

MONITORING AGREEMENT

THIS AGREEMENT dated the _____ day of _____, 201_

BETWEEN:

CANADIAN REFORMED SCHOOL SOCIETY OF FLAMBOROUGH INC.

(hereinafter called the "Owner")

- and -

CITY OF HAMILTON

(hereinafter called the "City")

WHEREAS the Owner warrants to the City 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 City for a site plan approval on the Lands;

AND WHEREAS the development on the Lands is to be serviced by means a private sewage system owned by the Owner, as described in a report prepared by CMT Engineering Inc., dated October 3, 2016 (the "Private Services");

AND WHEREAS the City has granted final site plan approval for the Lands through a letter dated October 12, 2016 which requires the Owner to enter into and have registered on title a monitoring agreement for the Private Services;

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 drinking water systems serving designated facilities , as defined therein;

AND WHEREAS the City requires and the Owner agrees that the Owner shall, at the Owner's expense, properly construct, operate, maintain, monitor, repair, replace and enhance the private sewage 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 City to assume the

monitoring of the Private Services under this Agreement, at no expense to its ratepayers outside of the Lands;

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

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

AND WHEREAS subsection 41(7)(c.1) of the *Planning Act*, R.S.O. 1990, c. P.13 (the "Planning Act"), authorizes the City to enter into one or more agreements with the Owner to ensure that development proceeds in accordance with approved plans and drawings;

AND WHEREAS at its meeting of the ___th day of ___, 201__, the Council of the City 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 Monitoring Agreement;
- (b) "Default" means the occurrence of any event described in Section 11 of this Agreement;
- (c) "Deficiency" means a situation wherein the Private Services are not being operated, maintained, monitored, repaired, replaced or enhanced by the Owner in accordance with the requirements of this Agreement;
- (d) "Financial Security" has the meaning given to it in Section 10 of this Agreement;
- (e) "Lands" means the lands and premises described in Schedule "A" hereto;
- (f) "Ministry" means the Ministry of the Environment and Climate Change of Ontario and shall include any authorized representative of the Ministry of the Environment and Climate Change and its successors;
- (g) "City" means the City of Hamilton, its successors and assigns;

- (h) "Notice of Deficiency" means a written notice from the City, the Ministry 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.
- (i) "Occupancy" meets the date of Occupancy as determined by the City's Building Division;
- (j) "Owner" means the Canadian Reformed School Society of Flamborough Inc., its successors in title and permitted assigns;
- (k) "Party" means either the City or the Owner and "Parties" means both the City and the Owner;
- (l) "Pending Event of Default" means an event which, but for the requirement for giving of notice, lapse of time, or both, or but for the satisfaction of any other condition subsequent to that event, would constitute an event of Default;
- (m) "Private Services" means the proposed private Class IV Sewage Disposal System, as described in a report dated October 3, 2016 prepared by CMT Engineering Inc. and any future improvement or expansion thereof;

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" Form of Assumption Agreement
- (c) Schedule "C" Insurance Provisions
- (d) Schedule "D" Monitoring Well Map

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, and shall come into force and take effect on the date of such registration; and
- (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. 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 Private Services are situated without first obtaining the prior written consent of the City 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 "B".

5. NATURE OF DEVELOPMENT

The Owner covenants and agrees:

- (a) that with respect to the Private Services that the City has no liability nor responsibility for the design, construction and installation of such services, nor for their operation, maintenance and management to date;
- (b) The Private Services shall be operated and maintained in accordance with this Agreement or as required by the City, acting reasonably;
- (c) that the Private Services shall be located totally within the Lands; and
- (d) that the Lands, including the Private Services, shall be developed in accordance with the approved site plan (DA-15-085).

6. PRIVATE SERVICES OPERATION & MAINTENANCE

The Owner covenants and agrees:

- (a) to properly operate and maintain, at no expense to the City, the Private Services within the Lands in a manner satisfactory to the City 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 operate and maintain the Private Services in accordance with the terms of this Agreement;
- (c) To install new monitoring wells as per peer reviews by Harden Environmental dated November 30, 2015 and SNC Lavalin dated May 2016;
- (d) 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;

- (e) within one year of registering this Agreement, to provide the City 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 City;
- (f) that upon Occupancy the Owner shall sample on a quarterly basis the wastewater effluent prior to being discharged to the leaching bed for all nitrogen species, *E. coli*, and total coliforms. Sampling shall occur in March, June, September, and December of each calendar year. After five (5) consecutive years of monitoring in which the annual median concentration of total nitrogen in wastewater effluent does not exceed 25 mg/L, per subsection (i) below, the Owner may request of the City that this Agreement be amended in accordance with Section 19(b) herein, to provide that all sampling and reporting shall revert to an annual basis. The City's consent to such a request for amendment shall not be unreasonably withheld.
- (g) that at least two (2) years from the date of Occupancy, but no later than three (3) years from the date of Occupancy, all monitoring wells located on the Lands shall be sampled and tested for nitrogen species, *E. coli*, total coliforms, pH, oxidation-reduction potential, dissolved oxygen, ICP metals, general chemistry, and alkalinity. pH, oxidation-reduction potential, and dissolved oxygen shall be analyzed as field parameters during the sampling event. Such results shall be submitted to the City in an annual report as described in subsection (j) below.
- (h) that starting two (2) years from the date of Occupancy, if wastewater effluent exceeds an annual median concentration of 25 mg/L total nitrogen, as shown in an annual report described in subsection (j) below, groundwater level monitoring and groundwater quality sampling of the monitoring wells on the Lands shall commence, which shall consist of sampling and testing in accordance with subsection (g) above. This groundwater monitoring and sampling shall commence in the first March or September immediately following the event in which this subsection is triggered, and shall continue twice annually, in March and September of each calendar year, until such time as it is shown to the satisfaction of the City, in an annual report described in subsection (j) below, that the annual median concentration of the wastewater effluent prior to being discharged to the leaching bed is below 25 mg/L total nitrogen;
- (i) If the total nitrogen concentration at the monitoring well closest to the southern boundary of the Lands (being BH1S or BH1D as indicated on the map attached hereto as Schedule "D"), which represents the annual median total nitrogen concentration at the property boundary in the bedrock aquifer, exceeds 5.0 mg/L, the Owner shall immediately notify the City in writing and inform any other

agency as required under the *Safe Drinking Water Act, 2002*, *Ontario Water Resources Act*, or the *Environmental Protection Act*.

- (j) to monitor and keep records of the operation and performance of the Private Services and that an annual monitoring report shall be submitted by the Owner no later than March 1st of each year to the satisfaction of Director, Hamilton Water. This monitoring report shall include the following, from the previous calendar year (January to December):
- i. Quarterly sampling results of the wastewater effluent as per subsection (f) above, including a calculation of the annual median concentration of total nitrogen, which shall be the median of the four (4) quarterly sampling events referenced in subsection (f) above, plus any remedial testing events
 - ii. Groundwater monitoring data if required as per subsection (g) above;
 - iii. Groundwater monitoring data if triggered as per subsection (h) above, occurred in the reporting year;
 - iv. Discussion of the wastewater effluent results, as per subsection (f) above, and groundwater monitoring data (if applicable), indicating if the testing required under subsection **Error! Reference source not found.** above is triggered for that calendar year;
 - v. Reports and discussion of any inspections, corrective or remedial actions that have occurred to improve nitrogen reduction from the sewage disposal system.

The annual report shall include the recommendations for resolving any non-compliance, Default or Deficiency, which the Owner shall immediately implement and document in the subsequent annual report;

- (k) For clarity, failure to comply with any of the provisions of this Section 6, including but not limited to any corrective action to remedy the results of any testing described in this Section 6 as required by the City, in its sole discretion, shall be sufficient to constitute a Deficiency.

7. PRIVATE SERVICES CONSTRUCTION, UPGRADES & REPAIRS

The Owner covenants and agrees:

- (a) to construct and maintain the Private Services in accordance with the report prepared by CMT Engineering Inc. dated October 3, 2016 and the site plan approval for the Lands;
- (b) to undertake any repairs or improvements as may be required in this Agreement, the construction of which shall be in accordance with an approved site plan, and shall include achieving compliance with the *Building Code Act, 1992*, S.O. 1992,

- c. 23 and associated Regulations and amendments, 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 comply with all laws regulating the design, construction and installation of the Private Services, including, but not limited to, the *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;
- (d) to provide to the City, 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. The "as built" plans shall be certified by the Owner's consulting engineer;
- (e) to supply to the City copies of all operating and maintenance manuals for the Private Services System 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;
- (f) where any proposed upgrades, improvements, expansion, or other action shall cause the Private Services to fall under the jurisdiction of the Ministry, the Owner shall apply thereto for an Environmental Compliance Approval or other approval as may be required by law prior to undertaking such upgrades, improvements, or expansion;
- (g) for clarity, failure to initiate and/or comply with any of the provisions of this Section 7 shall be sufficient to constitute a Deficiency.

8. ACCESS TO AND INSPECTION OF PRIVATE SERVICES

The Owner covenants and agrees that:

- (a) the City, 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 Services within the Lands to the extent reasonably necessary to permit the City, its employees and agents to ensure that the Owner is fulfilling its obligations pursuant to this Agreement; and
- (b) that the City shall be entitled to engage persons who are not employees of the City 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, monitoring, repair, replacement, enhancement and performance of the Private Services and that the Owner shall reimburse the City forthwith on demand for the reasonable costs of such review and inspection and the provision of advice based on such review and inspection.

9. MUNICIPAL ACCESS

The Owner covenants and agrees, that this Agreement grants to the City a licence to enter upon the Lands 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 City in the event of a Deficiency or other non-compliance, as otherwise set out in this Agreement. For greater certainty, the rights of this Section 9 shall function in the same manner as a municipality's right to entry on land served by a public utility under section 80 of the *Municipal Act, 2001*.

10. FINANCIAL SECURITY

- (a) The Owner covenants and agrees to secure the cost of monitoring of the Private Services, as described in Section 6 herein, by posting a financial security with the City prior to Occupancy, in the amount of \$10,000, in a form satisfactory to the City (the "**Financial Security**");
 - i. the City will accept a portion of the existing financial security provided by the Owner for its Site Plan Application DA-15-085 (the "Letter of Credit"), being _____ provided that such Letter of Credit is increased by the amount provided in subsection (a) above to provide for the Financial Security under this Agreement. Where the Letter of Credit is to be used for the purpose of posting the Financial Security under this Agreement, the Owner shall provide confirmation to the satisfaction of the City that the Letter of Credit has been amended to provide for an increase for the amount required under subsection (a) above.
- (b) For greater certainty, the Financial Security shall apply to the cost of one (1) year's worth of monitoring events, as described in Section 6 of this Agreement. In the event that the balance of the Financial Security is directed to be paid to the City in accordance with the terms of this Agreement, the City shall not be precluded from placing a charge upon the Lands recoverable in the same manner and to the same extent as municipal taxes for any remedial or other work required.
- (c) If there is a conflict between any term of the conditions of site plan approval for DA-15-085 or any site plan agreement required thereunder (the "Site Plan") and this Agreement with respect to the form, term and release of securities posted under the Site Plan, the terms of the Site Plan will apply, with the exception that

the amount of the Letter of Credit shall not be permitted to be reduced below the amount required as a Financial Security under this Agreement and the Letter of Credit may not be released so long as this Agreement, which is required as a condition of Site Plan, is in force.

- (d) In the event that this Agreement is terminated in accordance with Section 12 herein, and the City is satisfied that the Owner's obligations under this Agreement have been satisfied, the City shall forthwith release to the Owner the Financial Security posted.

11. DEFAULT AND DEFICIENCY

- (a) In the event the City determines that there is a Deficiency in the Private Services, the City 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. Failure of the Owner to remedy a Deficiency within thirty (30) days of receipt of the Notice of Deficiency, or such other timeframe as noted in the Notice of Deficiency, will be sufficient to result in a finding of Default under this Section 11.

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

- i. the Owner fails to provide or maintain Financial Security, in accordance with Section 10 of this Agreement;
- ii. the City determines that there is a Deficiency and the Owner fails to remedy the Deficiency, pursuant to subsection (a) above;
- iii. the Owner fails to meet two successive deadlines established by the City for compliance with any provision of this Agreement;
- iv. the Owner fails to comply with an order by the Ministry, the City's Medical Officer of Health, or other applicable City department, and/or fails to make arrangements with the Ministry, the Medical Officer of Health, or such other applicable City department to comply with such 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 or Hamilton Water, there are reasonable grounds to believe that a health hazard, as defined in the *Health Protection and Promotion Act* exists;
- vi. the City receives notice of the Owner's insolvency;
- vii. the Owner fails upon five (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 City receives legal notice, or otherwise finds, that the Owner has ceased to operate a school on the Lands, whether such cessation is voluntary or involuntary.
- (c) The Owner shall promptly notify the City of any event of Default or Pending Event of Default. Such notice shall be delivered in accordance with the provisions of Section 16 herein.
- (d) In the event of Default, the City may, at its sole option, pursue any or all of the following remedies, but shall not be bound to do so:
- i. 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 Financial Security or by placing a charge upon the Lands recoverable in the same manner and to the same extent as municipal taxes;
 - ii. 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 City;
 - iii. commence legal action to compel specific performance of all or any part of this Agreement and/or for damages;
 - iv. exercise any other remedy granted to the City pursuant to the terms of this Agreement or available to the City in law including, but not limited to, the provisions of the Municipal Act..
- (e) 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 City 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 City shall deliver a notice to the Owner advising of any such direction or order from the Ministry;
 - ii. the City shall be entitled to draw on the Financial Security, or by placing a charge upon the Lands recoverable in the same manner and to the same extent as municipal taxes, all costs and expenses incurred by the City with

respect to the operation and maintenance of the Private Services, and the decision shall be solely within the City's discretion;

- iii. all costs and expenses incurred by the City 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,
- (f) The Parties expressly acknowledge and agree that the City shall not at any time be required or expected by the Owner to assume ownership of or responsibility for the Private Services. The Parties agree that the City shall only become responsible for the operation and maintenance of the Private Services in the event that the City is ordered to do so by the Ministry;
- (g) The City 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 City, within thirty (30) days of receipt of such invoices. The amount of such assessment and levy may be increased by the City from time to time, in its sole discretion, to ensure that the City is at all material times 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 Financial Security to be provided by the Owner under Section 10 of this Agreement is reduced below the amounts required and the Owner has failed to remedy it within a reasonable amount of time, as determined by the City, then the City may in its sole discretion declare a Deficiency or Default under this Agreement.
- (i) The City 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.

12. TERMINATION

- (a) This Agreement shall terminate only upon the occurrence of one of the following events and the completion of the requirements of subsection (b) below:
 - i. The Lands are redeveloped such that the Private Services are no longer required.
 - ii. The Lands connect to municipal wastewater servicing.

- iii. The Private Services are upgraded so that they fall under the jurisdiction of the Ministry.
 - iv. Any statutory or regulatory change which would have the effect of placing the aspects of the Private Services covered by this Agreement wholly under the authority of the Chief Building Official of the City of Hamilton, or any other municipal, provincial, or federal authority.
- (b) Upon the occurrence of one of the events in subsection (a) above, the Owner may request that this Agreement be terminated, which shall be confirmed in writing by the City, and the City's consent to termination of the Agreement shall not be unreasonably withheld.

13. 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 "C" 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 "C" to this Agreement.

14. INDEMNITY

The Owner shall defend, indemnify and keep indemnified and save harmless the City, 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 City or the Owner or their several and respective employees, servants and agents, or any other person or corporation;

15. 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.

16. NOTICE

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

To the Owner:

Canadian Reformed School Society of Flamborough Inc.
497 Millgrove Side Road
Dundas, ON L9H 5E2

To the City:

City of Hamilton
Attention: City Clerk

71 Main Street West, First Floor
Hamilton, ON L8P 4Y5

17. MISCELLANEOUS

The Parties agree that:

- (a) the failure of the City at any time to require performance by the Owner of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the City of the performance of any obligation hereunder be taken or be held to be a waiver of the performance of the same or any other obligation hereunder at any later time;
- (b) nothing in this Agreement shall prevent or limit the City 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 City 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 11 of this Agreement, for the recovery of costs incurred by it;
- (c) No reference to or exercise of any specific right or remedy by the City shall prejudice or preclude the City from any other remedy in respect thereof, whether allowed at law or in equity or expressly provided for herein, and the City may from time to time exercise anyone or more of such remedies independently or in combination;
- (d) the Owner shall not add to, alter or extend the Private Services without prior notice to the City and without prior approval from the City and all other relevant government authorities;
- (e) 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 amicably resolved, even if only one of the parties declares that there is a difference in opinion will be referred to and finally settled by private confidential binding arbitration held in Ontario and governed by Ontario law in accordance with the *Arbitration Act, 1991*, S.O. 1991, c.17;

- (f) the Owner shall not call into question, directly or indirectly, in any proceedings whatsoever in law or equity or before any court or administrative tribunal the right of the City to enter into this Agreement and to enforce each and every term, covenant and condition herein contained and this Agreement may be pleaded as an estoppel as against the Owner by the City;
- (g) the Owner covenants and agrees to connect, at the then prevailing cost or rate set by the City, to municipal central water and/or sewage systems if and when such systems are constructed and extended to serve the Lands. The Owner further covenants and agrees that it shall not oppose the installation of any municipal services and improvements that are permitted to be installed under the provisions of any applicable legislation nor shall the Owner support a petition against any such works. In such a case, the Financial Security shall be transferred to the Owner and this Agreement shall be terminated in accordance with Section 12;
- (h) no amendment to this Agreement shall be effective unless in writing and signed by all Parties to this Agreement; and
- (i) time shall be of the essence of this Agreement.

18. ENUREMENT

This Agreement shall enure to the benefit of and be binding upon and enforceable by and against the parties hereto and their successors, assigns, administrators, executors and heirs.

19. TERM OF AGREEMENT

- (a) The term of this Agreement shall commence on the date of execution of the Agreement and shall continue until it is terminated in accordance with the terms of this Agreement, by a court with competent jurisdiction, or by written agreement signed by all parties.
- (b) Following the receipt by the City of the first annual report, per subsection 6(j) above, following five (5) years from the date of Occupancy, the Owner may make a request to the City in writing that this Agreement be amended. Any such amendments may be granted by the City in its sole discretion and authority, in a written amendment of this Agreement executed by both Parties.

IN WITNESS WHEREOF the Parties have executed this Agreement.

SIGNED, SEALED & DELIVERED

)

)

) **CANADIAN REFORMED SCHOOL
SOCIETY OF FLAMBOROUGH INC.**

)

)

)

) _____
Name: Marcel Kampen

) Title: Chairman

) I have authority to bind the
corporation.

)

)

) **CITY OF HAMILTON**

)

)

) _____
Mayor

)

)

) _____
Clerk

DRAFT

SCHEDULE "A"

LEGAL DESCRIPTION OF LANDS

PIN 17548-0094 (LT)

Part of Lot 18, Concession 3, West Flamborough, as in CD205333, except Part 3, Expropriation Plan AB99044; subject to interest, if any, in CD383536; City of Hamilton

DRAFT

SCHEDULE "B"

FORM OF ASSUMPTION AGREEMENT

THIS AGREEMENT dated the _____ day of 20____

BETWEEN

CANADIAN REFORMED SCHOOL SOCIETY OF FLAMBOROUGH INC.

(hereinafter called the "Owner")

OF THE FIRST PART

- and -

[NAME OF ASSIGNEE]

(hereinafter called the "Assignee")

OF THE SECOND PART

- and -

CITY OF HAMILTON

(hereinafter called the "City")

OF THE THIRD PART

WHEREAS the Owner and the City entered into and executed a Monitoring Agreement dated _____ in respect of the lands described in Schedule "A" hereto (the "Lands");

AND WHEREAS a notice of the Monitoring Agreement was registered against title to the Land as Instrument No. _____ on [date] (the "Monitoring Agreement");

AND WHEREAS the Lands have been [will be] transferred from the Owner to the Assignee;

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

AND WHEREAS Council for the City has consented to releasing the Owner from its duties, liabilities and responsibilities under said Monitoring Agreement subject to the Assignee accepting and assuming the Owner's duties, liabilities and responsibilities and subject to the Assignee, the Owner and the City entering into and executing an

assumption agreement whereby the Assignee will assume all of the Owner's duties, liabilities and responsibilities in the Monitoring 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 Monitoring Agreement and in all respects to be bound under said Monitoring Agreement as if the Assignee had been the original party to the agreement in place of the Owner.
2. The City hereby releases the Owner from all claims and demands of any nature whatsoever against the Owner in respect of the Monitoring Agreement. The City hereby accepts the Assignee as a party to the Monitoring 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 Monitoring Agreement as if the Assignee had been the original executing party in place of the Owner.
3. Clause _____ of the Monitoring Agreement is hereby amended to [*specify revision*].
4. All of the terms, covenants, provisos and stipulations in the said Monitoring Agreement are hereby confirmed in full force save and except for the amendments noted in Clauses _____ herein and such other modifications as necessary to make said clauses applicable to the Monitoring 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

)
)
) **CANADIAN REFORMED SCHOOL
 SOCIETY OF FLAMBOROUGH INC.**

)
)
) _____

) Name:

) Title:

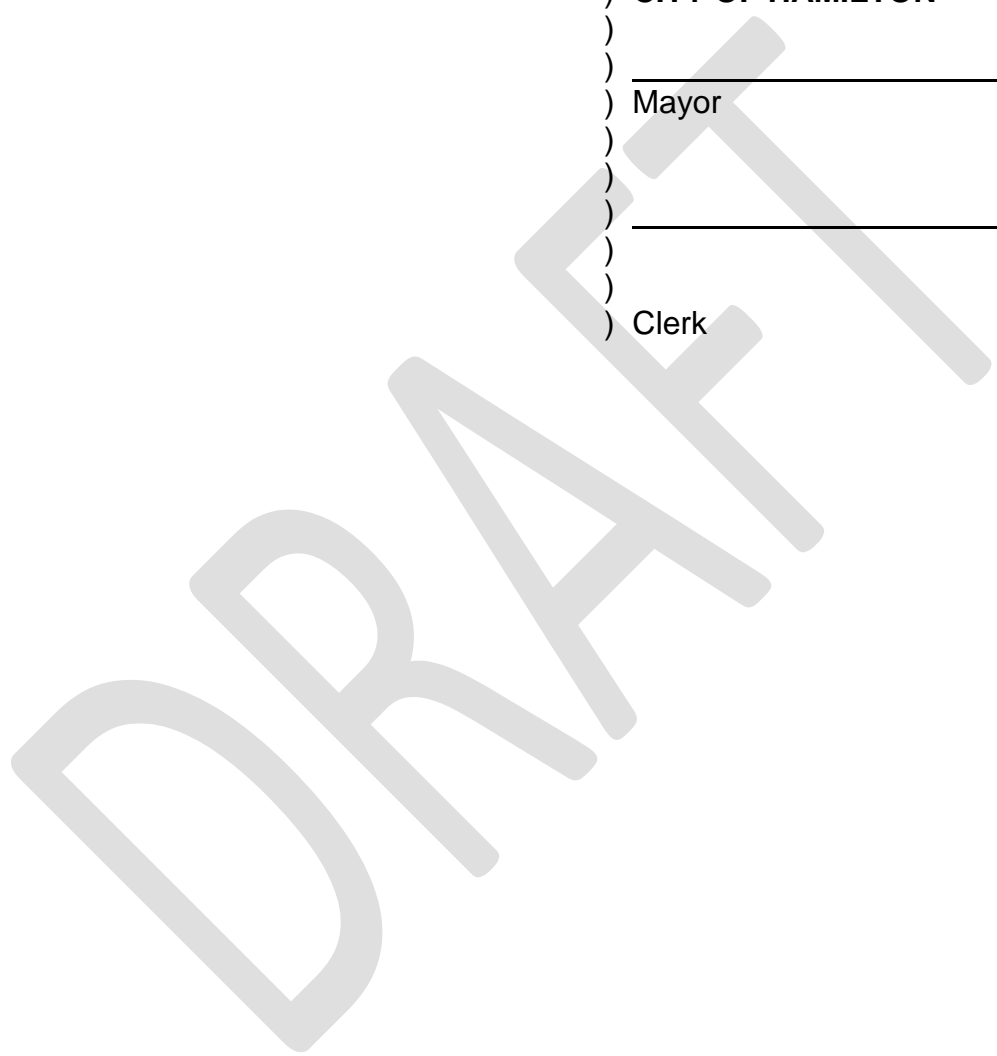
) I have authority to bind the corporation.

)
)
) **[NAME OF ASSIGNEE]**

)

)
) _____
) Name:
) Title:
) I have authority to bind the
corporation.

)
)
) **CITY OF HAMILTON**
)
) _____
) Mayor
)
) _____
)
)
) Clerk



SCHEDULE "C"**INSURANCE PROVISIONS**

1. The Owner agrees to purchase and maintain in force, at its sole cost and expense, including the payment of all deductibles the following policies of insurance:
 - (a) Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily injury, personal injury and property damage, having an inclusive limit of not less than Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) in the aggregate.
 - (b) Broad Form Property Insurance based on the full replacement cost of the Private Services.
 - (c) Certificates of insurance, originally signed by authorized insurance representatives or, if required by the City, certified copies of policies, shall be delivered to the City 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.
 - (d) 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 City.
 - (e) 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 City at least thirty (30) days prior written notice.
 - (f) If the Owner fails to arrange or fails to obtain or maintain any such policies or insurance referred to herein, the City may do so (but is not obligated to) and may pay the premium and applicable sales tax, and the Owner will reimburse to the City the amounts so paid.
 - (g) 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 City. The Owner shall not do or omit to do anything which would impair or invalidate the insurance policies.

2. It is the responsibility of the Owner to ensure that contractors retained to construct, repair, replace and/or enhance the private sewer services, obtain and maintain insurance coverage which includes at a minimum the following:
 - (a) Commercial General Liability insurance covering against any and all claims for bodily injury, including death, personal injury, and property damage with a minimum limit of coverage of not less than Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) in the aggregate endorsed to include the City and the Owner as additional insureds;
 - (b) Contractor's Pollution Liability having an inclusive limit of not less than \$2,000,000 per occurrence to insure liability for third-party claims caused by pollution events arising out of covered operations performed by or on behalf of the insured at the site. Policy shall be endorsed to include the City of Hamilton and the Owner as additional insureds;

3. The Owner further agrees to ensure that the person, company, or entity retained by the Owner to operate and maintain the Private Services pursuant to the Agreement obtains and maintains insurance coverage which includes at a minimum the following:
 - (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 and Four Million Dollars (\$4,000,000) in the aggregate. Policy shall be endorsed to include the City of Hamilton and the Owner as additional insureds.
 - (b) Contractor's Pollution Liability having an inclusive limit of not less than \$5,000,000 per occurrence to insure liability for third-party claims caused by pollution events arising out of covered operations performed and equipment used by or on behalf of the insured at the site. Policy shall be endorsed to include the City of Hamilton and the Owner as additional insureds.