



A People Place, A Change of Pace
SHELBURNE
ONTARIO, CANADA

Meeting Date: Monday, June 14, 2021

To: Mayor Mills and Members of Council

From: **Steve Wever, Town Planner**

Report: P2021-23

Subject: **SPA 21/01 – 12123711 Canada Inc.
Application for Site Plan Approval
121 Adeline Street**

Recommendation

Be it resolved that Council receive Report P2021-23 as information.

Be it resolved that, Site Plan Application SPA 21/02 be approved, subject to the following conditions:

1. That the Owner enter into a Site Plan Agreement with the Town of Shelburne; and
2. That the Owner shall obtain confirmation of sufficient reserve servicing capacity by the Town Engineer for the Stage 1 area and allocation of servicing for the proposed mixed-use building including one commercial unit with approximately 50 square metres of gross floor area and three residential units prior to Municipal Approval of a building permit.

Be it resolved that By-law 35-2021, being a by-law to enter into a Site Plan Agreement with 12123711 Canada Inc. substantially in the form attached to this by-law, for the mixed-use commercial/residential development of the property at 121 Adeline Street, be read a first, second and third time and finally passed, authorizing the Mayor or his designate and the Clerk to execute the agreement.

Background

A site plan application has been submitted by 12123711 Canada Inc. (Paolo Pambianchi) for a proposed mixed-use commercial/residential development on the vacant property at 121 Adeline Street in the downtown area.

The subject property has a small lot area of approximately 121 square metres and has 9.1 metres of frontage on the east side of Adeline Street.

The property previously contained a two-storey commercial building that was removed in accordance with a demolition permit obtained by the previous owner in 2019. The previous building occupied the nearly the entire property area and there were no parking or landscaped areas on the lot to service the previous building. The previous building also encroached slightly on the Town's right-of-way (Adeline Street).

The property does not have any existing driveways but can be accessed from Adeline Street or the existing Town-owned lane along the south boundary of the property.

The adjoining properties to the north and east contain existing commercial / mixed-use buildings and the existing building at 119 Adeline Street to the north occupies the entire property to the limits of the property boundaries, similar to the previous building at 121 Adeline Street.

The applicant proposes to construct a new three-storey building for commercial and residential uses on a similar footprint as the previously existing building, to the limits of the lot, except that the main floor of the proposed new building would be setback from the Town's public lane by 1.2m, in accordance with the Zoning By-law setback for private garages along a lane.

Analysis

The subject property is designated as "Commercial" and "Commercial Core" in the Town's Official Plan and is zoned "Downtown Commercial (C1) Zone" in the Town's Zoning By-law 38-2007. The property is within the Stage 1 area for servicing.

The Site Plan application received includes plans for a proposed three-storey building with a commercial unit and 3 interior private parking spaces on the main floor, and three residential apartments on the second and third floors of the building. The proposed commercial unit is oriented to Adeline Street and would have two access doors including one facing Adeline Street and the other along the rear lane. The commercial unit would be available for lease to commercial tenants, and a specific use has not been identified by the applicant at this time. The use of the commercial unit will be required to be in accordance with the permitted uses of the C1 Zone.

The proposed residential units would be accessed via independent entry doors along the south face of the proposed building providing access to three separate staircases to the second storey of the building where kitchen and living areas would be provided for each unit. The floor plans identify one bedroom and 2 den areas on the upper floor of each residential apartment (third floor of the building).

Mixed-use buildings and residential intensification are permitted and encouraged within the Commercial Core area in the Official Plan.

The C1 Zone permits a range of commercial uses as well as residential uses located above the first storey of a building containing a permitted commercial use. The proposed building complies with the applicable standards and regulations of the Zoning By-law as summarized in the following table

C1 Zone & Applicable General Provisions	Required	Proposed	Compliance
Min. Lot Area	Nil	121 m ²	Yes
Min. Lot Frontage	Nil	9.1 m	Yes
Min. Front Yard	Nil	Nil	Yes
Min. Interior Side Yard	Nil	Nil	Yes
Min. Rear Yard	Nil	Nil	Yes
Maximum Lot Coverage	75%	95%	Yes* (s. 3.13.2)
Maximum Building Height	12.0 m	8.4 m	Yes
Parking	3 spaces	3 spaces	Yes
Private Garage Minimum Setback to Lane	1.2m	1.2m	Yes

*Section 3.13.2 of the Zoning By-law provides that nothing in the By-law shall apply to prevent the reconstruction of any permitted building where the owner has obtained a demolition permit, and that the building may be reconstructed in accordance with the previously existing standards, even if such building did not conform with one or more of the provisions, but the non-compliance may not be further increased. While the proposed building exceeds the maximum lot coverage of the C1 Zone, it is permitted as a reconstruction of the former building which covered nearly the entire lot and is an improvement of the previously existing building on the property which encroached on the Town's right-of-way and by providing for a 1.2m setback on the ground floor along the rear lane.

The applicant has provided a coloured rendering of the proposed building to illustrate the proposed design. The proposed building design is a significant improvement over the previously existing building, and is generally in keeping with the height, massing and orientation of buildings along Adeline Street and in the downtown area.

A Site Plan Agreement has been prepared is ready for Council consideration. The agreement sets out the obligations of the owner to develop the property in accordance with the plans approved by the Town and related requirements.

There is sufficient reserve capacity available for the Stage 1 area for this development. An average day water usage limit of 2 m³/day is recommended in the Site Plan Agreement based on the floor area of the commercial unit and the 3 residential apartments proposed. Approval and construction of the development will reduce the remaining capacity available for Stage 1 by 2 m³/day. A condition is also recommended to require the Owner to obtain approval of the final servicing allocation by the Town Engineer prior to Municipal Approval of a building permit.

Financial Impact

The applicant has paid the required application fee for the cost of processing the application. The Site Plan Agreement requires that the owner is responsible for all costs of processing and administering the agreement, inspections, review and acceptance of completed works, etc. Development Charges apply to the proposed development and are required to be paid at Municipal Approval of a building permit.

Policies & Implications (if any) Affecting Proposal

Town of Shelburne Official Plan
Town of Shelburne Zoning By-law 38-2007

Consultation and Communications

The application was circulated and comments received through the circulation were provided to and addressed by the applicant.

Council Strategic Priorities

Council's Strategic Priorities has three Goals - Sustainable, Engaged and Livable. There are a total of 12 targets with the three Goals.

This report aligns with the Sustainable Goals within the Targets:

Target T4 Promote balanced growth

Supporting Documentation

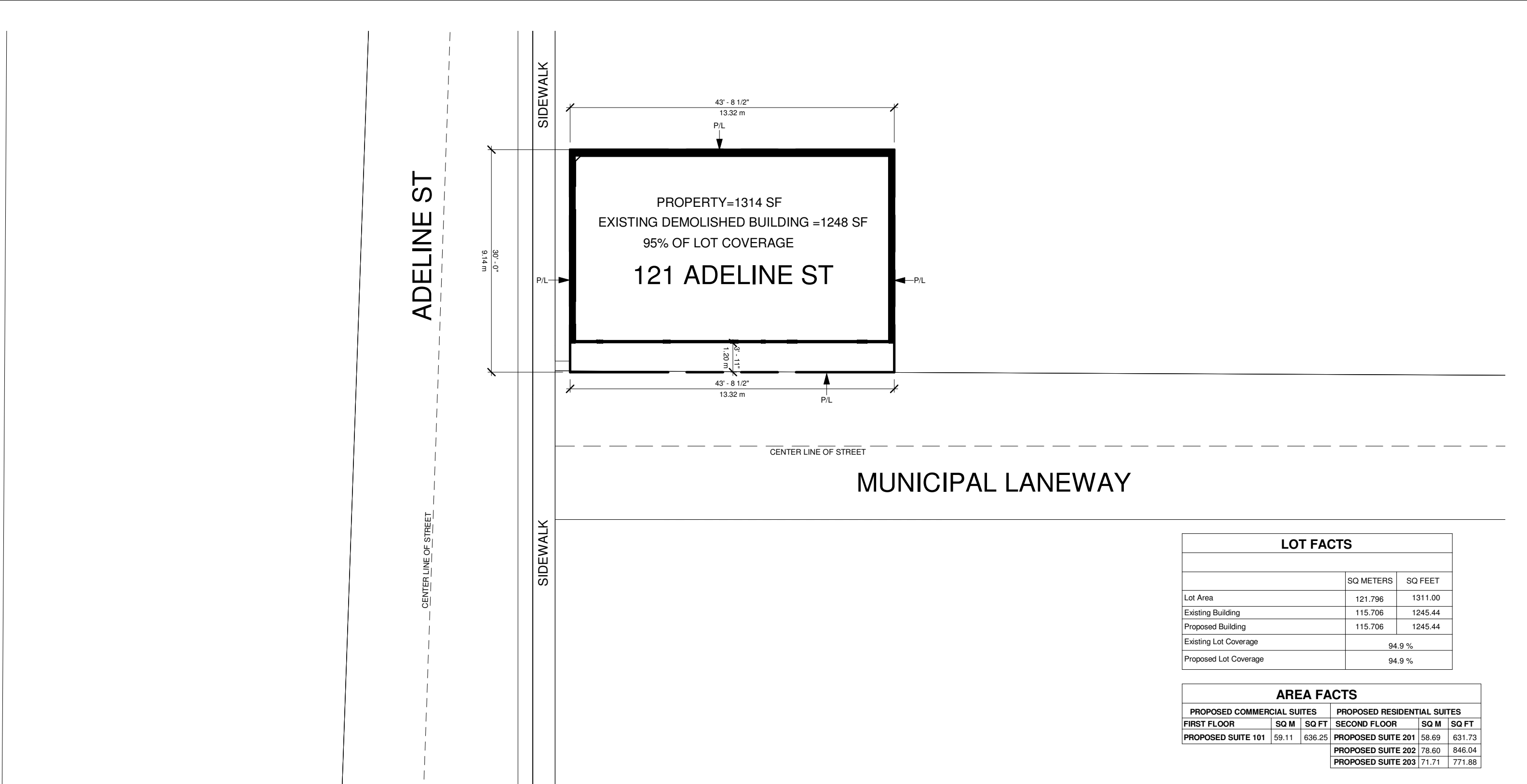
Site Plan and Rendering

Prepared by:

Steve Weber, Town Planner

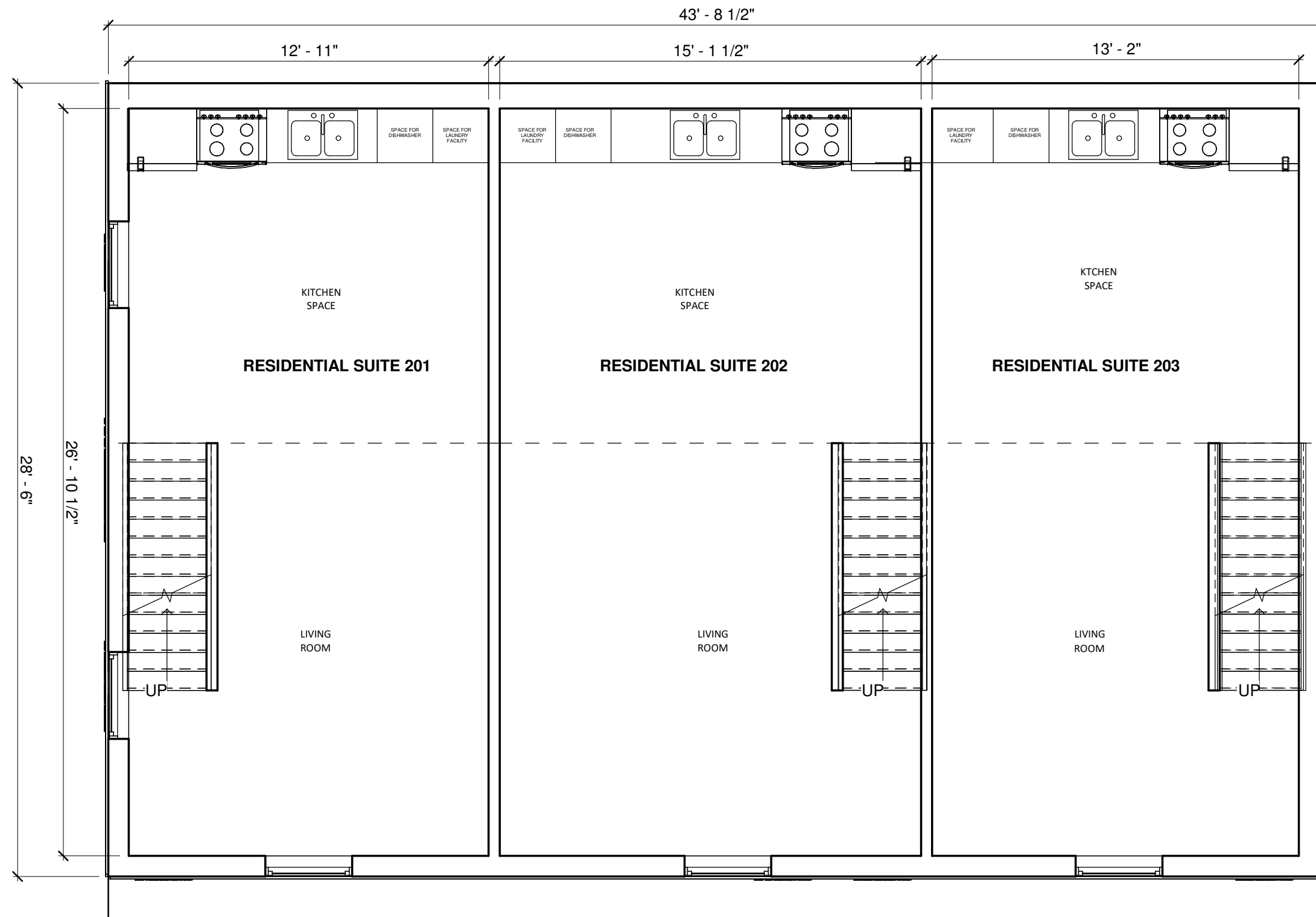
Reviewed by:

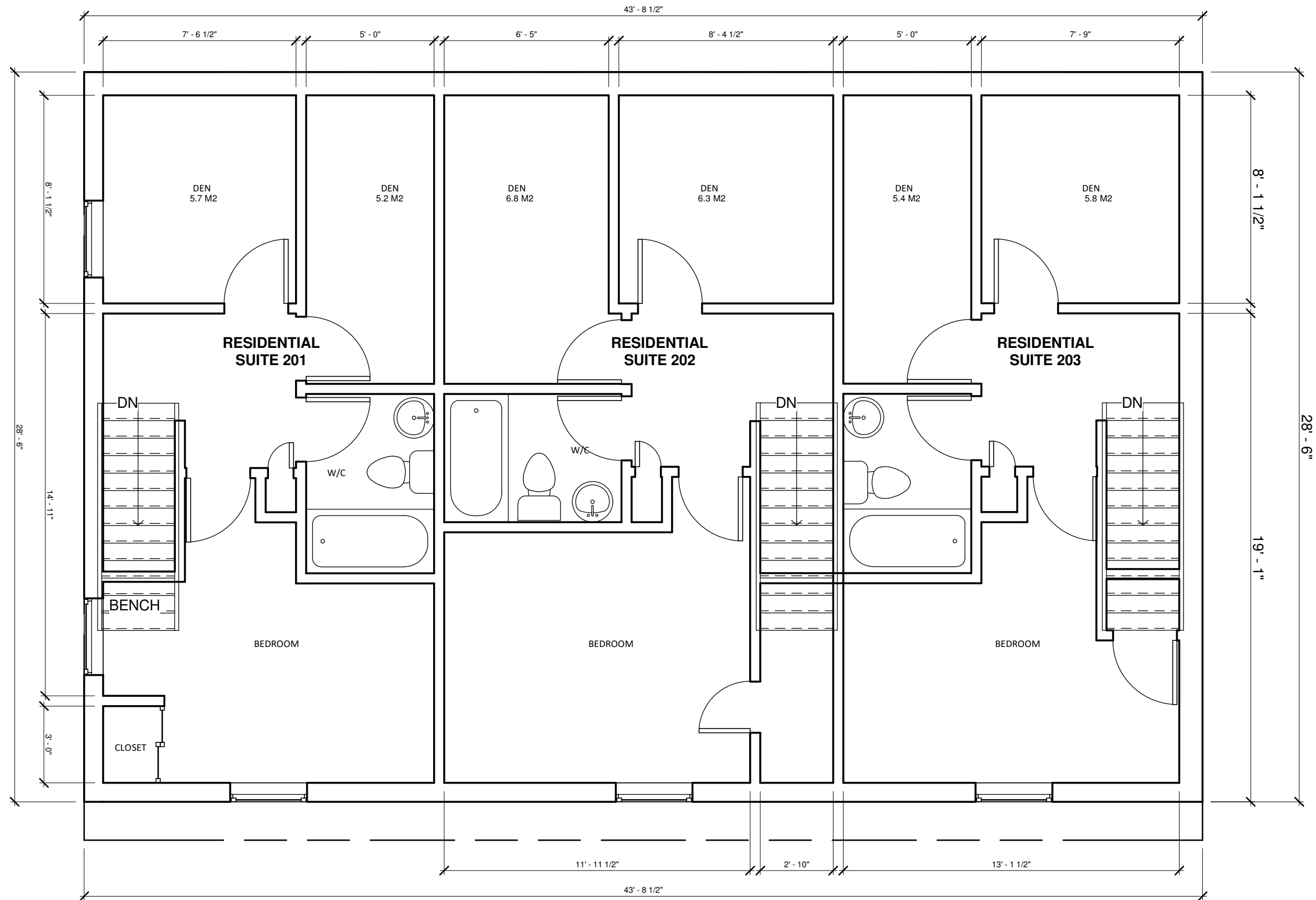
Denyse Morrissey, CAO



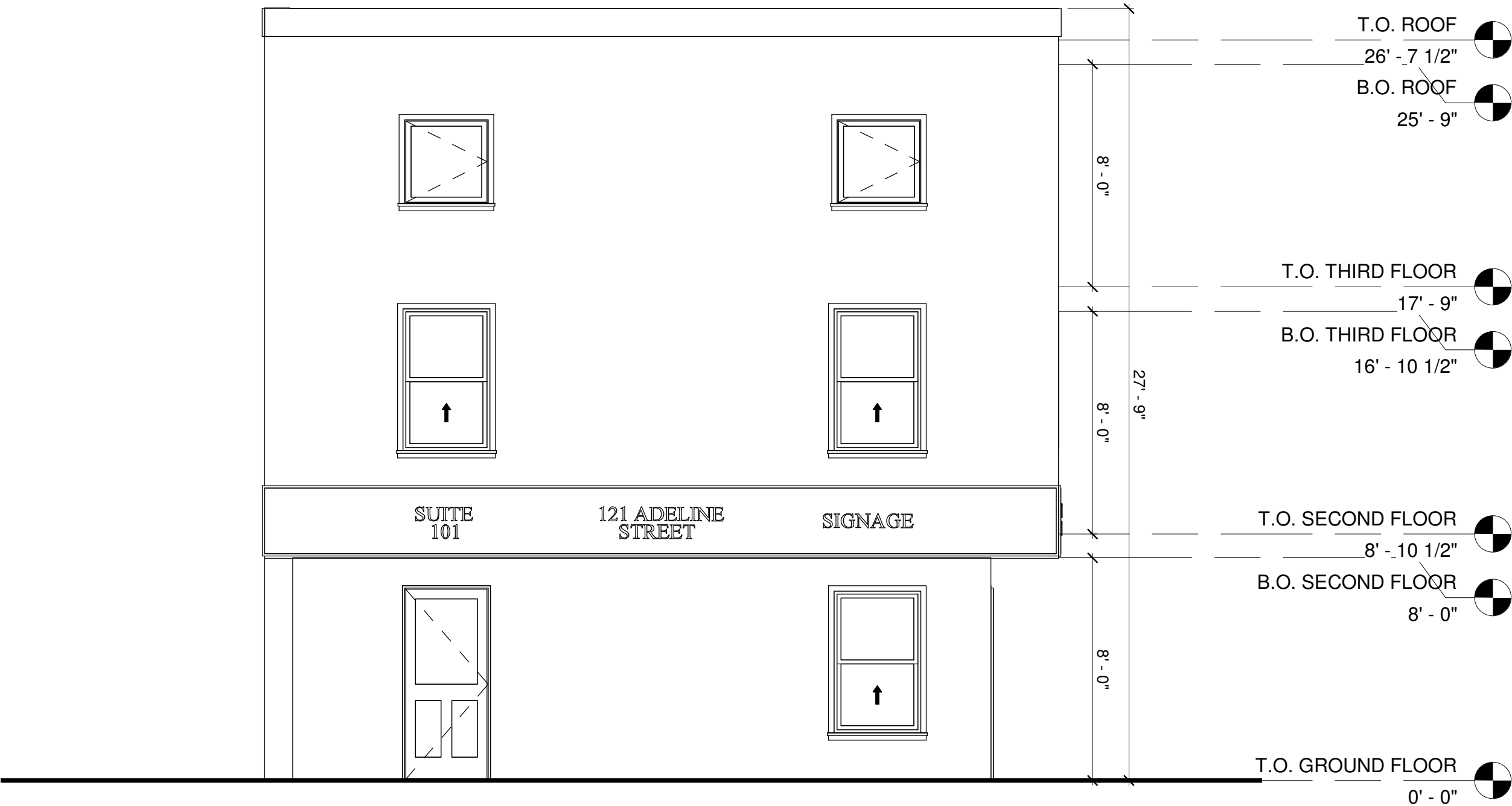
LOT FACTS		
	SQ METERS	SQ FEET
Lot Area	121.796	1311.00
Existing Building	115.706	1245.44
Proposed Building	115.706	1245.44
Existing Lot Coverage	94.9 %	
Proposed Lot Coverage	94.9 %	

AREA FACTS					
PROPOSED COMMERCIAL SUITES			PROPOSED RESIDENTIAL SUITES		
FIRST FLOOR	SQ M	SQ FT	SECOND FLOOR	SQ M	SQ FT
PROPOSED SUITE 101	59.11	636.25	PROPOSED SUITE 201	58.69	631.73
			PROPOSED SUITE 202	78.60	846.04
			PROPOSED SUITE 203	71.71	771.88










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		<div><div><div>BUILDER</div><div>NKOMPAS GROUP INC.</div><div>DEVELOP DESIGN BUILD MANAGE</div><div>9192 HWY # 9 PALGRAVE, ON LON IPO</div><div>647-527-4503 Email: nkompasgroup@gmail.com</div></div></div>	121 ADELINE STREET	EXTERIOR RENDER	<div>NO.</div> <div>01</div>	<div>Description</div> <div>SENT FOR DESIGN REVIEW</div>	<div>Date :</div> <div>2020-09-28</div>	<div>Sheet :</div> <div>A-12</div>
					<div>02</div>	<div>SENT FOR DESIGN REVIEW</div>	<div>2021-03-03</div>	
					<div>02</div>	<div>SENT FOR DESIGN REVIEW</div>	<div>2021-4-15</div>	

THE CORPORATION OF THE TOWN OF SHELBURNE

BY-LAW NUMBER 35- 2021

WHEREAS pursuant to the provisions of the Municipal Act, 2001, S.O. 2001 c. 25 as amended, ss. 8 & 9 refers the Town is authorized to enact this by-law;

AND WHEREAS the property dealt with in the by-law is subject to site plan control;

AND WHEREAS the Planning Act R.S.O. 1990 c. P.13 s. 41 provides for the Town and the owner to enter into an agreement with the municipality;

NOW THEREFORE the Municipal Council of The Corporation of the Town of Shelburne hereby enacts as follows:

1. THAT The Corporation of the Town of Shelburne enter into a Site Plan Agreement with 12123711 Canada Inc. for the commercial development of the property located at 121 Adeline Street dated as of June 14, 2021, substantially in the form attached to this by-law and initialed by the Clerk for identification.
2. THAT the Mayor or his designate and the Clerk are hereby authorized to execute the agreement and all documents necessary to complete the matters authorized by this by-law.

Read a First and Second Time in Open Council this the 14th day of June, 2021.

Read a Third Time in Open Council, and finally passed this the 14th day of June, 2021.

Mayor

Clerk

SITE PLAN AGREEMENT

THIS AGREEMENT made this 14th day of June, 2021.

BETWEEN:

12123711 CANADA INC.

(“Owner”)

Party of the FIRST PART

-and-

THE CORPORATION OF THE TOWN OF SHELBURNE

(“Town”)

Party of the SECOND PART

WHEREAS the Owner warrants that it is the owner in fee simple of the lands described in **SCHEDULE “A”** attached hereto (“Subject Lands”);

AND WHEREAS the Owner desires to develop a mixed use commercial and residential development on the Subject Lands in accordance with the plans described in **SCHEDULE “B”** attached hereto;

AND WHEREAS the Subject Lands are within an area designated as an area of site plan control pursuant to the Site Plan Control By-law of the Town passed pursuant to Section 41 of the *Planning Act*, R.S.O. 1990, c.P.13, as amended;

AND WHEREAS the Town requires the Owner to enter into this Agreement as a condition of approval of the plans and drawings for the Owner’s proposed Development on the Subject Lands;

AND WHEREAS the Town pursuant to section 41(10) of the Planning Act, R.S.O. 1990, c. P. 13, as amended, may register this Agreement on title to the land and is entitled to enforce the provisions of this Agreement against the Owner and any and all subsequent owners of the Subject Lands;

NOW THEREFORE in consideration of mutual covenants, agreements and promises herein contained and the sum of Two Dollars (\$2.00) of lawful money of Canada now paid by each of the parties hereto to the other (the receipt and sufficiency of which is hereby acknowledged) and other good and valuable consideration and the mutual agreements contained herein, the parties hereto covenant and agree as follows:

DEFINITIONS

1. (a) “Building Permit” means a Building Permit issued pursuant to the *Building Code Act*, S.O. 1992, c. 23.
- (b) “Building” means the three storey mixed use development which has a total building area of 337.2 m² and which is a new building to be constructed on the Subject Lands, as shown on **SCHEDULE “B”**.
- (c) “Chief Building Official” shall mean the Chief Building Official of the County of Dufferin and includes his or her designate or other duly appointed official, and/or any other Chief Building Official duly appointed by the Town pursuant to the *Building Code Act*, S.O. 1992, c. 23.
- (d) “Development” shall mean the construction, erection or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of substantially increasing the size or usability thereof and shall include the construction and installation of all facilities, services, utilities, works and other matters incidental thereto, including building excavation but shall not include preliminary site grading including stripping and storage of topsoil. “Developed” shall have a corresponding meaning.
- (e) “Owner” shall mean and include the Party of the First Part and any and all subsequent owners of the Subject Lands or any part thereof.
- (f) “Works” shall mean and include all works and services and all appurtenances thereto to be provided to and on the Subject Lands as required by the terms of this Agreement as set out in **SCHEDULE “B”** hereto, and the component parts of the above systems.

SCHEDULES

2. The following are the Schedules attached hereto and incorporated in this Agreement and deemed to be a part hereof:

SCHEDULE “A”	Legal Description of Subject Lands
SCHEDULE “B”	Site Plan Drawings
SCHEDULE “C”	Form of Letter of Credit
SCHEDULE “D”	Cost Estimate of Works
SCHEDULE “E”	Levies, Fees, Assessments and Charges Payable
SCHEDULE “F”	Regulations for Construction
SCHEDULE “G”	Insurance Requirements
SCHEDULE “H”	Statutory Declaration

The original drawings for **SCHEDULE “B”** are filed with the Clerk of the Town.

EXECUTION, REGISTRATION AND CERTIFICATION

3. (a) The Owner shall, at the time of execution of this Agreement by the Owner, provide the Town with an opinion letter, directed to the Town and signed by an Ontario Solicitor in good standing, certifying that the Owner is the sole owner of the Subject Lands and certifying whether there are any mortgages or encumbrances affecting the Subject Lands.
- (b) The Owner hereby consents to the registration at the Owner’s expense of this Agreement against the title to the Subject Lands, and agrees to provide to the Town, prior to execution of this Agreement by the Town, a legal description of the Subject Lands in registrable form.

- (c) The Owner hereby agrees to provide to the Town, prior to the execution of this Agreement by the Town, a Postponement Agreement(s) whereby any mortgagee or encumbrancer, to the full extent of its interest in the Subject Lands, consents to the registration of this Agreement against title to the Subject Lands, and to the registration of the Postponement Agreement(s) against title to the Subject Lands, and for itself, its successors and assigns subordinates and postpones all of its right, title and interest in the Subject Lands to the terms, provisions, obligations, conditions and agreements contained in this Agreement.
 - (d) The Owner covenants and agrees to pay the following charges, levies, taxes and fees and to provide the following documentation prior to the Town executing this Agreement:
 - (i) payment of all outstanding municipal taxes, if any;
 - (ii) payment of all legal, planning consultant and engineering fees as invoiced by the Town, where said fees exceed the application fee and contingency deposit required in accordance with the Town's Fee By-law (subject to and in accordance with paragraphs 23 and 24 of the Agreement);
 - (iii) provision of the Performance Guarantee which quantum is set out as part of **SCHEDULE "D"**;
 - (iv) provision of the insurance details as set out in paragraph 15 and **SCHEDULE "G"**.
 - (e) Subsequent to execution of this Agreement, the Owner shall within thirty days of said execution, register this Agreement against title to the Subject Lands, together with registration of postponement agreements (if any), and shall deliver to the Town Solicitor a Certificate of Title signed by an Ontario Solicitor in good standing certifying that the Site Plan Agreement and the postponement agreements, (if any) have been registered on title to the Subject Lands, and that the Site Plan Agreement stands in first priority on title, and including copies of the registration documentation together with current printouts of the property abstract for the Subject Lands. Said Certificate of Title shall be to the satisfaction of the Town Solicitor.
4. (a) The Owner covenants that it shall not commence any Development and/or Works, until:
- (i) this Agreement and any Postponement Agreement(s) as set out in paragraph 3(c) have been executed;
 - (ii) the necessary permits and authorizations, including the Building Permit and any other applicable licenses and permits have been obtained by the Owner from the appropriate authorities having jurisdiction;
 - (iii) the Performance Guarantee as set out in paragraph 11 has been lodged with the Town; and,
 - (iv) **SCHEDULE "B"** has been approved by the Town.
- (b) In the event that it comes to the attention of the Town that the Owner has failed to comply with any of the requirements of paragraphs 3 and 4(a) of this Agreement, the Town shall provide notification to the Owner in writing of the failure. If the Owner fails to remedy the failure complained of within seven (7) clear days after the receipt of such notice, the Town at its sole option, acting reasonably may suspend or terminate this Agreement and forthwith revoke all approvals, permits, and authorizations previously

granted by the Town to the Owner. The Town may, at the expense of the Owner, register notice on title of Subject Lands of the termination and/or suspension of this Agreement.

DESIGN AND FIELD REVIEW

5. (a) The Development and all Works shall be constructed and installed strictly in accordance with the terms of this Agreement, and in accordance with the Town's specifications as set out in **SCHEDULE "F"**.
- (b) The Owner covenants to retain the following professionals to design and provide field review of the construction and installation of the Development and the Works and to provide the Certificate(s) as set out in the following sentences in this section. The design and field review of the construction and installation of the Development and the Works, save and except landscaping, on the Subject Lands shall be provided by a Professional Engineer(s) licensed in the Province of Ontario and retained by the Owner. The said Engineer(s) shall provide upon completion of the Development and the Works, Certificate(s) that the execution of the Development and the Works has been in accordance with the plans and specifications as set out in **SCHEDULE "B"** and the terms of this Agreement.

SITE PLAN DEVELOPMENT

6. The Town hereby approves **SCHEDULE "B"** as to onsite matters. The Owner covenants and agrees that the Subject Lands shall only be developed in accordance with **SCHEDULE "B"** and terms of this Agreement and other plans filed with and approved by the Town as part of their approval processes of the Development and the Works and that the Development and the Works shall be used in compliance with the Town's applicable Zoning By-law, as amended and/or varied, and all other by-laws of the Town. The Owner covenants that no buildings, structures, other facilities, works or services or other matters shall be performed or constructed on the Subject Lands except as provided for in this Agreement without the prior written consent of the Town.

The Owner specifically acknowledges that the approval by the Town of **SCHEDULE "B"**, and the execution of the Agreement by the Town is based on the usage of the Subject Lands for commercial/residential purposes, with attendant allocation of water and sewage capacity from the Town for such usage, not to exceed a maximum of 2.0 cubic metres per day of water usage. Any change of use that requires approval under section 10 of the *Building Code Act*, or that the Town in its sole discretion will require greater water and sewer allocation, shall require an amendment to this Agreement, including a consideration of any additional allocation for water and sewage capacity which may be requested, and which the Town may or may not in its sole discretion grant.

7. **SCHEDULE "B"** once approved by Town Council, may be modified without amendment to this Agreement, provided that such modifications are expressly agreed to by the Town in writing. Should the Town refuse to agree to the modifications, the Town shall provide to the Owner written reasons for its refusal. The Town's decision with respect to such modifications and/or refusal shall be final. The foregoing paragraph does not preclude the Owner from making application to amend this Agreement pursuant to the provisions of the *Planning Act*.
8. The Owner shall not commence construction until the Owner or the Owner's Engineer has provided 48 hours prior written notice to the Town of its intention to commence such construction.

FACILITIES AND WORKS TO BE PROVIDED

9. (a) The Owner covenants and agrees to provide and maintain, at its sole expense, each and every facility, service, work or other matter illustrated or described on the approved **SCHEDULE “B”** hereto or otherwise required by the terms of this Agreement, all to the satisfaction of the Town. Without limiting the generality of the foregoing, the Owner covenants and agrees with the Town to:
- (i) provide ingress and egress to the Subject Lands at and only at the points and in the manner illustrated on the approved **SCHEDULE “B”** hereto;
 - (ii) provide a minimum of three (3) interior parking spaces in the locations as shown on **SCHEDULE “B”**;
 - (iii) construct, maintain, and be solely responsible for the care, maintenance, and operation of the drainage works and facilities on the Subject Lands, in accordance with the approved **SCHEDULE “B”** and any such drainage works and facilities must be constructed, designed and maintained to the requirements of the Town;
 - (iv) properly maintain at its own expense, at all times, the parking spaces and parking exits and entrances on the Subject Lands;
 - (v) be solely responsible for the removal of snow and ice from the driveway(s) on the Subject Lands and to be responsible for the winter maintenance of the above as is reasonably required. It is agreed that no snow will be transferred onto municipal road allowances or lanes, and that snow storage shall be located entirely on the Subject Lands and shall not be located on, or restrict access to, the required parking spaces, driveways, exits and entrances on the Subject Lands;
 - (vi) grade, alter in elevation and/or contour the Subject Lands in accordance with the approved **SCHEDULE “B”** hereto (or as required by the Town Engineer), and to ensure that all storm and surface water from the Subject Lands and from the Development thereon shall be properly managed, including meeting the requirements of the Town;
 - (vii) should exterior lighting be proposed on the new Building or otherwise on the Subject Lands, then the location, quantity and intensity of the exterior lighting is to be directed only to the Subject Lands and shall not impact any other property or Town right-of-way, and shall be in accordance with a lighting plan to be submitted to the Town for its approval in writing prior to the installation of the lighting. The aforesaid lighting is to be operated only during business hours, save and except that those exterior lights required for security purposes may be operated outside of business hours on the Subject Lands;
 - (viii) store all garbage and waste material within the buildings or enclosures in the approved locations only, on the Subject Lands;
 - (ix) provide signage only as shown on the approved **SCHEDULE “B”** and subject to complying with the Town Sign By-law and obtaining any necessary sign permits. Any additional or subsequent signage, including any to be erected on the new Building may be erected only if such signage is approved by the Town;

- (x) such further and other facilities, services or other matters required by the Town subsequent to an agreed modification pursuant to paragraph 7 of this Agreement.
- (b) The facilities, works and other matters shown or described on the approved **SCHEDULES "B"** hereto and/or described in the text of this Agreement shall be provided and maintained by the Owner at its sole expense to the satisfaction of the Town. In case of default thereof, the Town may, at its sole discretion, perform any work necessary to be done and shall charge the cost of performing said work to the Owner who shall promptly pay any invoice rendered by the Town. The cost of performing said work shall form a lien against the Subject Lands. In addition to all other remedies, should such cost not be paid in a timely manner, the Town may draw on the Performance Guarantee.

RESPONSIBILITY FOR PERMITS AND AUTHORIZATIONS

- 10. (a) The Owner hereby acknowledges that it is solely responsible for obtaining all permits and authorizations that may be necessary and/or advisable relating to the Development and the Works proposed on the Subject Lands from all authorities having jurisdiction, and to obtain such permits and authorizations as may be required in order to fulfill the terms and obligations of this Agreement;
- (b) The Owner shall ensure that there will be compliance with the insurance provisions of the *Workplace Safety and Insurance Act*, 1997 in carrying out all development and construction activities.

PERFORMANCE GUARANTEE

- 11. (a) The Owner shall prior to the execution of this Agreement by the Town, lodge with the Town a Performance Guarantee, consisting of irrevocable bank letter(s) of credit, cash, or certified cheque in the amount of which quantum is set out as part of **SCHEDULE "D"**. Should no amount be listed in **SCHEDULE "D"**, then it is agreed that the Performance Guarantee shall be a minimum of \$10,000;
- (b) The Performance Guarantee, if provided in the form of a letter of credit, shall be as set out in **SCHEDULE "C"** hereto, and the Owner covenants and agrees that the letter(s) of credit shall provide that the letter(s) of credit shall be automatically renewed or extended without the need for written notice from the Town requesting such extension.

USE OF PERFORMANCE GUARANTEE

- 12. (a) In order to guarantee that the Development, and the Works, will be constructed and installed in accordance with the provisions of the Agreement, the Owner shall lodge with the Town the Performance Guarantee as set out in paragraph 11.
- (b) The Owner agrees that the Town may, in its sole discretion, at any time and from time to time, authorize the use of all or any part of the Performance Guarantee for such purposes as the Town deems fit if the Owner:
 - (i) in any way makes or permits default of the Owner's obligations under this Agreement; or
 - (ii) fails to pay any costs, charges, expenses, premiums, liens or other monies whatsoever payable by the Owner arising out of or in connection with or in any way relating to the construction and installation of the Development and/or the Works including the

grading and/or the surfacing/paving and/or landscaping and/or any other provisions or obligations as set out in this Agreement.

- (c) The amount of the Performance Guarantee may be reduced from time to time at the sole discretion of the Town, as the Works proceed and subject to the Town being provided with such documentation as it may require.
- (d) The provisions of this section shall be in addition to all other provisions in this Agreement relating to the use of the Performance Guarantee.

CONSTRUCTION LIENS

- 13. (a) The Owner shall, at its own expense, within seven (7) clear days of receiving written notice from the Town to do so, pay, discharge, vacate, and obtain and register a release of all charges, claims, liens, and all preserved or perfected liens, made, brought or registered pursuant to the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended, which arise out of the performance of this Agreement by the Owner and its servants, employees, agents and contractors.

INDEMNIFICATION OF TOWN

- 14. The Owner hereby covenants and agrees to waive any right or entitlement it may have to any action, cause of action, losses, liens, damages, suits, judgments, orders, awards, claims and demands whatsoever against the Town, its Mayor and Councillors, employees, workmen, agents, contractors and consultants, and further covenants and agrees to indemnify and save harmless the Town, its Mayor and Councillors, employees, workmen, agents, contractors and consultants, from and against all actions, causes of action, losses, liens, damages, suits, judgments, orders, awards, claims and demands whatsoever, whether the same shall be with or without merit, and from all costs to which the Town, its Mayor and Councillors, employees, workmen, agents, contractors and consultants, may be put in defending or settling any such action, causes of actions, suits, claims or demands, which may arise either directly or indirectly by reason of, or as a consequence of, or in any way related to the Owner developing the Subject Lands including without limitation, the installation, construction, maintenance, repair and/or operation of any or all of the Development, and the Works.

INSURANCE

- 15. (a) The Owner shall obtain and maintain a policy or policies of insurance to the satisfaction of the Town Treasurer with a collective policy limit of not less than \$5,000,000 (Five Million Dollars) which policy shall include any and all claims which may arise from the installation, construction, maintenance, repair and/or operation of the Development, and the Works set out herein. The Owner shall from time to time, at the request of the Town, furnish proof to the Town that all premiums on such policy or policies of insurance have been paid and that the insurance continues in full force and effect. In the event that any premium is not paid, the Town, in order to prevent the lapse of such policy or policies of insurance, may pay the premium or premiums and the Owner shall reimburse the Town within seven (7) clear days of written demand being given by the Town. The Town, the engineering firm appointed by the Town as the Town Engineer, and Ontario Clean Water Agency (OCWA) being the Town appointed operator of its water and wastewater systems - shall be added as named insureds on said policies.
- (b) The Owner hereby covenants to obtain, prior to the issuance of the Building Permit, a letter from the Owner's insurance company(ies) addressed to the Town certifying that the policy or policies of insurance provided pursuant to this Agreement are in full force and in accordance in all respects with the

provisions of this Agreement. The Owner hereby acknowledges that the Town intends to rely on the said letter from the Owner's insurance company(ies).

INCOMPLETE OR FAULTY WORK

16. (a) In addition to any other rights that the Town may have by statute or otherwise, representatives of the Town, including the Town Engineer, may, at any time and from time to time, inspect the Development, and the Works, including the grading and landscaping, on the Subject Lands. If in the opinion of the Town, the Owner:

- (i) is not proceeding with or causing to be proceeded with the said work within any time limits specified in this Agreement, or in order that it may be completed within the specified time limits;
- (ii) is improperly performing the said work;
- (iii) has abandoned or neglected the said work;
- (iv) refuses, fails or neglects to replace or repair such work as may be rejected by the Town as defective or unsuitable;

then the Town shall notify the Owner in writing of the situation complained of, and if the Owner fails to remedy the situation complained of within seven (7) clear days after receipt of such notice, the Town shall have full authority and power to enter upon the Subject Lands, to purchase, lease, or otherwise acquire such materials, tools and machinery and to employ such consultants, contractors, employees and workmen as in the opinion of the Town shall be required for the proper completion of such work, including without limitation, the repair or the reconstruction of faulty work and the replacement of materials not in accordance with the specifications, all at the cost and expense of the Owner. In cases of emergency, in the sole opinion of the Town, such entry and work may be done without prior notice, but the Owner shall be notified thereafter.

- (b) In addition, the Town, or its representatives, including the Town Engineer, upon inspection may require work on the Development to cease immediately in the event of unsafe conditions or health risks being identified.
- (c) In addition to all other remedies, in the event that it comes to the attention of the Town that the Owner has failed to comply with any of the requirements of this Agreement, the Town shall provide notification to the Owner in writing of the failure. If the Owner fails to remedy the failure complained of within seven (7) clear days after the receipt of such notice, the Town at its sole option, acting reasonably may suspend or terminate this Agreement and forthwith revoke all approvals, permits, and authorizations previously granted by the Town to the Owner. The Town may, at the expense of the Owner, register notice on title of Subject Lands of the termination and/or suspension of this Agreement. The foregoing remedy is in addition to any other remedy the Town has at law, including enforcement of this Agreement in accordance with section 41(11) of the *Planning Act* and section 427 of the *Municipal Act, 2001*.
- (d) In addition to all other remedies, the Town may withhold municipal clearance of any Building Permit application or request the withdrawal of any Building Permit(s) that have been granted to the Owner until the Development and the Works, including grading and landscaping are completely installed in accordance with the requirements of the Town.

- (e) It is understood and agreed between the parties hereto that such entry upon the Subject Lands shall be as agent for the Owner and shall not be deemed, for any purpose whatsoever, as dedication to the Town or assumption by the Town of the Works by the Town.
- (f) The cost incurred by the Town in furtherance of the provisions of this section shall be calculated by the Town whose decisions shall be final and binding on all parties hereto. The cost calculated as aforesaid plus an additional 10% thereof (for inconvenience caused to the Town) shall be paid by the Owner to the Town forthwith on demand, failing which the Town shall be entitled to draw on the Performance Guarantee to recoup the aforesaid monies. The above costs may include a fee for any services or works performed by any municipal employee.
- (g) Nothing herein contained shall be taken to limit the powers, rights, remedies, actions and/or proceedings whatsoever available to the Town arising from or out of any breach of the provisions and terms of this Agreement.
- (h) This Section may be pleaded by the Town as estoppel against the Owner in the event any action is instituted by the Owner for recovery of the amount of any claim made by the Town against the Owner and/or the Performance Guarantee as the case may be.

REQUIREMENTS FOR LETTER OF COMPLETION

17. The Owner agrees that the occupancy and use of the new Building on the Subject Lands shall not occur until the Town has provided the Owner with a "Letter of Completion". The Town shall issue the Letter of Completion once it has been provided with:
- (i) certification by the Owner's Engineer, as set out in paragraph 5, addressed to the Town certifying that the Development, and the Works, have been fully constructed, and installed in accordance with good engineering and construction practices and the requirements of this Agreement, including the approved **SCHEDULES** hereto;
 - (ii) confirmation by the Chief Building Official that the new Building is permitted to be occupied and that the municipal services for the new Building as required by the *Building Code Act*, as amended, or as required by any other such legislation administered by the Chief Building Official are functional;
 - (iii) execution by the Owner and delivery to the Town a Statutory Declaration in the form of **SCHEDULE "H"** hereto;
 - (iv) delivery of one complete set of "as constructed" plans of all underground services, in hard copy, which plans shall be certified by the Owner's Engineer, as well as providing such plans in a computerized format satisfactory to the Town;
 - (v) confirmation from Hydro One, and any other utilities, that any changes to or expansion of necessary utilities are constructed to its satisfaction;
 - (vi) confirmation from the Town Engineer that drainage and stormwater management has been addressed in accordance with **SCHEDULE "B"** to the satisfaction of the Town;

- (vii) confirmation from the Town Engineer that the grading has been completed in accordance with **SCHEDULE “B”** to the satisfaction of the Town;
- (viii) confirmation from Town staff that the Owner has fulfilled all financial obligations of this Agreement required to the date of issuance of the Letter of Completion, including payment of all development charges, invoiced fees and municipal taxes; and,
- (ix) confirmation by the Town Engineer that the required driveways, parking areas and sidewalks have been surfaced and completed to the satisfaction of the Town or that adequate arrangements have been made to complete the paving and surfacing of these works to the satisfaction of the Town.

REQUIREMENTS FOR RELEASE OF PERFORMANCE GUARANTEE

18. The Owner agrees that the Town shall not be obligated to release to the Owner the Works Performance Guarantee until:
- (i) a Letter of Completion has been issued;
 - (ii) there has been full compliance with the requirements of the *Construction Lien Act*, R.S.O. 1990, c. C. 30, as amended, and the time for preserving liens has expired in relation to such work, services, or materials for which the Town may, in the sole and absolute opinion of the Town’s Solicitor, be liable arising from the Development and/or the Works.

PERIOD OF REQUIRED MAINTENANCE

19. The Owner shall, from the date of issuance of a Letter of Completion, maintain all the grading, landscaping, and the Works. The Owner agrees that the maintenance required includes maintenance of the driveway(s), parking spaces, including snow removal, and the drainage facilities, sanitary and water services on the Subject Lands.

MAINTENANCE GUARANTEE REQUIRED

20. In order to ensure that the grading, landscaping and the Works will be properly maintained for a period of one year from issuance of the Letter of Completion and that all failed plantings, if any, and erosion, if any, will be replaced and/or repaired, the Owner shall, prior to the release by the Town of the Performance Guarantee(s), lodge with the Town a “Maintenance Guarantee” consisting of an irrevocable bank letter of credit, cash, or certified cheque in an amount equal to such amount as the Town may reasonably require. If a letter of credit, the Owner covenants and agrees that the letter of credit shall be maintained in full force and effect for a period of one year from the date the Letter of Completion is issued by the Town. This subparagraph may also be satisfied by the Town retaining part of the Performance Guarantee previously lodged, at which case, it is expressly agreed that the retained Performance Guarantee is converted to the Maintenance Guarantee. After the expiry of one year from issuance of the Letter of Completion, should the Owner fail to comply with the provisions of paragraph 22, the Owner agrees that the Maintenance Guarantee shall remain lodged with the Town and shall be extended until the provisions of paragraph 22 are complied with.

USE OF THE MAINTENANCE GUARANTEE

21. The Owner agrees that the Town may, in its sole discretion, at any time and from time to time, authorize the use of all or any part of the Maintenance Guarantee for such purposes as the Town deems fit:
- (a) if the Owner fails to pay any costs, charges, expenses, premiums, liens or other monies whatsoever payable by the Owner arising from or in connection with or in any way relating to the maintenance, repair or replacement of any or all of the grading, landscaping and Works as shown and/or detailed on **SCHEDULE “B”**; and
 - (b) if a claim for lien is not vacated and released pursuant to this Agreement within the time set out therein.

REQUIREMENTS FOR RELEASE OF MAINTENANCE GUARANTEE

22. The Maintenance Guarantee shall be retained by the Town until:
- (a) the expiry of one year subsequent to the issuance of a Letter of Completion, subject to compliance with the obligations as set out in paragraph 19; and
 - (b) the Owner have provided the Town’s Solicitor with satisfactory evidence that there has been full compliance with the requirements of the *Construction Lien Act*, and the time for preserving liens has expired in relation to such work, services or materials for which the Town may, in the sole and absolute opinion of the Town’s Solicitor, be liable.

PAYMENT OF MUNICIPAL COSTS

23. Every provision of this Agreement by which the Owner is obligated in any way shall be deemed to include the words “at the expense of the Owner”.
24. The Owner shall reimburse the Town forthwith on demand, for all reasonable administrative, planning, legal, engineering, and/or other costs or expenses whatsoever incurred by the Town, or any of its agents, in connection with Development of the Subject Lands and/or in the preparation, review, consideration, and enforcement of this Agreement, including the **SCHEDULES** attached hereto, where said costs exceed the application fee and contingency deposit required in accordance with the Town’s Fee By-law, as determined at the sole discretion of the Town. In the event that the Town deems it necessary to retain the services of additional outside consultant(s), (that is, non-employees of the Town), to provide additional technical expertise and/or to review the plans of the Owner and/or to carry out on site inspections of the work performed, the Town shall advise the Owner accordingly of this requirement, and the costs of such outside consultant(s) shall be the responsibility of the Owner. The Owner shall provide an additional deposit to the Town be drawn against for such retention, subsequent to the Town advising the Owner of the requirement for such outside consultant(s).

The Town’s demand for reimbursement for all such costs above shall include the provision of detailed accounts itemizing the costs claimed. It is agreed that the Town’s demand for payment shall not include costs for employees of the Town except as otherwise expressly provided for under the terms of the Agreement and except as may be required under any other statutory authority of the Town which requirements include the payment by the Owner of all required fees and costs for Building Permits and inspections, including any applicable development charges.

In the event that the Owner does not reimburse the Town as aforesaid, the Town may, at its sole discretion, on thirty (30) days written notice to the Owner use the Performance Guarantee or any part thereof for the payment in full of such costs or expenses.

REQUIRED COMPLETION DATE

25. The Owner covenants and agrees to complete the Development and the Works pursuant to the terms of this Agreement on or before the expiry of two (2) years from the date of execution of this Agreement by the Town.

GENERAL MATTERS

26. (a) The Owner agrees with the Town that:
- (i) all necessary precautions will be taken in the Development and the Works of the Subject Lands to avoid dust, noise and other nuisances, and to provide for the public safety;
 - (ii) the failure of the Town to insist on strict performance of any of the terms, provisions, covenants or obligations herein shall not be deemed to be a waiver of any rights or remedies that the Town may have, and shall not be deemed to be a waiver of any subsequent breach or default of the terms, provisions, covenants and obligations contained in this Agreement;
 - (iii) the Owner acknowledges that nothing in this Agreement waives or limits any rights the Town may have at law to enforce the provisions of this Agreement, including section 447.1 of the *Municipal Act, 2001*, as amended, should same be required;
 - (iv) the Owner shall not call into question, directly or indirectly, in any proceedings whatsoever in law or in equity or before any court or administrative tribunal, the right of the Town to enter into this Agreement and to enforce each and every term, covenant and condition herein contained, and this clause may be pleaded as estoppel against the Owner in any such proceedings.
- (b) If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any event, be invalid or unenforceable, the remainder of this Agreement, or the application of such term covenant or condition of this Agreement to other persons or circumstances shall be valid and enforced to the fullest extent permitted by law.
- (c) This Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario.
- (d) It is understood and agreed that if the Owner fails to apply for a Building Permit for the Development contemplated by this Agreement within six months from the date of the execution of this Agreement by the Town, then the Town shall at its sole option have the right to terminate or suspend this Agreement and require that the plans and drawings be resubmitted by the Owner for approval. Nothing in this Agreement shall affect the authority of the Chief Building Official under Section 8 of the *Building Code Act*, S.O. 1992, c. 23, as amended.
- (e) Any notice to be given with respect to any default, breach, requirement, term or provision of this Agreement shall be in writing and either mailed, transmitted by facsimile or hand delivered to the other parties at the following addresses:

to the Owner:

12123711 CANADA INC.

Attention: Paolo Pambianchi
12123711 CANADA INC.
P.O. Box 390
Bolton, ON
L7E 5T3

to the Town:

Jennifer Willoughby
Clerk
Town of Shelburne
203 Main Street East
Shelburne, Ontario
L9V 3K7

Any notice, if mailed, shall be deemed to have been given on the fifth day following such mailing and if delivered by hand, or by facsimile transmission, shall be deemed to have been given on the day of delivery.

Each of the foregoing parties shall be entitled to specify a different address for service by giving written notice as aforesaid to the others.

- (f) The due dates of any sum of money payable herein shall be thirty (30) days after the date of the invoice. Interest at the rate of One and a Quarter Percent (1.25%) per month shall be payable by the Owner to the Town on all sums of money payable herein for overdue accounts which are not paid on the due dates, calculated from such due dates.
- (g) Section headings in this Agreement are not to be considered part of this Agreement and are included solely for the convenience of reference and are not intended to be full or accurate descriptions of the contents thereof.
- (h) It is hereby agreed that this Agreement shall be read with all changes of gender or number as are required by the context and the nature of the parties hereto.
- (i) It is acknowledged and agreed by the parties that this Agreement shall be interpreted without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.
- (j) This Agreement shall endure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, successors in title, and assigns. The covenants, provisions and conditions contained herein shall be of the same force and effect as a covenant running with the Subject Lands. The Town shall be entitled to enforce the provisions hereof against the Owner and, subject to the provisions of the *Registry Act* or *Land Titles Act*, (whichever applies to the Subject Lands), against any and all subsequent owners of the Subject Lands.
- (k) Time shall always be of essence of this Agreement.

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

12123711 CANADA INC.

Per

I have authority to bind the corporation

**THE CORPORATION OF THE TOWN OF
SHELBURNE.**

Mayor

Clerk

Pursuant to the approval and authorization as set out
in By-law No. 35-2021 of the
TOWN OF SHELBURNE

enacted the 14th day of June, 2021.

SCHEDULE “A”
Legal Description of Subject Lands

Lot 14, Registered Plan 7A Block 1

PIN

Property Address: 121 Adeline Street

SCHEDULE “B”
Site Plan Drawings

Drawing No.	Title	Author	Date of Last Revision or Issue Date
A-0	Title Page	NKOMPAS GROUP INC.	2021-04-15
A-1	Site Plan		2021-04-15
A-2	Sheet List		2021-04-15
A-3	Ground Floor		2021-04-15
A-4	Second Floor		2021-04-15
A-5	Third Floor		2021-04-15
A-6	North Elevation		2021-04-15
A-7	South Elevation		2021-04-15
A-8	East Elevation		2021-04-15
A-9	West Elevation		2021-04-15
A-10	Site Servicing Plan		2020-10-22
A-12	Exterior Render		2021-04-15
	Note: A foundation plan and geotechnical report/information are required for review and confirmation of soil bearing capacity, to the satisfaction of the Town Engineer, prior to issuance of Municipal Approval of a building permit.		

SCHEDULE "C"
Form of Letter of Credit

REQUIRED – to be on bank letterhead

Letter of Credit No. _____ Amount:

Initial Expiry Date

TO: THE CORPORATION OF THE TOWN OF SHELBURNE

203 Main Street East
Shelburne, Ontario L9V 3K7

WE HEREBY AUTHORIZE YOU TO DRAW ON THE
(Name of the Bank)

(Address)

for the account of
(Name of the Customer)

UP TO AN AGGREGATE AMOUNT OF _____
DOLLARS (\$_____) available on demand.

PURSUANT TO THE REQUEST OF our customer:

we the:

(Name of the Bank)

hereby establish and give you an Irrevocable Letter of Credit in your favour in the above amount which may be drawn on in whole or in part by you at any time and from time to time upon written demand for payment under the Corporate Seal of the Town made upon us by you which demand we shall honour without enquiring whether you have the right as between yourself and the said customer to make such demand, and without recognizing any claim of our said customer, or objection by it to payment by us.

THE LETTER OF CREDIT we understand relates to those Town services and financial obligations set out in an Agreement between the customer and the Town and referred to as

(Name of Project)

THE AMOUNT of this Letter of Credit may be reduced from time to time as advised by notice in writing to the undersigned by The Corporation of the Town of Shelburne.

THIS LETTER OF CREDIT will continue in force for a period of one year, but shall be subject to condition hereinafter set forth.

IT IS A CONDITION of this Letter of Credit that it shall be deemed to be automatically extended without amendment from year to year from the present or any future expiration date hereof, unless at least 30 days prior to the present or any future expiration date, we notify you in writing by registered mail that we elect not to consider this Letter of Credit to be renewable for any additional period.

DATED at _____, Ontario, this ____ day of _____, _____
COUNTERSIGNED BY:

(Name of Bank)

Per:

SCHEDULE “D”
Cost Estimate of Works

TOTAL PERFORMANCE GUARANTEE (ROUNDED):

SCHEDULE “E”
Levies, Fees, Assessments and Charges Payable

At the time of execution, the following charges payable:

Town of Shelburne Development Charges as per By-law Nos. 31-2015, 19-2020 and 11-2021, as amended, and any successors thereto, due at the time of Municipal Approval of a Building Permit.

SCHEDULE “F”
Regulations for Construction

Building Code of Ontario;

The applicable By-laws of the Corporation of the Town of Shelburne;

Building By-law of the Corporation of the County of Dufferin;

Ministry of Transportation Ontario (MTO) Permit requirements;

Ontario Ministry of Labour Occupational Standards, including its Health and Safety Standards;

Ontario Ministry of the Environment Standards;

Any permits required from the Town of Shelburne or County of Dufferin for ingress and egress;

All other applicable law.

**SCHEDULE “G”
Insurance Requirements**

Prior to commencing any Development and/or construction of any Works and/or the issuance of a Building Permit for the Development, the Owner shall insure against all claims of the character commonly referred to as public liability and property damage. The Owner shall insure against all damages or claims for damages with an insurance company satisfactory to the Town Treasurer. Such policy or policies shall be issued in the name of the Owner and shall name the Town, the engineering firm appointed as the Town Engineers and Ontario Clean Water Agency (OCWA) as additional named insureds. The minimum limits of such policy shall be as follows:

\$5,000,000.00 for loss or damage resulting from bodily injury to, or death of, one or more persons arising out of the same accident, and \$5,000,000.00 for property damage, or such minimum limits as may be agreed as between the parties.

The deductible shall be a maximum of \$5,000 per occurrence.

The policy shall be in effect for the period of this Agreement. It is agreed that no blasting shall occur on the property without insurance and approval of the Town. The issuance of such a policy of insurance shall not be construed as relieving the Owner from responsibility for other or larger claims, if any, for which it may be held responsible. The Owner shall prove to the satisfaction of the Town, from time to time as the Town Treasurer may require, that all premiums on such policy or policies of insurance have been paid and that the insurance is in full force and effect.

SCHEDULE “H”

Statutory Declaration (For Letter of Completion Release of Security)

I, [AUTHORIZED SIGNING OFFICER OF OWNER], of the [MUNICIPALITY], do solemnly declare that:

1. That I am the authorized signing officer of the Owner, and as such have personal knowledge of the facts hereunder declared.
2. All accounts for labour, subcontracts, products, construction machinery, and equipment and other indebtedness which incurred by contractors and/or subcontractors in the performance of the works required under this Subdivision Agreement for which the Owner might in any way be held responsible have been paid in full under the Contract(s) for the construction of the Works between the Owner and the Contractor and/or Subcontractor.
3. No charges, claims, liens, preserved or perfected liens have been made, brought or registered pursuant to the Construction Lien Act, R.S.O. 1990, c. C.30, as amended, arising out of the performance of this Agreement by the Owner and its servants, employees, agents and contractors, or any such charges, claims, liens, preserved or perfected liens made, brought or registered pursuant to the Construction Lien Act, R.S.O. 1990, c. C.30, as amended, arising out of the performance of this Agreement by the Owner and its servants, employees, agents and contractors have been paid, discharged, and/or released, and I further confirm that I have been advised by the Owner’s solicitor that the time for making any such charges, claims, liens, preserved or perfected liens pursuant to the Construction Lien Act, R.S.O. 1990, c. 30, as amended, has expired, and are now statutorily barred.
4. I am unaware of any litigation, pending litigation, claims, and/or disputes arising out of the performance of this Agreement by the Owner and its servants, employees, agents and contractors with respect to the construction, installation and operation of the Works required under this Agreement.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

DECLARED before me at the [MUNICIPALITY], this ____ day of _____, 20__.

12123711 CANADA INC.
Authorized Signing Officer

I have authority to bind the corporation.