

SUBDIVISION AGREEMENT

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

BETWEEN:

THE OWNER

(specified in Schedule "B" of this Agreement)
(hereinafter may be referred to as the "Owner")

of the First Part,

- and -

CITY OF HAMILTON

(hereinafter may be referred to as the "City")

of the Second Part,

WHEREAS:

- (a) the City of Hamilton was incorporated as of January 1, 2001 by the City of Hamilton Act, 1999 (S.O. 1999, Chapter 14, Schedule C), and the City is the successor to the former regional municipality, The Regional Municipality Of Hamilton-Wentworth and to the former area municipalities, namely The Corporation of the Town of Ancaster, The Corporation of the Town of Dundas, The Corporation of the Town of Flamborough, The Corporation of the Town of Glanbrook, The Corporation of the City of Hamilton, and, The Corporation of the City of Stoney Creek; and,
- (b) all references to the "City" in this Agreement shall be deemed to also include where required, references to the former area municipality as the case may be, or to the former regional municipality, The Regional Municipality of Hamilton-Wentworth; and,
- (c) the Owner is the registered owner in fee simple of the land described in Schedule "A" appended hereto; and the Owner has represented that there are no arrears of realty taxes on the said land and that the current municipal address and legal description of such land is set out in Schedule "A" of this Agreement, (hereinafter such land may be referred to as the "Land"); and,

- (d) the Owner is required to enter into this Agreement with the City to record the terms and conditions under which the Owner may, with the approval of the City, provide for one or more of the following:
- (i) the terms and conditions under which the Owner, who has made an application to the City pursuant to Section 51 of the Planning Act, R.S.O. 1990, c. P.13, for approval of a draft plan of subdivision, (the name and Application number of which subdivision are set out in Schedule "B") may develop the Schedule "A" Land in accordance with a plan of subdivision; and,
 - (ii) the terms and conditions under which the Owner, who has made application to the City pursuant to the Condominium Act, (R.S.O. 1990, chap. C.26) for approval of a draft plan of condominium, (the name and Application number of which condominium are set out in Schedule "B") may develop the Schedule "A" Land in accordance with a plan of condominium; and,
 - (iii) the terms and conditions under which the Owner, who has made application to the Committee of Adjustment for the City of Hamilton — for Consent to sever the Schedule "A" Land into two or more parcels, may develop such Land in accordance with the Decision of the Committee and the Consent(s) it has conditionally authorized; and,
 - (iv) the terms and conditions under which the Owner, who has made application to the City for another approval under the Planning Act, and specified in Schedule "B" of this Agreement, may receive such approval and develop and use its Land in accordance with such approval and its conditions; and,
- (e) the said Application, its Application Number (where assigned) the nature of the Application, the name of the plan of subdivision or plan of condominium (where applicable) — that are the subject of this Agreement, are specified in Schedule "B" of this Agreement; and,
- (f) the said Application in respect of the Land did receive conditional approval and the decision and its conditions of approval, are included in Schedule "C", and,
- (g) the said Application by the Owner was approved on the condition that the Owner comply with and carry out the conditions and requirements listed in Schedule "C", including the required details thereof and the Owner's obligations in relation to recorded in this Agreement.

NOW THEREFORE, THIS AGREEMENT WITNESSETH that in consideration of the premises and of the terms and covenants and conditions hereinafter set forth, the parties hereby mutually covenant and agree each with the other as follows:

CITY OF HAMILTON
SUBDIVISION AGREEMENT
I N D E X

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DEFINITIONS

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

- a) **"Acceptable Road Access"** means an asphalt surface road, or a road that has been accepted as an access road by the City.
- b) **"Acceptance"** means the date upon which the maintenance period for the Works has commenced, pending completion of all requirements, which relate to the construction of the Works.
- c) **"Agreement"** means this agreement including each of its Schedules, attached hereto, and forming part of this agreement, together with the required plans and specifications required by this agreement and approved by the City in accordance with the provisions of this agreement.
- d) **"Assumption"** means the date when the Works have been completed, the maintenance periods have expired and no other obligations under this agreement remain outstanding with respect to the Works.
- e) **"Block"** means a parcel of land laid out by a draft or registered plan of subdivision and designated by the Plan as a Block.
- f) **"City"** means the City Of Hamilton.
- g) **"City Engineer"** means the Manager of the Engineering Section in the Development and Real Estate Division of the Planning and Development Department for the City of Hamilton, or their designate.
- h) **"Consulting Engineer"** means a qualified Professional Engineer or Engineering Firm, registered under The Professional Engineers Act of Ontario which has been hired by the Owner to perform all engineering services related to development of the Land required of the Owner.
- i) **"Detailed Grading Plan"** means the grading plan for a particular lot, unit, block or severed parcel approved by the Director of Building & Licensing.
- j) **"Draft Plan"** or draft plan, means the proposed plan of subdivision or condominium comprised of the Land described in Schedule "A". The details of the Plan are set out in Schedule "A". The Plan was approved by the City, subject to the provisions of this Agreement; draft plan does not include a plan under Site Plan Control.

DEFINITIONS

Continued

- k) **"Land"** subject to the exception which follows, Land means the land described in Schedule "A" of this agreement; exception, after the plan of subdivision or the plan of condominium which is the subject of this agreement has been registered on title to the Schedule "A" Land, a reference to "Land" in this agreement shall be deemed to be a reference to the said registered plan;
- l) **"Lot"** means a parcel of land laid out by a draft or registered plan of subdivision and designated by the Plan as a Lot;
- m) **"Model Home"** means a single detached dwelling, semi-detached dwelling or townhouse block used in the interim for the sole purpose of an office and/or show room and/or sales centre to promote the sale of residential units within a draft approved Plan of subdivision proposed for registration.
- n) **"Mortgagee"** means the person, company or business having a beneficial entitlement to an interest in the Land in the form of a registered mortgage over all or part of the Land.
- o) **"Others"** means all utilities and telecommunication systems, excluding the Hydro authority, including but not limited to telecommunication cables, gas mains and television co-axial cables.
- p) **"Overall Grading Plan"** means the grading plan for all of the Land approved by the City Engineer.
- q) **"Owner"** means the registered owner of the Land described in Schedule "A" and may include an individual, an association, a partnership or corporation. The Owner's name is set out in Schedule "B" of this Agreement.
- r) **"Plan"** means the Final Plan of Subdivision or Condominium identified in Schedule "A" and registered on title to the Land; and "plan" has the same meaning unless otherwise required by the context; Plan or plan does not include plans which are the subject of Site Plan Control.
- s) **"Property"** includes a lot, block, unit or severed parcel;
- t) **"Security"** means the security defined under Section 5 (Security for Performance) of this agreement.
- u) **"Severed Parcel"** means a parcel of land that is, was or may be transferred as a result of the severance of the Schedule "A" Land within which the severed parcel is located, with the Consent of the Committee of Adjustment; and, severed parcel includes a parcel of the Schedule "A" Land which remains or will remain in the owner's name after the owner is no longer the owner of any abutting land.
- v) **"Street"** is a highway or road allowance owned by the City or intended to be vested by registration of a plan of subdivision or dedicated by transfer to the City, and includes both the traveled and untravelled portion of the street and all shoulders, boulevards and sidewalks located thereon, and includes land dedicated or vested in the City for a walk way. A roadway is that portion of a street, which is improved for use by cars and pedestrians. Street does not include an internal private road laid out within a plan of condominium.
- w) **"Super Mailbox"** means any group or community mailbox installed or to be installed by the Canada Post Corporation in order to provide postal service to residences situated within all or part of the Land.
- x) **"Unit"** means a portion of land laid out by a draft or registered plan of condominium and designated by the plan as a Unit.
- y) **"Works"** means all municipal or other services to be constructed by the Owner under this agreement. These municipal services are referred to on the construction drawings listed under Schedule "E" (List of Approved Construction Drawings) and the estimated costs of such municipal services are set out in Schedule "F"

(Estimated Costs of Works to be installed by the Owner).

EXECUTION AND REGISTRATION

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

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

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

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

Secondly, the plan of subdivision identified in Schedule "A" on title to the Land — within thirty days of the City's approval being endorsed on the Plan; and,

Thirdly, this Agreement on title to every Lot and Block of the registered Plan — within ten days of registration of the Plan and prior to the transfer of any Lot and Block of the registered Plan; and,

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

Fifthly, the transfer of the surface drainage easement to the City as described in Schedule "I", on title to all lots and blocks of the registered plan other than block(s) transferred to City.

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

Firstly, the land(s) or easement(s) identified in Schedule "I" that are intended for the City and are required as a condition of the Decision of the Committee of Adjustment, including those dedications that are external to the Land ("external transfers") or are from within the Land; and,

Secondly, this Agreement (the registration of which shall be prior to:

- (i) the endorsement of the Committee of Adjustment Consent to any permitted transfer of a severed parcel or of an easement, or,
- (ii) prior to the issuance by the Committee of any Certificate of its Decision); and,

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

Fourthly, any severed parcel and/or easement, the transfer of which by the Owner to a person is intended to be the subject of the Committee's Consent.

- (c) Where the Land which is the subject of this Agreement is being developed by a plan of condominium:
- (i) the Owner shall register at its expense on title the following:
 - Firstly, any land(s) or easement(s) identified in Schedule "I" that are external to the plan and are to be transferred to the City; ("external transfers") the registration of which shall be prior to approval being endorsed on the Plan; and,
 - Secondly, this Agreement on title to the Land; and,
 - Thirdly, the plan of condominium on title to the Land — within thirty days of the City's approval being endorsed on the plan of condominium; and,
 - Fourthly, the land(s) or easement(s) identified in Schedule "I" that are internal to the Plan and are intended to be transferred to the City ("internal transfers"); and,
 - Fifthly, the transfer of the surface drainage easement to the City as described in Schedule "I" on title to the Plan other than any Land transferred to City; and,
 - Sixthly, a Condominium (assumption) Agreement on title to the registered plan of condominium (— prior to registration of a transfer of any unit of the registered condominium plan).
 - (ii) the Owner shall, following registration of the condominium plan, cause the new condominium corporation to enter into a further "Condominium (assumption) Agreement with the Owner and with the City in which the condominium corporation covenants to the City to comply with the provisions of this subdivision agreement and the site plan agreement registered in respect of the Land. The further Condominium Agreement shall also include the Condominium Corporation's other obligations in favour of the City in a form and in accordance with terms satisfactory to the City.
- (d) The Owner's registration of this Agreement, the other required agreements, easements and transfers with or in favour of the City shall be free and clear of all mortgages and charges and shall be registered in a form satisfactory to the City's Corporate Counsel. Such registration shall be in an electronic format or in a paper format, as may be required by the Land Registry Office.

1.3 Where registration is in an electronic format, the Owner acknowledges and agrees that:

- (i) some or all of the Schedules that are attached to and forming part of the paper version of this Agreement, may not be attached and form part of the electronic registered Notice of this Agreement; and,
- (ii) the Owner authorizes its representative to signify its approval of the Notice of this Agreement for electronic registration; and,
- (iii) the electronic version of the Notice of this Agreement, by its nature, shall not include the signatures of the Owner or its corporate officers and directors, as the case may be; and,
- (iv) the Owner for itself its successors and assigns on title to the Land shall be bound by the electronic registered version of the Notice of this Agreement.

1.4 Where the Mortgagee(s) either execute this Agreement or authorize its electronic registration, it does so to:

- (i) postpone its registered mortgage with the Owner to the Land and to this Agreement as if this Agreement had been registered prior to the mortgage; and,
- (ii) postpone all its (their) right, title and interest in the Land to the rights of the City pursuant to this Agreement.

In the event the Mortgagee enters into possession of the Land pursuant to the default provisions of its mortgage with the Owner, the Mortgagee shall be bound by each and every term, provision and condition of this Agreement.

1.5 The Owner's lawyer shall provide the City with their Lawyer's Certificate of Title and Registration to certify to the City, in a form satisfactory to the City's Corporate Counsel, that the electronic version (if any) and the paper version of this Agreement have been entered into/authorized by the registered owner of the Land which is the subject of this Agreement and that this Agreement has been registered, as required herein, on title to the Land.

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

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

TRANSFERS / DEDICATIONS OF LAND / EASEMENTS

2.1 (a) Draft Transfer(s):

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

(b) Registration:

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

(c) Lawyer's Certificate of Title:

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

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

- 2.2 To fulfill their obligation to dedicate land in accordance with the Planning Act requirements for park purposes, the Owner shall either:
- (i) by transfer of land, dedicate to the City the land(s) designated in Schedule "I" for parks, free and clear of all encumbrances; or,
 - (ii) in the case where there are no lands in the Draft Plan to be conveyed to the City for park, pay to the City at such time as is required by the City's Parkland Dedication By-Law 03-199, as amended, and any approved Parkland Dedication and Cash-in-Lieu Policy, a sum of money, in-lieu of park dedication, calculated pursuant to the said by-law and approved policy.
- 2.3 The Owner shall, where the Land is to be subdivided by a plan of subdivision or by a plan of condominium, dedicate to the City by Certificate on the Plan, those land(s) as required by the Conditions of Approval in Schedule "C" and/or in Schedule "I" and/or in the balance of this Agreement.
- 2.4 The Owner shall transfer and/or dedicate the land(s) and easement(s) to the City as required by the Conditions of Approval in Schedule "C", and/or in the provisions of Schedule "I" and/or in the balance of this Agreement.

SIGNS

- 3.1 Prior to commencement of construction, the Owner shall erect at each main entrance to the Land:
- i) a General Land Use billboard sign displaying the design of the Plan, zoning, proposed and surrounding land use, sidewalk locations and pedestrian connections and other special site features; with the sign contents and sign size all firstly approved by the City's Director of Development. The Owner shall maintain the General Land Use billboard sign until all the lots, blocks, units or severed parcels have been built on; and,
 - ii) a Utility Locate Sign for the purpose of informing the public, including contractors, subcontractors and new property owners of the necessity for calling a central number for information as to the location of underground utilities. Such sign shall be obtained by the Owner from the applicable utility companies and shall be installed and maintained by the Owner, at its expense, until construction on all lots, blocks, units or severed parcels has been completed.
- 3.2 The Owner shall affix, in a conspicuous position, on each lot, block, unit or severed parcel where there is no dwelling, a lot or unit number, where applicable, to the satisfaction of the City. Where a dwelling has been constructed on a plan of subdivision or on a severed parcel, the Owner shall affix a house number on each dwelling, to the satisfaction of the City.
- 3.3 All signs required to be erected under this section are subject to the approval of the City. The design of each sign shall be satisfactory to the City and shall comply with, where applicable, the City's Sign By-laws or site plan agreement(s). Upon the expiration of the maintenance period for each sign, (the time period between erection and removal of the sign) the Owner shall remove it. The erection, alteration, maintenance and removal of each sign shall be carried out by the Owner.
- 3.4 In the event that any uses of Land shown on any such sign are changed, or in the event that any Land is re-subdivided, the Owner shall make appropriate changes on the signs to reflect the new information within one month after final approval is granted to the changed uses or re-subdivision of Land.

EXPENSES TO BE PAID BY OWNER

4. Every provision of this Agreement that the Owner is obligated to perform or carry out in any way shall be deemed to include the words "at the expense of the Owner" unless such provision expressly provides to the contrary.

SECURITY FOR PERFORMANCE

- 5.1 Prior to the execution of this Agreement by the City, the Owner shall deposit with the City security in an amount which is seventy-five percent (75%) of the estimated costs of installation of the Works set out or referred to in Schedule "F". The amount of the required security is specified in Schedule "G".
- 5.2 The required security shall be issued by a financial institution in the form of an irrevocable letter of credit(s), cash or such other equivalent security satisfactory to the Finance Department.
- 5.3 The letter of credit shall be irrevocable and valid for an initial term of not less than one (1) year. The Owner shall keep the Letter of Credit in full force and in effect and shall be renewed from time to time until the City determines such security is no longer required.
- 5.4 The security is required to secure:
 - a) completion of the said Works by the Owner in conformity with the provisions of this Agreement; and,
 - b) performance of all other obligations of the Owner under this Agreement.
- 5.5 The security received and held by the City in accordance with this Agreement may be applied and used by the City to not only the matters for which the security is expressly required, but may also be applied and used by the City in accordance with the remedial provisions of this Agreement, to any other matter, expense or obligation of the Owner, notwithstanding that such security was not expressly received for such purpose.
- 5.6 The security deposited as required by the provisions of this section shall be reduced in amounts from time to time at the discretion of the City following receipt, satisfactory to the City, of a progress certificate from the Consulting Engineer and proof of payment to the contractor, in respect of the Works covered by the said security; but in no case shall the amount of the security be reduced to less than an amount equivalent to the cost of the uncompleted Works as estimated by the Consulting Engineer, satisfactory to the City, plus ten percent (10%) of the estimated cost of Works and thirty percent (30%) of the estimated cost of trees as set forth in Schedule "F" or \$ 10,000, which ever amount is greater.
- 5.7 The financial security received and held by the City pursuant to this section of the Agreement, whether such security be in the form of an irrevocable letter of credit(s), cash or such other equivalent may, in this Agreement (including its Schedules) be referred to as the "security". Any reference to "security" in this Agreement (including its Schedules) shall be deemed to be a reference to the security deposited by the Owner with the City's Finance pursuant to this section of the Agreement.

COMMUTATION OF FRONTAGE CHARGES

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

FEE FOR ENGINEERING SERVICES AND AGREEMENT ADMINISTRATION

7. For the City's review and supervision of the Owner's engineering services and administration of security in connection with the construction and installation of the Works, the Owner shall pay to the City, prior to the City's execution of this Agreement, a fee in accordance with the City's User Fee By-law, which amount is set out in Schedule "G".

DEVELOPMENT CHARGES

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

INTEREST

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

ENGINEERING SERVICES

- 10.1 The Owner shall have engaged the services of a qualified Professional Engineer registered under The Professional Engineers Act of Ontario, to perform all required engineering services related to the Owner's development of the Land, subject to the approval thereof by the City Engineer.
- 10.2 a) The Owner shall provide to the City the full name, address, telephone & fax numbers and e-mail address of the Consulting Engineer, which shall provide the engineering services required of the Owner by the City.
- b) For the purpose of this Agreement, any notices, directions or approvals from the City in respect of any matters arising from the approval of the said Application, may be given by the City to the Owner or to the Owner's Consulting Engineer. The Owner shall inform the City by Notice in writing of any change of Consulting Engineer made by the Owner, together with the full name, address & telephone number of the replacement Consulting Engineer subject to approval by the City Engineer.
- 10.3 The Owner agrees that before any of the Works described under Schedule "F", are commenced or any contracts for such Works are entered into, such engineering services shall, in accordance with the standards and policies of the City, include, (but not be limited to) the following services:
- a) calling of tenders,
- b) analysis of bids including recommendation to the Owner,
- c) application to the Ministry of Environment for approval of sewers and watermains,
- d) application for other permits required to construct the Works required by this Agreement.
- 10.4 The Consulting Engineer's services shall include, but not be limited to, the following obligations:
- a) setting out the work,
- b) full time construction inspection and quality assurance all in accordance with plans and specifications of the Works, to the satisfaction of the City,
- c) preparation of progress certificates.

10.5 a) The Owner covenants to the City that:

- (i) the Works shall be carried out in accordance with the approved construction drawings and specifications and all other relevant provisions of this Agreement; and,
 - (ii) all phases of the Works described in this Agreement are subject to the prior approval of the City Engineer; and,
 - (iii) the Consulting Engineer shall provide to the City, at the expense of the Owner:
 - Firstly, prior to commencement of the Works - a copy of the approved construction drawings in a digitized electronic format acceptable to the City; and,
 - Secondly, within six (6) months of acceptance of the sewer and watermain works - "as constructed" drawings in a manner consistent with the requirements under this Agreement for "as constructed" drawings as well as inspection field records and reports of the constructed Works; and,
 - (iv) its Consulting Engineer is authorized to act as its representative to the City, including the submission of all engineering services and matters subject to the review and/or approval of the City and its consulting engineer is authorized to receive on behalf of the Owner, all directions, approvals and requirements of the City.
- b) The City agrees that, at the request of the Owner, it will join with the Owner to make the necessary applications to the Ministry of the Environment for approval of the plans for sewers, private drains, watermains, water service connections and all other applications required by an authority for other City services and improvements.
- c) The Owner shall not commence construction of any Works pursuant to this Agreement prior to the issuance of a related Certificate of Approval by the Ministry of the Environment or other authority.

COMMENCEMENT OF WORKS

- 11.1 The Owner shall give to the City, a minimum of two (2) clear business days written notice prior to the commencement of construction of any of the Works provided for under this Agreement. Should any significant work stoppage occur in the prosecution of Works, the Owner shall give to the City, prompt notice of the stoppage of such Works, and shall give two (2) clear business days written notice prior to the re-commencement of construction of such Works.
- 11.2 The Owner shall, in addition to and without limiting the application of any other terms of this Agreement, commence the Works described in the Schedules within six (6) months from the date of registration of this Agreement and diligently continue construction and installation of the Works, failing which the City may, upon 14 (fourteen) days written notice to the Owner, draw upon the security and complete the Works.
- 11.3 For the purpose of paragraph 11.2 above, the Owner shall be deemed to have commenced the Works when the Owner has actually undertaken construction and installation or completed part of the Works described in Schedule "F".
- 11.4 Before commencement of Works on the Land the Owner shall:
- a) obtain approval from the City and, where required, approval from the Conservation Authority of engineering design drawings for the works to be constructed to service the subdivision, including receipt of M.O.E. certificates and an erosion and sedimentation control plan; and,

- b) obtain Director of Development approval of the proposed final plan of subdivision for confirmation of zoning compliance and conformity to road pattern and road alignment to the approved draft plan; and,
- c) obtain approval of a Tree Preservation Plan by the appropriate agency, when such plan is required, including implementation of all necessary protection measures; and,
- d) ensure all sedimentation controls are in place prior to any earthworks on the site; and,
- e) submit written verification that an archeological survey has been conducted and the site is free and clear for construction, when the requirement for an archeological survey is a condition of draft plan approval; and,
- f) submit written verification that the subdivision lands have been decommissioned, when the requirement for decommissioning is a condition of draft plan approval; and,
- g) conduct a pre-blast survey of residences within 100 metres and notify residents of blasting within 200 metres of the subdivision lands, where services are to be constructed in rock; and,
- h) arrange for all required site inspections and materials testing for the works to be constructed to service the subdivision; and,
- i) arrange for a pre-construction meeting for construction of the works to service the subdivision; and,
- j) submit originally signed certificates of insurance for the Owner and the contractor as proof that both Owner and contractor have obtained adequate insurance coverage in accordance this Agreement.
- k) executed and delivered at least four copies of this Agreement to the City; and,
- l) delivered to the City cash and security as required by this Agreement; and,

ORDER OF INSTALLATION OF WORKS

- 12.1 The Owner shall proceed diligently with construction and installation of the Works in accordance with the following timetable:
- a) Commencement of storm sewers, sanitary sewers, storm and sanitary private drains, watermains and water service connections —
within three (3) months of registration of this Agreement;
 - b) Commencement of preliminary roads, including base course asphalt, barricades and guide rails, traffic signs and street lighting —
within three (3) months of the completion of services as set forth in paragraph a) above;
 - c) Commencement of curbs and gutters and fencing —
within twelve (12) months of the completion of the Works as set forth in paragraph b) above;
 - d) Commencement of sidewalks and tree planting —
as directed by the City and in any event, no later than completion of the final asphalt on the roads within the Land.
- 12.2 The Owner shall commence the installation of all Works within the time limits prescribed in this section. Upon the written application of the Owner to the City to extend the time for completion of the said Works or any of them, the City, in its discretion, may extend the time for completion for such period of time and upon such terms and conditions as it deems reasonable.

EROSION AND SEDIMENT CONTROL

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

WORKS OUTSIDE THE LAND

14. The Owner agrees that:
- a) where the Land adjoins an existing road or, where municipal services must be brought from some distance to the Land or be taken some distance to a suitable outfall, the Works herein may include works to be done outside of the Land, and in this event, such Works shall be identified in the Schedules of this Agreement and such Works shall be carried out by the Owner in accordance with the same requirements and be subject to the same obligations in favour of the City as provided for in this Agreement for the other Works to be carried out within the Land.
 - b) where work is performed by the Owner, pursuant to this Agreement, on existing roads outside the Land, such roads shall be reinstated by the Owner to the satisfaction of the City. The Owner is required to obtain all necessary road cut permits from the appropriate road Authority. Access shall be maintained at all times to properties abutting such roads and the travelling public shall be protected. All Works and services shall be carried out satisfactory to the City.
 - c) the Works required to be carried out by the Owner outside the Land, shall be completed according to the drawings and specifications set out under Schedule "E" and at such cost as may be agreed upon between the Owner and the City under Schedules "D" and "F".

RELOCATION OF SERVICES

15. Where the abandonment, relocation and/or reconstruction of any existing storm sewers, sanitary sewers, sewer private drains, watermains, private water services, roadways, sidewalks and/or utility installations is necessary by reason of the development of the Land, the Owner shall carry out such abandonment, relocation and/or reconstruction in accordance with the approved engineering drawings noted on Schedule "E" and pay all associated costs in accordance with Schedule "F".

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

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

ROADWAYS

- 17.1 The Owner shall construct, install and complete the roadways on all streets within the Land in accordance with:
- (i) the recommendations of a soils report prepared by a qualified engineer and approved by the City; and,
 - (ii) the drawings and specifications thereof approved by and satisfactory to the City; and,
 - (iii) the time tables contained in this Agreement; and,
 - (iv) the approved plan of subdivision or condominium of the Land, as the case may be.
- 17.2 The roadway Works described in the above paragraph shall be installed and tested by the Owner's Geotechnical Engineer at the Owner's expense, all to the satisfaction of the City.
- 17.3 Prior to installation of the final layer of asphalt pavement on any roadway, the Owner shall:
- a) wait until at least one year has passed after placement of the base asphalt; and,
 - b) wait until at least 80% of the dwellings in the Land are constructed; and,
 - c) remove any base asphalt or granular base course that in the opinion of the City Engineer has deteriorated; and,
 - d) repair or replace such deteriorated base asphalt and/or granular base course to the satisfaction of the City Engineer; and,
 - e) give the City five (5) clear business days prior notice, in writing, of its intention to install the final layer of asphalt pavement.
- 17.4 The construction of the final layer of asphalt pavement shall be undertaken and completed by the Owner in accordance with the criteria in this section, unless otherwise directed by the City. No final layer of asphalt pavement shall be laid in any year before the first day of May or later than the first day of November.

HYDRO-ELECTRIC AND OTHER UTILITY INSTALLATIONS

- 18.1 The Owner shall arrange with and satisfactory to the Hydro authority:
- a) for the design, provision and installation of all required electrical power transmission, distribution and street lighting systems and facilities, which shall be located and installed according to specifications approved by the City; and,
 - (i) to install underground such Hydro facilities that, in the opinion of the City, are capable of being installed underground; and,
 - (ii) to assume the costs involved in providing and installing the described facilities, as determined by the Hydro authority and to pay such authority those costs; and,
 - b) for installation of all electrical service connections and appurtenances from the Hydro distribution system to lots, blocks, units and severed parcels within the Land at locations approved by the City; and,
 - (i) the wiring of such service connections shall be underground; and,
 - (ii) the entire cost of providing and installing such service connections and appurtenances shall be borne by the Owner and paid to the Hydro authority.

- c) for any locations not within the street(s) and not within land(s) dedicated by Transfer or vested by a Plan into the City's name, the transfer of easements required by the Hydro authority, for the installation of poles and guy wires, subterranean cables, transformers and other appurtenances of an electric distribution system, on, across, or under the Land without charge and with clear title thereto, prior to registration of any transfer of a lot, block, unit, or parcel severed within the Land;
- 18.2 Regarding all other utilities and telecommunication facilities, (hereinafter referred to as "others") permitted at law or, where the City's approval is required, with the City's approval, (as the case may be) including telecommunication cables, gas mains and television co-axial cables,
 - a) the Owner shall ensure that such "others" are installed underground in a manner as may be required at law and in a manner and in locations satisfactory to the others and to the City; and,
 - b) the Owner shall, prior to registration of any transfer of a lot, block, unit, or parcel severed within the Land and after the transfer of any land or easement required by the City, grant, (in respect of locations not within public highways or walkways,) easements, as may be required, by such "other" company, to permit installation of side and rear of parcel utility services by such "other" company.

SIDEWALKS AND DRIVEWAY APRONS

- 19.1 The Owner shall construct sidewalks and driveway aprons leading up to any required sidewalk in all locations and in accordance with the drawings and specifications referred to in Schedule "E".
- 19.2 The Owner covenants and agrees that prior to entering into any agreement of purchase and sale relating to any lot, block, unit or severed parcel within the Land, the Owner shall display in the site sales office/model home the approved grading or engineering plan(s) which clearly indicate the location of sidewalks and boulevard areas and any known street furniture locations within the Land.

STREET NAME SIGNS

- 20.1
 - a) The Owner shall pay the amount specified under Schedule "G" for all street name signs required on those streets created or affected by development of the Land.
 - b) The City shall supply and erect all street name signs in accordance with the standard design of the City at locations satisfactory to the City.
- 20.2 The Owner shall supply, erect and pay for all temporary or permanent barricades and guide rails on streets as may be required by the City and no such barricade or guide rail may be removed or its position changed without the written consent of the City.

BUILDING LEVELS

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

PREGRADING OF BUILDING PARCELS (FIRST STAGE GRADING CONTROL)

- 22. The Owner shall, before an application is made for a building permit for construction of a single detached or semi-detached dwelling on any lot, block, unit or severed parcel within the Land:
 - a) prepare and submit to the City for the City's review and approval an Overall Grading Plan which the Owner shall procure pursuant to the Owner's engineering design for the Works in respect of all of the Land; and,

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

The parties acknowledge and agree that the Owner's Grading Deposit, or remaining balance thereof, shall not be released to the Owner until receipt by the City, of Grading Certificates for all lots, blocks, units or severed parcels within the Land, which certificates are satisfactory to the City; and,

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

FINAL GRADING (SECOND STAGE GRADING CONTROL)

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

- a) prepare and submit to the City, for the City's review and approval, a Detailed Grading Plan for each lot, block, unit or severed parcel, which the owner of any lot, block, unit or severed parcel shall prepare in accordance with the Overall Grading Plan for the Land which has been approved by the City Engineer; and,
- b) deposit with the City cash security for each lot, block, unit or severed parcel, the amount of which deposit shall be determined by the City in accordance with the City's lot grading policy. Such cash deposit shall be held by the City as security for the purpose of second stage grading control ("Builder's Grading Deposit"). The parties acknowledge and agree that the Builder's Grading Deposit shall be held by the City in addition to any other security which the Owner may be required to provide to the City in this Agreement, and in addition to any other security which the Owner's builder may be required provide to the City pursuant to this Agreement. The Builder's Grading Deposit shall be held by the City to ensure completion of, or correction to, any grading issues which may arise in respect of final lot grading of individual lots, blocks, units or severed parcels by the property owner's builder.

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

- c) pay to the City a fee for inspection of final lot grading by the City, which amount shall be determined in accordance with the City's User Fee By-

law.

- 23.2 Upon receipt of a Building Permit for construction of a single detached dwelling or semi-detached dwelling the owner of any lot, block, unit or severed parcel within the Land shall:
- a) carry out and complete final grading, which includes provision of topsoil and sod, in accordance with the Detailed Grading Plan, approved by the City, for each lot, block, unit or severed parcel located within the Land, to the satisfaction of the City, within six (6) months after the insulation inspection date with the exception of the period between November 30 and April 1, the grading shall be completed by June 15 of the same year following April 1; and,
 - b) submit to the Director of Building and Licensing, or designate, a certificate stamped by a qualified professional engineer stating that the "as built" grading of the lot, block, unit or severed parcel within the Land conforms to the approved Detailed Grading Plan.
- 23.3 The Owner covenants and agrees to complete the grading of parks and other areas within the Land as approved by the City Engineer, in accordance with the Overall Grading Plan, within six (6) months after completion of the base asphalt for the roads within the Land.
- 23.4 All buildings erected on the lots, blocks units or severed parcels located within the Land are to conform to the grades shown on the Overall Grading Plan.
- 23.5 In the event that the final grading of a lot, block, unit or severed parcel is not completed in accordance with this Agreement, the City may:
- a) enter upon the lot, block, unit or severed parcel and carry out the work necessary to complete the final grading; and,
 - b) draw upon the security to pay the City's cost to complete the final grading.
- 23.6 Notice is hereby given that the City may subsequently approve amendments, revisions and adjustments to the Overall Grading Plan, as referred to on Schedule "E" of this Agreement, such that the reader is advised to examine the plans on file with the City to determine current requirements.
- 23.7 The owner of any lot, block, unit or severed parcel within the Land covenants and agrees not to construct an accessory building, an addition or structural alteration to an existing building or a pool, or pool enclosure, until the City has received a Grading Certificate certifying that final grading has been completed in accordance with the approved Detailed Grading Plan on such lot, block unit or severed parcel.

ISSUANCE OF BUILDING PERMITS

- 24.1 No building permits shall be issued for any lot, block, unit or severed parcel within the Land by the City;
- a) until the Plan, if any, has been registered on title; and,
 - b) until this Agreement has been registered on title; and,
 - c) until such time as the Owner's Consulting Engineer has certified that watermain, including fully serviceable and operative fire hydrants, together with a roadway, which includes granular base and base asphalt, have been installed in accordance with municipal standards to the satisfaction of the City Engineer; and,
 - d) until such time as the Owner's Consulting Engineer has certified that the lots, blocks, units or severed parcels have been pre-graded in accordance with the requirements of this Agreement for pre-grading; and,

- e) until a Detailed Grading Plan indicating the site of the building, the main floor and top of foundation wall elevations, and the proposed grading according to the Overall Grading Plan has been prepared by an Ontario Land Surveyor or a qualified professional engineer and filed with the Director of Building and Licensing, or designate; and
- f) all trees to be preserved on the lot, block, unit or severed parcel have been satisfactorily protected in accordance with the standards established by the City; and,
- g) unless otherwise prescribed in Schedule "D" (Specific Provisions).

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

- a) In accordance with the provisions of the relevant Zoning By-law, the Owner may construct Model Homes on the Land prior to registration of the Plan of subdivision provided that:
 - i) the Owner receives a Building Permit from the City's Director of Building and Licensing for each model home to be constructed; and,
 - ii) the Owner confirms that there is adequate water supply and pressure with fully operational hydrants to within 150 metres of any building erected on the Land for fire protection; and,
 - iii) the Owner confirms that there is road access, acceptable to the City's Director of Building and Licensing, to within 90 metres of any building erected on the Land for emergency access; and,
 - iv) the Owner certifies to the City's Director of Building and Licensing that lots designated for model home construction, have been pre-graded to the elevation shown on the Overall Grading Plan, for the Land, making due allowance for the final application of top soil and sod and for material to be excavated for foundations and basements of Model Homes to be constructed, and all provisions set out in Section 11.4 of this Agreement requiring completion prior to commencement of servicing have been satisfied.
- b) The maximum number of Model Homes permitted by the City for construction by the Owner on the Land under the provisions of this section shall not exceed ten percent (10%) of the lots intended for single-detached dwellings, semi-detached dwellings or townhouse purposes within the Plan of subdivision proposed for registration to a maximum of twenty (20) dwelling units, all in accordance with the provisions of the City's relevant Zoning By-law, as amended.
- c) In order to guarantee compliance with all the terms and conditions contained within this section, the Owner covenants and agrees to place security with the Director of Building and Licensing in an amount of \$ 3,000 for each and every model home in a form satisfactory to the City, prior to issuance of a Building Permit for construction of any model home permitted by this Agreement.

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

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

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

- i) a Plan of subdivision has been registered on the Land; and,
 - ii) there are no outstanding obligations required of the Owner with respect to the security held under this Section.
- d) All Model Homes constructed under the provisions of this Section shall be used for the sole purpose of an office and/or show room and/or sales centre to promote the sale of residential units on the Land and shall not be occupied as a dwelling unit until:
- i) a Plan of subdivision has been registered against the Land; and,
 - ii) the City has received from the Owner a Surveyor's Real Property Report prepared by an Ontario Land Surveyor showing the location of the constructed building on the lot and the City has determined that the location of such building complies with the requirements of the Building, Zoning and Health By-laws of the City; and,
 - ii) the building has passed an inspection for occupancy to the satisfaction of the City's Director of Building and Licensing, or designate, pursuant to the conditions for occupancy in the Building Code Act and Regulations thereunder.
- e) The Owner shall register a Plan of subdivision on the Schedule "A" Land, within six (6) months of issuance of a building permit for the first model home.

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

- f) Where the Owner has not registered a Plan of subdivision on the Land and no written request for extension to register a Plan of subdivision has been received by the City within twelve (12) months of the date of issuance of a Building Permit for the first model home, then the City may, upon written notification to the Owner, require the Owner to immediately:
- i) demolish any number of Model Homes, which are beyond the maximum number permitted by the relevant Zoning By-law on the Land; and,
 - ii) remove any and all appurtenances used to service the said model home(s), which shall include, without limiting the generality of the foregoing, connections to the water and sewer services as well as electrical service connections, telecommunication cables, gas mains and television co-axial cables; and,
 - iii) to restore the Land to its original state, pursuant to the Building Code Act, Section 8, Subsection 4.
- g) In the event that no action is taken by the Owner, satisfactory to the City, to remove such Model Homes within thirty (30) days after the mailing of such Notice, the City has, and is hereby given, the right of entry by the Owner to the Land and may do and perform any and all actions, matters and things that may be required to demolish any number of Model Homes which are beyond the maximum number permitted by the relevant Zoning By-law on the Land and in pursuance thereof, may hire labour, equipment and purchase such materials as the City considers necessary. All expenses incurred by the City, pursuant to this subsection, shall be charged against the security deposit required under this Section.

OCCUPANCY OF BUILDINGS

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

LAND RESTRICTIONS

26. The Owner agrees regarding the lots, blocks, units and severed parcels, if any, described in Schedule "J":
- a) that they:
 - (i) are unsuitable for building purposes — due to insufficient size or frontage, or because of their low-lying, rocky, marshy, or environmentally sensitive character; and,
 - (ii) must be amalgamated with an adjoining lot, block, unit or severed parcel;before the Schedule "J" parcel may be eligible for a building permit or as further provided for in Schedule "J"; and,
 - b) that no application may be made by the Owner for a building permit for the erection of any building or structure on any of the said lots, blocks, units or severed parcels until such time when same becomes part of an adjoining lot, block, unit or severed parcel which larger combined parcel is suitable for development in accordance with the intent of the approved development plans and applicable zoning by-laws.

SODDING

27.1 The Owner shall:

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

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

- a) provide topsoil and lay sod of a quality acceptable to the City, in accordance with the time limits specified for completion of Final Grading in this Agreement, on the front, side and rear yards of each lot, block, unit or severed parcel from the building face thereto produced to the boundaries of such land, except for the area designated as a driveway; and,
- b) maintain the sod on each lot, block, unit or severed parcel until possession of the property by a third party.

CONTROL OF WEEDS

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

PROHIBITION AGAINST DEBRIS ON LANDS

- 29.1 The Owner agrees:

- a) to not use land dedicated, transferred or vested in the City for the depositing of waste, debris, tree branches, topsoil, fill material or refuse obtained from the development of the Land, except with the prior approval in writing of the City and subject to such terms as may be required by the City; and,
- b) to ensure that until all buildings to be erected on every lot, block, unit or severed parcel within the Land have been occupied, they will not become unsightly by the accumulation of garbage, debris or builder's waste; and,
- c) to restrain, by all reasonable means, all other persons from depositing waste, debris, topsoil, fill material or refuse on the Land; and,
- d) to remove, at its expense, any such wastes, debris, tree branches, topsoil, fill material or refuse so deposited forthwith upon being so directed by the City.

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

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

- 29.4 The Owner shall not dispose or stockpile any waste or surplus fill material on the Land except in a manner and in a location approved by the City.

STREET CLEANING

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

- i) the Owner shall be responsible to prevent earth and debris from being tracked onto streets outside the Land; and,
- ii) the Owner shall, as soon as any dwelling within the Land has been commenced to be constructed, keep the street adjacent to which the dwelling is situate, and all streets affording access to that street, clear of earth, debris and building materials.

- 30.2 If earth, debris and building materials are allowed by the Owner to accumulate on any of the aforementioned streets, either inside or adjacent to the Land, the Owner shall forthwith clean the said streets and remove the debris and materials.

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

TREES

- 31.1 The Owner shall:

- a) provide advance notice to the Manager of Forestry, or designate and obtain all necessary underground locates, prior to commencement of tree planting; and,

- b) plant one shade tree of a type acceptable to the City on the untravelled portion of the road allowance in front of each lot, block, unit or severed parcel and two shade trees at equal spacing and frequency for the flankage yard of each corner lot, block, unit or severed parcel within the Lands in accordance with Schedule "F"; and,
 - c) repair any damage caused to underground utilities as a result of tree planting operations; and,
 - d) preserve and protect all existing trees within the Land, in accordance with good arborist practices except for those trees that the City has agreed may be removed, and no trees shall be removed without such permission, and the City shall remove all municipally owned trees; and,
 - e) remove all trees within the Land which have died or were severely damaged during the construction process and replace damaged or dead trees with new trees, where required to do so by the City, except for municipally owned trees, which shall be removed by the City; and,
 - f) maintain each tree for a period of two (2) years after acceptance by the City of the work carried out by the Owner for tree planting, to ensure that each tree is living and shows signs of active growth; and,
 - g) place a letter of credit with the City in an amount as specified under Schedule "F", appended hereto, to secure the maintenance obligation of the Owner under this Agreement for tree planting.
- 31.2 At any time during the maintenance period, the Owner shall, upon request from the City, remove any tree, which has died or is not in satisfactory condition. In the event the Owner fails to maintain the trees to the satisfaction of the City, the City may have the work carried out on behalf of the Owner with all associated costs charged against the security. The City shall release the remaining balance of the security deposit for trees to the Owner, upon assumption of the trees by the City.
- 31.3 In the event that the measures required for the protection of trees during building operations become unsatisfactory, in the opinion of the City, the Owner or any builder on the Land or their representatives, shall upon forty-eight (48) hours notice from the City, reinstate protection for the trees. Upon failure by the Owner or any builder on the Land or their representatives to reinstate protection for the trees, the City may have the work carried out at the Owner's expense, with all associated costs charged against the security.

FENCING

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

DEFICIENCIES IN WORKS

- 33.1 In the event that the City determines that the Owner is not proceeding with due diligence to carry out the Works or any of them:
- a) in accordance with the timetable for the Order of Installation of Works specified under this Agreement; or,
 - b) in a proper and workmanlike manner and in accordance with Schedules "E" and "F"; or,
 - c) in accordance with other provisions of this Agreement;

then, in that event, the City may cause a Notice in writing to be sent by Registered Mail or delivered personally to the Owner at its last known place of business specifying such default and requiring that the default be remedied forthwith.

- 33.2 In the event that no action is taken by the Owner satisfactory to the City to remedy such default within seven (7) clear business days after the service or mailing of such Notice (or within such greater period as may otherwise expressly be permitted in this Agreement) or in the event of emergency, in addition to any other remedies hereunder, the City has and is hereby given the right of entry by the Owner to the Schedule "A" Land and may do and perform any and all actions, matters and things that may be required to remedy the default(s) as aforesaid, and in pursuance thereof, may hire labour, equipment and purchase such materials as the City considers necessary. All expenses incurred by the City, pursuant to this subsection, shall be paid by the Owner to the City within seven (7) days from the date of an account therefor being rendered to the Owner by the City.
- 33.3 Where, in the opinion of the City, any damage to any property has been caused directly or indirectly, or by reason of any default of the Owner under the provisions of this Agreement, the City has and is hereby given the right by the Owner to remedy such default at the expense of the Owner. The Owner shall pay such expense to the City within seven (7) days from the date of an account therefor being rendered to the Owner by the City.
- 33.4 The expense of all remedial work done by the City pursuant to this section shall:
- a) be calculated by the City whose decision on such expense is final; and,
 - b) include a management fee and a liquidated damages payment equal to fifty percent (50%) of the cost of labour, materials and equipment to perform such work, payable to the City as a consequence of such default; and,
 - c) include such further sums for special damages as may be determined by the City.
- 33.5 No work, act, matter or thing done by the City, its officers, employees or contractors as an agent of the Owner, pursuant to the provisions of this section or any other sections of this Agreement shall:
- a) give rise to any action, claim, counterclaim or demand by the Owner and/or Mortgagee or their respective executors, administrators, successors or assigns for damages, costs or compensation of any kind, except where such action, claim, counterclaim or damage arises from the negligence of the City or those for whom it is responsible; and,
 - b) be an acceptance of any such City service or improvement by the City.

MAINTENANCE OF WORKS

- 34.1 The Owner shall maintain to the satisfaction of the City during the period between the first occupancy of any permanent building within the Land and the placement of the final layer of asphalt pavement on the roadways of the Land:
- a) the asphalt base for such roadways in a well-graded and dust and muck free condition, fit for normal traffic at all times; and,
 - b) all curbs and gutters.
- 34.2 The Owner shall maintain, against any defective materials, latent defects or poor workmanship, at its own expense and to the satisfaction of the City:
- a) all sewer and watermain works and appurtenances installed by it under the provisions of this Agreement from the time of installation and continuing for a period of two (2) years after acceptance of sewer and watermain works by the City; and,
 - b) all base and surface course asphalt, curb and sidewalks installed by it under the provisions of this Agreement from the time of installation and continuing for a period of one (1) year after acceptance of surface course asphalt by the City; and,

- c) all trees installed by it under the provisions of this Agreement from the time of installation and continuing for a period of two (2) years after acceptance of surface course asphalt by the City.
- 34.3 The City agrees that acceptance of the Works and commencement of the maintenance periods described in this Agreement shall take place upon fulfillment of the following conditions by the Owner:
 - a) where the Land is being developed by a Plan, the Owner has registered the Plan in the Registry Office for the Land Titles Division of Wentworth; and,
 - b) the Works, which the Owner is required to construct pursuant to this Agreement, are substantially complete, in the opinion of the City; and,
 - c) the Works, which the Owner is required to construct pursuant to this Agreement, have been inspected to the satisfaction of the City; and,
 - d) the City has not identified any major deficiencies in the Works constructed pursuant to this Agreement.
- 34.4 The required security to be deposited by the Owner in this Agreement shall include an amount to secure this maintenance obligation and shall be no less than ten percent (10%) of the estimated cost of Works and thirty percent (30%) of the estimated cost of planted trees or \$ 10,000, whichever amount is greater.
- 34.5 During construction and installation of the Works and site grading, and until the streets are assumed by the City, the Owner shall, on or before the 15th day of November in each year, complete all such road Works as it has, on or before the 10th day of October in that year, been directed in writing by the City to perform — in order to place the roads in a satisfactory condition for the winter, including such work required to prevent damage to snow plows.
- 34.6 Notwithstanding the obligation of the Owner to maintain the said Works for the periods of time herein prescribed, the title to the Works together with all materials, pipes, pumps, machinery and other equipment connections and things appurtenant thereto, shall vest in the City immediately upon their installation and the Owner shall execute and deliver to the City when requested by the City, such other assurance(s) of title as the City may require.

ENTRY BY CITY EMPLOYEES, CONTRACTORS OR AGENTS

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

SNOW REMOVAL AND USE OF WORKS BY CITY OR AUTHORIZED PERSONS

- 36.1 The Owner agrees:
 - a) that pending completion of the said Works and/or acceptance thereof by the City, the Works, or any of them, may be used by the City or by any persons authorized by the City for the purposes for which such Works are designed; and,
 - b) that where the Land is being developed by a Plan, the City and any and all persons authorized by the City may enter upon all highways within the Plan with all necessary machinery and equipment and plow or remove snow or perform any other work which may be deemed necessary or expedient to make such highways safe and more convenient for the use of persons or vehicles; and,

- c) to consent to such entry by the City personnel and authorized persons for the purposes set out herein.

36.2 Notwithstanding the provisions of the above section:

- a) the use of the Works or any of them or such snow plowing or removal of snow or the performance of other work shall not constitute an acceptance of the Works or any of them pursuant to this Agreement by the City; and,
- b) the use of the Works or the snow plowing or removal of snow or the performance of such other work as the City considers necessary does not relieve or discharge the Owner of its obligations in respect of the construction and maintenance of the said Works or any of them, or of any other obligation of the Owner pursuant to the provisions of this Agreement.

"AS CONSTRUCTED" DRAWINGS

37. The Owner's Consulting Engineer shall:

- a) incorporate any job changes on the plans for such Works; and,
- b) deliver one (1) complete set of such revised "as constructed" drawings in mylar form, certified by the Owner's Consulting Engineer, as well as in a digitized electronic format acceptable to the City, within six (6) months after acceptance of the sewer and watermain works.

ASSUMPTION OF WORKS BY THE CITY

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

- a) have complied with all of the terms and conditions of this Agreement in respect of the Works; and,
- b) have corrected all deficiencies in the Works identified under the maintenance periods described in this Agreement, to the satisfaction of the City; and,
- c) have furnished to the City a duly sworn statutory declaration of the Owner:
 - (i) that it has paid all accounts in connection with the supply, installation of and maintenance of the Works; and,
 - (ii) that there are no outstanding debts, claims or liens in respect of the installation of or maintenance of the Works; and,
- d) have furnished to the City a progress certificate, in the form of a statutory declaration, prepared and signed by its Consulting Engineer; and,
- e) provide the City with a Certificate by an Ontario Land Surveyor stating that he has made visible all standard iron bars on all corners and at all points where there occurs a horizontal change of direction in every street, easement and/or other lands dedicated to the City and along the outside perimeter of the Land; and,
- f) have furnished to the City such additional assurances (such as a solicitor's opinion) as the City may require.

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

38.3 Upon the City's acceptance of the completion of installation and maintenance of the Works, including the streets and easements dedicated to the City hereunder,

the Works shall thereupon be deemed to have been assumed by the City, and, thereafter, the City shall be responsible for their maintenance and all liability pertaining thereto, subject to the Owner's obligations under Section 34 herein.

LIABILITY OF OWNER AND INDEMNIFICATION OF THE CITY

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

- a) any loss or damage that may happen to the Works, or to any part or parts thereof installed by the Owner pursuant to this Agreement and not yet assumed by the City; or
- b) any of the materials or other things used and employed in finishing and completing the Works by the Owner or any part or parts thereof; or,
- c) any injury to any person or persons, including workmen and the public, during the construction of the said Works or the maintenance thereof by the Owner pursuant to the provisions of this Agreement; or,
- d) damage caused by the storage, handling or use of explosives by the Owner or its employees, agents or contractors; or,
- e) the unapproved disposal of surface water from the Land; or,
- f) damage to any roadway, pavement, sidewalk or property of the City within the Land prior to assumption of the said Works by the City; or,
- g) damage by the Owner to the property of any person while the Owner is carrying out any of its Works in respect of the development; or,
- h) damage caused by the construction or operation of the Works under this Agreement prior to assumption thereof by the City; or,
- i) any loss or damage caused by the disposal or escape of surface water from the Land prior to assumption of the streets by the City.

39.2 The Owner covenants and agrees, at the Owner's expense, to defend, indemnify and forever save harmless the City, its employees, personnel, servants, contractors and agents from and against all actions, causes of action, interest, claims, demands, costs, (including legal costs) charges, damages, expenses prosecutions, fines, rights of contribution, and loss which the City may, at any time, bear, incur, be liable for, sustain or be put into for any reason, on account of or by reason of or in consequence of, arising directly or indirectly from (1) the City entering into this Agreement, and (2) from the implementation of the provisions of this Agreement by the Owner, its employees, agents, assignees or contractors and (3) in respect of any failure by the Owner to fulfil its obligations under this Agreement.

39.3 Notwithstanding any provision of this Agreement, the City shall not be liable for and no provision of this Agreement shall be construed as imposing upon the City any liability, in respect of any matter or thing arising directly or indirectly out of the provisions of this Agreement, for any damage or damages suffered by the Owner, or to any other employee, servant or agent of the Owner or to any property of the Owner or of any other person by reason of:

- a) any inspection carried out by the City or by a duly authorized employee, servant, contractor or agent of the City under any By-law of the City, under this Agreement or otherwise; or,
- b) the failure of the City or of any duly authorized employee, contractor or agent of the City to carry out any inspection under any By-law of the City, this Agreement or otherwise; or,
- c) the approval or failure to approve of any matter or thing, arising directly or indirectly out of the provisions of this Agreement, by the City or any duly authorized employee, servant, contractor or agent of the City.

INSURANCE

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

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

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

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

Where the works to be carried out include any one of the following activities, the policy shall not contain any exclusions or limitations with respect to such activity: shoring; storage; handling and use of explosives; underpinning; raising or demolition of any building or structure; pile driving; caisson work; collapse of any structure or subsidence of any property, structure or and from any cause.

The Owner's policy shall:

- (i) insure the Owner and shall include all contractors, agents, sub-trades and subcontractors employed or used by the Owner while engaged in any activities under this Agreement; and,
- (ii) name the City as an additional insured; and,
- (iii) contain cross-liability and severability of interest provisions.

The Contractors' policy shall:

- (i) insure the Contractor, and shall include all agents, sub-trades and subcontractors employed or used by the Contractor while engaged in any activities under this Agreement; and,
 - (ii) shall name the Owner and the City as additional insured; and,
 - (iii) contain cross-liability and severability of interest provisions.
- b) Automobile Liability Insurance, being a Standard Owners Form Automobile insurance policy, including third party liability coverage in an amount of not less than One Million Dollars (\$ 1,000,000) per occurrence; to cover all licensed vehicles owned and/or leased, as may be used in conjunction with this Agreement.
 - c) Any other form of insurance coverages in such amounts and deductible levels, or increased limits of the aforementioned coverages, as the City may require, taking into consideration Works to be done and industry standards.

40.3 Evidence, Acceptability, Cancellation, Termination/Non-Renewal

- a) Prior to execution of this Agreement by the City and prior to construction of the Works by the Contractor, the Owner shall deposit with the City originally signed certificates of insurance, or if required by the City, certified copies of each of the above noted insurance policies and, thereafter during the term of this Agreement, shall provide all policy renewals at least 15 days prior to the expiry date of such insurance.
- b) All insurance policies shall be in terms, form and amount and with Insurers (licensed to carry on business in Ontario) acceptable to the City Engineer.
- c) Insurance policies shall contain a provision that in the event of cancellation/termination/non-renewal, insurers shall provide prior written notice to the City of not less than 30 days for Commercial General Liability Insurance and 15 days for Automobile Liability insurance.

40.4 In the event the required insurance is not received or not maintained in force by the Owner, the City may, but is not obliged to, pay premiums for such insurance or substitute insurance and in such event, the Owner shall reimburse the City forthwith for all premiums so paid by the City. In the event of the failure of the Owner to so reimburse the City, within ten (10) days of the Notice of payment by the City, the City may, without further Notice, realize upon the security or may recover same as a debt in a court of competent jurisdiction.

REMEDIES

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

AGREEMENTS OF PURCHASE AND SALE

- 42. The Owner shall include in any Agreements of Purchase and Sale for lots, blocks units and severed parcels:
 - a) in respect of sidewalks:
 - (i) a plan showing the location of sidewalks; and,
 - (ii) a notice advising prospective purchasers and tenants that a sidewalk will, or will not, be constructed within the street right-of-way fronting the lot/block, unit or severed parcel.
 - b) in respect of the Detailed Grading Plan:
 - (i) a clause whereby the right is reserved, notwithstanding completion of the sale, for the Owner to enter upon the lot, block, unit or severed parcel sold for a period of one (1) year after the completion of the sale or until expiration of the maintenance period for the Works specified in this Agreement whichever date is later, in order to alter the land's grading in compliance with the Detailed Grading Plan; and,

- (ii) where roof leaders are not connected to the storm sewer a statement by the purchaser acknowledging that the purchaser understands and agrees that there are continuing lot, block, unit or severed parcel grading obligations and requirements and a restrictive covenant regarding the discharge of roof leaders to the ground, which shall run with the Land.
- c) in respect of Super Mailboxes and/or Catchbasins:
 - (i) a statement by the purchaser acknowledging the location of all Super Mailboxes and/or catchbasins within the Land; and,
 - (ii) a statement by the Owner that, as of the date of execution of the Agreement of Purchase and Sale, the lot, block, unit or severed parcel has or will have, as the case may be, a catchbasin and/or a Super Mailbox upon or adjacent to it (and, if the Super Mailbox location is not then known, upon being so informed by the Canada Post Corporation, the Owner shall immediately, at its own expense, notify, in writing, the purchaser of this fact); or,
 - (iii) where the purchaser of the lot, block, unit or severed parcel is a builder that has purchased the property for the purpose of constructing a residence on the property and its re-sale to a homebuyer, a covenant by the builder that, prior to the sale of the property to a homebuyer who intends to occupy the premises as a residence, the builder shall, at its own expense, notify, in writing, the homebuyer that the property has or will have, as the case may be, a catchbasin and/or a Super Mailbox abutting or fronting on it (or, if the location of the Super Mailbox is not then known, upon being so informed by the Canada Post Corporation, the builder shall immediately, at its own expense, notify, in writing, the homebuyer of this fact).

MISCELLANEOUS

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

- a) every term, covenant, obligation and condition in this Agreement inures to the benefit of and is binding upon the parties hereto and also any person or persons, corporate or otherwise, who execute this Agreement and their respective executors, administrators, successors and assigns; and,
- b) when the context so requires or permits, the singular number is to be read as if the plural were expressed, and the masculine gender as if the feminine or neuter, as the case may be, were expressed; and,
- c) the headings to the paragraphs in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or of any provision hereof; and,
- d) notices may be given to the Owner at the address set out in Schedule "B". Notices to the City may be addressed as follows, (until the City gives notice otherwise);

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

- e) subject to the provisions of this Agreement regarding changes to the approved construction drawings that may be subsequently approved by the City and regarding the plans and drawings to be prepared and submitted to the City for approval and subject to the fact that some or all of the Schedules of this Agreement may not form part of the version of this Agreement registered in an

electronic format, this Agreement contains the entire agreement between the Owner and the City, there is no condition precedent or warranty of any nature, no warranty or covenant exists collateral to this Agreement and this Agreement supersedes all prior agreements, arrangements, promises, representations or other understandings; and,

- f) notice is hereby given that unregistered amendments, revisions and adjustments may subsequently be authorized by the City to:
 - i) the approved schedules and construction drawings either required and/or referred to in this Agreement; and,
 - ii) the Schedules listed in this agreement; and,
 - iii) such that the reader is advised to examine the approved Schedules and construction drawings on file with the City to determine current requirements; and,
- g) if any of the provisions of this Agreement or their application to any person or circumstance are to any extent illegal, invalid or unenforceable at law, the remainder of this Agreement shall be construed as if such illegal, invalid or unenforceable provision were not part of the Agreement; and,
- h) this Agreement may not be modified or amended except by instrument in writing signed by the Owner and the City.

43.2 Time shall be of the essence of this Agreement.

LIST OF SCHEDULES TO THIS AGREEMENT

44. It is understood and agreed that::

- (i) schedules "A", "B", "C" and "D" listed below are attached to the paper version of this Agreement, and are to be included in and form part of this Agreement; and,
- (ii) schedules "E", "F", "G", "H", "I" and "J" listed below, (unless designated in Schedule "D" (the Specific Provisions Schedule) of this Agreement as "Not Applicable" or as "N/A") — are also attached to the paper version of this Agreement, and are to be included in and form part of this Agreement:
- (iii) where further Schedule(s) (if any) in addition to the foregoing Schedules, are also attached to and form part of this Agreement, such further Schedules shall be listed in Schedule "D".

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

SCHEDULE "A"

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

APPLICATION NUMBER: 25T-98002 and 25T200301

NAME OF SUBDIVISION: Southampton Estates Phase 2

DETAILS OF THE PLAN:

Plan prepared by: S.D. McLaren, O.L.S.

Plan dated:

MUNICIPAL ADDRESS OF LOCATION OF DEVELOPMENT:

N/A

LEGAL DESCRIPTION:

Being composed of Part of Lot 5, Concession 5, Geographic Township of Glanford, now in the City of Hamilton, being more particularly described as Lots 1 to 140, inclusive, Blocks 141 to 151, inclusive and streets namely, Midanbury Way, Rosebury Way and Thames Way as shown on a plan of subdivision registered in the Land Registry Office of the Land Titles Division Of Wentworth as Plan 62M-_____.

Date Schedule prepared: September 1, 2005

SCHEDULE "B"

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

APPLICATION NUMBER: 25T-98002 and 25T200301

NAME OF SUBDIVISION: Southampton Estates Phase 2

DATE OF THIS AGREEMENT: September 1, 2005

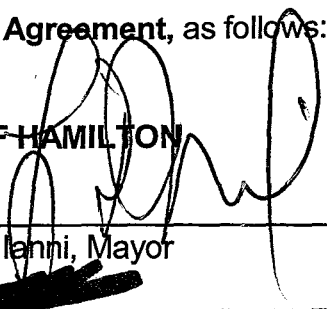
NAME OF OWNER: 1536708 Ontario Inc.

ADDRESS OF OWNER FOR NOTICES: 1070 Stone Church Road East, Unit 41
Hamilton ON L8W 3K8

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

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

CITY OF HAMILTON



Larry Di Ianni, Mayor



Kevin C. Christenson, City Clerk

(c/s)

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

Witness (signature)

Print name of Witness

Address of Witness

Per: 1536708 ONTARIO INC.



Anthony Di Cenzo, President

(c/s)

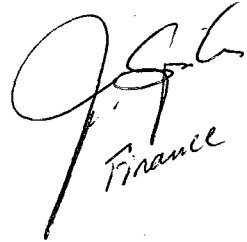
I/We have authority to bind the corporation.


Where Owner is a corporation, also

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

And, Where Owner is an individual also,

- (i) have witness(es) sign;
- (ii) cross out phrase, "I/We have authority to bind the corporation."



OFFICE OF THE CLERK	
APPROVED BY COUNCIL	
DATE	Aug. 22. 2001
REPORT COW 01-025	ITEM 47
INTL. 	YEAR/FILE 2006-4102

SCHEDULE "C"

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

APPLICATION NUMBER: 25T-98002 and 25T200301

NAME OF SUBDIVISION: Southampton Estates Phase 2

CONDITIONS OF APPROVAL

REVISED SCHEDULE 1 **(PHASE 2 ONLY)**

As authorized by By-law No. R95-041, I, T. McCabe, hereby approve revised draft plan of subdivision, **"Southampton Estates Phase 2"**, 1536708 Ontario Inc., owner, for lands located in the City of Hamilton (Township of Glanbrook) under Files No. 25T-98002 and 25T200301, subject to the following conditions:

- 1) That this approval apply to "Southampton Estates, Phase 2", dated February 10, 2004 prepared by Planning and Engineering Initiatives Ltd., showing one hundred forty-one (141) lots (Lots 1 to 140 and Block 148) for single detached dwellings, five (5) blocks (Blocks 141 to 145) for street townhouses, one (1) block (Block 146) for future high density development, one (1) block (Block 147) for a neighbourhood park, and one (1) block (Block 149) for a temporary storm water management facility eventually to be developed for block townhouses. The streets labeled "Thames Way.", "Rosebury Way Ext.", and "Midanbury Way" will be dedicated to the City as public roadways.

Development Engineering

- 2) That all road allowances, daylight triangles, public walkways and road widenings be dedicated by certificate as public highways on the final plan.
- 3) That the owner agrees to deed, free and clear to the appropriate authority, all easements or blocks required for utility purposes.
- 4) That, if required by the City of Hamilton, the owner/subdivider shall transfer to the City of Hamilton any easement over the subdivider's draft approved lands need for water or sewer services, or both, which easements will permit development to occur on adjacent property in accordance with the criteria approved by Council. Such easements are to be conveyed upon registration of the final plan of subdivision for any phase of that draft approved land.
- 5) That the owner agrees to provide a Geodetic Benchmark in a location to the satisfaction of the City of Hamilton.
- 6) That the owner agrees that any dead-ends and open sides of road allowance created by this draft plan of subdivision shall be terminated in 0.3m reserves and conveyed to the City of Hamilton.
- 7) That the owner shall submit detailed engineering design drawings to current standards and to the satisfaction of the Manager of Development Engineering.
- 8) That the owner agrees that all lots and blocks shall be developed with full municipal services.
- 9) That the owner agrees that all roads shall be designed to current geometric design standards of the City of Hamilton.
- 10) That the owner agrees to construct all works which may be considered temporary to facilitate the development of the subject property, as required by the Manager of Development Engineering. These may include, but not be limited to, emergency access, temporary turn around, or outfalls.

- 11) That the owner shall submit a detailed grading plan showing how the grading within the development will be integrated with the existing adjacent residential properties. The grading of the buildings will attempt to blend in with the existing topography and natural setting, where possible.
- 12) That the owner agrees that grading shall be carried out in accordance with the current standard drawings and specifications. Any modification to these drawings/specifications will require approval by the Manager of Development Engineering.
- 13) That the owner agrees that all dead or diseased trees shall be removed from the road allowances and that the removal and replacement of street trees, as required by the reconstruction of the roads, will be at the sole expense of the owner.
- 14) That the owner agrees to provide street lighting throughout the subdivision to the limits of the subdivision, to the satisfaction of the Manager of Development Engineering.
- 15) That the owner agrees not to dispose or stockpile any waste or surplus fill material except in a manner and in a location approved by the City of Hamilton.
- 16) That the owner agrees that no blasting will take place without a blasting permit from the City of Hamilton.
- 17) That the Owner, through his or her soil consultant, shall check the existing wells which provide the potable water supply within a reasonable distance of the subject lands to establish the existing depth of water within the wells prior to the commencement of construction; monitor these wells during construction; and, check the wells after the completion of construction. If any problems do arise, they must be appropriately addressed by the developer to the satisfaction of the Manager of Development Engineering.
- 18) That storm drainage, lot grading, siltation, erosion and noise control plans be implemented to the satisfaction of the City of Hamilton.
- 19) That the Owner agrees in writing to operate and maintain, in an acceptable manner, storm water management facilities throughout the construction of all the phases of the subdivision or until a time to be established by the Manager of Development Engineering, and monitor such operation and effects thereof. An operation manual, prepared by the Owner's engineer, shall be provided to the Manager of Development Engineering at the point of assumption by the City of Hamilton, the timing of which is to be established by the Manager of Development Engineering. This manual shall provide guidance for future inspections, monitoring and maintenance of the storm water management pond.
- 20) That the Owner agrees in writing that accesses to Lots 119 and 120 are only on Thames Way and Thames Way Extension, respectively.
- 21) That driveway accesses to Lots 137 to 140 inclusive be shown on the engineering drawings and located to the satisfaction of the Manager of Development Engineering.
- 22) That the owner prepares a plan showing the design and location of siltation and erosion control devices in accordance with the "Keeping Soils on Construction Sites" manual. The owner shall demonstrate how he or she will implement and monitor the plan to the satisfaction of the Manager of Development Engineering.
- 23) That, in accordance with the City's sidewalk policy, the Owner agrees, in writing, to construct:
 - Thames Way, from the west side of Block 147 to Fulmar Way, with a sidewalk along the south side of the street;
 - Thames Way and Thames Way Extension, from Fulmar Way to the east limit of Lot 84, with a sidewalk on the north side of the street;
 - Thames Way and Thames Way Extension, from Fulmar Way to Provident Way, with a sidewalk on the south and east sides of the street;
 - Rosebury Way Extension with only one sidewalk along the north side of the street;

- Avatar Way with only one sidewalk along the north side of the street; and,
- Provident Way with only one sidewalk along the south side of the street.

Further, that the Owner shall include a notice in all Purchase and Sale Agreements advising future home owners of these sidewalk requirements.

- 24) That the owner prepares a geotechnical report and implements the report's recommendations to the satisfaction of the Manager of Development Engineering.
- 25) That the owner's engineer confirms to the satisfaction of the Manager of Development Engineering that the approved servicing reports prepared for the South Mount Hope Estates and Southampton Estates draft plans of subdivision, including but not limited to the ground water study, do not require amendment to address the subject draft plan.
- 26) That the owner prepares a reference plan to identify the existing 0.3 metre reserve on Hampton Brook Way adjacent to Block 148 which is to be lifted by a deed prepared by the owner's solicitor.
- 27) That the owner provides details with regard to the facilitation of stormwater from Block 148, to the satisfaction of the Manager of Development Engineering, Planning and Development Department.
- 28) That the owner submits a plan illustrating the location of the driveway access for Block 148 in order to ensure the safe maneuvering of vehicles entering and exiting Block 148, to the satisfaction of the Manager of Development Engineering.
- 29) That the owner agrees to relocate, at his or her expense, the existing hydrant on the east side of Hampton Brook Way to allow for the proposed access to Block 148, if required, to the satisfaction of the Manager of Development Engineering.

Development Planning

- 30) That the owner agrees to select a street name from the City of Hamilton Reserved Street Name Index and/or submit street names to the satisfaction of the City of Hamilton.
- 31) That the owner agrees to erect a sign in accordance with the Subdivision Agreement prior to the issuance of a final release by the City of Hamilton.
- 32) That the final plan conforms to the Zoning By-law approved under the Planning Act.
- 33) That the owner agrees to provide the City of Hamilton with a certified list showing the net lot area and width of each lot and block and the gross area of the subdivision in the final plan.
- 34) That the owner submit, to the satisfaction of the City of Hamilton, a noise/vibration study prepared by a qualified professional, with said study containing an investigation of the noise/vibration levels impacting the proposed development, and the necessity for noise/vibration control measures.
- 35) That in event the proposed noise control measures do not fully achieve the MOE's recommended sound level limits for residential land uses, and a slight noise level excess remains, that the owner agrees to the inclusion in the Subdivision Agreement the following noise warning clause:

"Due to this development being in close proximity to King's Highway No. 6, purchasers are advised that despite the inclusion of noise/vibration measures within the development area and within the individual building units, noise levels may become of concern, occasionally interfering with some activities of the occupants."
- 36) That due to the proximity of the subject lands to the John C. Munro Hamilton International Airport, a notice clause similar to the following shall be included in the Subdivision Agreement:

"Future residents of this development are advised that the John C. Munro Hamilton International Airport is located in the vicinity of the subject lands and, as a result, there is a potential for noise nuisance at times related to Airport activity."

- 37) That any phasing of the development of the subject lands be to the satisfaction of the Director of Development, Planning and Development Department.
- 38) That the owner agrees, in writing, to satisfy all requirements, financial and otherwise, of the City of Hamilton prior to development of any portion of these lands.
- 39) The owner agrees to enter into a Subdivision Agreement or Agreements with the City of Hamilton.
- 40) That the owner agrees to install and pay for a minimum 1.5 metre black vinyl chain link fence along the east and north limits of Block 148.
- 41) That the owner agrees to install and pay for one half of the cost of a 1.5 metre black vinyl chain link fence along the east side of Block 147 where it abuts Lot 109.
- 42) That the owner conveys Block 147 to the City of Hamilton, as provided under Section 51 of the Planning Act, in fulfillment of the parkland dedication requirement.
- 43) That the owner submits a Phase 1 Record of Site Condition of Park Block 147 to confirm the land is free of any contaminants to the satisfaction of the Director of Development and Real Estate.
- 44) That the owner agrees, in writing, that the 0.3 metre reserves shown as Blocks 191, 194, 197 and 198 on Plan 62M-992 shall not be removed until such time as those lots and blocks to which the 0.3 metre reserves apply have been registered.

Open Space Development Division, Capital Planning and Implementation

- 45) That the Owner agrees that undeveloped blocks within the Subdivision Plan, which have been disturbed from their natural state or are difficult to maintain in a controlled state, shall be graded, seeded and maintained by the Owner until construction commences thereon.
- 46) That the Owner provides and implements, at the Owner's expense, a Streetscape Plan detailing street lighting and street-tree planting for Thames Way Extension, Rosebury Way Extension, Avatar Way Extension and Provident Way, which are prepared by a full member, in good standing, of the Ontario Association of Landscape Architects (OALA), to the satisfaction of the Manager of Open Space Development, Capital Planning and Implementation, Public Works Department.
- 47) That the Owner provides, at the Owner's expense, a 1.5 metre high black vinyl chainlink fence along the storm channel, comprised of Parts 3, 5 to 8, 14, 15 and 16 of Plan 62R-16650, where it abuts Lots 109 to 140 and Blocks 141 to 146, except where a noise attenuation wall may be required, to the satisfaction of the Manager of Open Space Development and Park Planning, Capital Planning and Implementation, Public Works Department.

Public Health & Community Services

- 48) That any existing or proposed development(s) constructed on the above described draft plan are properly connected to municipal sewers and water supply.

Bell Canada

- 49) That the owner be required to enter into an Agreement (Letter of Understanding) with Bell Canada complying with any underground servicing conditions imposed by the municipality, and if no such conditions are imposed, the owner shall advise the municipality of the agreement made for such servicing.
- 50) That Bell Canada shall confirm that satisfactory arrangements, financial and otherwise, have been made with Bell Canada for any Bell Canada facilities serving this draft plan of subdivision which are required by the City of Hamilton to be installed underground; a copy of such confirmation shall be forwarded to the City of Hamilton.

- 51) That the owner shall agree in words satisfactory to Bell Canada, to grant to Bell Canada any easements that may be required for telecommunication services. If there are any conflicts with existing Bell Canada facilities or easements, the owner/developer shall be responsible for rearrangements of relocation;

Canada Post

- 52) That the owner agrees to provide Canada Post facilities as required by Canada Post Corporation and to locate these facilities to the satisfaction of the City of Hamilton and Canada Post. The facilities are to be installed as part of the installation of Public Works.

Transport Canada

- 53) That the Subdivision Agreement require the following paragraph in all agreements of purchase and sale:

"Prospective tenants or owners should be aware that this residential development is located in close proximity to a takeoff and approach area for the Hamilton International Airport and residents will be subjected to the noise impact associated with substantial aircraft activity."

Niagara Peninsula Conservation Authority

- 54) That detailed lot grading and drainage plans, noting both existing and proposed grades, and the means whereby major system flows will be accommodated across the site, be submitted to the Conservation Authority for review and approval.
- 55) That detailed sedimentation and erosion control, detailing controls to be implemented both during and after construction, be submitted to the Conservation Authority for review and approval.
- 56) That prior to final approval, the owner submits to the Niagara Peninsula Conservation Authority confirmation that the existing stormwater management facility was designed and built to service the subject Draft Plan, consisting of Draft Plan 25T-98002 (Southampton Estates) and Draft Plan 25T-200301 (South Mount Hope Estates), in regards to stormwater quality and quantity in accordance with the Ministry of Environment documents entitled Stormwater Management Practices, Planning and Design Manual, 2003 as revised, endorsed by a qualified Professional Engineer.
- 57) That the abutting watercourse and any setback to protect fish habitat, as recommended in the EIA, comprised of Parts 3, 5 to 8, 14, 15 and 16 of Plan 62R-16650, be included within an environmental protection zone where no structural development is permitted.
- 58) That the subdivider's agreement include appropriate clauses that require the implementation of the conditions of the Niagara Peninsula Conservation Authority.

Union Gas

- 59) That the owner agrees to establish easements of an appropriate width in favour of Union Gas, if necessary.

Director of Development

- 60) That prior to the signing of the final plan, the Director of Development and Real Estate be satisfied that:

- a) The Development Engineering that conditions (2) to (29) inclusive;
- b) The Development Planning that conditions (30) to (44) inclusive;
- c) Open Space Development Division that conditions (45) to (47) inclusive;
- d) Public Health & Community Services that condition (48);
- e) Bell Canada that conditions (49) to (51) inclusive;
- f) Canada Post that condition (52)
- g) Transport Canada that condition (53);
- h) Niagara Peninsula Conservation Authority that conditions (54) to (58) inclusive;
- i) Union Gas that condition (59); and

has/have been carried out to his satisfaction with a brief but complete statement indicating how each condition has been satisfied.

NOTE: Pursuant to Section 51(32) of the Planning Act, draft approval shall lapse if the plan is not given final approval within 3 years. However, extensions will be considered if a written request is received before the draft approval lapses.

Signed: _____ Date: September 22, 2004.
Tim McCabe, Director
Development and Real Estate Division

NOTES TO DRAFT APPROVAL

- Acknowledgement by the City of Hamilton that, in accordance with the City's Financial Policies for new development, the City shall fund one-half of the cost of a 1.5 metre high black vinyl chain link fence along the east side of Park Block 147 only where it abuts Lot 109.
- That the City agrees to purchase an additional 653 square metres of land for parkland purposes, at market value, at the time of registration of that portion of the plan containing the parkland, with funding provided through the City's ParkTrust Fund Reserve.

SCHEDULE "D"

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

APPLICATION NUMBER: 25T-98002 and 25T200301

NAME OF SUBDIVISION: Southampton Estates Phase 2

SPECIFIC PROVISIONS

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

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

Schedules to this Agreement

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

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

1. SURVEY MONUMENTATION

a) Vertical and Horizontal Control

The Owner covenants and agrees to retain the services of an Ontario Land Surveyor to prepare a plan showing the proposed locations of Horizontal Control Monuments and Bench Marks to the satisfaction of the City. The monuments shall be placed in accordance with City Of Hamilton Standards prior to the submission of as-built engineering drawings.

b) Vertical Control Survey Requirements

i) The Owner shall use only approved City of Hamilton or Ministry of Transportation first or second order benchmarks to establish elevations throughout the Plan of subdivision. Prior to assumption of all Works in the Plan by the City, the Owner's surveyor shall establish one (1) permanent second order benchmark for the first 10 hectares or less, plus one (1) benchmark for every additional 10 hectares or less of the Plan of subdivision. The location and type of monument shall be to the satisfaction of the City.

ii) At the sole discretion of the Director of Development, the City may accept cash-in-lieu of Vertical Control Survey.

c) Horizontal Control Survey Requirements

i) Prior to assumption of all Works in the Plan by the City the Owner's surveyor shall submit to the City Of Hamilton, horizontal coordinates of all boundary monuments for the approved Plan of subdivision. These coordinates shall be based on the North American Datum 1983 (NAD'83), Zone 17, Central Meridian 81° and the 6° Universal Transverse Mercator Grid projection 6° (UTM) and derived from at least three monuments held fixed which are administrated under the COSINE data bank and to the satisfaction of the City.

SCHEDULE "D"

Page 2 of 6

Continued

- ii) The Owner's surveyor shall submit a report to the satisfaction of the City containing a summary of the field traverse, rotation, adjustment methods, closure errors, and a summary of the rational used to drive the boundary coordinates. The report shall be typed and bound.
- iii) Before, assumption of all Works in the Plan by the City, coordinates shall be derived for every monument associated with the Plan of subdivision based upon the 6°UTM coordinates of Item c) i) above. The Owner's surveyor shall provide a report containing the same requirements as Item c) ii) above.
- iv) The Owner's surveyor shall submit a plot plan and a geographical referencing digital file showing the number of each coordinated monument as well as an associated coordinate listing. The digital file is to be submitted in a format satisfactory to the City.
- v) The Owner's surveyor shall establish second order horizontal control monuments to the satisfaction of the City and in accordance with OS79 and OG79 for eventual acceptance by COSINE data bank. Location of the monuments is to be agreed upon by the Owner's surveyor and the City. The establishment of these monuments shall be two monuments for the first ten hectares or less, and one for every additional ten hectares of the Plan of subdivision. Every existing horizontal control destroyed due to construction activities shall be replaced by the Owner's surveyor.
- vi) At the sole discretion of the Director of Development, the City may accept cash-in-lieu of Horizontal Control Survey.

A cash payment in lieu of
Horizontal and Vertical Control Survey
is calculated to be the sum of.....

\$2,000.00

2. SILTATION CONTROL

The Owner agrees:

- a) To provide a siltation and control plan for review and approval by of the City Engineer. The siltation and erosion control devices shall be installed and maintained to the satisfaction of the City Engineer and in accordance with the approved plans. In addition the owner shall carry out the following:
 - i To prepare and maintain a Siltation and Control Plan to function efficiently of the sewers and road construction, as described under Schedule "F" of the attached Agreement have been accepted as complete for the City.
 - ii Any lots no intended for construction within 45 days of registration of this Agreement shall be seeded and mulched to re-establish vegetation.
 - iii To construct and maintain control features that will prevent soil from being washed out onto the roads.
 - iv To provide a maintenance schedule for cleaning of catchbasins within the plan.
 - v That once occupancy has taken place for any units within the plan, mud shall be scraped from the roads as required by the City, but not less than once a day during construction.
 - vi That a power sweeper shall clean all roads within the plan and shall be scheduled at least one day per week upon occupancy of any units within the plan.

- vii That siltation control devices shall be visually inspected by the owner at the end of each working day and any deficiencies will be immediately remedied to the satisfaction of the City Engineer. A siltation inspection record shall be kept by the consultant and a copy presented to the City on a monthly basis.
- viii That in the event that the low flow channel at the storm sewer outlet is obstructed by silt or debris, the Owner shall be responsible to carry out the removal and disposal of any silt or debris in accordance with Provincial guidelines.
- b) To install all erosion and sediment control measure prior to development, and maintained throughout the construction process, until all disturbed areas have been revegetated;
- c) To inspect all erosion and sediment control measures after each rainfall and maintain such to the satisfaction of the City Engineer and the Niagara Peninsula Conservation Authority staff;
- d) To provide any disturbed area not scheduled for further construction within 45 days with a suitable temporary mulch and seed cover within 7 days of the completion of that particular phase of construction.
- e) To ensure that the builders carry out "good housekeeping practices", contain all construction wrappers and debris for each lot, and store all propane tanks and other volatile substances in accordance with the appropriate regulations.

3. SALES TRAILERS/PAVILION – CONSTRUCTION TRAILERS/COMPOUND

The Owner agrees:

- a) To submit to the Planning and Development Department a plan showing the proposed location of any sales trailer/pavilion together with its size, access, parking, signage and landscaping to be approved by the City Engineer.
- b) To store construction materials when not in active use on a building site, in a fenced construction compound and in a location satisfactory to the City Engineer. The location of the construction compound shall be shown on a plan which shall include information such as the location of the compound and the height and dimensions of the fence including the setback from roads/property lines.

4. PRIVATE REAR YARD CATCH BASINS

The Owner covenants and agrees to include the following notice to perspective purchasers in all agreements of purchase and sale for Lots 18, 23, 29, 51, 56, 63, 87, 93, 99 and 106:

"Lot grading and drainage of the lands in the subdivision plan has been designed to provide a rear yard catchbasin at the rear of this lot with a connection to the mainline sewer. It is the sole responsibility of the owner of this lot to maintain and operate the rear yard catchbasin and its connection. The owner of this lot shall in no way interfere with, alter, change or remove the rear yard catchbasin or its connection to the mainline sewer."

**5. RESTRICTIVE COVENANTS WHERE
ROOF LEADERS DISCHARGE TO THE GROUND SURFACE**

The Owner covenants and agrees that every Agreement of Purchase and Sale between the Owner, as vendor, and a purchaser for the sale of a lot, block, unit or severed parcel intended for construction of a single detached or semi-detached dwelling within the Land shall include:

- a) a statement by the purchaser acknowledging that the purchaser understands and agrees that where rainwater from roof leaders discharges to the ground surface there are continuing lot grading and drainage obligations of the purchaser and requirements of the City to be maintained by the purchaser;
- b) the following restrictive covenant, which shall run with the land:

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

- i) As roof leaders from the dwelling situated within the herein lands are not connected to the storm sewers, the Transferee understands and agrees that there is an obligation and responsibility on the part of the Transferee to maintain the City's requirements with respect to Final Grading of the herein lands in accordance with the City's Lot Grading Policy and the grading plans approved by the City, for the lands herein.
- ii) Rainwater from roof leaders shall discharge directly onto splash pads, then, at a distance of no less than 0.60 metres away from any building face, enter onto only a grassed or landscaped area;
- iii) Rainwater from roof leaders shall not, under any circumstances, discharge onto a sidewalk or a driveway, as may be defined by the City;

The Transferee shall not interfere with the final lot grading of the lands herein as shown on the Grading Plan approved by the City. In the event, that the Transferee breaches this covenant, as determined by the City, the said Transferee shall carry out, at his/her expense, such works as may be necessary to correct such interference and shall restore all damaged property to its original condition as determined by and to the satisfaction of the City.

6. STORM WATER MANAGEMENT FACILITIES

The Owner covenants and agrees in writing to operate and maintain, in an acceptable manner, to the City, storm water management facilities throughout the construction of all the phases of the subdivision Plan or until a time to be established by the City Engineer, and monitor such operation and effects thereof. An operation manual, prepared by the Owner's Consulting Engineer, shall be provided to the City Engineer, at the point of assumption by the City. This manual shall provide guidance for future inspections, monitoring and maintenance of the storm water management pond.

The City and Owner hereby agree that the City shall review the amount of the security held in respect of the Owner's obligation to maintain the storm water management facilities, once yearly on or about the anniversary date of this Agreement as noted under Schedule "B" to determine whether the amount of such security is sufficient to one hundred percent (100%) of the value of the Owner's obligations to maintain the storm water management facilities under this Agreement which are outstanding at the time of such review. If the amount of security is determined to be insufficient by the City, then the Owner covenants and agrees to increase the amount of such security to satisfy the City's requirements.

7. NOISE WARNINGS

The Owner covenants and agrees to include the following notice to perspective purchasers in all agreements of purchase and sale for all Lots and Blocks:

"Due to this development being in close proximity to Upper James Street, White Church Road, Highway No. 6 and the Hamilton International Airport, purchasers are advised that despite the inclusion of noise/vibration measures within the development area and within the individual building units, noise levels may become of concern, occasionally interfering with some activities of the occupants."

"Future residents of this development are advised that the John C. Munro Hamilton International Airport is located in the vicinity of the subject lands and, as a result, there is a potential for noise nuisance at times related to Airport activity."

Lots 134-140 & Blocks 141-145

That all outdoor living areas (OLA) within Lots 134-140 and Blocks 141-145 within the proposed development shall be provided with Warning Clause Type "B"

Type "B" Warning Clause:

"Purchasers/tenants are advised that despite the inclusion of noise control features in the development and within the building units, sound levels due to increasing road traffic may on occasions interfere with some activities of the dwelling occupants as the sound levels exceed the Municipality's and the Ministry of the Environments noise criteria."

Lots 10-19, 44-53, 79-88, 131-140 & Blocks 141-145

That Lots 10-19, 44-53, 79-88, 131-140 & Blocks 141-145 within the proposed development shall be provided with Warning Clause Type "C", in addition forced air heating will be required.

Type "C" Warning Clause:

"Purchasers/tenants are advised that this dwelling unit has been fitted with a forced air heating system and the ducting, etc. was sized to accommodate central air conditioning. Installation of central air conditioning by the occupants will allow windows and exterior doors to remain closed thereby ensuring that the interior sound levels are within the Municipality's and the Ministry of the Environments noise criteria. (Note: The location and installation of the outdoor air conditioning device should be done so as to comply with noise criteria of MOE Publication NPC 216, Residential Air Conditioning Devices and thus minimize the noise impacts both on and in the immediate vicinity of the subject property.)"

Blocks 146 & 149 – Future Development Blocks

That a separate noise study be prepared for future Blocks 146 and 149 at the time of the site plan approval when land use and building location has been prepared for these Blocks. The site plan should take into consideration the acoustical effects of the realignment of Highway No. 6 on the development.

8. ENVIRONMENTAL PROTECTION ZONE

The Owner covenants and agrees to include the following notice to perspective purchasers in all agreements of purchase and sale for all adjacent Lots and Blocks:

"No structural development is permitted within the limits of Part 3 and Parts 5 to 8, inclusive, Parts 14, 15 and 16 of deposited Reference Plan 62R-16650, which are included within an Environmental Protection Zone as recommended in the Environmental Impact Assessment, in order to protect fish habit in the adjacent natural watercourse."

That the abutting watercourse and any setback to protect fish habitat, as recommended in the EIA, comprised of Part 3 and Parts 5 to 8, inclusive, Parts 14, 15 and 16 of Plan 62R-16650, be included within an environmental protection zone where no structural development is permitted.

9 Niagara Peninsula Conservation Authority

The developer shall carry out or cause to carry out, implement and construct, both on and external to the site, all grading, drainage works, stormwater management plan works, erosion and sedimentation controls and re-vegetation or otherwise restore all disturbed areas immediately upon completion of construction, all-in accordance with the plans prepared by S. Llewellyn, P.Eng. dated 06-08-05 which are necessary to fulfill the conditions for final approval of the MOE, NPCA and the City Of Hamilton.

10 Distance Separation to Existing Operating Wells

- 1) The Owner shall ensure that if there are any operating wells within a reasonable distance of the subject lands, the Owner, through his soils consultant or other qualified consultant, shall be required to check the existing wells which provide the potable water supply within a reasonable distance of the subject lands to establish the existing depth of water within the wells prior to the commencement of construction, monitor these wells during construction and check the wells after the completion of construction. If any problems arise, they shall be appropriately addressed by the Owner to the satisfaction of the City.

11 Land Restrictions

That a 0.3 metre reserve fronting Lots 138, 139 and 140 and Blocks 141 through to 145, inclusive, shall be transferred to the City as a requirement of the registration of the Plan. Said reserve shall be lifted and dedicated as part of the public road allowance upon the latter of:

- (I) The Owner obtaining the consent of the Manager of Development Engineering to the design and specifications of the noise barrier to be constructed along the westerly limit of Upper James Street; and
- (II) The City being in possession of securities and/or cash (on a present value basis) sufficient, in the opinion of the Manager of Development Engineering, to ensure the construction of the said barrier

For further certainty, the Owner acknowledges and agrees that Lots 138, 139 and 140 and Blocks 141 through to 145, inclusive not be developed until such time as the reserve is so lifted as aforesaid. The parties further agree that, should the Manager of Development Engineering be satisfied that the said noise barrier is not required at any time prior to the commencement of construction, then the said reserve shall be lifted without the Owner being required to satisfy the requirements of subparagraphs (I) and (II) hereof and, where, the Owner has posted securities and/or cash pursuant to said subparagraph (II), such securities and/or cash shall be forthwith returned or released to the Owner.

12. Noise Study

That the Owner agrees to submit, to the satisfaction of City of Hamilton, a noise study prepared by a qualified professional, for Lots 138, 139 and 140 and Blocks 141 through 145 inclusive, that is current at the time of consideration of this development phase.

Date Schedule prepared: November 18, 2005

SCHEDULE "E"

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

APPLICATION NUMBER: 25T-98002 and 25T200301

NAME OF SUBDIVISION: Southampton Estates Phase 2

LIST OF APPROVED CONSTRUCTION DRAWINGS

for Works Included in the Agreement

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

Construction drawings prepared by S. Llewellyn & Associates Limited numbered 1 to 12 inclusive, D-1 and D-2 under project number 02082.

List of Drawings:

1. General Services
2. Plan and Profile Thames Way
3. Plan and Profile Thames Way
4. Plan and Profile Thames Way
5. Plan and Profile Rosebury Way
6. Plan and Profile Avatar Way
7. Plan and Profile Provident Way
8. Grading Plan
9. Grading Plan
10. Grading Plan
11. Notes and Details
12. Erosion and Sedimentation Control Plan
- D-1 Storm Drainage Area Plan
- D-2 Sanitary Drainage Area Plan

Date Schedule prepared: September 1, 2005

SCHEDULE "F"

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

APPLICATION NUMBER:

NAME OF SUBDIVISION OR CONDOMINIUM: SOUTHAMPTON ESTATES PHASE 2
PROJECT NO.: 02082

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

Submitted By: S. Llewellyn & Associates
Limited.

S. Llewellyn, P. Eng.

Date: _____

Approved By: _____

FOR

Manager,

Engineering Section – Development Division
Planning and Development Department

Date: Nov. 21, 2005



SCHEDULE "F"
SOUTHAMPTON ESTATES PHASE 2

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

PART A - Works to be carried out by the Owner and costs to be shared as shown below

		<u>TOTAL COST OF WORKS</u>	<u>OWNER'S SHARE</u>	<u>CITY'S SHARE</u>
1	THAMES WAY			
	From: Hampton Brook Way to Provident Way. Note: Lots 98 to 119 were serviced in Phase I.			
a)	Sanitary Sewers, 250mm dia. and appurtenances. 409.0m @\$170.00/m.	69,530.00	69,530.00	0.00
b)	Storm Sewers, 375 - 600mm dia. and appurtenances. 418.5m @ \$220.00/m	92,070.00	92,070.00	0.00
c)	Watermains, 200mm dia. (incl. valves and hydrants). 430.0m @ \$130.00/m	55,900.00	55,900.00	0.00
d)	Catch Basins and Connections 10.0 singles @ \$1,500.00/ea.	15,000.00	15,000.00	0.00
e)	Rear lot Catchbasins 2.0 each @\$4,000.00/ea.	8,000.00	8,000.00	0.00
f)	Curb and Gutter (including subdrains) 800.0 m @ \$50.00/m	40,000.00	40,000.00	0.00
g)	Final Roads (gravel, asphalt and surface asphalt). 3,400.0m ² @ \$35.00/ m ²	119,000.00	119,000.00	0.00
h)	Sidewalks 920.0m ² @ \$45.00/m ²	41,400.00	41,400.00	0.00
i)	Remove Existing Dead End Barricade 2.0 @ \$500.00/ea.	1,000.00	1,000.00	0.00
j)	Streetlighting 10.0 @ \$1,500.00/ea.	15,000.00	15,000.00	0.00
SUB-TOTAL THAMES WAY		\$456,900.00	\$456,900.00	\$0.00

SCHEDULE "F"
SOUTHAMPTON ESTATES PHASE 2

		TOTAL COST OF WORKS	OWNER'S SHARE	CITY'S SHARE
2	AVATAR WAY From: Hollybank Way to Thames Way.			
a)	Sanitary Sewers, 250mm dia. and appurtenances. 195.0m @ \$170.00/m.	33,150.00	33,150.00	0.00
b)	Storm Sewers, 450mm dia. and appurtenances. 197.0m @ \$200.00/m	39,400.00	39,400.00	0.00
c)	Watermains, 150mm dia. (incl. valves and hydrants). 230.0m @ \$130.00/m	29,900.00	29,900.00	0.00
d)	Catch Basins and Connections 6.0 singles @ \$1,500.00/ea.	9,000.00	9,000.00	0.00
e)	Rear lot Catchbasins 3.0 each @ \$4,000.00/ea.	12,000.00	12,000.00	0.00
f)	Curb and Gutter (including subdrains) 460.0 m @ \$50.00/m	23,000.00	23,000.00	0.00
g)	Final Roads (gravel, asphalt and surface asphalt). 1,850.0m² @ \$35.00/ m²	64,750.00	64,750.00	0.00
h)	Sidewalks 330.0m² @ \$45.00/m²	14,850.00	14,850.00	0.00
i)	Remove Existing Dead End Barricade 1.0 @ \$500.00/ea.	500.00	500.00	0.00
j)	Streetlighting 6.0 @ \$1,500.00/ea.	9,000.00	9,000.00	0.00
	SUB-TOTAL AVATAR WAY	\$235,550.00	\$235,550.00	\$0.00
3	ROSEBURY WAY From: Hollybank Way to Thames Way.			
a)	Sanitary Sewers, 250mm dia. and appurtenances. 195.5m @ \$170.00/m.	33,235.00	33,235.00	0.00
b)	Storm Sewers, 375-450mm dia. and appurtenances. 197.0m @ \$200.00/m	39,400.00	39,400.00	0.00
c)	Watermains, 150mm dia. (incl. valves and hydrants). 230.0m @ \$130.00/m	29,900.00	29,900.00	0.00
d)	Catch Basins and Connections 6.0 singles @ \$1,500.00/ea.	9,000.00	9,000.00	0.00
e)	Rear lot Catchbasins 3.0 each @ \$4,000.00/ea.	12,000.00	12,000.00	0.00
f)	Curb and Gutter (including subdrains) 460.0 m @ \$50.00/m	23,000.00	23,000.00	0.00
g)	Final Roads (gravel, asphalt and surface asphalt). 1,850.0m² @ \$35.00/ m²	64,750.00	64,750.00	0.00

SCHEDULE "F"
SOUTHAMPTON ESTATES PHASE 2

		TOTAL COST OF WORKS	OWNER'S SHARE	CITY'S SHARE
	h) Sidewalks 330.0m ² @ \$45.00/m ²	14,850.00	14,850.00	0.00
	i) Remove Existing Dead End Barricade 1.0 @ \$500.00/ea.	500.00	500.00	0.00
	i) Streetlighting 5.0 @ \$1,500.00/ea.	7,500.00	7,500.00	0.00
	SUB-TOTAL AVATAR WAY	\$234,135.00	234,135.00	\$0.00
4	PROVIDENT WAY Note: Underground installations and roads constructed in Phase I. Lots 1-14 inclusive serviced in Phase I.			
5	PRIVATE DRAIN CONNECTIONS Sanitary - For Lots 15-97, 120-140 and Blocks 141-145 & 148. 137 Services @ \$700.00/each Storm - For Lots 15-97 83 Services @ \$700.00/each	154,000.00	154,000.00	0.00
6	PRIVATE WATER SERVICE CONNECTIONS For Lots 15-97, 120-140 and Blocks 141-145 & 148 137 Services @ \$700.00/each	95,900.00	95,900.00	0.00
7	DRIVEWAY APPROACHES For Lots 15-31, 49-65, 84-108, 109-140 and Blocks 141-145 & 148 124 Lots @ \$400.00/each	49,600.00	49,600.00	0.00
8	STREET TREES For Lots 1-140, Blocks 141-145 & 148 198 trees @ \$300.00/each	59,400.00	59,400.00	0.00
9	FENCING Adjacent to Channel – 1.5m Chainlink Fence 655.0m @ \$50.00/m Block 147 – 1.5m Chainlink Fence 30.0m @ \$50.00/m Block 148 – 1.5m Chainlink Fence 70.0m @ \$50.00/m Adjacent to Upper James Street – 2.4m Noise Wall 305.0m @ \$200.00/m	32,750.00 1,500.00 3,500.00 61,000.00	32,750.00 750.00 3,500.00 61,000.00	0.00 750.00 0.00 0.00
10	SODDING (Road Allowance) 9000m ² @ \$5.00/m ²	45,000.00	45,000.00	0.00
	TOTAL PART A	\$1,429,235.00	\$1,428,485.00	\$750.00

SCHEDULE "F"
SOUTHAMPTON ESTATES PHASE 2

SUMMARY SHEET

DESCRIPTION OF WORKS		TOTAL COST OF WORKS	OWNER'S SHARE	CITY'S SHARE
A.	1. Sewers including Private Drains	460,785.00	460,785.00	0.00
	2. Catch Basins and Connections	65,000.00	65,000.00	0.00
	3. Watermains including Water Service Connections	211,600.00	211,600.00	0.00
	4. Curbs and Gutters	86,000.00	86,000.00	0.00
	5. Final Roads	248,500.00	248,500.00	0.00
	6. Sidewalks including Driveway Approaches	120,700.00	120,700.00	0.00
	7. Streetlighting	31,500.00	31,500.00	0.00
	8. Sodding	45,000.00	45,000.00	0.00
	9. Dead End Barricades	2,000.00	2,000.00	0.00
	10. Fence & Noise Wall	98,750.00	98,000.00	750.00
	Net Construction Cost (A)	1,369,835.00	1,369,085.00	750.00
	GST on Net Construction Cost (7%)	95,888.45	95,835.95	52.50
	Subtotal (B)	1,465,723.45	1,464,920.95	802.50
	Maintenance (greater of 10% Net Construction Cost or \$10,000)	146,572.35	146,572.35	0.00
	Engineering (8% Net Construction Cost)	109,586.80	109,526.80	60.00
	Construction Engineering Fee (4% Net Constr. Cost)	30.00	0.00	30.00
	Total Construction Cost	1,721,912.60	1,721,020.10	892.50
B.	Street Trees	59,400.00	59,400.00	0.00
	30% Maintenance on Street Trees	17,820.00	17,820.00	0.00
C.	Replace damaged or missing survey monuments & SIB's	2,000.00	2,000.00	0.00
D.	Pre-Grading of lots	0.00	0.00	0.00
E.	Final Grading of Lots	25,000.00	25,000.00	0.00
	TOTAL COST OF WORKS	1,826,132.60	1,825,240.10	892.50

SCHEDULE "G"

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

APPLICATION NUMBER 25T200301

NAME OF SUBDIVISION: Southampton Estates Phase 2

FINANCIAL OBLIGATIONS OF OWNER**1. Summary of Cash Payments**

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

- | | |
|--|----------------------------|
| a) a cash payment in lieu of dedication of five percent (5%) of the lands in the Land for parkland, pursuant to Section 51.1 of the <u>Planning Act</u> R.S.O. 1990 Chapter P.13, which amount is calculated to be the sum of : | <u>\$ - NIL -</u> |
| b) an amount sufficient to pay or commute all costs of Works installed under the Local Improvement Act, under the Municipal Act, or under other applicable provincial legislation, together with accumulated interest, less any amounts referable to the oversizing of the City services and improvements, and all other charges and rates already assessed or imposed against the Land or against the owners or occupants thereof, in accordance with Section 6 of the Agreement and as set out in Part 1 of Schedule "H", attached to the Agreement, which actual amount is calculated to be the sum of: | <u>\$ - NIL -</u> |
| c) an amount sufficient to pay, the cost of street name signs, at a cost of \$ 250.00 per intersection, to be erected by the City for the streets established by the Plan or affected by the development of the Land, in accordance with Section 20 of the Agreement, which amount is calculated to be the sum of: | <u>\$ 1,250.00</u> |
| d) an administration fee for: | |
| i) the City's review and supervision of the Owner's engineering services and administration of security in connection with the construction and installation of the Works in accordance with Section 7 of the Agreement, which amount is calculated to be the sum of: | <u>\$ 63,348.94</u> |
| Geodetic Bench marks | <u>\$ 2,000.00</u> |
| TOTAL CASH PAYMENT required at the time of execution of the Agreement equals the sum of those amounts required by sections (a), (b), (c), and (d) above, which amount is calculated to the sum of: | <u>\$ 66,599.94</u> |

SCHEDULE "G"
Continued

2. Summary of Security Deposits

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

- a) Seventy five percent (75%) of the total estimated cost, including consulting engineering fees and maintenance fees, for Works to be installed by the Owner on highways and easements in accordance with Section 5 of the Agreement and as set out under Schedule "F", attached to the Agreement, which estimated amount is calculated to be the sum of: \$ 1,368,930.00

- b) The estimated cost of future City services and improvements to be installed by the City or other Owners or developers on highways and easements abutting or within the Land as set out in Part 2 of Schedule "H", attached to the Agreement, which estimated amount is calculated to be the sum of: \$ 250,000.00

TOTAL SECURITY DEPOSIT required at the time of execution of the Agreement equals the sum of those amounts required by sections (a), and (b), above, which amount is calculated to the sum of: \$ 1,618,930.00

Date Schedule prepared: September 1, 2005

SCHEDULE "H"

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

APPLICATION NUMBER: 25T-98002 and 25T200301

NAME OF SUBDIVISION: Southampton Estates Phase 2

RECOVERY OF COSTS FOR EXISTING AND FUTURE SERVICES

PART 1 - Recovery of Costs for Existing Works

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

STORM AND SANITARY SEWERS

N/A \$ - NIL -

WATERMAINS

N/A \$ - NIL -

SUBTOTAL FOR SEWERS AND WATERMAINS \$ - NIL -

Adjustment to Recoverable Sewer and Watermain Costs
based on the "Canadata Construction Cost Index":

Adjustment period – (Index #) to (Index #) \$ - NIL -

ROADS

N/A \$ - NIL -

LAND

N/A \$ - NIL -

TOTAL CASH PAYMENT FOR EXISTING WORKS **\$ - NIL -**

PART 2 - Recovery of Costs for Future Works

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

STORM AND SANITARY SEWERS

N/A \$ - NIL -

WATERMAINS

N/A \$ - NIL -

NOISE WALL

Adjacent to Lots 138, 139 and 140, Blocks 141 to 145 inclusive. \$ 250,000.00

TOTAL SECURITY DEPOSIT FOR FUTURE WORKS **\$ 250,000.00**

Date Schedule prepared: September 1, 2005

SCHEDULE "I"

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

APPLICATION NUMBER: 25T-98002 and 25T200301

NAME OF SUBDIVISION: Southampton Estates Phase 2

TRANSFER OF LANDS AND EASEMENTS

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

PART "A" - TRANSFER OF LANDS TO THE CITY

1. By Certificate on the Plan to the City

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

Block(s): N/A

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

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

- (i) where the required lands or easements to be dedicated to the City are located outside the limits of the Plan of subdivision or condominium, "external transfers", such external transfers shall be transferred to the City PRIOR to registration of the Plan of subdivision or of condominium; and,
- (ii) where this agreement is in respect of a Decision of the Committee of Adjustment, all of the required land(s) or easement(s) listed below shall be transferred to the City PRIOR to registration of this agreement.

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

Five Percent (5%) Park land Dedication:

(i) Internal: Block(s):147

Total area of land within the plan	116,417.17 m ²
5% Park land dedication requirement	5,821.00 m ²
Remaining Credit in favour of the Owner	6,474.00 m ²
Park Credit held by Owner remaining from Southampton Phase 1	1,274.60 m ²
Plus area of Block 147	<u>6,474.00 m²</u>
Total Credit	7,748.60 m²
Less 5% Park land dedication requirement for the Plan	<u>-5,821.00 m²</u>
Remaining Park Credit in favour of the Owner to be used for future development	<u>1,927.60 m²</u>

(ii) External/COA: Part(s): N/A

SCHEDULE "I"

Continued

Reserve(s):

- (i) Internal: Block(s): 151
- (ii) External/COA: Part(s): N/A

Other Land(s):

- (i) Internal: Block(s): Block 150
- (ii) External/COA: Part(s): N/A

PART "B" - TRANSFER OF EASEMENTS TO CITY**Watermain(s):**

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

Sewer(s):

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

Other:

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

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

1. The Transferor grants to the Transferee, its successors and assigns the free, uninterrupted and unobstructed right and easement in the land described in this transfer (hereinafter such land may be referred to as the "land") upon the following terms and conditions:
 - (a) This easement in favour of the Transferee is for the purpose of: watermain, storm and sanitary sewer systems, including all appurtenances necessary or incidental thereto (hereinafter may be referred to as the "easement").
 - (b) This easement includes the right of the Transferee to enter the land and lay down, install, construct, maintain, open, inspect, add to, alter, repair and keep in good condition, remove, replace, reconstruct, supplement and operate the easement on, in, across, under and through the land.
 - (c) This easement includes the right of the Transferee, its employees, agents, contractors, workers and other persons duly authorized by the Transferee, at all reasonable times and from time to time, as may be necessary or incidental to this easement, to pass and re-pass the land with all plant, machinery, material, vehicles, and equipment and to keep the land clear of obstructions necessary to permit the easement.
 - (d) The Transferor shall not, on, in, over or under the land (i) excavate, drill, install, erect or build; (ii) plant any tree, construct any pit, well, pavement, building or structure; and, (iii) alter the grading or any over-land drainage patterns approved by the City, without the prior written consent of the General Manager, Planning and Development Department. The foregoing is subject to the exception that the Transferor's building's footings and eaves may encroach into or over the land up to a maximum of 0.5 metres from the outer limits of the land. Subject to this and the other provisions of this easement in favour of the Transferee, the Transferor remains the owner of the land.

SCHEDULE "I"

Continued

- (e) Sewer or water pipe(s) and all other equipment and material brought onto the land by the Transferee (i) shall at all times remain the property of the Transferee notwithstanding same may be annexed or affixed to the land; and, (ii) may at any time and from time to time, be removed in whole or in part, by the Transferee.
- 2. The Transferee covenants to the Transferor that the Transferee is responsible for any damage caused by its agents or employees to the land and to the property of the Transferor, including any other land of the Transferor adjacent to the said land; and, without limiting the generality of the foregoing, that the Transferee shall, as far as possible, at the Transferee's expense, replace any soil, turf or ground coverings disturbed by the Transferee; restore the existing grading and any existing overland drainage patterns; and repair any damage caused by the Transferee, its agents or employees.
- 3. (a) In accordance with section 91 of the Municipal Act, 2001 S.O., 2001, c. 25, it is acknowledged that because this is a municipal public utility easement, this easement in favour of the Transferee does not have to be appurtenant to or annexed to or for the benefit of any specific parcel of land of the Transferee as its dominant tenement, to be valid.
- (b) The dominant tenement of this easement of the Transferee is the Transferee's municipal system of watermains, storm and sanitary sewers, including their related buildings and plant located in the City of Hamilton in the Province of Ontario.
- (c) This easement shall enure to the benefit of and be binding upon the Transferor, the Transferee and their respective successors and assigns.

TRANSFER OF SURFACE DRAINAGE EASEMENT TO THE CITY

- 1. The Transferor grants to the Transferee, its agents, successors and assigns, the right, interest and easement in, over, along and upon the land described in the Transfer Easement to which this Schedule is attached, to be used as appurtenant to the Transferee's land described below, for the following purpose, in common with such further and other easements as the Transferor may grant from time to time:
 - (a) to enter, inspect and undertake, at any time, modifications to the surface drainage of the said land in accordance with the Detailed Grading Plan and the Overall Grading Plan approved in accordance with the registered Subdivision Agreement with the municipality;
 - (b) to clear obstructions so as to permit the exercise and enjoyment of this easement;
 - (c) for the servants, agents, contractors, workers and other persons duly authorized by the Transferee at all reasonable times and from time to time to pass and repass with all plant machinery, material, vehicles and equipment which may be necessary or incidental to the exercise and enjoyment of this easement.
- 2. The easement hereby granted,
 - (a) shall be of the same force and effect to all intents and purposes as a covenant running with the land;
 - (b) is declared hereby to be appurtenant to and for the benefit of the land of the Transferee described below;

SCHEDULE "I"

Continued

- (c) shall enure to the benefit of the Transferee and be binding upon the Transferor, its successors, assigns and successors in title.
- 3. The Transferor shall register this Transfer Easement on title to the land at the Transferor's expense in a form satisfactory to the Corporate Counsel prior to the first transfer of any lot, block, unit or severed parcel.
- 4.
 - (a) In accordance with section 91 of the *Municipal Act* S.O., 2001, Chapter 25, as amended, it is acknowledged that this is a municipal public utility easement, in favour of the Transferee does not have to be appurtenant to or annexed to or for the benefit of any specific parcel of land of the Transferee as its dominant tenement, to be valid.
 - (b) The dominant tenement of this Transfer Easement of the Transferee is the Transferee's municipal system of watermains, storm and sanitary sewers, including their related buildings and plant located in the City of Hamilton, in the Province of Ontario.

Date Schedule prepared: September 1, 2005

SCHEDULE "J"

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

APPLICATION NUMBER: 25T-98002 and 25T200301

NAME OF SUBDIVISION: Southampton Estates Phase 2

LAND RESTRICTIONS

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

N/A

Date Schedule prepared: September 1, 2005