

CITY OF HAMILTON

CORPORATE SERVICES
Financial Planning and Policy Division

TO: Mayor and Members General Issues Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: November 14, 2011	
SUBJECT/REPORT NO: Waterfront Outdoor Rink Management Agreement (FCS11106) (City Wide)	
SUBMITTED BY: Roberto Rossini General Manager Finance & Corporate Services Department	PREPARED BY: Mike Zegarac 905 546 2424 ext. 2739
SIGNATURE:	

RECOMMENDATION

- (a) That Council approve the Waterfront Outdoor Rink Management Agreement as per Appendix "A" of FCS11106 between Hamilton Waterfront Trust ("HWT") and the City of Hamilton ("Hamilton") for the operation, maintenance and management of the Waterfront Outdoor Rink for the period November 1, 2010 to April 30, 2011;
- (b) That the General Manager of Finance and Corporate Services be authorized and directed to negotiate all necessary agreements in a form satisfactory to the City Solicitor, including a management agreement of the Waterfront Outdoor Rink for the exclusive authority for the HWT to operate, maintain and manage the premises forming part of the Waterfront Outdoor Rink for a five year term;
- (c) That the Mayor and City Clerk be authorized and directed to execute, on behalf of the City of Hamilton, all necessary documentation to implement recommendation (b) of report FCS11106, all with content acceptable to the General Manager of Finance and Corporate Services, and in a form satisfactory to the City Solicitor.

EXECUTIVE SUMMARY

The purpose of this report is to seek approval from Committee to enter into a new agreement with The Hamilton Waterfront Trust (HWT) for the continued operation, maintenance and management of the Waterfront Outdoor Rink.

Through the 2011 tax-supported operating budget process, Council approved a program enhancement in the amount of \$150,000 pertaining to the operation and maintenance of Waterfront Pier 8 Rink (referred to as Waterfront Outdoor Rink throughout this report). At the March 28, 2011, General Issues Committee, the following motion was carried:

**Operation and Maintenance of Waterfront Pier 8 Rink
(Ferguson/Bratina)**

- (a) That funding for future years for the operation and maintenance of Waterfront Pier 8 Rink be subject to staff providing a report back to the General Issues Committee addressing the following issues:
 - (i) is this a one-time grant or multi-year commitment
 - (ii) who operates the restaurant
 - (iii) what is the revenue generated by the restaurant and where is that money going
 - (iv) status of the management/operations agreement
 - (v) cost of operating all City ice rinks
 - (vi) information respecting the restaurant bid.

- (b) That representatives of the Waterfront Trust be requested to attend the meeting of the General Issues Committee at which the above-noted information is provided to respond to questions of the Committee.

Report FCS11106 undertakes to address the outstanding issue of the management agreement between the City of Hamilton and the Hamilton Waterfront Trust for the operation, maintenance and management of the Waterfront Outdoor Rink for the period November 1, 2010 to April 30, 2011, and on a continued basis. More specifically, recommendation (a) of report FCS11106 relates to the operation and maintenance of the Waterfront Outdoor Rink by the Hamilton Waterfront Trust for the period November 1, 2010 to April 30, 2011, while recommendation (b) of report FCS11106 relates to the continued operation, maintenance and management of the Waterfront Outdoor Rink, for an indeterminate period beginning November 1, 2011.

While the March 28, 2011, carried motion requested costing of operating all city rinks, the analysis section of report FCS11106 provides financial information for the Dundas outdoor rink for the 2010 calendar year, as this would be the most comparable facility owned and operated by the City.

It is anticipated that, at the November 14, 2011, GIC meeting, Hamilton Waterfront Trust staff will be available to address the balance of the questions raised through the March 28, 2011, motion.

As mentioned previously, the attached draft agreement (Appendix "A" of report FCS11106) represents a joint effort by City and HWT staff to develop a management agreement that reflects the HWT having accepted the responsibility of operating, maintaining and managing the Waterfront Outdoor Rink for the City upon such terms and conditions as set out in the Agreement. The attached agreement (Appendix "A" of report FCS11106) is specifically for the operation, maintenance and management of the Waterfront Outdoor Rink for the period November 1, 2010 to April 30, 2011 and it is proposed that the new agreement will contain, at a minimum, the following terms and conditions:

- Period commencing April 30, 2011;
- HWT shall have exclusive authority to act as the agent of the City for the purpose of operating, maintaining and managing the premises forming part of the Waterfront Outdoor Rink, subject to the limitations and restrictions set out in Subsection 5 of the attached Agreement (Appendix "A" of report FCS11106);
- HWT has authority to hire staff to operate the Waterfront Outdoor Rink but not transfer FTE from HWT to the City;
- HWT must comply with all terms and conditions contained in the City Land Lease Agreement attached to the draft agreement as Schedule "C", and also Her Majesty Land Lease Agreement attached to the draft agreement as Schedule "D";
- All personal property located in and around the Waterfront Outdoor Rink, except for property owned or leased by the HWT is the sole and exclusive property of the City, as will be any and all subsequent acquired personal property purchased or acquired by the HWT through expenditure of trust monies under the attached Agreement (Appendix "A" of report FCS11106);
- Any and all taxes, rates and levies charged against the Waterfront Outdoor Rink and its operations and concessions shall be the responsibility of the HWT or any lessees or concessionaires of the HWT;
- The HWT shall present to the City its budget in relation to the conduct of the affairs of the Waterfront Outdoor Rink as set out in Subsection 7 of the attached Agreement (Appendix "A" of report FCS11106);
- The HWT is responsible for all insurance requirements as set out in Subsection 13 of the attached Agreement (Appendix "A" of report FCS11106); and
- Either party at any time, upon 3 months notice to the other party, may terminate the Agreement.

Beyond the period ending October 31, 2011, recommendation (c) of Report FCS11106 authorizes and directs the General Manager of Finance and Corporate Services to negotiate all necessary agreements in a form satisfactory to the City Solicitor, including a management agreement of the Waterfront Outdoor Rink for the exclusive authority for the HWT to operate, maintain and manage the premises forming part of the Waterfront Outdoor Rink. If it is the will of Committee to extend the Agreement, the attached agreement (Appendix "A" of report FCS11106) can be modified for a specified period of time.

Alternatives for Consideration –Not Applicable.

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: Report FCS11106, through the Waterfront Outdoor Rink Management Agreement, recommends a total cost of up to \$150,000 for the period November 1, 2010 to April 30, 2011.

Staffing: none

Legal: none

HISTORICAL BACKGROUND (Chronology of events)

The City of Hamilton is the owner of certain lands located in the City of Hamilton known as Pier 8, more specifically described in Schedule "A" of Appendix "A" of report FCS11106. The HWT was constituted with the role to invest funds towards the regeneration of the waterfront at Pier 8. Since 2009, the City of Hamilton has committed \$4.2 million towards the remediation, design and construction of the Waterfront Rink and expansion of the Discovery Centre. The Waterfront Rink was completed in October of 2010 and the HWT has been operating and maintaining the asset since that time. To date, the City (through the HWT) has spent about \$3.0 million on the project.

POLICY IMPLICATIONS

Not Applicable.

RELEVANT CONSULTATION

City Manager's Office – Legal Services Division has coordinated developing the Rink Facility Agreement.

Corporate Services Department – Treasury Services, Risk Management Section, provided input into the development of the agreement.

Public Works Department – General Manger's Office, provided input into the development of the agreement.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

The following table represents a preliminary breakdown of operating and maintenance expenditures, as submitted by HWT, that relate to the annual management of the Waterfront Outdoor Rink:

**Hamilton Waterfront Trust
Pier 8 Development
Outdoor Ice Rink - Operating Budget**

		2011 Budget
Item	Description	Expenditures
1	Staffing & Benefits	72,000
2	Clothing	600
3	Staff Training/Safety Equipment	1,000
4	Equipment Maint./Repair/Replacement	3,000
5	Gas	3,000
6	Hydro	24,000
7	Water / Sewer	3,600
8	Insurance	6,000
9	Fuel (gas & propane)	1,400
10	Programming, music	1,000
11	Signage	2,000
12	Permits/Licenses	1,000
13	Miscellaneous	7,900
14	Depreciation Expense--Zamboni	4,364
15	Contractual Services	5,000
16	Audit Fees	500
	Sub-total	136,364
	Administration (10%)	13,636
	Total	150,000

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As requested at the March 28, 2011, GIC the financial information for the Dundas outdoor rink is provided below. The information below provides estimated costs of the outdoor rink, one of a selection of City operations located at the Dundas Driving Park. It should be noted that the Dundas Driving Park outdoor rink is smaller by approximately two-thirds the size of the Waterfront Outdoor Rink which, for comparison reasons, would result in lower costs, including for example utilities and maintenance.

Dundas Driving Park Outdoor Rink	
Description	2010 Estimated Costs
Employee related costs	\$27,160
Material and supply	\$1,700
Building and grounds (utilities, maintenance, storage)	\$68,500
Contractual (snow removal)	\$9,100
Financial (inspections ESA standards)	\$1,300
Total	\$101,260

ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Not Applicable.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Skilled, Innovative & Respectful Organization

- ◆ More innovation, greater teamwork, better client focus

Financial Sustainability

- ◆ Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner

Healthy Community

- ◆ An engaged Citizenry

APPENDICES / SCHEDULES

Appendix "A" of Report FCS11106 (Waterfront Outdoor Rink Management Agreement).

WATERFRONT OUTDOOR RINK MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT made in quadruplicate, _____ day of _____, 2011.

B E T W E E N:

CITY OF HAMILTON

(hereinafter called the "**City**")
OF THE FIRST PART,

- and -

THE HAMILTON WATERFRONT TRUST

(hereinafter called the "**HWT**")
OF THE SECOND PART,

WHEREAS the City is the owner of certain lands located in the City of Hamilton known as Pier 8 (the "City Lands"), more particularly described in Schedule "A" attached to and forming part of this Agreement as if embodied in it;

AND WHEREAS Her Majesty the Queen is the owner of certain lands located in the City of Hamilton known as Pier 8 (the "Her Majesty Lands"), more particularly described in Schedule "A" attached to and forming part of this Agreement as if embodied in it;

AND WHEREAS City Council has approved 4.2M for the re-development and regeneration of the waterfront at Pier 8 (the "Waterfront Outdoor Rink"). The project is being constructed on Her Majesty Lands that are leased to the HWT on a forty-five year term ending April 30th, 2054 ("Her Majesty Land Lease Agreement"), and are adjacent to City Lands currently leased to the HWT on a fourteen year term ending October 31st, 2019 ("City Land Lease Agreement");

AND WHEREAS the Hamilton Waterfront Trust was formerly known as the Hamilton Harbour Development Trust having changed its name and incorporating under the *Canada Corporations Act*;

AND WHEREAS the Hamilton Harbour Development Trust was constituted with the role to invest the funds, in accordance with the Deed of Trust Agreement dated November 24, 2000 between the City of Hamilton and the Hamilton Harbour Commission;

AND WHEREAS the HWT has accepted the responsibility of operating, maintaining, managing and developing the Waterfront Outdoor Rink for the City;

AND WHEREAS the Council of the City of Hamilton, at its meeting on November 16, 2011, approved Item XX of the General Issues Committee Report 11-XXX and agreed to permit the HWT to operate, maintain, manage and develop the Waterfront Outdoor Rink for the City upon such terms and conditions as are set out in the Agreement;

AND WHEREAS the City will, in accordance with the terms and conditions of this Agreement, reimburse the HWT amounts, not exceeding the budget approved by the Council for the City, for expenditures incurred by the HWT and all other costs including internal costs properly attributable by the HWT to the carrying out of the provisions of this Agreement related to the operation of the Waterfront Outdoor Rink;

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the premises and of the covenants hereinafter contained, the City and the HWT on behalf of themselves and their respective successors and assigns, covenant and agree each with the other as follows:

1. **EXCLUSIVE AUTHORITY**

The HWT shall have the exclusive authority and is hereby given such authority to act as the agent of the City for the purposes of operating, maintaining and managing on behalf of the City, the premises forming part of the Waterfront Outdoor Rink, more particularly described in Schedule "A" attached hereto and forming part of this Agreement as if embodied in it, together with the real personal property used in connection therewith, more particularly described in Schedule "B" attached hereto and forming part of this Agreement as if embodied in it, in accordance with the provisions of this Agreement and the schedules attached hereto.

2. **REAL PROPERTY COMPLIANCE**

The HWT hereby acknowledges and agrees to comply with all terms and conditions contained in the City Land Lease Agreement attached hereto as Schedule "C", and also Her Majesty Land Lease Agreement attached hereto as Schedule "D".

3. **OWNERSHIP OF PERSONAL PROPERTY**

It is hereby acknowledged that any and all personal property located, as of the commencement date of this Agreement, in and about the Waterfront Outdoor Rink, except for such personal property owned or leased by the HWT in its own name, is, as between the City and the HWT, the sole and exclusive property of the City, as will be any and all subsequently acquired personal property purchased or acquired by the HWT through the expenditure of trust monies under this Agreement.

4. **TAXES**

Any and all taxes, rates and levies charged against the Waterfront Outdoor Rink and its operations and concessions shall be the responsibility of the HWT or any lessees or concessionaires of the HWT, as the case may be.

5. **OPERATION, MAINTANCE AND MANAGEMENT OF PARK**

(1) The HWT shall, within the limits imposed by the budget approved by the Council of the City as provided for herein and in a manner consistent with its perception of the purposes for which the Waterfront Outdoor Rink is best suited and in a manner not contrary to or not in conflict with the established policies, practices, procedures, resolutions and by-laws of the City, operate, maintain and manage and secure the Waterfront Outdoor Rink to a first class standard.

(2) Subject to the limitations and restrictions set out in Subsection 5(1) of this Agreement, the HWT shall have the authority to do the following:

- (a) establish the character of the Waterfront Outdoor Rink;

- (b) establish, modify and discontinue and re-establish all services and facilities in the Waterfront Outdoor Rink; and
 - (c) fix the location and nature of such services and facilities.
- (3) Despite the above, the HWT shall not dispose, remove or dismantle the Waterfront Outdoor Rink without the prior written approval of the City. The Waterfront Outdoor Rink shall be free of charge unless the HWT and City Council approve otherwise.

6. **THE SAME**

Without limiting the generality of the provisions of the preceding Section 5 of this Agreement, and subject always to the limitations and restrictions set out in Subsection 5(1) of this Agreement, the HWT, on behalf of the City, may do any or all of the following:

- (1) **Staff:** Hire such staff as it considers necessary to operate the Waterfront Outdoor Rink but no transfer of FTE from HWT; and
- (2) **Repairs:** Repair and replace any and all Waterfront Outdoor Rink structures, equipment and facilities (whether in existence on the date of the commencement of this Agreement or acquired or erected subsequent to that date) and modify the same or any of them and change the uses to which they may be put from time to time for the purpose of better employing the same in the operation of the Waterfront Outdoor Rink.

7. **BUDGETS**

The HWT shall present to the City its budget in relation to the conduct of the affairs of the Waterfront Outdoor Rink for the fiscal year ending on December 31st, which budget shall include:

- (1) Expenditures of a capital nature proposed for the current fiscal year:
 - (a) for additions, improvements, replacements, removals and repairs in relation to, and for the development of, the real property comprising the Waterfront Outdoor Rink and, without limiting the generality of the foregoing, for additions, improvements, replacements, removals repairs and for the development of any and all structures, buildings, landscaping, herbaceous plantings, trees, roadways, paths, bridges, fences, gates and improvements of all kinds to the real property (whether in existence on the date of the commencement of this Agreement or acquired or erected subsequent to that date); and
 - (b) for additions, improvements, replacements, removals and repairs in relation to personal property of every nature, kind and description located in and about the Waterfront Outdoor Rink (whether in existence on the date of the commencement of this Agreement or acquired subsequent to that date).
- (2) Expenditures of a capital nature proposed for fiscal years subsequent to the current fiscal year for additions, improvements, replacements, removals and repairs in relation to, and for the development of, the real property comprising the Waterfront Outdoor Rink and, without limiting the generality of the foregoing for additions, improvements, replacements, removals and repairs and for the development of any

and all structures, buildings, landscaping, herbaceous plantings, trees, roadways, path, bridges, fences, gates and improvements of all kinds to the real property.

- (3) Expenditures for current operations to be expended for this operation and maintenance of the Waterfront Outdoor Rink for the current fiscal year. These expenditures are to take into account the expected income for the Waterfront Outdoor Rink from all sources projected by the HWT for the current fiscal year.
- (4) Expenditures for "administration expenses" including, without limiting the generality of that term, legal and audit fees.
- (5) A Management Fee of Ten Percent (10%) of the cost to operate the Waterfront Outdoor Rink, which will be included within the budgeted amount of \$150,000 (approved by City Council for the initial calendar year of 2011) of the aggregate of budget/expenditure items referred to in Clauses 7(1), (2), (3) and (4) of this Agreement. This Fee is intended by the City to be fair compensation to the HWT for its managerial, administrative and supervisory services together with those miscellaneous expenditures which it may incur and are not charged directly to the City. However cost over runs and under runs shall be dealt with as follows:
 - (a) If costs overrun, the HWT shall be solely responsibility; and
 - (b) If costs run under, the City shall continue to make the maximum payment of \$150,000.
- (6) The parties acknowledge the water and sewer surcharge (the "WSS") levied against the HWT under the City Land Lease Agreement shall be shared on a percentage basis with 25% being allocated to the HWT and 75% being allocated to the City. The HWT shall include the WSS in its budget submission, and it shall be included in the maximum payment of \$150,000.

8. **CONSIDERATION OF BUDGET**

The City shall consider each annual Waterfront Outdoor Rink budget after it has been presented by the HWT pursuant to Section 7 of this Agreement and may approve such budget or make any proposed changes to such budget and communicate such approval or such proposed changes to the HWT within thirty (30) days next following the presentation of the budget by the HWT to the City.

9. **CHANGE IN BUDGET AND TERMINATION OF AGREEMENT**

In the event that the City requires any change in a budget presented by the HWT pursuant to Section 7 of this Agreement, which has not been resolved by discussion between the parties and is insisted upon by the City, the HWT may at any time within thirty (30) days of receipt of notice from the City of such required change elect to terminate immediately this Agreement or any renewal thereof, as the case may be, and shall communicate notice of such termination. Such notice of termination will only take effect at the end of the operating season (April 30th) in any given year.

10. **DEEMED ACCEPTANCE OF CHANGE IN BUDGET**

In the event that the City proposes a change in a budget presented by the HWT pursuant to Section 7 of this Agreement and the HWT does not elect to terminate this Agreement or any renewal of this Agreement, as the case may be, pursuant to Section 9 of this Agreement, the HWT shall be deemed to have accepted the change and will be considered to have modified its budget in conformity with such change and to be continuing the performance of its duties and obligation and the acceptance of its liabilities under the provisions of this Agreement.

11. **BUDGET FUNDING**

When a budget has been approved by the City as presented by the HWT pursuant to Section 7 of this Agreement or having been modified by the City, has been thereafter deemed to have been accepted by the HWT as modified pursuant to Section 10 of this Agreement, the City shall provide the budget funding on the basis of a mutually agreeable payment schedule.

12. **PAYMENT SCHEDULE**

The City shall make the approved budgeted amount payments following approval by City Council of HWT's budget and the management agreement for the Waterfront Outdoor Rink within 30 days of being invoiced by the HWT.

13. **INSURANCE AND INDEMNIFICATION**

Insurance Requirements:

(1) Throughout the Term of this Agreement (including any renewal thereof), the HWT shall obtain and maintain at its own expense, including the cost of any applicable deductibles, the following policies of insurance (no subcontracting of any portion of the services shall in any way relieve the HWT of its insurance obligations under this Agreement):

(a) Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily and personal injury liability, property damage, products liability, completed operations liability, owners & contractors protective liability, blanket contractual liability, premises liability, liquor liability (if applicable), incidental medical malpractice including rendering or failure to render first-aid, broad form property damage, and contingent employer's liability coverage, having an inclusive limit of not less than **\$5,000,000** per occurrence and in the aggregate. Coverage shall be included for pollution liability arising from "hostile fires" and the storage and use of fuels and chemicals. Alternatively, any portions of the above coverages may be provided under a separate policy form. Policy to include the City named as an additional insured, to the extent of the HWT's obligations to the City under this Agreement;

(b) with respect to the third party operation of food service or other concessions, \$5,000,000 per occurrence and if applicable endorsed to include Host Liquor Liability;

- (c) All Risk Property Insurance including coverage for Flood and Earthquake, to be provided on all improvements and facilities (including fixtures permanently attached thereto, tenant's improvements, equipment and any other objects mechanical or otherwise) in use by the HWT in an amount not less than 100% of their full replacement cost;
 - (d) Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than \$5,000,000 per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the HWT for the provision of services;
 - (e) Non-Owned Automobile Liability Insurance in standard form having an inclusive limit of not less than \$2,000,000 per occurrence or such greater amount as the City may from time to time request, in respect of vehicles not owned by the HWT, that are used or operated on its behalf for the provision of services under this Agreement; and
 - (f) Comprehensive Crime Insurance, broad form coverage endorsed to include third parties, to adequately protect the HWT and the City against loss of monies, securities or other properties, including property of the City while such property is in the HWT's care, custody, and control, for dishonesty, disappearance and destruction, to protect against incidents arising out of but not limited to theft, robbery or burglary; having a limit of not less than \$50,000 for Employee Dishonesty (Commercial Blanket Form A), Loss inside the premises, and loss outside the premises.
- (2) The HWT shall maintain Property Insurance and Business Interruption insurance to cover loss of revenues, profits, extra expenses and rental expense, as may be applicable, with respect to loss or damage (including fire, theft, burglary, etc.) of its own property and property in its care, custody and control, including its equipment, tools, stock, used in connection with this Agreement.
- (3) All policies of insurance within the scope of subsection (1) shall,
- (a) provide for a deductible amount of no greater than \$50,000, or such other amount(s) as the City, at its sole discretion, may deem appropriate;
 - (b) be recorded as being a primary policy and shall be in a form and issued by an insurance company satisfactory to the City, that is licensed to carry on business in Ontario;
 - (c) be maintained continuously during the course of carrying out the obligations under this Agreement; or for such period of time as may be required after completion of the Term, as deemed necessary by the City,
 - (d) contain cross liability and severability of interest provisions, as may be applicable;
 - (e) preclude subrogation claims against the City and any other person insured under the policy; and

- (f) provide that at least 30 days prior written notice (15 days, in the case of automobile liability insurance, and 10 days in the event of non-payment of premiums) shall be given to the City by the Insurer before the Insurer or HWT takes any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the insurance or any part thereof.
- (4) The City reserves the right to require the HWT to purchase such additional insurance coverage as the City's Risk Management Services Office may reasonably require. The City reserves the right to request such higher limits of insurance or otherwise alter the types of coverage requirements due to material or significant change arising from such matters as the nature of the work, contract value, industry standards, and availability of insurance as the City may reasonably require.
- (5) Any insurance coverage acquired under this Agreement shall in no manner discharge, restrict or limit the liabilities assumed by the HWT under this Agreement. The dollar limit of insurance coverage shall not be limited by the dollar amount of this Agreement.
- (6) The HWT shall pay all premiums on its policies as they become due provided that the City may pay premiums as they become due and deduct the amount thereof from moneys due from the City to the HWT should the HWT fail to do so.
- (7) It is the responsibility of the HWT to ensure that its contractors, subcontractors, of every description, obtain and maintain insurance coverage as required by section (1) of these insurance conditions.
- (8) The limits of this Insurance shall be the greater of those limits that apply in equivalent insurance coverages maintained by the HWT from time to time in connection with the operation of its conservation areas or those limits established by the City's policies. The cost of such required Insurance coverage shall be included as a component in the budget to be presented by the HWT pursuant to Section 7 of this Agreement.

Proof of Insurance:

- (9) The HWT shall deposit with the City such evidence of its insurance as provided in or required under this Agreement,
 - (a) at the time of execution of this Agreement, and
 - (b) thereafter during the Term of this Agreement, no later than 20 business days prior to the renewal date of each applicable policy, the HWT shall deposit with the City an original Certificate of Insurance originally signed by an authorized insurance representative, confirming thereon relevant coverage information including but not limited to name/description of City contract, name of Insurer, name of Broker, name of Insured, name of Additional Insureds as may be applicable, commencement and expiry dates of coverage, dollar limits of coverage, deductible levels as may be applicable, cancellation/termination provisions; or (at the City's election) a certified copy of the insurance policy or policies required under section 13. Certificate Holder will be addressed as the City of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5 attn: Risk Management. All certificates, cancellation, non-renewal or adverse change notices should be mailed to this address.

- (10) The HWT shall not do or omit to do anything that would impair or invalidate the insurance policies.
- (11) Delivery to and examination or approval by the City of any certificates of insurance or policies of insurance or other evidence of insurance shall not relieve the HWT of any of its indemnification or insurance obligations under this Agreement. The City shall be under no duty either to ascertain the existence of or to examine such certificates of insurance or policies of insurance or to advise the HWT in the event such insurance coverage is not in compliance with the requirements set out in this Agreement.

Notice of Accident, Injury or Harm:

- (12) HWT shall give immediate notice to the City, no later than seventy-two (72) hours after, and a written report with complete details thereof, of any accident, injury or harm to any person on or using the Waterfront Outdoor Rink or of any damage, loss or defect in or to any part of the Park or any damage or loss of any property of any person using the Waterfront Outdoor Rink or any damage or loss of any property of the City on or at the Waterfront Outdoor Rink which comes to the attention of HWT, its officers, employees, members, servants or contractors, notwithstanding that the City may not have any obligation with respect to same.

Indemnification:

- (13) HWT shall indemnify and shall defend and save the City, its elected officials, officers, and employees harmless from and against any claims, proceedings, fines, penalties, expenses and costs (including legal costs on a solicitor and client basis) that are incurred by, or made or instituted against, any of them or to which any of them may be liable by reason of HWT's negligence in carrying out or its failure or omission to carry out or in carrying out any obligation or part thereof to which it is subject under laws or this Agreement, or in exercising any right to which it is entitled, under this Agreement, except to the extent that the same are caused by the negligence of the City or other person entitled to indemnification under this section in carrying out or its failure or omission to carry out or in carrying out any obligation or part thereof to which it is subject under laws or this Agreement.
- (14) The right of indemnification granted to the City or other person entitled to indemnification under subsection (13) shall extend to any amount paid by that person in the settlement of any claim against it, and in entering into any such settlement, that person may exercise its reasonable discretion as to the amount to be paid, but that person shall serve prior notice of any intended settlement on HWT, at least five (5) business days prior to agreeing to any such settlement.
- (15) The City may enforce the rights of indemnity conferred on the elected officials, officers, and employees of the City under subsection (13) on their behalf and to the same extent as if they were parties to this Agreement.
- (16) The rights to indemnity provided for in this section shall be deemed to be in addition to any rights with respect to insurance in favour of the City, its elected officials, officers and employees provided under this Agreement.

- (17) The rights to indemnity provided for in this section shall survive the expiration or any termination of this Agreement.

14. **SEPARATE BOOKS OF ACCOUNT**

The HWT shall keep and maintain proper and separate books of accounts for revenues and expenditures in relation to the Waterfront Outdoor Rink, which books shall be audited separately by an Auditor independent of the HWT, and the HWT shall provide the City with a copy of such Auditor's statement annually when available. In addition, the HWT will make the books of accounts available for inspection or audit or both, at any time, by the City's Internal Auditor, if so requested. For these purposes, the independent Auditor or Internal Auditor, as the case may be, may make copies of such accounts or take extracts from them. The HWT shall afford all facilities for such inspections and audits and shall furnish the independent Auditor or Internal Auditor, as the case may be, with all such information and such assistance and co-operation as she or he may from time to time require with reference to such accounts. The HWT shall not, without the written consent of the General Manager of Finance for the City, dispose of any such accounts, but shall preserve and keep the same available for inspection and audit in accordance with the financial documents retention periods established for the HWT by the Province of Ontario in right of Canada or by law.

15. **TERM**

Subject to the right of the parties to terminate as herein provided, the term of this Agreement shall commence on the 1st day of November, 2010, and shall terminate on the 30th day of April, 2011 (the "Term").

16. **TERMINATION**

Despite any other provision of this Agreement, either party may, at any time upon three (3) months' notice to the other party, terminate this Agreement.

17. **AUDITED STATEMENT UPON TERMINATION**

Upon the termination of this Agreement, the HWT shall prepare an audited statement of its Waterfront Outdoor Rink accounts and shall immediately afterwards remit any trust monies held by the HWT under this Agreement to the City.

18. **LEGAL CAPACITY OF AUTHORITY**

The HWT represents to the City that the HWT has the legal capacity and power to enter into this Agreement and to perform and meet, as the case may be, any and all duties, liabilities and obligations as may be required of it under this Agreement.

19. **RELATIONSHIP OF PARTIES**

Nothing contained herein shall be construed to mean that the City and the HWT are partners or joint venturers, or have any relationship (including master and servant and employer and employee) other than that of principal and agent. At all times, it is hereby recognized that the HWT is an independent contractor.

20. **EFFECTIVE DATE OF AGREEMENT**

This Agreement shall not be in force, or bind any of the parties, until fully executed, FIRSTLY, by the HWT and, SECONDLY, by the City.

21. **TIME IS OF THE ESSENCE**

The HWT agrees that time shall be of the essence and any dates or deadlines set out in this Agreement are to be strictly adhered to.

22. **OUTSTANDING OBLIGATIONS**

This Agreement does not expire or terminate until all duties, liabilities and obligations of the HWT under this Agreement have been discharged, in whole, to the satisfaction of the General Manager of Finance & Corporate Services for the City.

23. **DEFAULT**

Notwithstanding anything to the contrary in this Agreement, where the HWT fails to repay any loan in accordance with the terms of this Agreement or is otherwise in default under or in breach of this Agreement, the City, without the necessity of any further notice or demand, may exercise against the HWT all rights and remedies that it may have under this Agreement or otherwise by statute or by common law. No delay or omission by the City in exercising any such right or remedy shall operate as a waiver of them or of any other right or remedy, and no single or partial exercise of them shall preclude any other or further exercise of them or the exercise of any other right or remedy. All rights and remedies of the City granted or recognized in this Agreement are distinct, separate and cumulative and may be exercised at any time and from time to time independently or in combination.

24. **ASSIGNMENT**

Neither this Agreement nor any part of it shall be assigned by the HWT without the prior written approval of the Council of the City, which may be arbitrarily or unreasonably withheld. Any attempt by the HWT to assign this Agreement without such approval of the Council of the City is void.

25. **NOTICE**

All notices, or any other thing to be given or delivered pursuant to this Agreement, unless otherwise specified, shall be given in writing and delivered personally, transmitted by facsimile or by prepaid registered mail, and addressed:

(a) to the City at:

City of Hamilton
Public Works Department, General Manager's Office
77 James Street North, Suite 320
Hamilton, ON L8R 2K3
Attention: General Manager
Fax: 905.546.4481

with a copy to:

City of Hamilton, City Hall
71 Main Street West
Hamilton ON L8P 4Y5
Attention: City Clerk
Fax: 905.546.2095

(b) to the HWT at:

The Hamilton Waterfront Trust
47 Discovery Drive
Hamilton, ON L8L 8K4
Attention: Werner Plessl, Executive Director
Fax: 905.540.4498

or such other address as the City or HWT may, from time to time, advise each other by notice in writing. All notices delivered by facsimile shall be deemed received upon mechanical confirmation of transmittal. All notices mailed hereunder shall be deemed to have been given and received by the addressee seventy-two (72) hours following mailing. In the event of actual or threatened postal interruption, all notices shall be delivered personally or by facsimile.

26. **SEVERABILITY**

If any of the provisions of this Agreement or their application to any person or circumstance are to any extent illegal, invalid or unenforceable, the remainder of this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been contained in it.

27. **GOVERNING LAW**

This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada as applicable in the Province.

28. **GENDER AND NUMBER**

This Agreement shall be read with such changes of gender or number or corporate status as the context may require.

29. **HEADINGS**

Any note appearing as a heading in this Agreement has been so inserted for convenience and reference only and of itself cannot define, limit or expand the scope of meaning of this Agreement or any of its provisions.

30. **SCHEDULES**

(1) The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part of this Agreement by reference and deemed to be a part of this Agreement:

- Schedule "A" – Map and Description of Property
- Schedule "B" – Lands, Buildings, Fixtures and Chattels
- Schedule "C" – City Land Lease Agreement
- Schedule "D" – Her Majesty Land Lease Agreement

(2) In the event of any inconsistency between this Agreement and the Schedules referred to in Subsection 30(1) of this Agreement or in the event that these Schedules impose greater obligations on the City, this Agreement governs. Despite the foregoing, any provisions in the Schedules which would impose any greater obligations on the HWT shall govern to the extent of such additional obligation.

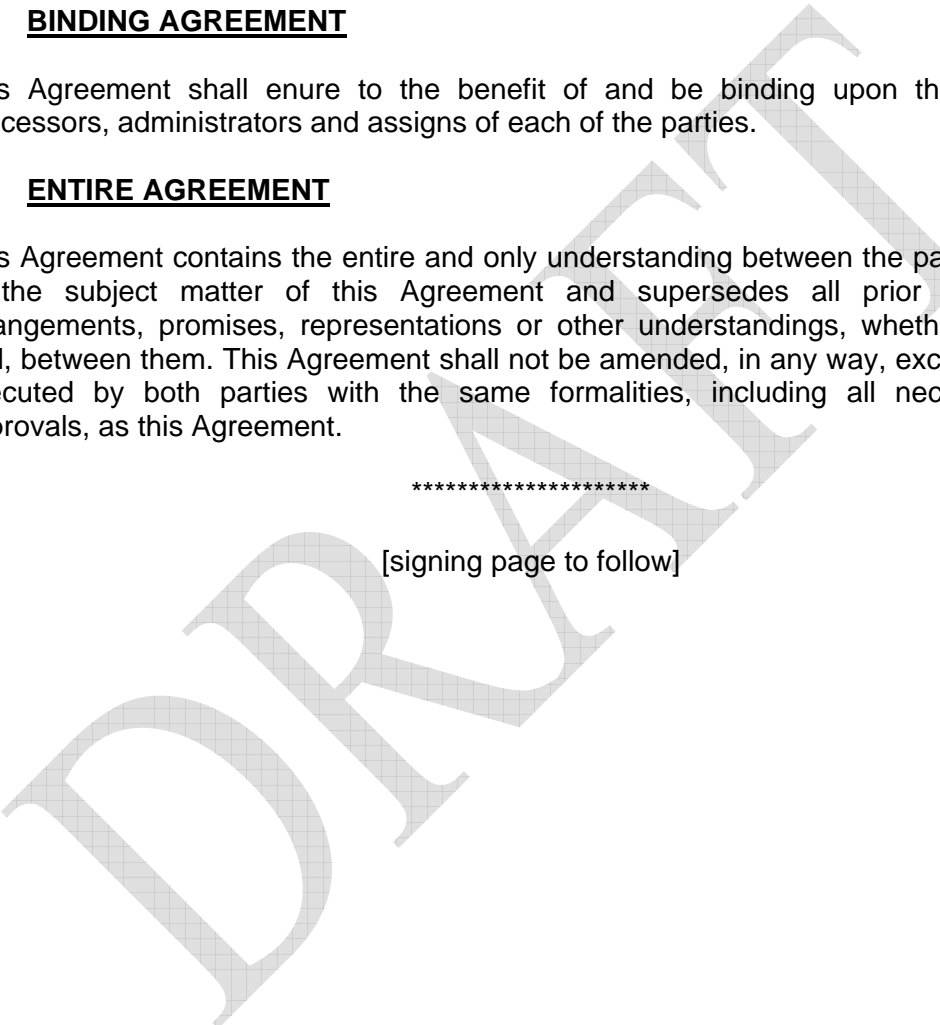
31. **BINDING AGREEMENT**

This Agreement shall enure to the benefit of and be binding upon the respective successors, administrators and assigns of each of the parties.

32. **ENTIRE AGREEMENT**

This Agreement contains the entire and only understanding between the parties relating to the subject matter of this Agreement and supersedes all prior agreements, arrangements, promises, representations or other understandings, whether written or oral, between them. This Agreement shall not be amended, in any way, except in writing executed by both parties with the same formalities, including all necessary prior approvals, as this Agreement.

[signing page to follow]



IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals attested to by the hands of their respective proper signing officers in that behalf duly authorized.

HAMILTON WATERFRONT TRUST

Signed for and on behalf of the Hamilton Waterfront Trust by:

Signed _____
Name: _____ c/s
Title: _____

Signed _____
Name: _____ c/s
Title: _____

Date _____

Date _____

"I have the authority to bind the Corporation"

"I have the authority to bind the Corporation"

CITY OF HAMILTON

Signed for and on behalf of the City of Hamilton by:

Signed _____
Name: R. Bratina
Title: Mayor

Signed _____
Name: Rose Caterini
Title: City Clerk

Date _____

Date _____

Authorized by Report No. 11-0XX, Item XX of the General Issues Committee adopted by the Council of the City of Hamilton on the XXth day of November, 2011.

File Number:

**APPROVED AS TO CONTENT
PUBLIC WORKS DEPARTMENT**

**APPROVED AS TO CONTENT
CORPORATE SERVICES DEPARTMENT**

APPROVED AS TO FORM

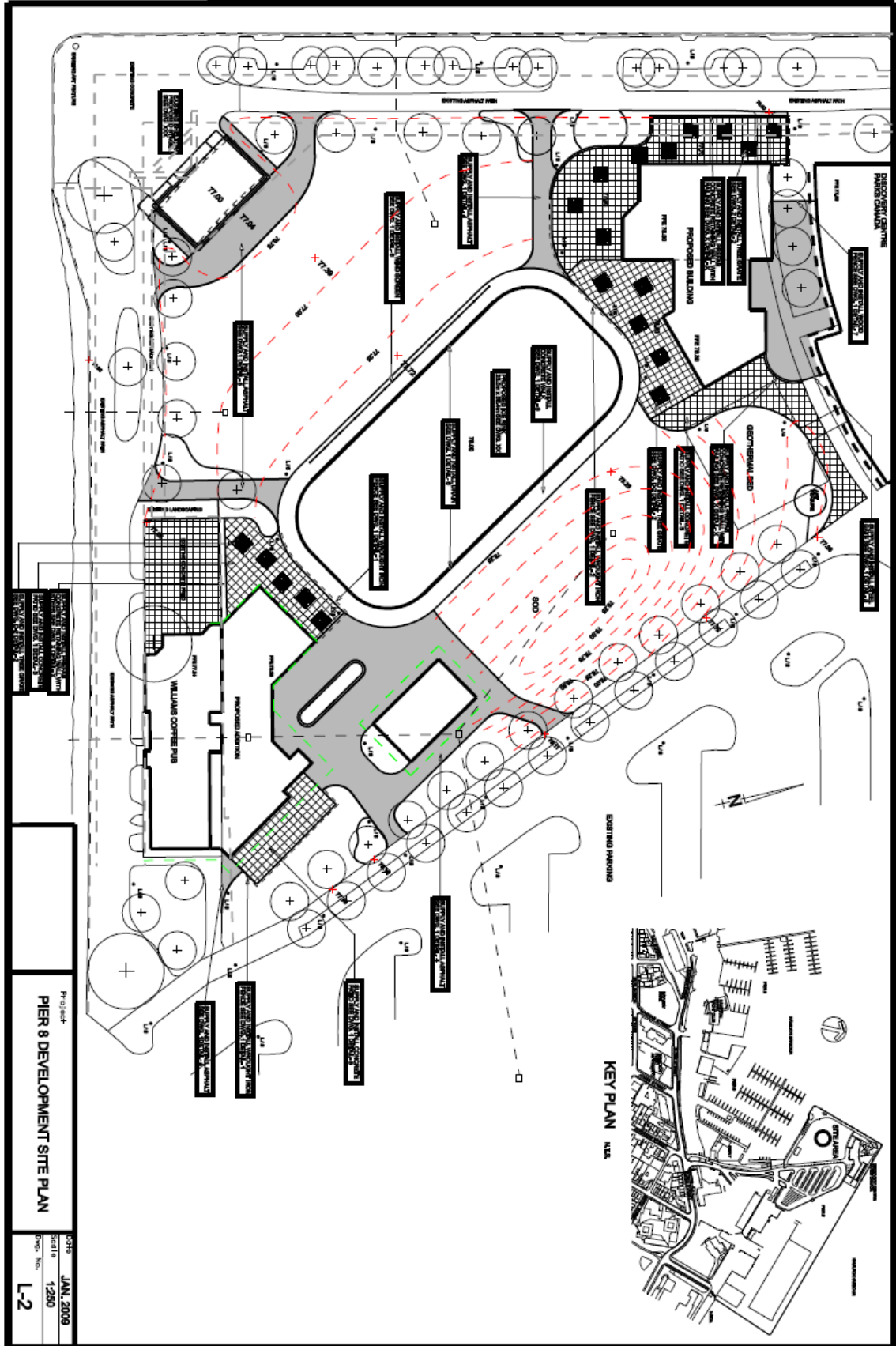
LEGAL SERVICES

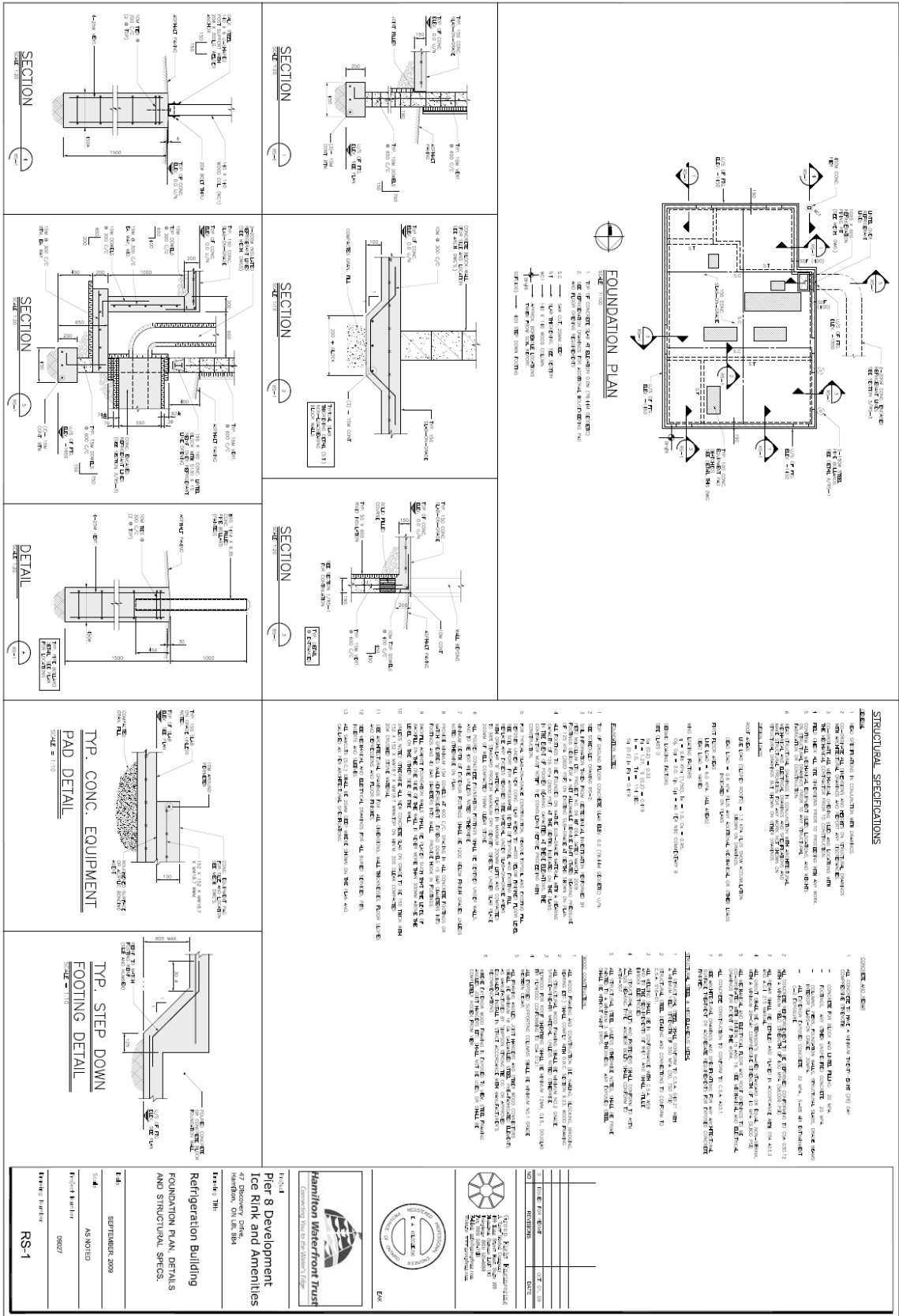
SCHEDULE "A"
MAP AND DESCRIPTION OF PROPERTY

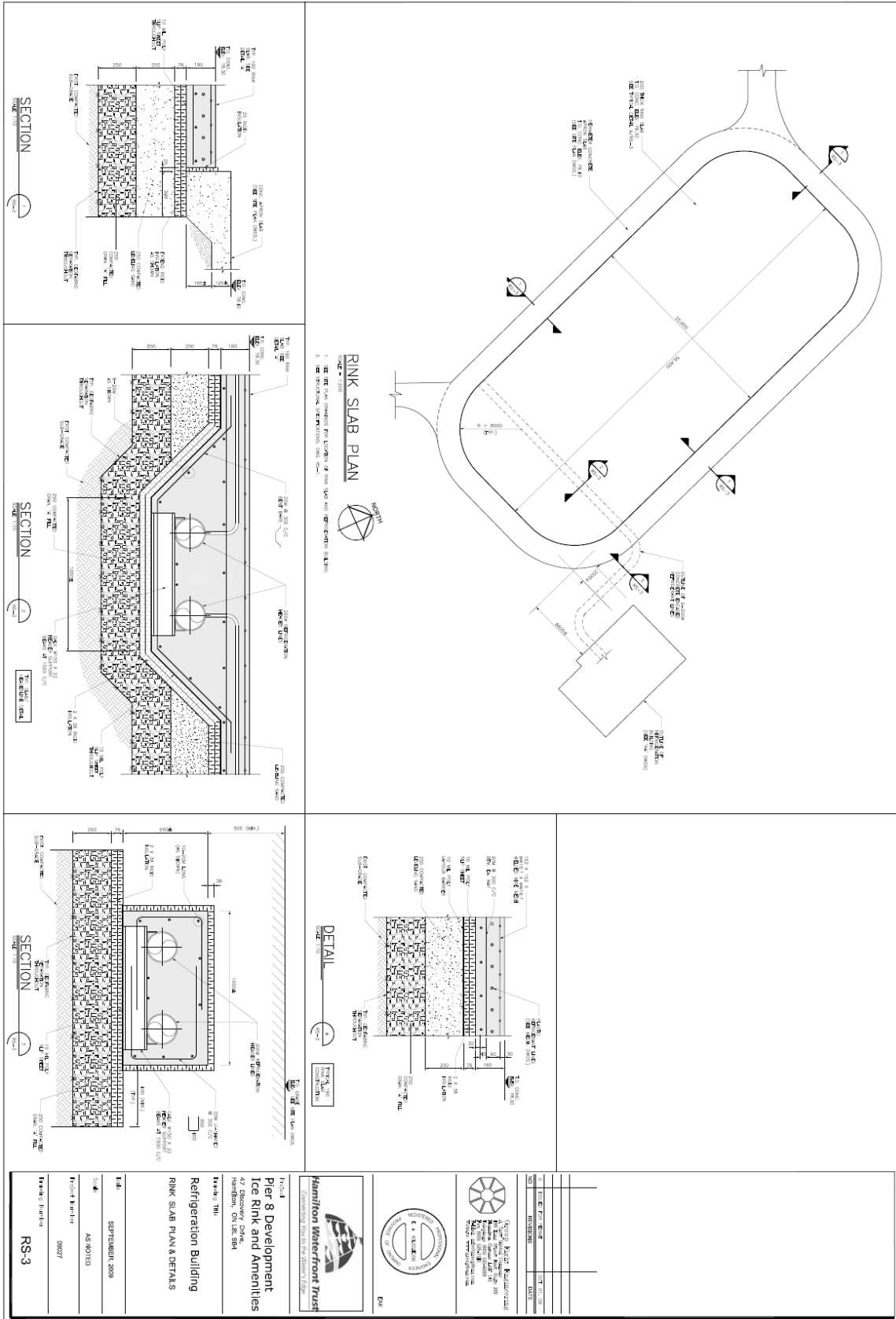
"City Lands" means the lands described as Township of Barton, City of Hamilton, being part of Parts 15, 48, 49 and all of Part 17 on Reference Plan 62R-15663 being part of PIN 17579-0062(R), consisting of approximately 1019 square meters, and more particularly described on the plan attached hereto at Schedule "A".

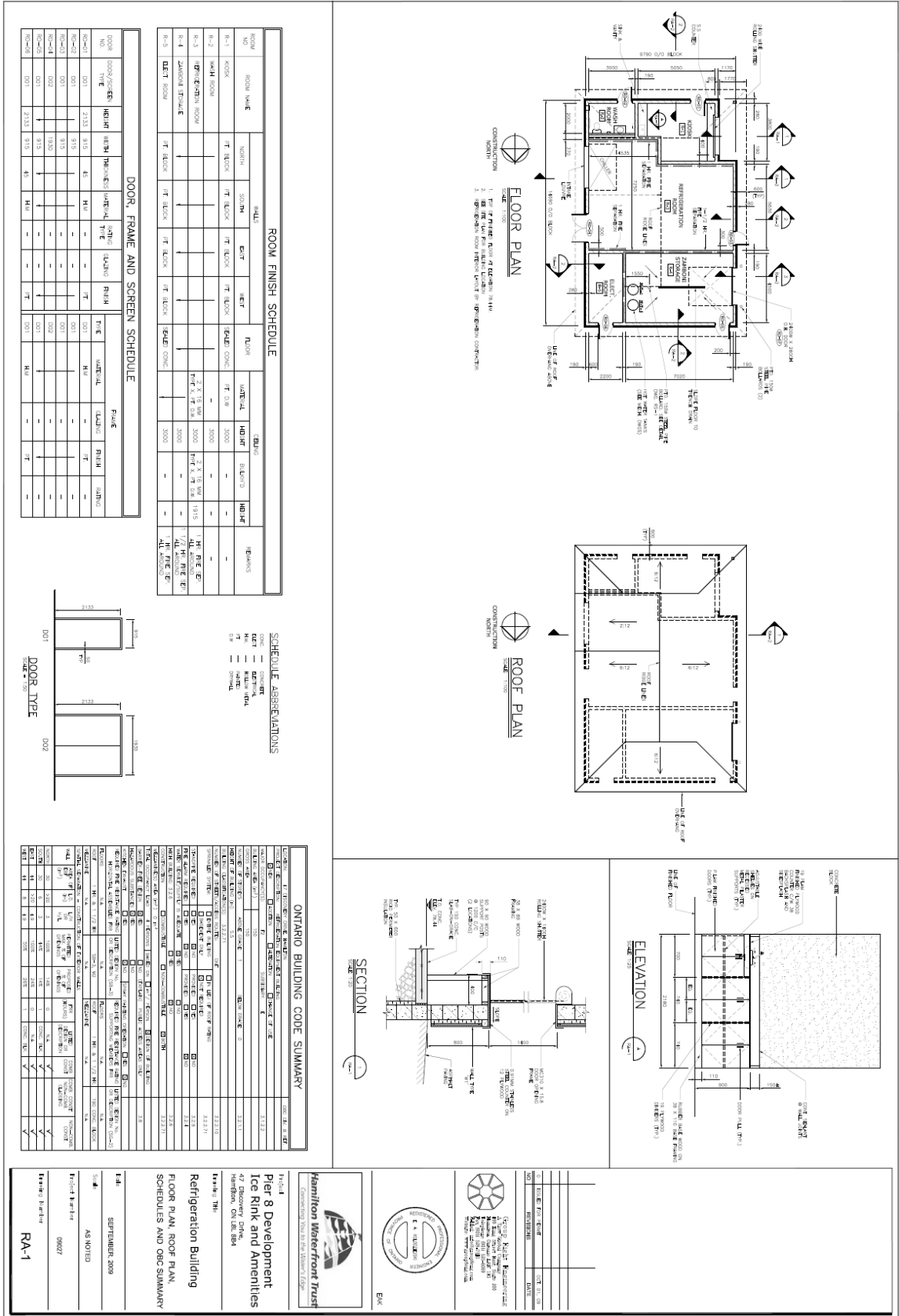
"Her Majesty Lands" means the lands described as Township of Barton, City of Hamilton, being part of Parts 14, 18, 19, 46, 47 and 51 on Reference Plan 62R-15663, excluding therefrom Parts 3 and 4 on Reference Plan 62R-16813 and subject to a Licence of Occupation in favour of the City of Hamilton, over Parts 18, 19, 46 and 47 on Reference Plan 62R-15663 for the purposes of connecting to the sanitary sewer or water system, copies are attached hereto at Schedule "A".

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ROOM NO.	ROOM NAME	WALL	CEILING	FLOOR	WINDING	DOOR	SCREEN	FINISH
R-1	RECREATION ROOM	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK
R-2	ZAMBONI ROOM	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK
R-3	RESTROOM	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK
R-4	RESTROOM	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK

DOOR, FRAME AND SCREEN SCHEDULE

DOOR NO.	DOOR TYPE	WALL	CEILING	FLOOR	WINDING	DOOR	SCREEN	FINISH
D-1	DOOR	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK
D-2	DOOR	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK	FT. BLOCK

ONTARIO BUILDING CODE SUMMARY

SECTION	DESCRIPTION	REMARKS
1.0	GENERAL	
2.0	FOUNDATIONS	
3.0	WALLS	
4.0	FLOORS	
5.0	ROOFS	
6.0	DOORS AND WINDOWS	
7.0	MECHANICAL	
8.0	ELECTRICAL	
9.0	PLUMBING	
10.0	FIRE PROTECTION	
11.0	ENERGY EFFICIENCY	
12.0	ENVIRONMENTAL	
13.0	ACCESSIBILITY	
14.0	CONCRETE	
15.0	GLASS	
16.0	STEEL	
17.0	WOOD	
18.0	PLASTER	
19.0	PAINTS AND COATINGS	
20.0	MECHANICAL	
21.0	ELECTRICAL	
22.0	PLUMBING	
23.0	FIRE PROTECTION	
24.0	ENVIRONMENTAL	
25.0	ACCESSIBILITY	

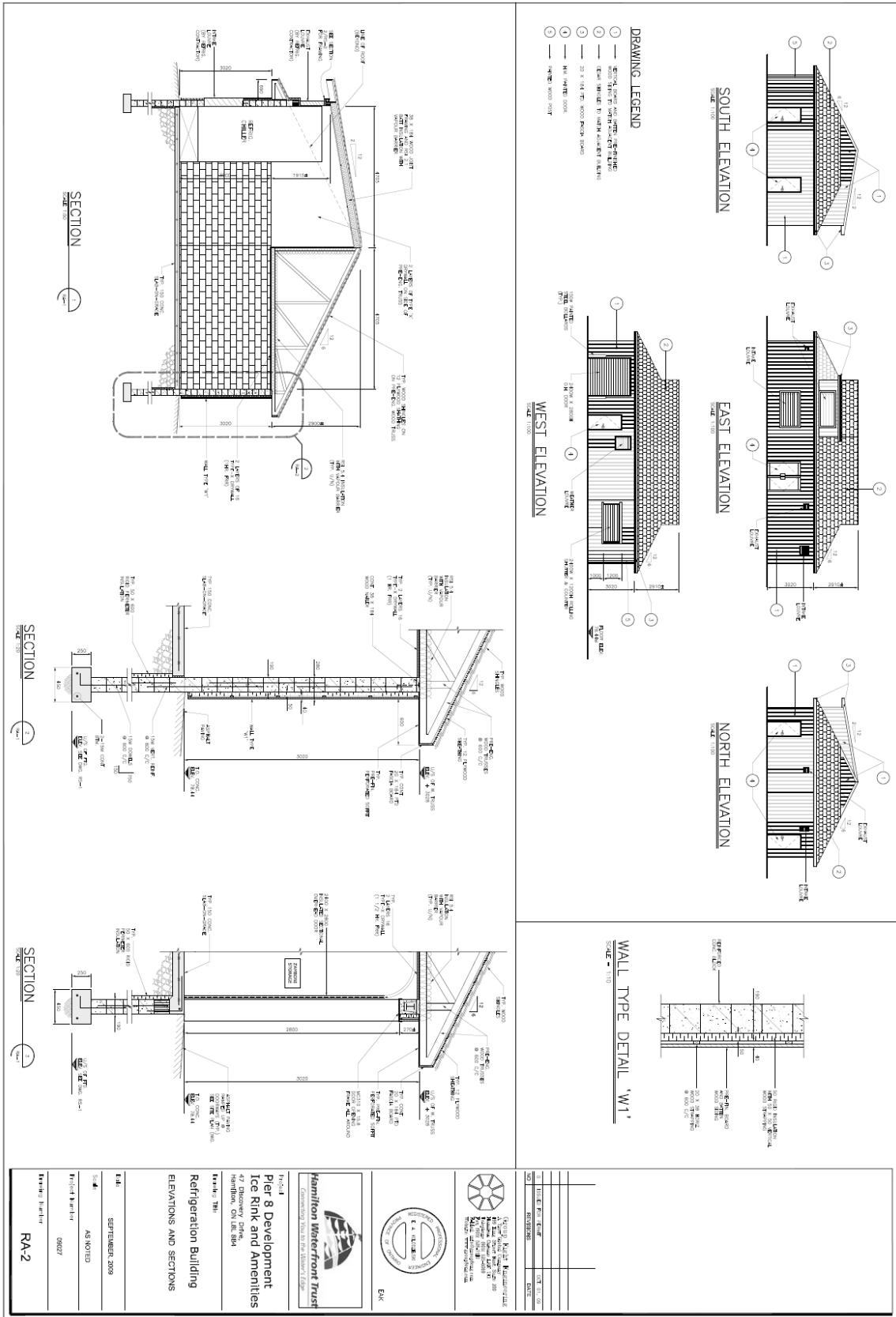
Hamilton Waterfront Trust

Project: Pier 8 Development
Ice Rink and Amenities
Hamilton, ON L8E 8B4

Rejuvenation Building
FLOOR PLAN ROOF PLAN,
SCREENS AND DOOR SUMMARY

DATE: SEPTEMBER 2009
AS NOTED

Project Number: 0007
Drawing Number: RA-1



SCHEDULE "B"
LANDS, BUILDINGS, FIXTURES AND CHATTELS

1. All real and personal property comprising and located in and about the lands and premises known as Pier 8 Outdoor Rink Park, more particularly described in Schedule "A" of this Agreement and notwithstanding the generality of the foregoing, all lands, buildings and building contents, fixtures, structures, improvements and chattels located in, about or upon the said lands and premises and including any and all inventory of saleable goods on the property at the time of the delivery of this Agreement.
2. All real and personal property which is part of the Pier 8 Outdoor Rink Park but which is not located on the land and premises.

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**SCHEDULE “C”
CITY LAND LEASE AGREEMENT**

(to be attached upon execution)

DRAFT

**SCHEDULE “D”
HER MAJESTY LAND LEASE AGREEMENT**

(to be attached upon execution)

DRAFT