the decision to draw on either the Municipal Operations Fund or the Capital Reserve Fund shall be solely within the Municipality's discretion;
- ii. all costs and expenses incurred by the Municipality in operating and maintaining the Private Services shall be a charge upon the Lands recoverable in the same manner and to the same extent as municipal taxes. In particular, and without limiting the generality of the foregoing, such charges shall have priority over any lease or encumbrance affecting the Lands; and,
- iii. the Owner shall assign the Reserve Fund Charge received under the leases to the Municipality and the Municipality shall have the right to apply all amounts it receives to the operation, maintenance, replacement and/or repair of the Private Services. The Municipality may apply such amounts in such order of priority as the Municipality in its sole discretion determines.

- (e) If the Municipality assumes responsibility for the operation and maintenance of the Private Services pursuant to Subsections 14(c) or 14(d), and the Municipality has been operating and maintaining the Private Services for 6 (six) months, and the Owner has not remedied all default conditions, then the Municipality may, in its sole discretion, assume ownership and control of the Capital Reserve Fund;
- (f) The parties hereto expressly acknowledge and agree that the Municipality shall not at any time be required or expected by the Owner to assume ownership of or responsibility for the Private Services. The parties hereto agree that the Municipality shall only become responsible for the operation and maintenance of the Private Services in the event that the Municipality is ordered to do so as referenced in Subsection 14(d), or upon choosing to do so, as referenced in Subsection 14(c) of this Agreement;
- (g) The Municipality may, upon the temporary operation, maintenance and management of the Private Services in the event of Default by the Owner assess and levy on the Lands all costs and expenses of maintenance, operation and management of the Private Services and such other costs and expenses as are set out in any applicable legislation and the Owner hereby covenants to pay such costs and expenses, as invoiced by the Municipality. The amount of such assessment and levy may be increased by the Municipality from time to time, in its sole discretion, to ensure that the Municipality at all material times is operating the Private Services on a full cost-recovery basis;
- (h) If at any time that this Agreement is in force and effect, the total security to be provided by the Owner under section 12 is reduced below the amounts required and the Owner has failed to remedy it within a reasonable amount of time, then the Municipality may in its sole discretion temporarily or permanently assume the Private Services and the operation, maintenance, and management thereof, or contract for such services with a private operator. The Municipality's costs and expenses associated with such temporary or permanent assumption of the Private Services shall be collected on a full cost-recovery basis in such manner as is permitted by law or in equity, including but not limited to collecting such costs from the Owner, or from the residents on the Lands; and,
- (i) The Municipality is under no obligation under the Agreement to construct or complete the construction of the Private Services (or any phase thereof) should such systems not be constructed or completed by the Owner.

## **15. INSURANCE**

The Owner covenants and agrees to purchase and maintain in force, at its sole cost and expense, including the payment of all deductibles, the policies of insurance set out in Schedule "G" to this Agreement and to require from any contractor it retains to construct, install, repair, upgrade or make improvements to the Private Services the policies of insurance set out in Schedule "G" to this Agreement.

## **16. INDEMNITY**

- (a) The Owner shall defend, indemnify and keep indemnified and save harmless the Municipality, its officers, officials, employees, contractors and agents for all loss, damage, cost and expense of every nature and kind whatsoever arising from or in consequence of the design, construction, installation, maintenance, operation and management of the Private Services or any other matter under this Agreement, including but not limited to any untruth or inaccuracy in any representation, warranty or covenant contained in this Agreement, whether such loss, damage, cost or expense is incurred by reason of negligence or without negligence on the part of the Owner, and whether such loss, damage, cost or expense is sustained by the Municipality or the Owner or their

several and respective employees, servants and agents, or any other person or corporation;

- (b) This indemnity shall survive the temporary or permanent operation of the Private Services by the Municipality; and,
- (c) This indemnity shall not apply to any loss, damage, cost or expenses if such loss, damage cost or expense is incurred due to any act, negligence or omission of the Municipality in their operation, whether permanent or temporary, of the Private Services Systems.

## **17. ASSIGNMENT OF RESERVE FUND CHARGE, POSTPONEMENT AND SUBORDINATION**

- (a) The Owner shall register on title to the Lands, an assignment of the Reserve Fund Charge in favour of the Municipality (the "Assignment");
- (b) This Assignment shall be registered as first priority against title to the Lands and shall take priority over any vendor take-back mortgages or subsequent mortgages, encumbrances and registrations or any other agreements and encumbrances against title to the lands;
- (c) The Owner, prior to registration of the Assignment, shall obtain for registration postponement agreements from each and every mortgagee or other encumbrancer registered on title subordinating and postponing all its (their) right, title and interest in the Schedule "A" land to the Municipality to ensure that the Municipality's remedies under this Agreement arising from a Default by the Owner hereunder shall have priority to any such third party mortgagee or other encumbrancer under their respective registered security instruments; and,
- (d) The Municipality shall not be required to register the Assignment until such documentation in (c) evidencing postponement and subordination have been registered by the Owner.

## **18. INTERPRETATION OF AGREEMENT**

The Parties agree that:

- (a) the part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience or reference only and shall not affect the construction or interpretation of this Agreement;
- (b) all changes in number and gender shall be construed as may be required by the context;
- (c) every provision of this Agreement by which the Owner is obligated in any way shall be deemed to include the words "at the expense of the Owner" unless the context otherwise requires, including the payment of any applicable taxes (including HST);
- (d) references herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto;
- (e) all obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants;
- (f) wherever a statement or provisions in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference; and



- (g) all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.

## 19. MISCELLANEOUS

The Parties agree that:

- (a) the terms of this Agreement may be imposed as a condition of approval in the ECA issued pursuant to the *Environmental Protection Act* and the *Ontario Water Resources Act* or related legislation and the Owner agrees that it will not object to or otherwise appeal the imposition of such terms in such ECA;
- (b) the failure of the Municipality at any time to require performance by the Owner of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Municipality of the performance of any obligation hereunder be taken or be held to be a waiver of the performance of the same or any other obligation hereunder at any later time;
- (c) nothing in this Agreement shall prevent or limit the Municipality from:
  - i. establishing special taxes, levies or rates on the Lands for the purposes of raising costs with respect to the operation, maintenance, repair, replacing or enhancement of the Private Services, in the event that the Municipality is ordered to operate and maintain the private services by a Director;
  - ii. pursuing any remedy available to it at law, including in the event of Default under section 14 of this Agreement, for the recovery of costs incurred by it;
- (d) No reference to or exercise of any specific right or remedy by the Municipality shall prejudice or preclude the Municipality from any other remedy in respect thereof, whether allowed at law or in equity or expressly provided for herein, and the Municipality may from time to time exercise anyone or more of such remedies independently or in combination;
- (e) the Owner shall not add to, alter or extend the Private Services without prior notice to the Municipality and without prior approval from the Municipality and all other relevant government authorities;
- (f) the Reserve Fund Charge required to be paid is deemed to be a Municipal Charge levied by the municipality upon the Owner pursuant to this agreement and for which payment may be enforced under the terms of this Agreement;
- (g) If the Landlord and Tenant Board, or any court of competent jurisdiction, finds that the Reserve Fund Charge is not a Municipal Charge, the Owner will be liable for all remedies ordered by the tribunal or court, as the case may be. The Owner further covenants and agrees that the Reserve Fund Charge amounts to be deposited monthly will be paid by the Owner, in accordance with the terms of this Agreement;
- (h) any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability, and shall be severed from the balance of this Agreement, all without affecting the validity or enforceability of such provision in any other jurisdiction, and without affecting the validity or enforceability of the remaining terms of this Agreement;
- (i) except where specifically prohibited by this Agreement, all other disputes, claims or controversies arising out of or in any way connected with or arising from this Agreement, its negotiation, performance, breach, enforcement, existence or validity, any failure of the parties to reach agreement with respect to matters provided for in this Agreement, and all matters of dispute relating to the rights and obligations of the parties, which cannot be





) **THE CITY OF HAMILTON**

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) Mayor

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) Clerk

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## SCHEDULE "A"

### LEGAL DESCRIPTION OF LANDS

#### **The Northerly portion (the "North Parcel")**

P.I.N. 17526-0157 (LT)

Consolidation of Various Properties, Part 11, Con 12 East Flamborough Parts 1 to 8 inclusive 62R-5368, s/t Bell Canada Easement over Parts 1 to 8 62R5368 as in CD345024, s/t Union Gas Easement over Parts 1 to 8 62R-5368, as in VM144852, Flamborough, Part of Lot 12, Con 12 East Flamborough designated as Part 1 on 62R-14014, Flamborough, City of Hamilton

#### **The Road Allowance (also the "North Parcel"):**

P.I.N. 17526-0203 (LT)

Part of the Road Allowance between Concessions 11 and 12 East Flamborough closed by by-law 04-313 as in WE284740 being Part 1 on 62R16863, Flamborough, City of Hamilton

#### **The Farm Land (The "South Parcel"):**

P.I.N. 17526-0171 (LT)

Part of Lots 10 and 11, Concession 11, East Flamborough as in HL221449 except Part 1 on 62R9300, except Part 1 on 62R14458, Flamborough, City of Hamilton.

## SCHEDULE "B"

### CONDITIONS OF OCCUPANCY

- A. The Owner shall include the following clauses in each and every lease for each site on the Lands:**
1. In the event that the Owner defaults on its obligations under the Municipal Responsibility Agreement and the Municipality assumes temporary or permanent responsibility for the Private Services, it is agreed and acknowledged that the Reserve Fund Charge, which is a Municipal Charge, will be assigned to the Municipality to operate, maintain, replace and/or repair the Private Services, all of which would be done in the Municipality's sole discretion.
- B. If the Owner elects to partially recover the Reserve Fund Charge from the residents, the following clauses shall be included by the Owner in each and every lease:**
1. The Resident shall pay to the Owner in advance of the first day of each and every month, an amount equal to the total of:
    - (a) the basic rent; and
    - (b) the Reserve Fund Charge as hereinafter provided.
  2. The Owner shall calculate the monthly contributions to a Reserve Fund Charge pursuant to Municipal Responsibility Agreement for the Lands. Receipts of the Reserve Fund Charge shall be held in a trust for the benefit of the Owner, the Residents and the Municipality for the purposes set out in the Municipal Responsibility Agreement for the Lands.
  3. The Reserve Fund Charge shall be determined based on the calculations made by a person qualified to carry out a Reserve Fund Study. Such person shall determine the replacement costs of the capital components of the Private Services as those components reach the end of their anticipated useful life and calculate annual sum necessary to ensure the replacement costs are accumulated in the Trust established for that purpose. The annual sum as determined by said person shall then be allocated on the basis that 80% of said sum is attributable to the sites in the North Parcel. The sum attributable to the North Parcel shall then be divided by the number of occupied sites within the North Parcel and further divided by 12 to arrive at the monthly sum payable by residents of the North Parcel as the Reserve Fund Charge. The current Reserve Fund Charge has been determined in accordance with the Reserve Fund calculations prepared by ESSE Environmental Health, access to which can be provided on request to the Owner.
  4. The Resident shall forthwith pay to the Owner, monthly, 100% of the Reserve Fund Charge apportioned to the Resident's site plus applicable HST, if any, in addition to any property taxes and other Municipal Charges levied with respect to the site or the Resident's home. The Reserve Fund Charge may be varied every five years in accordance with timing and determinations made under the terms of the Municipal Responsibility Agreement affecting the Lands, in which case the Owner shall have the right to adjust the amount of the proportionate Reserve Fund Charges payable monthly by the Resident to reimburse the Owner for the adjusted Reserve Fund Charge. If the Reserve Fund Charge levied by the Municipality is reduced, the Owner shall forthwith notify the Resident of such reduction and the Resident's monthly payment of his proportionate share of the Reserve Fund Charge shall be reduced accordingly.
  5. It is agreed and acknowledged that the Reserve Fund Charge is a charge that has been levied on the Owner's property by the Municipality to fund a trust, the purpose of which is to indemnify and secure the Municipality against financial liability in connection with operation, maintenance or replacement of the Private Services. In the event the Municipality assumes operation of the Private Services the Municipality may require increases to the Reserve Fund Charge, in which case any such increase shall be immediately due and payable by the Resident in accordance with the Resident's

proportionate share based on the amount of the increase and divided by the number of sites within the Lands, in addition to the base Reserve Fund Charge. In addition, the parties hereto acknowledge that the Reserve Fund Charge is subject to review every five years by the Owner and Municipality pursuant to the terms of a Municipal Responsibility Agreement registered on title to the Owner's lands and that as a consequence of such review, the Reserve Fund Charge may be increased or decreased, as the case may be, and if it is increased, the Resident shall forthwith pay such increase or decrease upon demand by the Owner or the Municipality, as the case may be.

6. It is agreed and acknowledged that if the Municipality assumes permanent operation and control of the Private Services, it may, in its sole discretion, decide to terminate all leases. The termination of tenancies will be conducted in accordance with the notice and compensation requirements provided for in applicable law, including the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17.

**SCHEDULE "C"**

**REGULATORY APPROVALS:**  
**ENVIRONMENTAL COMPLIANCE APPROVAL AND PERMIT TO TAKE WATER**





Ministry of the Environment  
Ministère de l'Environnement

**AMENDED ENVIRONMENTAL COMPLIANCE APPROVAL**

NUMBER 7301-8NVJEN  
Issue Date: December 2, 2011

Fern Brook Resort Inc.  
143 Willowdale Ave, No. Suite 200  
Toronto, Ontario  
M2N 4Y5

Site Location: Fernbrook Nature Resort  
57 Concession 12 Rd E  
City of Hamilton

*You have applied under section 20.2 of Part II.1 of the Environmental Protection Act, R.S.O. 1990, c. E. 19 (Environmental Protection Act) for approval of:*

The establishment of a non-municipal subsurface disposal works for the collection, transmission, treatment and disposal of domestic sewage with a *Rated Capacity* of 110,000 L/d to serve the Fernbrook Nature Resort, consisting of the following:

- a 80,300 L capacity concrete main-lift station receiving sewage from the resort's sewage collection system and consisting of a duplex pumping system that demand doses at 100 L/min, at a dosing rate of 500 L/dose, to the three (3) equalization tanks (described below) located at the sewage treatment plant via two (2) 1.5 hp, 230V, single phase high speed sewage pumps rated for a design flow of 9.1 L/s at 18.9m TDH, complete with a Sensaphone (1104) connected to the float operated audible/visual high level alarm to provide a direct connection to the maintenance provider and log pumping data.
- three (3) 35,864 L capacity equalization storage precast concrete tanks connected in parallel, with a total capacity of 107,591 L, providing pre-treatment for peak flow attenuation and grit removal, with the middle tank is equipped with two (2) Universal Biotube pump vaults, each vault equipped with a ½ hp, 230V, single phase submersible effluent pump rated at a design flow of 3.2 L/s at 16.76m TDH. The pumps, controlled by an alternating duplex timer located on the main control panel, discharge 100 L/min, at a dosing rate of 2,200 L/dose, to the anoxic chambers of the Norweco Modulair Wastewater Treatment System described below.
- a dual train Norweco Modulair Wastewater Treatment System rated at 110,000 L/day, each train comprised of the following:
  - one (1) 25,346 L capacity sludge control tank, complete with a 230V, single phase 1.3 kW blower, and a ½ hp, 230 V, single phase vortex pump rated for a design flow of 3.8 L/s at 6m TDH, pumping sludge into

the flow equalization tanks described above;

- one (1) 11,362 L capacity anoxic chamber with two compartments and mixers;
- two (2) 25,346 L capacity agitation/aeration chambers, each complete with a ½ hp, 230 V, single phase vortex pump rated for a design flow of 3.8 L/s at 6m TDH, a 230V, single phase 1.3 kW blower and eight (8 ) membrane tube diffusers;
- one (1) 8,400 L capacity anoxic chamber with two compartments and mixers, complete with a methanol injection system (to add methanol seasonally (November through March), to provide an additional carbon source for denitrification), located within the control building and consisting of one (1) chemical dosing pump and a day tank.
- one (1) 18,354 L capacity dual compartment aeration chamber complete with a 230V, single phase, 1.3 kW blower and four (4) membrane tube diffusers;
- one (1) 26,220 L clarifier complete with one pump and surface skimmer contained in each of the two hoppers, each ½ hp, 230 V, single phase sludge return pump rated for a design flow of 3.8 L/sec at 6m TDH and a 115V single phase blower.
- two (2) trains discharging effluent into one (1) 25,920 L capacity pump chamber, complete with three (3) 2.0 hp, 230V, single phase submersible sewage pumps rated for a design flow of 10.7 L/s at 22.5m TDH, with treated effluent discharged to the sub-surface disposal system described below.
- a subsurface disposal system comprising a total of approx. 1,660 m of shallow buried trench in a configuration of three (3) groups of six cells,

all other controls, electrical equipment, instrumentation, piping, pumps, valves and appurtenances essential for the proper operation of the aforementioned sewage works.

*For the purpose of this environmental compliance approval, the following definitions apply:*

"*Approval*" means this entire *Approval* document and any *Schedules* to it, including the application and *Supporting Documentation*.

"*CBOD5*" means five day carbonaceous (nitrification inhibited) biochemical oxygen demand measured in an unfiltered sample;

"*Director*" means a person appointed by the Minister pursuant to section 5 of the *EPA* for the purposes of Part II.1 of the *EPA*.

"*District Manager*" means the District Manager of the appropriate local district office of the Ministry, where the Facility is geographically located;

"*EPA*" means the Environmental Protection Act, R.S.O. 1990, c.E.19, as amended.

"*Facility*" means the entire operation located on the property where the *Equipment or Works or Site* is located

"*Ministry*" means the ministry of the government of Ontario responsible for the *EPA* and includes all officials, employees or other persons acting on its behalf.

"*Owner*" means Stein Resorts Inc. and includes its successors and assignees;

"*OWRA*" means the Ontario Water Resources Act, R.S.O. 1990, c. O.40, as amended.

"*Rated Capacity*" means the *Average Daily Flow* for which the *Works* are approved to handle;

"*Substantial Completion*" has the same meaning as "*substantial performance*" in the Construction Lien Act;

"*Supporting Documentation*" means the documents listed in Schedule A of this *Approval*.

"*Works*" means the sewage works described in the *Owner*'s application, this *Approval* and in the supporting documentation referred to herein, to the extent approved by this *Approval*.

*You are hereby notified that this environmental compliance approval is issued to you subject to the terms and conditions outlined below:*

## **TERMS AND CONDITIONS**

### **1. GENERAL PROVISIONS**

- (1) The *Owner* shall ensure that any person authorized to carry out work on or operate any aspect of the *Works* is notified of this *Approval* and the conditions herein and shall take all reasonable measures to ensure any such person complies with the same.
- (2) Except as otherwise provided by these Conditions, the *Owner* shall design, build, install, operate and maintain the *Works* in accordance with the description given in this *Approval*, the application for approval of the works and the submitted supporting documents and plans and specifications as listed in this *Approval*.
- (3) Where there is a conflict between a provision of any submitted document referred to in this *Approval* and the Conditions of this *Approval*, the Conditions in this *Approval* shall take precedence, and where there is a conflict between the listed submitted documents, the document bearing the most recent date shall prevail.
- (4) Where there is a conflict between the listed submitted documents, and the application, the application shall take precedence unless it is clear that the purpose of the document was to amend the application.
- (5) The requirements of this *Approval* are severable. If any requirement of this *Approval*, or the

application of any requirement of this *Approval* to any circumstance, is held invalid or unenforceable, the application of such requirement to other circumstances and the remainder of this *Approval* shall not be affected thereby.

2. EXPIRY OF APPROVAL

The approval issued by this *Approval* will cease to apply to those parts of the *Works* which have not been constructed within five (5) years of the date of this *Approval* .

3. CHANGE OF OWNER

(1) The *Owner* shall notify the *District Manager* and the *Director* , in writing, of any of the following changes within 30 days of the change occurring:

(a) change of *Owner* ;

(b) change of address of the *Owner* ;

(c) change of partners where the *Owner* is or at any time becomes a partnership, and a copy of the most recent declaration filed under the Business Names Act, R.S.O. 1990, c.B17 shall be included in the notification to the *District Manager* ;

(d) change of name of the corporation where the *Owner* is or at any time becomes a corporation, and a copy of the most current information filed under the Corporations Informations Act, R.S.O. 1990, c. C39 shall be included in the notification to the *District Manager* ;

(2) In the event of any change in ownership of the *Works* , other than a change to a successor municipality, the *Owner* shall notify in writing the succeeding owner of the existence of this *Approval* , and a copy of such notice shall be forwarded to the *District Manager* and the *Director* .

4. CONSTRUCTION

(1) The *Owner* shall ensure that the construction of the works is supervised by a licensed installer or a Professional Engineer, as defined in the Professional Engineers Act.

(2) Upon construction of the works, the *Owner* shall prepare a statement, certified by a licensed installer or a Professional Engineer, that the *Works* are constructed in accordance with this *Approval* , and upon verbal request, shall make the written statement available for inspection by *Ministry* staff.

5. MONITORING AND RECORDING

The *Owner* shall, upon commencement of operation of the *Works* , carry out the following monitoring program:

(1) All samples and measurements taken for the purposes of this *Approval* are to be taken at a time and in

a location characteristic of the quality and quantity of the effluent stream over the time period being monitored.

(2) Daily quantities of effluent being disposed of through the subsurface disposal system shall be measured and recorded.

(3) Samples shall be collected of the effluent being discharged to the subsurface disposal system at the frequency specified, in Table 1, by means of the specified sample type and analyzed for each parameter listed and all results recorded:

<b>Table 1</b>	
<b>Effluent Monitoring</b> (effluent from dosing chamber, prior to discharge to subsurface disposal system)	
<b>Frequency</b>	once a month for the first year of operation of the works, quarterly thereafter
<b>Sample Type</b>	grab
<b>Parameters</b>	CBOD5 , Total Suspended Solids, Total Phosphorus, Total Ammonia Nitrogen, Nitrate and Nitrite, TKN, Dissolved Oxygen, Temperature and pH

(4) Establish a groundwater monitoring well 40 metres down-gradient of the subsurface disposal system and a groundwater monitoring well at a significant distance up-gradient from the subsurface disposal system; collect samples at the frequency specified, in Table 2, by means of the specified sample type and analyzed for each parameter listed and all results recorded:

<b>Table 2</b>	
<b>Groundwater Monitoring</b> (at down-gradient monitoring well)	
<b>Frequency</b>	quarterly
<b>Sample Type</b>	grab
<b>Parameters</b>	Total Phosphorus, Nitrate and Nitrite, TKN, Ammonia, Total Suspended Solids, Dissolved Oxygen, Temperature and pH

(5) Water levels in all existing groundwater wells (including the up-gradient and down-gradient groundwater wells to be established pursuant to subsection (4) above) within the vicinity of the leaching bed should be recorded on a quarterly basis

(6) The monitoring requirements outlined in Tables 1 and 2 are minimum requirements which may, after 36 months of monitoring, be modified only by written request by the Owner and approval by the *District Manager* in writing from time to time.

(7) Prior to the startup of the *Works* , background groundwater quality must be established by collecting groundwater samples and having them analyzed for the parameters outlined in Table 2.

(8) The methods and protocols for sampling, analysis and recording shall conform, in order of precedence, to the methods and protocols specified in the following:

(a) the Ministry's Procedure F-10-1, "Procedures for Sampling and Analysis Requirements for Municipal and Private Sewage Treatment Works (Liquid Waste Streams Only), as amended from time to time by more recently published editions;

(b) the Ministry's publication "Protocol for the Sampling and Analysis of Industrial/Municipal Wastewater" (January 1999), ISBN 0-7778-1880-9, as amended from time to time by more recently published editions; and

(c) the publication "Standard Methods for the Examination of Water and Wastewater" (20th edition), as amended from time to time by more recently published editions.

(9) The *Owner* shall retain for a minimum of three (3) years from the date of their creation, all records and information related to or resulting from the monitoring activities required by this *Approval*, on site and be made available to a Provincial Officer upon verbal request.

## 6. EFFLUENT OBJECTIVES

The *Owner* shall use best efforts to design, construct and operate the *Works* with the objective that the concentrations of the materials named below as effluent parameters are not exceeded in the effluent being discharged to the subsurface disposal system.

<b>Table 3 - Effluent Objectives</b>	
<b>Effluent Parameter</b>	<b>Concentration Objective</b> (milligrams per litre)
<i>CBOD5</i>	15
Total Suspended Solids	15
Total Nitrogen	10
Nitrate	3

## 7. OPERATIONS AND MAINTENANCE

(1) The *Owner* shall prepare and operate in accordance with an operations manual within six (6) months of the introduction of sewage to the *Works*, that includes, but not necessarily limited to, the following information:

(a) operating procedures for routine operation of the *Works*; and

(b) inspection programs, including frequency of inspection, for the *Works* and the methods or tests employed to detect when maintenance is necessary.

(2) The *Owner* shall maintain the operations manual current and retain a copy at the location of the *Works* for the operational life of the *Works*. Upon verbal request, the *Owner* shall make the manual available to *Ministry* staff.

(3) The *Owner* shall prepare and make available for inspection by *Ministry* staff, a maintenance agreement with the manufacturer for the treatment process/technology and a complete set of "as constructed" drawings within one (1) year of *Substantial Completion* of the *Works*. The maintenance agreement and drawings must be retained at the site and kept current.

## 8. REPORTING

(1) One week prior to the start up of the operation of the *Works* , the *Owner* shall notify the *District Manager* (in writing) of the pending start up date.

(2) The *Owner* shall prepare and submit a performance report to the District manager (unless notified otherwise by the District Manager) on an annual basis, within ninety (90) days following the end of the period being reported upon. The first such report shall cover the first annual period following the commencement of operation of the *Works* and subsequent reports shall be submitted to cover successive annual periods following thereafter. The reports shall contain, but shall not be limited to, the following information:

(a) a summary and interpretation of all monitoring data and a comparison to the effluent objectives outlined in Condition 6, including an overview of the success and adequacy of the *Works* and recommendations on future groundwater monitoring based on the interpretation of all monitoring data;

(b) a tabulation of the daily volumes of effluent disposed through the subsurface disposal system during the reporting period;

(c) a summary of all maintenance carried out on any major structure, equipment, apparatus, mechanism or thing forming part of the *Works* ; and

(d) a description of any operating problems encountered and corrective actions taken.

## 9. FINANCIAL ASSURANCE

(1) Financial assurance shall be provided to the *Ministry* by the *Owner* , in an amount and form as required by the *Director* , to pay for the compliance with and performance of any action specified in this *Approval* including the clean- up, monitoring and post closure care of the *Sewage Works* . As of the date hereof the Director has determined that the amount of the financial assurance to be provided to the Ministry is the following:

A total of \$108,528.00 due and payable to the Ministry. This full amount has been received by the Ministry.

(2) A report regarding the review of financial assurance required by the conditions in this *Approval* shall be submitted to the *Director* and the *District Manager* by September 1, 2014, and at intervals of not more than three (3) years thereafter. The report shall include:

- a. Updates of the discount, interest and inflation rates associated with the requirements for financial assurance in this *Approval* including justifications and sources of the proposed rates; and
- b. A report prepared by a qualified professional engineer which updates the cost estimates on which the amounts associated with the requirements for financial assurance in this *Approval* are based. The report shall take into consideration:
  - i. the entire sewage treatment and disposal works;
  - ii. operating costs, including annual monitoring costs per the conditions of this *Approval* .

(3) If financial assurance is scheduled to expire or notice is received, indicating financial assurance will not be renewed, and satisfactory methods have not been made to replace the financial assurance at least 60 days before the financial assurance terminates, the financial assurance shall be forthwith replaced with cash.

#### **Schedule 'A'**

1. Application for Approval of Municipal and Private Sewage Works dated February 28, 2011 submitted by Eric Gunnell, P. Eng., of Gunnell Engineering Ltd, Consulting Engineers together with design brief and supporting documentation prepared by Gunnell Engineering Ltd, Consulting Engineers.

*The reasons for the imposition of these terms and conditions are as follows:*

1. Condition 1 is imposed to ensure that the *Works* are built and operated in the manner in which they were described for review and upon which approval was granted. This condition is also included to emphasize the precedence of Conditions in the *Approval* and the practice that the Approval is based on the most current document, if several conflicting documents are submitted for review. The condition also advises the Owners their responsibility to notify any person they authorized to carry out work pursuant to this *Approval* the existence of this *Approval* .
2. Condition 2 is included to ensure that, when the *Works* are constructed, the *Works* will meet the standards that apply at the time of construction to ensure the ongoing protection of the environment.
3. Condition 3 is included to ensure that the *Ministry* records are kept accurate and current with respect to the approved works and to ensure that subsequent owners of the *Works* are made aware of the *Approval* and continue to operate the *Works* in compliance with it.
4. Condition 4 is included to ensure that the works are constructed, and may be operated and maintained such that the environment is protected and deterioration, loss, injury or damage to any person or property is prevented.



5. Condition 5 is included to enable the *Owner* to evaluate and demonstrate the performance of the *Works* , on a continual basis, so that the *Works* are properly operated and maintained at a level which is consistent with the design objectives specified in the *Approval* and that the *Works* does not cause any impairment to the receiving watercourse.
6. Condition 6 is imposed to establish non-enforceable effluent quality objectives which the *Owner* is obligated to use best efforts to strive towards on an ongoing basis. These objectives are to be used as a mechanism to trigger corrective action proactively and voluntarily before environmental impairment occurs.
7. Condition 7 is included to require that the *Works* be properly operated, maintained, and equipped such that the environment is protected. As well, the inclusion of an operations manual, maintenance agreement with the manufacturer for the treatment process/technology and a complete set of "as constructed" drawings governing all significant areas of operation, maintenance and repair is prepared, implemented and kept up-to-date by the owner and made available to the *Ministry* . Such information is an integral part of the operation of the *Works* . Its compilation and use should assist the *Owner* in staff training, in proper plant operation and in identifying and planning for contingencies during possible abnormal conditions. The manual will also act as a benchmark for *Ministry* staff when reviewing the *Owner'* s operation of the work.
8. Condition 8 is included to provide a performance record for future references, to ensure that the *Ministry* is made aware of problems as they arise, and to provide a compliance record for all the terms and conditions outlined in this *Approval*, so that the *Ministry* can work with the *Owner* in resolving any problems in a timely manner.
9. Condition 9 is included to ensure that the *Owner* provides a financial assurance on a timely basis, in an amount adequate to cover the capital and operating costs of the environmental measures for which it is provided and is in a form readily utilizable by *Ministry* personnel.

**Upon issuance of the environmental compliance approval, I hereby revoke Approval No(s). 5820-75EKPJ issued on July 25, 2007.**

*In accordance with Section 139 of the Environmental Protection Act, you may by written Notice served upon me and the Environmental Review Tribunal within 15 days after receipt of this Notice, require a hearing by the Tribunal. Section 142 of the Environmental Protection Act provides that the Notice requiring the hearing shall state:*

1. The portions of the environmental compliance approval or each term or condition in the environmental compliance approval in respect of which the hearing is required, and;
2. The grounds on which you intend to rely at the hearing in relation to each portion appealed.

*Pursuant to subsection 139(3) of the Environmental Protection Act, a hearing may not be required with respect to any terms and conditions in this environmental compliance approval, if the terms and conditions are substantially the same as those contained in an approval that is amended or revoked by this environmental*

*compliance approval.*

*The Notice should also include:*

3. The name of the appellant;
4. The address of the appellant;
5. The environmental compliance approval number;
6. The date of the environmental compliance approval;
7. The name of the Director, and;
8. The municipality or municipalities within which the project is to be engaged in.

*And the Notice should be signed and dated by the appellant.*

*This Notice must be served upon:*

The Secretary\*  
Environmental Review Tribunal  
655 Bay Street, Suite 1500  
Toronto, Ontario  
M5G 1E5

AND

The Director appointed for the purposes of  
Part II.1 of the Environmental Protection Act  
Ministry of the Environment  
2 St. Clair Avenue West, Floor  
12A Toronto, Ontario  
M4V 1L5

**\* Further information on the Environmental Review Tribunal's requirements for an appeal can be obtained directly from the Tribunal at: Tel: (416) 212-6349, Fax: (416) 314-4506 or [www.ert.gov.on.ca](http://www.ert.gov.on.ca)**

*The above noted activity is approved under s.20.3 of Part II.1 of the Environmental Protection Act.*

DATED AT TORONTO this 2nd day of December, 2011



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Ian Parrott,  
P.Eng. Director  
appointed for the purposes of Part II.1 of the  
*Environmental Protection Act*

HV/

c: District Manager, MOE Hamilton District Office  
Eric Gunnell, P. Eng., Gunnell Engineering Ltd.



Ministry of the Environment  
Ministère de l'Environnement

**PERMIT TO TAKE WATER**  
Ground Water  
NUMBER 7853-97NNKF

*Pursuant to Section 34 of the Ontario Water Resources Act, R.S.O. 1990 this Permit To Take Water is hereby issued to:*

Fern Brook Resort Inc.  
Suite 200 - 143 Willowdale Avenue  
Toronto, Ontario M2N 4Y5

*For the water taking from:* Well 3 and Well 9

*Located at:* Lot 11, Concession 11 and 12, Geographic Township of East Flamborough  
Hamilton

*For the purposes of this Permit, and the terms and conditions specified below, the following definitions apply:*

**DEFINITIONS**

(a) "Director" means any person appointed in writing as a Director pursuant to section 5 of the OWRA for the purposes of section 34, OWRA.

(b) "Provincial Officer" means any person designated in writing by the Minister as a Provincial Officer pursuant to section 5 of the OWRA.

(c) "Ministry" means Ontario Ministry of the Environment.

(d) "District Office" means the Hamilton District Office.

(e) "Permit" means this Permit to Take Water No. 7853-97NNKF including its Schedules, if any, issued in accordance with Section 34 of the OWRA.

(f) "Permit Holder" means Fern Brook Resort Inc..

(g) "OWRA " means the *Ontario Water Resources Act*, R.S.O. 1990, c. O. 40, as amended.

*You are hereby notified that this Permit is issued subject to the terms and conditions outlined below:*

**TERMS AND CONDITIONS**

**1. Compliance with Permit**

1.1 Except where modified by this Permit, the water taking shall be in accordance with the application for this Permit To Take Water, dated November 25, 2012 and signed by Paul Colvin, and all Schedules included in this Permit.

1.2 The Permit Holder shall ensure that any person authorized by the Permit Holder to take water under this Permit is provided with a copy of this Permit and shall take all reasonable measures to ensure that any such person complies with the conditions of this Permit.

1.3 Any person authorized by the Permit Holder to take water under this Permit shall comply with the conditions of this Permit.

1.4 This Permit is not transferable to another person.

1.5 This Permit provides the Permit Holder with permission to take water in accordance with the conditions of this Permit, up to the date of the expiry of this Permit. This Permit does not constitute a legal right, vested or otherwise, to a water allocation, and the issuance of this Permit does not guarantee that, upon its expiry, it will be renewed.

1.6 The Permit Holder shall keep this Permit available at all times at or near the site of the taking, and shall produce this Permit immediately for inspection by a Provincial Officer upon his or her request.

1.7 The Permit Holder shall report any changes of address to the Director within thirty days of any such change. The Permit Holder shall report any change of ownership of the property for which this Permit is issued within thirty days of any such change. A change in ownership in the property shall cause this Permit to be cancelled.

## **2. General Conditions and Interpretation**

### **2.1 Inspections**

The Permit Holder must forthwith, upon presentation of credentials, permit a Provincial Officer to carry out any and all inspections authorized by the OWRA, the *Environmental Protection Act*, R.S.O. 1990, the *Pesticides Act*, R.S.O. 1990, or the *Safe Drinking Water Act*, S. O. 2002.

### **2.2 Other Approvals**

The issuance of, and compliance with this Permit, does not:

(a) relieve the Permit Holder or any other person from any obligation to comply with any other applicable legal requirements, including the provisions of the *Ontario Water Resources Act*, and the *Environmental Protection Act*, and any regulations made thereunder; or

(b) limit in any way any authority of the Ministry, a Director, or a Provincial Officer, including the authority to require certain steps be taken or to require the Permit Holder to furnish any further information related to this Permit.

### **2.3 Information**

The receipt of any information by the Ministry, the failure of the Ministry to take any action or require any person to take any action in relation to the information, or the failure of a Provincial Officer to prosecute any person in relation to the information, shall not be construed as:

(a) an approval, waiver or justification by the Ministry of any act or omission of any person that contravenes this Permit or other legal requirement; or

(b) acceptance by the Ministry of the information's completeness or accuracy.

### **2.4 Rights of Action**

The issuance of, and compliance with this Permit shall not be construed as precluding or limiting any legal claims or rights of action that any person, including the Crown in right of Ontario or any agency thereof, has or may have against the Permit Holder, its officers, employees, agents, and contractors.

### **2.5 Severability**

The requirements of this Permit are severable. If any requirements of this Permit, or the application of any requirements of this Permit to any circumstance, is held invalid or unenforceable, the application of such requirements to other circumstances and the remainder of this Permit shall not be affected thereby.

### **2.6 Conflicts**

Where there is a conflict between a provision of any submitted document referred to in this Permit, including its Schedules, and the conditions of this Permit, the conditions in this Permit shall take precedence.

## **3. Water Takings Authorized by This Permit**

### **3.1 Expiry**

This Permit expires on **March 31, 2023**. No water shall be taken under authority of this Permit after the expiry date.

**3.2 Amounts of Taking Permitted**

The Permit Holder shall only take water from the source, during the periods and at the rates and amounts of taking specified in Table A. Water takings are authorized only for the purposes specified in Table A.

**Table A**

	Source Name / Description:	Source: Type:	Taking Specific Purpose:	Taking Major Category:	Max. Taken per Minute (litres):	Max. Num. of Hrs Taken per Day:	Max. Taken per Day (litres):	Max. Num. of Days Taken per Year:	Zone/ Easting/ Northing:
1	Well 3	Well Drilled	Communal	Water Supply	166	20	200,000	365	17 577328 4807149
2	Well 9	Well Drilled	Communal	Water Supply	166	20	200,000	365	17 577581 4807177
							<b>Total Taking:</b>	400,000	

**4. Monitoring**

41 Under section 9 of O. Reg. 387/04, and as authorized by subsection 34(6) of the Ontario Water Resources Act, the Permit Holder shall, on each day water is taken under the authorization of this Permit, record the date, the volume of water taken on that date and the rate at which it was taken. The daily volume of water taken shall be measured by a flow meter or calculated in accordance with the method described in the application for this Permit, or as otherwise accepted by the Director. A separate record shall be maintained for each source. The Permit Holder shall keep all records required by this condition current and available at or near the site of the taking and shall produce the records immediately for inspection by a Provincial Officer upon his or her request. The Permit Holder, unless otherwise required by the Director, shall submit, on or before March 31st in every year, the records required by this condition to the ministry's Water Taking Reporting System.

**5. Impacts of the Water Taking**

**5.1 Notification**

The Permit Holder shall immediately notify the local District Office of any complaint arising from the taking of water authorized under this Permit and shall report any action which has been taken or is proposed with regard to such complaint. The Permit Holder shall immediately notify the local District Office if the taking of water is observed to have any significant impact on the surrounding waters. After hours, calls shall be directed to the Ministry's Spills Action Centre at 1-800-268-6060.

**5.2 For Groundwater Takings**

If the taking of water is observed to cause any negative impact to other water supplies obtained from any adequate sources that were in use prior to initial issuance of a Permit for this water taking, the Permit Holder shall take such action necessary to make available to those affected, a supply of water equivalent in quantity and quality to their normal takings, or shall compensate such persons for their reasonable costs of so doing, or shall reduce the rate and amount of taking to prevent or alleviate the observed negative impact. Pending permanent restoration of the affected supplies, the Permit Holder shall provide, to those affected, temporary water supplies adequate to meet their normal requirements, or shall compensate such persons for their reasonable costs of doing so.

If permanent interference is caused by the water taking, the Permit Holder shall restore the water supplies of those permanently affected.

**6. Director May Amend Permit**

The Director may amend this Permit by letter requiring the Permit Holder to suspend or reduce the taking to an amount or threshold specified by the Director in the letter. The suspension or reduction in taking shall be effective immediately and may be revoked at any time upon notification by the Director. This condition does not affect your right to appeal the suspension or reduction in taking to the Environmental Review Tribunal under the *Ontario Water Resources Act*, Section 100 (4).

*The reasons for the imposition of these terms and conditions are as follows:*

1. Condition 1 is included to ensure that the conditions in this Permit are complied with and can be enforced.
2. Condition 2 is included to clarify the legal interpretation of aspects of this Permit.
3. Conditions 3 through 6 are included to protect the quality of the natural environment so as to safeguard the ecosystem and human health and foster efficient use and conservation of waters. These conditions allow for the beneficial use of waters while ensuring the fair sharing, conservation and sustainable use of the waters of Ontario. The conditions also specify the water takings that are authorized by this Permit and the scope of this Permit.

*In accordance with Section 100 of the Ontario Water Resources Act, R.S.O. 1990, you may by written notice served upon me, the Environmental Review Tribunal and the Environmental Commissioner, **Environmental Bill of Rights**, R.S.O. 1993, Chapter 28, within 15 days after receipt of this Notice, require a hearing by the Tribunal. The Environmental Commissioner will place notice of your appeal on the Environmental Registry. Section 101 of the Ontario Water Resources Act, as amended provides that the Notice requiring a hearing shall state:*

1. The portions of the Permit or each term or condition in the Permit in respect of which the hearing is required, and;
2. The grounds on which you intend to rely at the hearing in relation to each portion appealed.

*In addition to these legal requirements, the Notice should also include:*

3. The name of the appellant;
4. The address of the appellant;
5. The Permit to Take Water number;
6. The date of the Permit to Take Water;
7. The name of the Director;
8. The municipality within which the works are located;

*This notice must be served upon:*

*The Secretary  
Environmental Review Tribunal  
655 Bay Street, 15th Floor  
Toronto ON  
M5G 1E5  
Fax: (416) 314-4506  
Email:  
ERTTribunalsecretary@ontario.ca*

*AND*

*The Environmental Commissioner AND  
1075 Bay Street  
6th Floor, Suite 605  
Toronto, Ontario M5S 2W5*

*The Director, Section 34  
Ministry of the Environment  
12th Floor  
119 King St W  
Hamilton ON L8P 4Y7  
Fax: (905)521-7820*

**Further information on the Environmental Review Tribunal's requirements for an appeal can be obtained directly from the Tribunal:**

**by telephone at (416) 314-4600 by fax at (416) 314-4506 by e-mail at [www.ert.gov.on.ca](http://www.ert.gov.on.ca)**

*This instrument is subject to Section 38 of the **Environmental Bill of Rights** that allows residents of Ontario to seek leave to appeal the decision on this instrument. Residents of Ontario may seek to appeal for 15 days from the date this decision is placed on the Environmental Registry. By accessing the Environmental Registry, you can determine when the leave to appeal period ends.*

This Permit cancels and replaces Permit Number 03-P-2045, issued on 2003/02/26.

Dated at Hamilton this 15th day of May, 2013.



Belinda Koblik  
Director, Section 34  
*Ontario Water Resources Act, R.S.O. 1990*

**Schedule A**

This Schedule "A" forms part of Permit To Take Water 7853-97NNKF, dated May 15, 2013.

**SCHEDULE "D"**

**FORM OF ASSUMPTION AGREEMENT**

**THIS AGREEMENT** dated the \_\_\_\_\_ day of 20\_\_\_\_

**BETWEEN**

**FERBROOK RESORT INC**  
(hereinafter called the "Owner")

OF THE FIRST PART

- and -

**[NAME OF ASSIGNEE]**  
(hereinafter called the "Assignee")

OF THE SECOND PART

- and -

**THE CITY OF HAMILTON**  
(hereinafter called the "Municipality")

OF THE THIRD PART

**WHEREAS** the Owner and the Municipality entered into and executed a Municipal Responsibility Agreement dated \_\_\_\_\_ in respect of the lands described in Schedule "A" hereto (the "Land");

**AND WHEREAS** a notice of the Municipal Responsibility Agreement was registered against title to the Land as Instrument No. on [date]; \_\_\_\_\_

**AND WHEREAS** the Land has been [will be] transferred from the Owner to the Assignee;

**AND WHEREAS** Assignee has indicated that it will assume all of the Owner's duties, liabilities and responsibilities as set out in the Municipal Responsibility Agreement;

**AND WHEREAS** Council for the Municipality has consented to releasing the Owner from its duties, liabilities and responsibilities under said Municipal Responsibility Agreement subject to the Assignee accepting and assuming the Owner's duties, liabilities and responsibilities and subject to the Assignee, the Owner and the Municipality entering into and executing an assumption agreement whereby the Assignee will assume all of the Owner's duties, liabilities and responsibilities in the Responsibility Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the mutual covenants hereinafter expressed and other good and valuable consideration, the parties hereto agree as follows:

1. The Assignee covenants and agrees to accept, assume and to carry out the Owner's duties, liabilities and responsibilities under the Municipal Responsibility Agreement and in all respects to be bound under said Municipal Responsibility Agreement as if the Assignee had been the original party to the agreement in place of the Owner.
2. The Municipality hereby releases the Owner from all claims and demands of any nature whatsoever against the Owner in respect of the Municipal Responsibility Agreement. The Municipality hereby accepts the Assignee as a party to the Municipal Responsibility Agreement in substitution of the Owner, and agrees with the Assignee that the Assignee



will be bound by all the terms and conditions of the Agreement as if the Assignee had been the original executing party in place of the Owner.

3. Clause \_\_\_\_\_ of the Municipal Responsibility Agreement is hereby amended to [*specify revision*].
4. All of the terms, covenants, provisos and stipulations in the said Municipal Responsibility Agreement are hereby confirmed in full force save and except for the amendments noted in Clauses 1, 2 and 3 herein and such other modifications as necessary to make said clauses applicable to the Municipal Responsibility Agreement.

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

**SIGNED, SEALED & DELIVERED**

)  
)  
) **FERN BROOK RESORT INC.**  
)  
)  
) \_\_\_\_\_  
) Name:  
) Title:  
) I have authority to bind the corporation.  
)  
)  
) [*NAME OF ASSIGNEE*]  
)  
)  
) \_\_\_\_\_  
) Name:  
) Title:  
) I have authority to bind the corporation.  
)  
)  
) **THE CITY OF HAMILTON**  
)  
) \_\_\_\_\_  
) Mayor  
)  
)  
) \_\_\_\_\_  
)  
)  
) Clerk

**SCHEDULE "E"**

**FORM OF CAPITAL RESERVE FUND TRUST AGREEMENT  
(to be provided upon approval of balance of RA)**

**THIS TRUST AGREEMENT** is effective this \_\_\_ day of \_\_\_, 2014,

B E T W E E N:

**FERN BROOK RESORT INC.** (the "OWNER"),

OF THE FIRST PART

-and-

**CITY OF HAMILTON** (the "MUNICIPALITY")

OF THE SECOND PART

- and -

**TRUSTEE**

\_\_\_\_\_ (the "TRUSTEE").

OF THE THIRD PART

WHEREAS the Owner and Municipality entered into an agreement on the \_\_\_ day of \_\_\_\_\_, 2014 (the "Municipal Responsibility Agreement") over the Owner's lands located at 57 and 58 12<sup>th</sup> Concession Road East in the City of Hamilton and more particularly described in Schedule A to the Municipal Responsibility Agreement, to secure the Owner's provision and maintenance of private water and sewer services, defined therein as Private Services;

AND WHEREAS the Owner wishes to establish a trust for the purposes of creating a Capital Reserve Fund in accordance with and subject to the terms of the Municipal Responsibility Agreement;

AND WHEREAS the Owner is required to make contributions to the trust in an amount specified by a Reserve Fund Study attached to the Municipal Responsibility Agreement, and as may be amended by a subsequent Annual Reserve Assessment, subject to the Municipality's approval;

AND WHEREAS the Owner intends that the Capital Reserve Fund will be held in trust for the sole purpose of effecting capital expenditures for repairs, maintenance and/or enhancement of the Private Services;


NOW THEREFORE, the parties do hereby establish the trust and agree that the trust shall be comprised, held and disposed of as follows:

**1. Municipal Responsibility Agreement**

Reference is made to the Municipal Responsibility Agreement entered into as of the \_\_\_ day of \_\_\_\_\_, 2014 between the Owner and the Municipality. Capitalized terms used but not defined herein shall have the meanings given to them in the Municipal Responsibility Agreement.

**2. Establishment of Trust**

- (a) The Owner hereby establishes a reserve fund trust (the "Capital Reserve Fund") with the Trustee, consisting of ONE HUNDRED FORTY-TWO THOUSAND ONE HUNDRED EIGHTY DOLLARS (\$142,180.00) (the "Capital Reserve Fund Initial Contribution") and such sums of money from time to time paid, delivered, and accepted by the Trustee from the Owner pursuant to the terms of the Municipal Responsibility Agreement.
- (b) that the Capital Reserve Fund shall be held by the Trustee for the purposes of and pursuant to the provisions of this Agreement and that the Trustee shall only invest sums in the Capital Reserve Fund in investments authorized for the Trustees by the *Trustee Act*, R.S.O. 1990, c. T.23 and by the *Municipal Act, 2001*, S.O. 2001, c. 25 and O. Reg. 438/97, as may be amended from time to time.

- (c) The Capital Reserve Fund shall contain, as a minimum, the Capital Reserve Fund Initial Contribution. The Trustee shall be required to immediately notify the Owner and the Municipality in writing if the Capital Reserve Fund falls below the Capital Reserve Fund Initial Contribution, for any reason.
- (d) The Trustee shall have no duty to determine any contribution under the Municipal Responsibility Agreement and shall have no responsibility for any funds until it is received and accepted by the Trustee.
- (e) The Trustee shall be required to advise the Owner and the Municipality annually, in writing, of the balance, details of all claims made (including date, purpose and amount), monies disbursed, and any Reserve Fund Charge payments or amounts owing by the Owner ("Trustee Report"). In the event that the Owner does not restore the Capital Reserve Fund within three (3) months of the Trustee Report, the outstanding balance shall be subject to the equivalent interest rate applicable to property tax arrears in effect in the Municipality at the time. 
- (f) The principal of the Capital Reserve Fund, and any interest, earnings or income thereon which shall be added to the principal balance of the Capital Reserve Fund, shall be used exclusively for the purposes of the Municipal Responsibility Agreement subject to this Trust Agreement.

### **3. Trust Funding Requirement**

- (a) The Owner shall, on a monthly basis and on the same day of each successive month, pay the total Reserve Fund Charge into the Capital Reserve Fund, as outlined in the Municipal Responsibility Agreement and as may be amended by the Annual Reserve Assessment, which shall be subject to the Municipality's approval.
- (b) The Owner shall register on title to the Lands, an assignment of the Reserve Fund Charge in favour of the Municipality.
- (c) the Owner acknowledges and agrees that Capital Reserve Fund, and the obligation to contribute shall remain in place notwithstanding the fact that the Municipality may have assumed the temporary or permanent operation, maintenance and management of the Private Services in accordance with the provisions of this Agreement.
- (d) The Capital Reserve Funds shall be funded by the Owner. The Owner is solely responsible for the monthly Reserve Fund Charge contributions. The mechanism, amount and frequency by which the Owner collects or recovers these funds, or any part thereof, from his tenants or by other means is outside the scope of this Agreement.

### **4. Payments out of the Trust Funds**

#### **(a) Release of Reserve Funds**

- i) the Owner requests funds from the Trustee to meet its obligations under this Agreement, the Municipal Responsibility Agreement or applicable legislation, regulations, by-laws, orders or guidelines;
- ii) the Ministry makes an order to the Owner or Municipality to carry out any work on the Private Services;
- iii) the Municipality requires funds to remedy any Default of the Owner;
- iv) the Municipality requires funds to replenish the Municipal Operations Fund following any withdrawals made from it for any purposes under the Municipal Responsibility Agreement; or
- v) the Municipality has authorized a release of surplus funds in accordance with subsection 12.3(d) of the Municipal Responsibility Agreement and in section 4(b) of this Agreement.

(b) Release of Surplus Funds to Owner

Where the amount in the Capital Reserve Fund exceeds the Minimum Reserve, the Owner may apply to the Municipality to authorize the Trustee's release of funds from the Capital Reserve Fund to use for the Owner's purposes, and the Municipality may, in its sole discretion acting reasonably, authorize the Trustee to release the specified funds.

Prior to authorizing any withdrawal, the Municipality shall review the Annual Report described in subsection 7(b) of the Municipal Responsibility Agreement and the Trustee Reports to determine whether or not sufficient funds are available for a payout. The discretion as to whether or not a release of surplus funds is prudent, and the amount, is in the sole discretion of the Municipality.

(c) Assumption of Responsibility

If the Municipality is required temporarily or permanently assume responsibility or any third party assumes responsibility of the operation and maintenance of the Private Services pursuant to the terms of the Municipal Responsibility Agreement (the "Assuming Party"), the Assuming Party may request the release of funds, pursuant to this Agreement, from the Capital Reserve Fund to meet their obligations under the Municipal Responsibility Agreement.

(d) Request for Release of Funds

- i) To request for a release of funds from the Capital Reserve Fund, a party shall serve the Trustee with a notice requesting funds (the "Notice"). The Notice shall include the amount requested, the anticipated date which the funds will be used and by which dates the works will be completed, purpose for which the funds are to be used, estimates, reports, quotes, or invoices for which the funds are being requested, and anything which the Trustee may reasonably require for such Notice. Unless in the case of emergencies, within five (5) business days of acceptance of the Notice, if the Trustee is satisfied with the purpose of the request in its discretion, the Trustee shall release the funds to the requesting party.
- ii) The requesting party and Trustee will work together to administer the payments out of the Capital Reserve Fund directly to any contractor or supplier who has provided services in accordance with the Notice provided pursuant to section 3(c) of this Agreement. The requesting party shall have full discretion as to the timing and amount of the payment to be made within the Notice amount.
- iii) Within thirty (30) days of completing any capital works for which funds were dispersed, the requesting party shall provide the Trustee with final invoices for all related expenditures and reinstate any excess funds to the Capital Reserve Fund.

(e) Reimbursement of Funds

The Owner may request a release of funds from the Capital Reserve Fund for expenditures already made by the Owner which normally would have been paid out of the Capital Reserve Fund by providing the purpose for which the funds were used and proof of expenditure in the form of an invoice, receipt, or any proof which the Trustee may reasonably require. The Trustee shall reimburse the Owner of such payment with funds from the Capital Reserve Fund.

(f) Conditions Precedent

Disbursement from the Capital Reserve Fund shall be made to the Owner only if the following conditions precedent have been satisfied, as reasonably determined by the Trustee:

- i) No Lien Claim. No construction lien or claim has been filed or asserted against the property;
- ii) Approvals. All licenses, permits, and approvals of governmental and/or regulatory authorities required for the capital works as completed to the applicable stage have been obtained;

- iii) Legal Compliance. The capital works as completed to the applicable stage do not violate any laws, rules or regulations, or restrictions applicable to the property.

(g) Notice to Municipality if Capital Works not Completed

If the Owner abandons or fails to proceed diligently to undertake and/or complete any capital replacement in a timely fashion or is otherwise in default under this Agreement for thirty (30) days after written notice of such failure by the Trustee to the Owner, the Trustee shall notify the Municipality, who may avail itself of such remedies available to it under this Agreement, the Municipal Responsibility Agreement or otherwise at law to require or cause the capital works to be completed and funded by the Owner.

(h) Insufficient Account

If the Owner requests disbursement from the Capital Reserve Fund for a capital works in accordance with this Agreement in an amount which exceeds the amount in the Capital Reserve Fund, the Trustee shall disburse to Owner a maximum of 50% of the amount in the Capital Reserve Fund or the Minimum Reserve, whichever amount is greater, and shall immediately notify the Municipality. The Owner shall pay all additional amounts required in connection with any such capital works from the Owner's own funds.

## 5. Investment and Administrative Authority

In addition to any rights conferred by law, the Trustee shall have the authority for the following:

- (a) the Trustee may invest and reinvest the principal and income of the Trust and keep it invested, without distinction between principal and income, in any investment authorized by the Trustee Act R.S.O. 1990, c. T.23, Municipal Act, 2001, S.O. 2001, c. 25 and O. Reg. 438/97, as may be amended from time to time. in the Trustee's sole discretion;
- (b) the Trustee may deposit funds into interest bearing accounts in any banking operation, and any interest earned on such moneys shall be added to the principal balance of the Capital Reserve Fund;
- (c) the Trustee may settle, compromise, or submit to arbitration any claims, debt or damages due or owing to or from the Trust; the Trustee may also commence or defend suits or legal proceedings to protect any interest of the Trust, and may represent the Trust in all suits or legal proceedings in any court or before any other body or tribunal; and
- (d) the Trustee may generally do any act, which the Trustee may deem necessary or desirable for the protection of the Trust.

## 6. Disposition of Income

All income received by the Trust, net of expenses and taxes, shall be accumulated and reinvested.

## 7. Accounting by Trustee

- (a) The Trustee shall keep accurate and detailed records of all contributions, investments, receipts, disbursements, and all other transactions made.
- (b) The Trustee shall provide both the Owner and Municipality a summary of the Capital Reserve Fund annually, and by no later than January 31<sup>st</sup> of each year ("Trustee Report").
- (c) The Trustee Report shall further identify any Reserve Fund Charge payments or amounts owing by the Owner for the reporting period.
  - i) The Owner shall pay all outstanding amounts identified in the Trustee Report within three (3) months of its issue.

- ii) In the event that the Owner does not restore the Capital Reserve Fund within three (3) months of the Trustee's Report issuance, the outstanding balance shall have to the equivalent interest rate applicable to property tax arrears in effect in the Municipality at the time applied to it, and the Trustee shall maintain accounting records documenting same.

## **8. Responsibility of Trustee**

The Trustee shall have all powers conferred on Trustees by applicable law and shall be responsible for the following:

- (a) The Trustee shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.
- (b) The Trustee shall not use the Capital Reserve Fund to personally benefit the Owner or use the Capital Reserve Fund as a mortgage on the Lands.
- (c) The Trustee has no duties or responsibilities other than those expressly contained in the Municipal Responsibility Agreement and this Trust Agreement. In any case in which a provision of this Trust Agreement conflicts with any provision in the Municipal Responsibility Agreement, Municipal Responsibility Agreement shall control.
- (d) The Owner agrees to indemnify and hold harmless the Trustee, its parent, subsidiaries and affiliates, and each of their respective officers, directors, employees and agents from and against all liability, loss and expense, including reasonable legal fees and expenses incurred by the Trustee or any of the foregoing indemnitees arising out of or in connection with Trust Agreement, except as a result of the Trustee's own negligence, willful misconduct, bad faith or breach of this Trust Agreement or of its fiduciary duties.
- (e) The Trustee may consult with legal counsel (who may also be counsel for the parties generally) with respect to any of its duties or obligations hereunder and as a part of its reimbursable expenses under this Trust Agreement, pay counsel's reasonable compensation and expenses. The Trustee shall be entitled to rely on and may act upon advice of counsel on all matters, and shall be without liability for any action reasonably taken or omitted pursuant to such advice.
- (f) The Trustee may hire agents, accountants, actuaries, investment advisors, financial consultants or other professionals, including affiliates, to assist it in performing any of its duties or obligations hereunder, all of which shall be subject to the Owner's consent.
- (g) Notwithstanding anything in this Trust Agreement to the contrary contained herein, the Trustee shall not be responsible or liable for any losses to the Trust resulting from any event beyond the reasonable control of the Trustee, its agents or custodians, including but not limited to nationalization, strikes, expropriation, devaluation, seizure, or similar action by any governmental authority, de facto or de jure; or enactment, promulgation, imposition or enforcement by any such governmental authority of currency restrictions, exchange controls, levies or other charges affecting the Trust's property; or the breakdown, failure or malfunction of any utilities or telecommunications systems; or any order or regulation of any banking or securities industry including changes in market rules and market conditions affecting the execution or settlement of transactions; or acts of war, terrorism, insurrection or revolution; or acts of God; or any other similar event. This Section shall survive the termination of this Trust Agreement.
- (h) The Trustee shall not be liable for any act or omission of any other person, except to the extent that such person is an agent of the Trustee or under the control of the Trustee, in carrying out any responsibility imposed upon such person and under no circumstances shall the Trustee be liable for any indirect, consequential, or special damages with respect to its role as Trustee.

## **9. Compensation and Expenses of Trustee**

The Trustee shall be entitled to reimbursement of its reasonable costs and expenses incurred performing its obligations under this Trust Agreement and shall be entitled to:

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## **10. Resignation and Removal of Trustee**

- (a) The Trustee may resign at any time by written notice to the parties, which shall be effective sixty (60) days after receipt of such notice unless the parties and the Trustee agree otherwise.
- (b) The Trustee may be removed by the Owner on sixty (60) days notice or upon shorter notice accepted by the Trustee.
- (c) Upon resignation or removal of the Trustee and appointment of a successor Trustee, all assets shall subsequently be transferred to the successor Trustee, whose appointment shall be on consent of the Municipality acting reasonably. The transfer shall be completed within ninety (90) days after receipt of the notice of resignation or removal, unless the Owner extends the time limit.
- (d) If the Trustee resigns or is removed, a successor shall be appointed in accordance with Section 11 hereof by the effective date of resignation or removal under this Section. If no such appointment has been made, the Trustee may apply to a court of competent jurisdiction for appointment of a successor or for instructions. The Trustee shall continue to fulfill its duties hereunder and shall receive compensation pursuant to Section 8 until the successor's appointment is effective. All expenses of the Trustee in connection with the proceeding shall be allowed as administrative expenses of the Trust.

## **11. Appointment of Successor**

If the Trustee resigns or is removed in accordance with Section 10 hereof, the Owner shall appoint another third party as a successor, on consent of the Municipality acting reasonably, to replace the Trustee upon such resignation or removal. The appointment shall be effective when accepted in writing by the new Trustee, who shall have all of the rights and powers of the former Trustee, including ownership rights in the Trust assets. The former Trustee shall execute any instrument necessary or reasonably requested by the Owner or the successor Trustee to evidence the transfer.

## **12. Amendment or Termination**

- (a) This Trust Agreement may be amended by a written instrument which is executed by the parties and which recites that it is an amendment to this Trust Agreement. Notwithstanding the foregoing, no such amendment shall conflict with the terms of the Municipal Responsibility Agreement.
- (b) The Trust shall not terminate until the date on which the parties are no longer entitled to the benefits pursuant to the terms of the Municipal Responsibility Agreement.
- (c) Upon termination of the Trust, any assets remaining in the Trust shall be returned as follows:
  - i) to the Owner, if the Owner is the operator of the Private Services at the date of termination; or
  - ii) to the Municipality, if the Municipality is the operator of the Private Services at the date of termination.

## **13. Reliance of Representations**

The Owner and the Trustee each acknowledge that the other will be relying, and shall be entitled to rely, on the representations, undertakings and acknowledgments of the other as set forth in this Trust Agreement. The Owner and the Trustee each agree to notify the other promptly if any of its



representations, undertakings, or acknowledgments set forth in this Trust Agreement ceases to be true.

The Owner and the Trustee hereby each represent and warrant to the other that it has full authority to enter into this Agreement upon the terms and conditions hereof and that the individual executing this Trust Agreement on their behalf has the requisite authority to bind the Owner and the Trustee to this.

**14. Notice**

Any notice, delivery, payment or tender of money or document to a party hereunder may be delivered personally or sent by prepaid registered or certified mail or prepaid courier to the following addresses:

To the Owner:

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To the Trustee:

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To the Municipality:

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and any such notice, delivery or payment so delivered or sent shall be deemed to have been given or made and received upon delivery of same or on the third (3rd) business day following the mailing of same, as the case may be. Each party may, by notice in writing to the others from time to time, designate an alternative address in Canada to which notices given more than ten (10) days thereafter shall be addressed. Notwithstanding the foregoing, any notice, delivery, payment or tender of money or document(s) to be given or made to any party hereunder during any disruption in the service of the Canada Post Office shall be deemed to have been received only if delivered personally or sent by prepaid courier.

**15. Miscellaneous**

Neither the Owner nor the Trustee may assign this Trust Agreement without the prior written consent of the other and the Municipality, except that the Trustee may assign its rights and delegate its duties hereunder to any corporation or entity which directly or indirectly is controlled by, or is under common control with, the Trustee. This Trust Agreement shall be binding upon, and inure to the benefit of, the Owner and the Trustee and their respective successors and permitted assigns. Any entity which shall by merger, consolidation, purchase, or otherwise, succeed to substantially all the trust business of the Trustee shall, upon such succession and without any appointment or other action by the Owner, be and become successor trustee hereunder, upon notification to the Owner.

Any provision of this Trust Agreement prohibited by law shall be ineffective to the extent of any such prohibition, without invalidating the remaining provisions hereof.

This Trust Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.



**SCHEDULE "F"**

**RESERVE FUND STUDY**

## Fernbrook Resort – Total Reserve Assessment Water & Sewage Treatment Systems – February 21, 2014

Total Reserve Assessment based on 150 year round sites + 100 seasonal sites + 3 staff apartments + 1 Manager's Residence + Clubhouse + 20 hotel units  
Year round uses = 150 sites + 3 staff apartments + Manager's Residence

Total Daily Sewage Design Flow = 110,000 Litres / day

Year round occupancy = 150 sites x 400 L / day + 3 staff apartments x 1,100 L / day + 1 Manager's Residence x 1,100 L / day = 64,400 L / day  
64,400 L / day = 60% of Total Design Flow (rounded)

### 15% Replacement Capital Cost Assessment:

Water Treatment / Distribution System	\$ 516,550.00
Wastewater Treatment / Collection System	\$ 827,950.00
Total	<u>\$ 1,344,500.00</u>
15% Replacement Capital Costs	<b>\$ 201,675.00</b>

A \$201,675.00 lump sum payment would represent 15% of the replacement capital costs of both the water & sewage treatment systems serving the 150 year-round sites, 3 staff apartments, and Manager's Residence. This amount can be achieved by providing funds in the amount of \$93,147.00, in addition to the \$108,528 Financial Assurance funds currently held by the Ministry of Environment.

### Three (3) Years Operating Costs:

Annual Wastewater System Maintenance / Operation	\$ 21,200.00
Annual Drinking Water System Maintenance / Operation	\$ 24,000.00
Annual Total	<u>\$ 45,200.00</u>

The annual maintenance and operation costs for the regulated drinking water and wastewater treatment systems, is based on the current ESSE contract in the amount of \$45,200.00. Three-years operating costs totals \$135,600.00.

### Annual Reserve Assessment (150 sites + 3 staff Apartments + Manager's Residence):

Water	\$ 26,230.00
Sewage	\$ 44,860.00
Total (based on Total Daily Sewage Design Flow)	<u>\$ 71,090.00</u>
Monthly Reserve Contribution	<b>\$ 5,924.17</b>

### Reserve Assessment Summary

#### WATER TREATMENT SYSTEM

Item	Capital Cost (\$)	Life Span (Years)	Reserve Assessment \$ / Year	Comments
<i>Part I - Water treatment system, Well equipment</i>	182,550.00	3-25	16,780.00	see equipment replacement breakdown – page 3
<i>Part II - Water treatment building &amp; tanks</i>	75,000.00	30	2,375.00	see equipment replacement breakdown – page 4
<i>Part III - Water distribution system *</i>	219,000.00	40	5,475.00	lump sum amount
<i>Part IV - Misc. components</i>	40,000.00	25	1,600.00	lump sum amount
<b>Total</b>	<b>\$516,550.00</b>		<b>\$26,230.00</b>	

#### WASTEWATER TREATMENT SYSTEM

Item	Capital cost (\$)	Life Span (Years)	Reserve Assessment \$ / Year	Comments
<i>Part I - Sewage treatment equipment</i>	171,050.00	5-25	22,710.00	see equipment replacement breakdown – page 5
<i>Part II - Sewage treatment building &amp; tanks</i>	100,000.00	20-40	3,000.00	see equipment replacement breakdown – page 6
<i>Part III - Subsurface disposal field *</i>	42,000.00	25	1,680.00	lump sum amount
<i>Part IV – Sewage collection / Distribution system *</i>	438,000.00	40	10,950.00	lump sum amount
<i>Part V – Sewage collection, pumps/controls *</i>	36,900.00	7.5	4,920.00	lump sum amount
<i>Part VI - Misc. components, vaults</i>	40,000.00	25	1,600.00	lump sum amount
<b>Total</b>	<b>\$827,950.00</b>		<b>\$44,860.00</b>	

\* 60% of capital costs used to account for the portion of services used by the 150 year-round sites.

**Water Treatment System - Equipment Replacement**

Item	Lifespan (years)	Cost / unit (\$)	Quantity	Total cost / Item (\$)	Annual to Reserve (%)	Annual Maintenance (\$)	Annual Contribution to Reserve Fund (\$)
Prominent Gala	5	1,750.00	2	3,500.00	20		700.00
Flow sensor	5	1,250.00	1	1,250.00	20		250.00
Chlorine probe analyzer	5	5,000.00	1	5,000.00	20		1,000.00
Reader	5	2,500.00	1	2,500.00	20		500.00
Turbidity probe analyzer	5	3,000.00	1	3,000.00	20		600.00
Reader	10	2,500.00	1	2,500.00	10		250.00
Data logger (sensaphone)	10	2,400.00	1	2,400.00	10		240.00
Strain rite filter	10	4,100.00	5	20,500.00	10		2,050.00
Harmsco Hurricane 90	10	1,850.00	4	7,400.00	10		740.00
Prominent Beta	5	1,250.00	2	2,500.00	20		500.00
Hallett 30 UV light	10	5,500.00	4	22,000.00	10		2,200.00
Pressure tanks	10	600.00	8	4,800.00	10		480.00
Pump	10	2,100.00	4	8,400.00	10		840.00
Pump drive	10	4,700.00	4	18,800.00	10		1,880.00
2 hp well pump	3	1700.00	1	1700.00	30		510.00
Motor	5	700.00	1	700.00	20		140.00
Control	5	600.00	1	600.00	20		120.00
Flow meter	10	6,500.00	2	13,000.00	10		1300.00
Plumbing and labour	25	62,000.00	1	62,000.00	4		2,480.00
Maintenance/operation*						24,000.00	
<b>Total</b>				<b>\$182,550.00</b>		<b>\$24,000.00</b>	<b>\$16,780.00</b>

\*Maintenance/operation cost is based on the current operation contract

**WATER TREATMENT SYSTEM – Physical Plant Replacement**

Item	Lifespan (Years)	Cost / unit (\$)	Quantity	Total cost / Item (\$)	Annual to Reserve (%)	Annual Maintenance (\$)	Annual Contribution to Reserve Fund (\$)
Tanks	40	55,000.00	1	55,000.00	2.5		1,375.00
Building	20	20,000.00	1	20,000.00	5		1,000.00
<b>Total</b>				<b>\$75,000.00</b>			<b>\$2,375.00</b>

**SEWAGE TREATMENT SYSTEM - Equipment Replacement**

Item	Lifespan (Years)	Cost / unit (\$)	Quantity	Total Cost / Item (\$)	Annual to Reserve (%)	Annual Maintenance	Annual Contribution to Reserve Fund (\$)
Pump vault pumps	5	2,000.00	2	4,000.00	20		800.00
Flow equalization (2), Mixed liquor (2), Clarifier (2), Final Chamber (3)	5	850.00	9	7,650.00	20		1530.00
Mixer motors, 1 hp	5	3,800.00	2	7,600.00	20		1,520.00
Mixer motors, 1/2 hp	5	3,600.00	2	7,200.00	20		1,440.00
Blowers, sludge	5	2,700.00	4	10,800.00	20		2,160.00
Blowers, skimmers	5	525.00	2	1,050.00	20		210.00
Air diffusers	5	50.00	10	500.00	20		100.00
Transfer Station Sewage pumps	5	2,000.00	2	4,000.00	20		800.00
Control Panel (including timers)	10	8,000.00	1	8,000.00	10		800.00
Flow meter	10	4,100.00	2	8,200.00	10		820.00
Data logger (sensaphone) Treatment Plant	10	2,000.00	1	2,000.00	10		200.00
Autodialer (Transfer Pump Station)	5	1000.00	1	1,000.00	20		200.00
Methanol Injection Pumps (Stenner)	5	700.00	2	1,400.00	20		280.00
Sewage distribution/collection pumps	5	1,150.00	41	47,150.00	20		9,430.00
Plumbing, electrical, labour	25	60,500.00	1	60,500.00	4		2,420.00
Maintenance/operation*						21,200.00	
Methanol (consumable)		N/A	N/A			N/A	
<b>Total</b>				<b>\$171,050.00</b>		<b>\$21,200.00</b>	<b>\$22,710.00</b>

\*Maintenance/operation cost is based on the current operation contract  
Note: Pump floats included in pump cost



**SEWAGE TREATMENT SYSTEM – Physical Plant Replacement**

Item	Lifespan (Years)	Cost / unit (\$)	Quantity	Total Cost / Item (\$)	Annual to Reserve (%)	Annual Maintenance	Annual Contribution to Reserve Fund (\$)
Tanks	40	80,000.00	1	80,000.00	2.5		2,000.00
Building	20	20,000.00	1	20,000.00	5		1,000.00
<b>Total</b>				<b>\$100,000.0</b>			<b>\$3,000.00</b>

This information has been prepared by ESSE Environmental and is based on three year’s operating and the available information / documentation for the water and sewage treatment systems at Fernbrook Resort.

Prepared by:

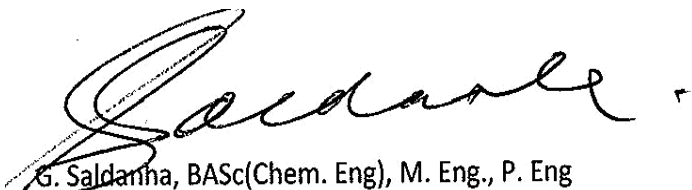


Jason Berry,  
BSc. Project  
Manager

Drinking Water- Certified Operator - Limited Surface Water Subsystems MOE Lic. #64536  
Certified Sewage Disposal System Inspector/Installer BCIN #41916



Rick Esselment, BSc., BASc., DOHS, CPHI(c)  
President Certified Public Health Inspector #4490  
Certified Sewage Disposal System Inspector/Installer BCIN #15244  
Drinking Water- Certified Operator - Limited Surface Water Subsystems MOE Lic. # 59749



G. Saldanha, BASc(Chem. Eng), M. Eng., P. Eng  
Senior Environmental Engineer

## SCHEDULE "G"

### INSURANCE PROVISIONS

1. The Owner agrees to purchase and maintain in force, at its sole cost and expense, including the payment of all deductibles:
  - (a) Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily injury and personal injury liability, property damage, products liability, completed operations liability, owners & contractors protective liability, blanket contractual liability, premises liability, broad form property damage, employer's liability and voluntary compensation), non-owned automobile liability and contingent employer's liability coverage, having an inclusive limit of not less than Two Million Dollars (\$2,000,000) per occurrence.
  - (b) a policy of Broad Form Property Insurance based on the full replacement cost of the Private Services. The Developer shall be the named insured and the Municipality shall be named as additional insured as their interest may appear.
  - (c) The insurance policies referred to herein shall be in force and effect upon the execution of this Agreement by the Owner and hereafter until the Municipality has permanently assumed the operation, maintenance and management of the Private Services in accordance with the provisions of this Agreement.
  - (d) Certificates of insurance, originally signed by authorized insurance representatives or, if required by the Municipality, certified copies of policies, shall be delivered to the Municipality upon execution of this Agreement and for all policy renewals thereafter during the term of this Agreement within sixty (60) days of their renewal date. Certificate Holder will be addressed as the City Of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5, attn. Planning and Economic Development Department. All certificates, cancellation, nonrenewal or adverse change notices should be mailed to this address.
  - (e) All insurers shall be licensed to do business in Ontario and such insurers and the insurance policy wordings and terms shall be acceptable to the Municipality.
  - (f) The insurance certificates and policies shall contain a provision that the insurer shall not cancel or materially change coverage as would effect this Agreement without providing the Municipality at least thirty (30) days prior written notice.
  - (g) If the Owner fails to arrange or fails to obtain or maintain any such policies or insurance referred to herein, the Municipality may do so (but is not obligated to) and may pay the premium and applicable sales tax, and the Owner will reimburse to the Municipality the amounts so paid.
  - (h) All insurance coverage to be provided by the Owner in this Agreement shall be primary and not call into contribution any other insurance coverage available to the Municipality. The Owner shall not do or omit to do anything which would impair or invalidate the insurance policies.
2. The Owner further agrees to require from the contractor(s) retained by the Developer to construct and install the Private Services pursuant to the Agreement:
  - (a) Commercial General Liability Insurance, including but not limited to bodily injury and personal injury liability, property damage, having an inclusive limit of not less than Two Million Dollars (\$2,000,000) per occurrence and endorsed to include the City of Hamilton and the Developer as additional insureds.
  - (b) Builder's Risk Insurance based on the full replacement cost of the Private Services Systems. The contractor(s) shall be the named insured(s) and the City of

Hamilton and the Developer shall be named as additional insureds as their interests may appear.

- (c) The insurance policies referred to in clauses 2(a), (b) and (c) of this Schedule "G" shall be in force and effect upon the commencement of the construction of the Private Services or of any repairs, upgrades, improvements or other measures to the Private Services required under subsection 8(a), and thereafter until the completion of all phases of the construction of the Private Services.
- (d) Certificates of insurance, originally signed by authorized insurance representatives, or, if required by the Municipality, certified copies of policies, shall be delivered to the Municipality prior to the commencement of any construction of the Private Services or of any repairs, upgrades, improvements or other measures to the Private Services required under subsection 8(a) and for all policy renewals thereafter during the term of this Agreement within sixty (60) days of their renewal date.
- (e) All insurers shall be licensed to do business in Ontario and such, insurers and the insurance policy wordings and terms shall be acceptable to the Municipality.
- (f) The insurance certificates and policies shall contain a provision that the insurer shall not cancel or materially change coverage as would effect this Agreement without providing the Municipality at least thirty (30) days prior written notice.
- (g) If the Owner or the contractor fails to arrange or fails to obtain or maintain any such policies or insurance referred to herein, the Municipality may do so (but is not obligated to) and may pay the premium and applicable sales tax, and the Owner will reimburse to the Municipality the amounts so paid.
- (h) All insurance coverage which the Owner has agreed to require from its contractor in this Agreement shall be primary and not call into contribution any other insurance coverage available to the Municipality. The Developer shall not do or omit to do anything which would impair or invalidate the insurance policies.