



SUBJECT: New Site Plan Control Area By-law and Site Plan Control Agreement

TO: Planning and Development Committee

FROM: Legal Department

Report Number: L-8-17

Wards Affected: All

File Numbers: 535-01, 110-04

Date to Committee: May 30, 2017

Date to Council: June 12, 2017

Recommendation:

Approve enactment of the attached by-law to repeal the existing Site Plan Control Area by-laws and enact a new Site Plan Control Area by-law; and

Direct staff to prepare all new site plan approval agreements substantially in accordance with the new site plan approval agreement template.

Purpose:

The purpose of this report is to recommend Council repeal and replace the City's existing Site Plan Control Area by-law, and for Council to approve new standard site plan control agreement terms.

A City that Grows

- Promoting Economic Growth
- Intensification
- Focused Population Growth

An Engaging City

- Good Governance
-

Background and Discussion:

Site Plan Control Area By-law

The City of Burlington has exercised site plan control pursuant to its authority under the Planning Act since 1979. Since that time, the City has enacted a number of by-laws to establish the whole of the City as an area of site plan control, and to delegate the municipality's authority to regulate site plan approvals to, at various times, the City's Chief Building Official and the Director of Planning.

At its October 3, 2016, Council considered Planning staff report PB-70-16 containing various recommendations on general Official Plan and Zoning By-law policies and on Character Area Studies for specific neighbourhoods within the municipality. PB-70-16 also contained a recommendation on an amendment to the Site Plan Control Area by-law to eliminate the site plan approval process for low density residential areas.

On October 3, 2016, Council voted to endorse proposed amendments to the Official Plan and Zoning By-law for public consultation at a future public meeting (subsequently considered and approved for enactment at Council meeting of December 19, 2016), and voted to approve an amendment to the Site Plan Control by-law to eliminate the site plan approval process for low density residential areas.

The existing Site Plan Control Area by-laws are outdated and are recommended to be replaced with a new by-law to more accurately and effectively reflect Council's direction to exempt low density residential development and/or redevelopment in Burlington from site plan approval.

Standard Site Plan Control Agreement Terms

For development that remains subject to site plan approval, the City requires applicants to enter into a site plan agreement pursuant to section 41 of the Planning Act. The standard form of the site plan agreement that is currently used by City staff was last considered and approved by Council in May 1991. The standard terms of the agreement do not represent current best practice, and sometimes contradict with the terms staff are seeking through the detailed schedules that are attached to the agreement. Over the last year, City Planning, Capital Works and Legal staff have undertaken a review of the standard agreement terms, including a review of best practices of other municipalities. Based on that review, staff recommend that the terms of the standard site plan agreement be updated to reflect current municipal authority and best practice.

Strategy/process

In order to implement Council's direction to exempt low density residential development and/or redevelopment in Burlington from site plan approval, the City Solicitor recommends that the existing Site Plan Control Area by-laws (167-1979, 168-1979, 116-1986, and 115-1986) describing the areas of the City to which site plan control applied, both be repealed and replaced with a new site alteration by-law that confirms that site plan control is in effect for the entire City, and that low density residential development is exempt from site plan control. A proposed new by-law is attached to this report as "Appendix A".

The City's standard site plan approval agreement was last approved by Council in 1991. It is out of date and does not reflect what the municipality has the right to require in such an agreement. City Planning, Capital Works and Legal staff have worked together to prepare a proposed new site plan approval agreement that the City will enter into with those proponents that are subject to site plan control. The City Solicitor recommends that City staff be directed to prepare site plan approval agreements substantially in accordance with the proposed new standard site plan agreement template attached to this report as "Appendix B".

Options considered

City Planning and Legal staff have considered continuing to regulate site plan control through the existing Site Plan Control Area by-laws, and the existing standard site plan control agreement. Staff do not recommend continued regulation under the existing by-laws or the existing standard agreement as they are both outdated and not reflective of current best practice.

Financial Matters:

No financial impacts beyond those already considered in Council's approval to eliminate the requirement for site plan approval for low density residential development.

Public Engagement Matters:

Significant public engagement was undertaken in the consideration and recommendation by Council to eliminate site plan approval for low density residential development. No further consultation related to the by-law implementing that direction or a new standard site plan agreement is recommended or statutorily required.

Conclusion:

The City's Site Plan Control Area by-laws do not reflect Council's direction to not require site plan approval for low density residential development. The City's standard site plan approval agreement is out of date and requires an update to reflect best municipal practices. Accordingly, staff recommend the repeal and replacement of the Site Plan Control Area by-laws and recommend that staff be directed to prepared new site plan approval agreements substantially in accordance with the proposed new site plan approval agreement template attached to this report.

Respectfully submitted,

Blake Hurley

Assistant City Solicitor

905-335-7600 x7611

Appendices:

- a. Site Plan Control Area By-law
- b. Standard Site Plan Agreement Template

Report Approval:

All reports are reviewed and/or approved by Department Director, Director of Finance and Director of Legal. Final approval is by the City Manager.

Appendix 'A'

THE CORPORATION OF THE CITY OF BURLINGTON

BY-LAW NUMBER **- 2017

A by-law to establish Site Plan Control and designate all lands
in the City of Burlington as a site plan control area

WHEREAS section 41 of the Planning Act, R.S.O. 1990, c. P. 13, as amended, permits the Council of a municipality to designate the whole or any part of the municipality as a Site Plan Control Area where in the Official Plan the area is shown or described as a Site Plan Control Area;

AND WHEREAS the City of Burlington Official Plan designates all lands in the City of Burlington as a Site Plan Control Area;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF BURLINGTON HEREBY ENACTS AS FOLLOWS:

1. In this By-law:

(a) "City" means the Corporation of the City of Burlington;

(b) "Council" means the Council of the Corporation of the City of Burlington;

(c) "Development" has the same meaning as in subsection 41(1) of the Planning Act, R.S.O. 1990, c. P. 13;

(d) "Person" means any owner of land as identified in the records of the Land Registry Office and includes a purchaser under a valid Agreement of Purchase and Sale, and the authorized agent of any such purchaser or owner of land;

2. The whole of the City of Burlington is hereby designated as a Site Plan Control Area pursuant to Section 41 of the Planning Act, R.S.O. 1990,c. P.13.

3. Subject to section 4 of this by-law, no person shall undertake any Development in the Site Plan Control Area without final approval of a site plan by Council or persons to whom Council's approval authority has been delegated through the City's Delegation By-law 99-2012, as may be amended.
4. Section 3 of this by-law shall not apply to the following classes of development:
 - (a) Any single detached dwelling, duplex dwelling or semi-detached dwelling used solely for residential use;
 - (b) Any building or structure accessory to the uses described in subsection 4(a) of this by-law;
 - (c) Any agricultural building or structure, save and except large scale agricultural buildings or structures used for or in association with food processing and manufacturing.
5. By-laws 167-1979, 168-1979, 115-1986 and 116-1986 are hereby repealed.

ENACTED AND PASSED this 12th day of June, 2017.

_____ MAYOR
Rick Goldring

_____ CITY CLERK
Angela Morgan

Appendix 'B'

SITE PLAN FILE NO.: 535- ####/##

THIS SITE PLAN AGREEMENT made this # day of month, 2017

B E T W E E N:

THE CORPORATION OF THE CITY OF BURLINGTON, in the Regional
Municipality of Halton, in the Province of Ontario,
(Hereinafter referred to as the "City"),

OF THE FIRST PART

- and -

<NAME>

(Hereinafter referred to as the "Owner"),

OF THE SECOND PART

WHEREAS the Owner owns the lands described in Schedule "A" attached hereto (hereinafter referred to as the "Lands");

AND WHEREAS the Owner has applied to the City pursuant to the provisions of Section 41 of the *Planning Act*, R.S.O. 1990 c.P.13, as amended, for approval of development plans as described in Schedule "B" attached hereto (hereinafter referred to as the "Plans");

AND WHEREAS the City considers the Owner's application to be in the public interest and has approved the Plans, subject to the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the Owner and the City hereto covenant and agree as follows:

1.0 REGISTRATION

- 1.1 This Agreement affects the lands described in Schedule "A" attached hereto and the Owner hereby charges the Lands with the performance of this Agreement. The Owner hereby consents to the registration of this Agreement against the title of the Lands.
- 1.2 The Owner agrees to pay to the City an agreement registration fee in the amount shown on Schedule "D" to this Agreement.
- 1.3 The Owner agrees to provide to the City a solicitor's certificate of title in a form acceptable to the City's Director of Planning and Building upon the execution of this Agreement, at the request of the City's Director of Planning and Building.
- 1.4 The Owner agrees that, should the City be unable to register this agreement on title of the Lands as a result of incorrect information provided by the Owner, any additional costs incurred by the City to register the agreement will be paid by the Owner to an upset limit of \$250.00.

2.0 GENERAL WORKS AND CONDITIONS

- 2.1 The Owner agrees that:
 - 2.1.1 The Lands shall only be developed in accordance with the plans described in Schedule "B" attached hereto (hereinafter referred to as the "Plans"). No modification of the Plans shall be permitted without prior written approval of the City;
 - 2.1.2 It shall carry out all conditions of approval, including the additional terms and conditions of the Agreement as more particularly set out in Schedule "C" attached hereto;
 - 2.1.3 It shall obtain a permit or other authorizing documentation from the Public Works Department of the Regional Municipality of Halton allowing for the connection of the development specified in the Plans to Regional Municipality of Halton water and waste water services or in the event that such services are not available, that

the Owner shall obtain a certificate or other authorizing documentation from the Health Department of the Regional Municipality of Halton permitting the development outlined in the Plans to be serviced using private services. The said permit, certificate or other authorizing documentation shall be obtained within six months of the execution of this Agreement and in any event prior to the issuance of any Building Permit with respect to the Lands. In the event that the said permit, certificate or other authorizing documentation cannot be obtained by the Owner within the said time period, this Agreement and the approval of the City's Director of Planning and Building or City Council, as the case may be, with respect to the Plans, shall become null and void. This is a condition for the benefit of and may be waived by the City;

- 2.1.4 All costs associated with the relocation of existing services or utilities shall be borne by the Owner;
- 2.1.5 A Building Permit shall be secured for the construction specified in the Plans within six months of final Site Plan Approval and that the said construction shall be substantially commenced within twelve months of final Site Plan Approval. In the event that the said Building Permit is not secured or work has not substantially commenced within the said time periods, as determined by the City's Director of Planning and Building, this Agreement and the approval of the City's Director of Planning and Building or City Council, as the case may be, with respect to the Plans, shall become null and void. This is a condition for the benefit of and may be waived by the City;
- 2.1.6 A Trench Excavation Permit for works within the road allowance shall be secured from the Capital Works Department before any vegetation is disturbed or any grading or construction commenced, if necessary;
- 2.1.7 An Entrance Permit for construction of a new driveway entrance within the road allowance shall be secured from the Capital Works Department before any vegetation is disturbed or any grading or construction commenced, if necessary;
- 2.1.8 48 hours prior to pouring concrete or paving on the Lands and/ or municipal road allowance, the Owner shall contact Capital Works staff inspection. Control points for curb returns on municipal road allowances shall be clearly marked for Capital Works staff and confirmation of entrance curb radii;
- 2.1.9 A Site Alteration Permit (as per By-law 64-2014, as amended) shall be secured from the Capital Works Department before any vegetation is disturbed or any grading or construction commenced, if necessary;
- 2.1.10 A Tree Permit (as per By-law 68-2013, as amended) shall be secured from the Capital Works Department before any vegetation is disturbed or any grading or construction commenced, if necessary. The Owner shall provide continuous and careful protection of existing City trees, as per City of Burlington Tree Protection

and Preservation Specification No. SS12A, as amended, to minimize negative impacts to existing City trees until all construction, grading and other works contemplated in the Plans are fully completed. During the said time period, care shall also be taken by the Owner to store construction materials and park construction vehicles outside of the municipal right-of-way and to the satisfaction of the City Arborist;

- 2.1.11 Noncompliance with the City's tree protection and preservation requirements or removal of the tree protection without the approval of the City Arborist will result in the loss of the associated Schedule "D" securities. The security deposit shall be returned to the Owner if the City trees are deemed not injured or damaged by the City Arborist, otherwise the deposit shall be retained by the City, indefinitely, for the on-going maintenance, preservation and/ or eventual replacement of the tree;
- 2.1.12 Prior to the commencement of framing/ above grade/ superstructure work, elevations of the top of foundation walls, footings and/ or ground floor slab shall be delivered for approval to the Executive Director of Capital Works. These elevations shall be prepared by an Ontario Land Surveyor or the consulting engineer and shall show "as-constructed" elevations;
- 2.1.13 Throughout the duration of construction, the site shall be maintained in a safe and orderly condition, construction debris shall be contained and removed on a regular basis and appropriate temporary fencing, barriers and signage shall be utilized to prevent injury to persons and/ or property to the satisfaction of the City. Where construction is being undertaken within an existing developed area or on an existing developed site, the Owner will ensure that the functioning of the surrounding area, including pedestrian and vehicular movement, is maintained;
- 2.1.14 Throughout the duration of construction, all streets abutting the Lands and to be used for access shall be kept in good and usable condition and, if damaged, will be restored immediately and to the satisfaction of the Executive Director of Capital Works. All costs associated with restoration of the streets shall be borne by the Owner. The Owner's failure to complete the restoration works in a period of time deemed satisfactory to the Executive Director of Capital Works may result in the necessary works being carried out by the City's contractor and charged against the curb bond deposit and/ or the letter of credit;
- 2.1.15 Provide continuous and careful control measures to minimize dust emanating from the Lands until all construction, grading and other works contemplated in the Plans are fully completed. During the said time period, care shall also be taken by the Owner to minimize the tracking of soil/ material onto municipal road allowance. The Owner shall expeditiously suppress dust or remove all soil/ material from the municipal road allowance when requested to do so by City inspection staff and to the satisfaction of the Executive Director of Capital Works;
- 2.1.16 Throughout the duration of construction, tires of all vehicles/ equipment leaving

the Lands are to be scraped during wet conditions;

2.1.17 Roads are to be flushed and swept on Friday afternoons

2.1.18 Silt control measures, to the satisfaction of the Executive Director of Capital Works, shall be provided by the Owner until all construction, grading and other works contemplated in the Plans are fully completed, to prevent silt or other substances entering onto adjacent properties, roads, sewers or watercourses from the Lands. Plans to control silt will be provided to the City's Executive Director of Capital Works for review and approval before any vegetation is disturbed or any grading or construction commenced

2.1.19 As further set out in Section 4 of this Agreement, throughout the duration of construction, noncompliance with the City's dust/ soil/ silt control requirements or any and all damage to lands other than the Lands of the Owner caused or as a result of anything done in connection with the construction as set out in the Plans shall be remediated and repaired at the direction of the Executive Director of Capital Works and all work in connection thereto shall be borne by the Owner. Should the Owner fail to comply with said direction, the City may, in its discretion, remediate and repair damage using securities collected and set out in Schedule "D", and/or pursue remedies as set out in section 446 of the Municipal Act, S.O. 2001, as amended ;

2.1.20 Should construction require or otherwise cause the normal flow of traffic on a street to be disrupted, the provisions of the Ontario Traffic Manual, Book 7 (Temporary Conditions), as amended, shall be followed at all times, including but not limited to the appropriate traffic control person(s) and related signage. More particularly, the City requires:

2.1.15.1 two flag person(s) shall be dedicated to direct construction vehicles into and out of the Lands at all times;

2.1.15.2 at the discretion of the Director of Transportation Services, pay duty police officers provided by the Halton Regional Police Service may be required to direct traffic. All costs associated with the requirement for pay duty police officers shall be borne by the Owner;

2.1.15.3 traffic lanes shall not be closed completely. Lane closures and/ or restrictions require the approval of the Director of Transportation Services;

2.1.15.4 lane closures and/ or restrictions shall be communicated in advance to outside agencies, including Burlington Transit, Burlington Fire

Department, Region of Halton Land Ambulance Services, Halton Regional Police Service and Ontario Provincial Police;

- 2.1.16 Throughout the duration of construction, should any adverse environmental impact to the Lands be discovered or occur the Owner agrees to inform the City of Burlington/ Regional Municipality of Halton/ Ministry of the Environment and Climate Change and immediately retain a qualified environmental consultant to investigate, report and remediate, as may be required, all in compliance with Ontario Regulation 153/04, as amended;
- 2.1.17 Disposal of excavated material from the Lands will comply with a preapproved haulage route to the satisfaction of the Executive Director of Capital Works. The haulage route will be monitored twice daily (at noon and end of workday) to ensure the route is clean. Should unforeseen problems arise, remedial action will be taken to the satisfaction of the Executive Director of Capital Works;
- 2.1.18 Upon completion of construction, all municipal boulevards will be sodded at the expense of the Owner with minimum 150 mm of topsoil and No. 1 Nursery Sod. Prior to sodding on the Lands and/ or municipal boulevards, Capital Works staff will be called for inspection;
- 2.1.19 To provide the City with all monies and securities as specified in Schedule "D" attached hereto, prior to the execution of this Agreement;
- 2.1.20 All property interests listed in Schedule "E" attached hereto shall be conveyed at the expense of the Owner to the public authority noted on the said schedule free of all encumbrances of any kind within sixty (60) days of the execution of this Agreement. Failure to convey the said property interests in accordance with this provision shall render this Agreement and the approval of the City's Director of Planning and Building or City Council, as the case may be, with respect to the Plans, null and void. This is a condition for the benefit of and may be waived by the City.

3.0 MAINTENANCE

3.1 The Owner agrees that:

- 3.1.1 All site works specified in the Plans including, but not limited to, drainage and stormwater management facilities, parking and loading surfaces, curbing, landscaping, walkways, access ramps, driveways, fencing, garbage enclosures, roof top mechanical screening, lighting and signage (hereinafter referred to as "Site Works"), shall be maintained at the sole risk and expense of the Owner in a good state of repair to the satisfaction of the City including, but not limited to, the removal of snow from access ramps, driveways, parking and loading areas, and walkways;

- 3.1.2 All weeping tiles shall be pumped as per the City's stormwater management policy. Sump pumps shall discharge onto permeable areas via concrete splash pads or extensions and not onto walkways, driveways, parking lots, etc. Sump pumps which cannot discharge onto permeable areas may connect to the storm sewers on the Lands with written approval from the Executive Director of Capital Works;
- 3.1.3 All downspouts shall discharge onto permeable areas via concrete splash pads or downspout extensions and not onto walkways, driveways, parking lots, etc.. All downspouts which cannot discharge onto permeable areas shall be connected to the storm sewers on the Lands;
- 3.1.4 All landscape plant material on the Lands shall be maintained by the Owner in a good and healthy condition and any dead landscape stock shall be replaced immediately by the Owner. All planting beds and other landscaped areas on the Lands shall be maintained by the Owner in a weed-free condition;
- 3.1.5 The Owner shall re-establish grass or other vegetation on all disturbed or graded areas on the Lands as quickly as possible after a disturbance;
- 3.1.6 Perpetual maintenance of all installed stormwater management works will be provided and to implement all recommendations of the approved Stormwater Management Report. Copies of maintenance records shall be provided to the City at the request of the Executive Director of Capital Works;
- 3.1.7 Stormwater management quantity and quality controls are not to be removed or altered without prior approval from the City of Burlington and Conservation Halton. The Owner further acknowledges that removal or alteration of stormwater management controls, without the prior written authorization of the Executive Director of Capital Works, may result in flooding within the Owner's building and/or on the Lands as well as lands external to the Owner's;
- 3.1.8 Should changes to the approved lighting be necessary details will be provided for approval to the satisfaction of the Executive Director of Capital Works;
- 3.1.9 After 11:00 pm parking lot lighting will be reduced to ** lux while maintaining the permitted max/ min uniformity ratio;
- 3.1.10 After 11:00 pm signage lighting will be reduced if deemed necessary by the Executive Director of Capital Works to the satisfaction of the Executive Director of Capital Works;
- 3.1.11 Should the approved lighting be identified as a problem by the Executive Director of Capital Works on adjacent properties or right-of-ways, the Owner will

implement appropriate remedial measures to the satisfaction of the Executive Director of Capital Works;

- 3.1.12 Perpetual maintenance of all installed noise mitigation measures will be provided and to implement all recommendations of the approved Noise Report. Copies of maintenance records shall be provided to the City at the request of the Executive Director of Capital Works;
- 3.1.13 Noise mitigation measures are not to be removed or altered without prior written approval from the Executive Director of Capital Works;
- 3.1.14 Garbage storage will be provided in accordance with the Plans. All perishable garbage (including perishable recyclable garbage) is to be stored within the main building and within a climate controlled room or facility;
- 3.1.15 Should changes to the approved waste management process/ garbage facilities be necessary details will be provided for approval to the satisfaction of the Executive Director of Capital Works;
- 3.1.16 Should the approved waste management process/ garbage facilities be identified as a problem by the Executive Director of Capital Works, the Owner will implement appropriate remedial measures to the satisfaction of the Executive Director of Capital Works.

4.0 SECURITY - PERFORMANCE - ENTRY

- 4.1 The Owner is to deposit with the City at the time of the execution of this Agreement, a Letter of Credit or other security satisfactory to the City's Director of Finance (hereinafter referred to as the "Performance Guarantee") in the amount shown on Schedule "D" attached hereto, as security for:
 - 4.1.1 completion of the Site Works in conformity with the provisions of this Agreement; and
 - 4.1.2 performance and satisfaction of any other provision of this Agreement.
 - 4.1.3 in the event that the Owner has provided a Letter of Credit and the Owner or the financial institution who issued the Letter of Credit notifies the City that the Letter of Credit will not be renewed, the City will automatically cash said letter of credit and set up a cash account as a Performance Guarantee;

- 4.2 The Owner agrees that, prior to the release of the required Letter of Credit or other securities held by the City in accordance with this Agreement, the Site Works and all other things, including but not limited to the following, are to be completed and/ or provided by the Owner and to the satisfaction of the Executive Director of Capital Works:
- 4.2.1 “as constructed” drawings of record for all engineering works required by the Plans. The “as constructed” drawings will be certified by the consulting engineer. A digital copy of the “as constructed” drawings will be provided in .dwg format. The digital “as constructed” drawings shall be in accordance with the City of Burlington Design and Layering Standards and georeferenced to UTM NAD 83, Zone 17.
 - 4.2.2 a Letter of Certification from the consulting engineer certifying that all stormwater quantity devices, quality devices, manholes, catchbasins and sewers have been inspected and cleaned;
 - 4.2.3 confirmation of acceptable Mandrel testing as well as copy of the storm sewer video inspection;
 - 4.2.4 a copy of the maintenance agreement for all stormwater quality devices;
 - 4.2.5 a Letter of Certification from the lighting consultant that confirms all lighting was installed as per the Plans;
 - 4.2.6 a Letter of Certification from the noise consultant that confirms all recommendations contained in the noise and vibration report/ study have been implemented. Confirmation of the site’s noise levels shall be provided to the City at the request of the Executive Director of Capital Works.
- 4.3 The Performance Guarantee provided pursuant to this Agreement shall be released by the City when the Site Works set out in the Plans and all other acts, matters or things required to be done under the provisions of the agreement are finally completed by the Owner and approved by the Executive Director of Capital Works, such approval not to be unreasonably withheld, except that 10% of the Performance Guarantee may be retained by the City for a period of one (1) year following the said Executive Director's approval, to secure any works within the municipal road allowance under this Agreement during that time period. A written request by the Owner to release the Performance Guarantee in accordance with the foregoing provision shall be delivered to the Executive Director of Capital Works before the said Executive Director makes a determination as to whether to grant the said approval to release the Performance Guarantee.
- 4.4 In the event that the Owner:

4.4.1 fails to complete, repair or maintain the Site Works to the satisfaction of the City; or

4.4.2 fails to do any other act, matter or thing required to be done, under the provisions of this Agreement to the satisfaction of the City;

the City may, at its sole discretion, cause a notice in writing to be served on the Owner specifying such default and requiring that same be remedied forthwith and if no action satisfactory to the City to remedy such default is taken by the Owner within seven (7) days after the service of such notice, the City has and is hereby given right to do and perform any and all matters and things that may be in default as stated in the notice at the expense of the Owner and for such purposes, if necessary, to purchase such materials and to purchase or hire such tools or machinery and to employ such contractors or work persons as the City considers necessary to remedy the default.

4.5 Notwithstanding the notice provisions in subsection 4.3, where, in the opinion of the City, any damage to persons or property has been, might be or could be caused directly or indirectly by or by reason of any default of the Owner under the provisions of this Agreement, the City has and is hereby given the right to remedy such default at the expense of the Owner without notice to the Owner.

4.6 The costs of all work done by the City pursuant to this Agreement shall be determined by the City, which determination of such costs shall be final and shall include a management fee equal to 20% of the cost of labour, materials and equipment for such work, and all such costs shall forthwith be payable by the Owner to the City.

4.7 In the event that the Owner fails to make, on demand in writing by the City, any payment required to be made under the provisions of this Agreement within seven (7) days after the service of notice on the Owner demanding such payment, the City may, at any time thereafter authorize the use of the Performance Guarantee provided by the Owner pursuant to this Agreement to pay any monies owed by the Owner to the City under this Agreement or the City under this Agreement or the City may collect any such outstanding amounts in like manner as municipal taxes, pursuant to Section 446 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended.

4.8 Where the City pursuant to this Section or any other Section in this Agreement supplies any necessary materials or carries out work in accordance with this Agreement, it shall be deemed to have been undertaken and completed by the City as an agent of the Owner and shall not be deemed to be an acceptance of any of the Site Works by the City nor an

assumption by the City of any liability in connection therewith, nor a release or discharge of the Owner from any obligation under this Agreement.

- 4.9 The City through its employees, contractors or agents may, at any time and from time to time, enter the Lands and buildings thereon to inspect, maintain, repair or complete any of the Site Works.

5.0 RELEASE AND INDEMNITY

- 5.1 No work, act, matter or thing done or omitted to be done by the City, its officers, employees or agents or City Council, pursuant to or in connection with this Agreement, shall give rise to any action, claim, counter-claim or demand by the Owner, or the Owner's heirs, executors, administrators, successors or assigns, for damages or compensation of any kind because of such work, act, matter or thing done or omitted to be done by the City, its officers, employees or agents or City Council, pursuant to or in connection with this Agreement.
- 5.2 The Owner agrees to indemnify and forever save harmless the City, its officers employees, and agents and City Council, from any claim, suit, demand, action, costs or causes of action against the City by any other party, arising out of or in connection with this Agreement or any work, act, matter or thing done or omitted to be done by the City, its officers, employees or agents or City Council pursuant to or in connection with this Agreement.

6.0 GENERAL PROVISIONS

- 6.1 The Owner acknowledges having read and understood the provisions of subsections 41(10) and 41(11) and Section 67 of the *Planning Act*, as amended, and Section 446 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, regarding the enforcement by the City of the provisions of this Agreement.
- 6.2 The City may, as attorney for the Owner, enforce all performance bonds given by the contractors to the Owner for any work to be completed in accordance with the Plans, but this shall not constitute an assignment of any such bond. When the City considers the contractor to be in default it may notify the Owner and the Owner will, within seven (7) days, proceed to enforce the bond, and in default, the City as attorney for the Owner and at the Owner's sole expense, may enforce the bond.
- 6.3 Every provision of this Agreement by which the Owner is obligated to perform in any way is to be deemed to include the words "at the risk and expense of the Owner" unless any such provision expressly provides to the contrary.

- 6.4 If any section or sections or part or parts of a section or sections in this Agreement are determined by any Court or tribunal of competent jurisdiction to be illegal or unenforceable, it or they shall be considered separate and severable from this agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto as though the said section or sections or part or parts of a section or sections had never been included.
- 6.5 Any notice required to be given under this Agreement may be given personally or by registered mail sent to the following addressees, the service of which shall be deemed to have been made on the third day after the said mailing.

City: The Corporation of the City of Burlington
426 Brant Street, Burlington, Ontario, L7R 3Z6

Owner: <NAME>
<ADDRESS>

- 6.6 Nothing contained in this Agreement shall relieve the Owner from complying with all applicable municipal by-laws, provincial and federal statutes and regulations there under.
- 6.7 This Agreement shall be read with such changes of gender and number as the context may require.
- 6.8 The following schedules attached hereto shall be deemed to form a part of this Agreement:

Schedule "A" Legal Description of the Lands

Schedule "B" The Plans

Schedule "C" Additional Terms & Conditions of Agreement

Schedule "D" Financial Obligations

Schedule "E" Property Interests to be Conveyed

- 6.9 This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the corporate parties have hereunto caused their corporate seals to be affixed and attested by their proper officers and the individual parties have hereunto set their hands and seals, at the times and places indicated.

SIGNED, SEALED & DELIVERED

This _____ day of (month), 2017

at the City of Burlington,

Province of Ontario

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SIGNED, SEALED & DELIVERED

This _____ day of (month), 2017

at the _____ of _____

Province of Ontario

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THE CORPORATION OF THE CITY

OF BURLINGTON

Per: _____

Rick Goldring – Mayor

Per: _____

Angela Morgan – City Clerk

We have authority to bind the corporation.

<NAME OF CORPORATION>

Per: _____

Name: _____

Title: _____

I have authority to bind the corporation.

SCHEDULE "A"

LEGAL DESCRIPTION OF THE LANDS

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the City of Burlington in the Regional Municipality of Halton and Province of Ontario more particularly described as

(Enter legal description)

SCHEDULE "B"

THE PLANS

The following plans and drawings constitute the approved development plans noted in subsection 2.1.1 of this Agreement as the "Plans".

The actual Plans are on file in the City's office at 426 Brant Street, Burlington, Ontario, and are available for viewing during normal business hours. The Plans are stamped by Planning and Building staff and Capital Works staff.

DRAWING NAME	DWG #	REV #	DATE	PREPARED BY
SITE DRAWINGS				
Site Plan				
Site Details				
ARCHITECTURAL DRAWINGS				
Building Elevations				
Building Floor Plans				
Building Roof Plan				
LANDSCAPE DRAWINGS				
Tree Preservation Plan				
Landscape/ Planting Plan				
Landscape Details				
LIGHTING DRAWINGS				

Photometric Plan				
Electrical Site Plan				
ENGINEERING DRAWINGS				
Construction Management Plan				
Erosion and Sediment Control Plan				
Site Grading Plan				
Site Servicing Plan				
Notes and Details Plan				
Utility Coordination Plan				
SURVEY DRAWINGS				
Reference Plan (for land conveyances)				

SCHEDULE "C"

ADDITIONAL TERMS AND CONDITIONS OF THIS AGREEMENT

SCHEDULE "D"

FINANCIAL OBLIGATIONS

SCHEDULE "E"

PROPERTY INTERESTS TO BE CONVEYED

1.0 For all property interests to be conveyed to the City or the Region, The Owner acknowledges and agrees that the survey, reference plan, transfer fee and all costs associated with registration, including legal fees incurred by the municipality, are to be paid by the Owner. The reference plan and all associated plans shall be related to 6 degrees UTM NAD 83, Zone 17.

2.0 The Owner shall convey the following land to the City of Burlington for public purposes in accordance with subsection 2.1.20 of this Agreement:

<u>Purpose</u>	<u>Description</u>
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(a)	Road Widening
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The Owner shall convey to the City a # metre road widening of <INSERT STREET NAME>, to the satisfaction of the Executive Director of Capital Works.

Or, None

(b)	Intersection Improvements
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The Owner shall convey to the City a # metre daylight triangle at the intersection of <INSERT STREET NAME> and <INSERT STREET NAME>, to the satisfaction of the Executive Director of Capital Works.

Or, None

(c)	Easements
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The Owner shall convey to the City an easement, measured as # metres by # metres, for <INSERT PURPOSE> purposes, to the satisfaction of the Executive Director of Capital Works.

Or, None