



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

Meeting Date: Monday, July 12, 2021

To: Mayor Mills and Members of Council

From: **Steve Wever, Town Planner**

Report: P2021-29

Subject: **SPA 21/03 - Application for Site Plan Approval – Barlow Trail Investments Inc., 108 Prentice Drive, Shelburne**

Recommendation

Be it resolved that Council receive Report P2021-29 as information.

Be it resolved that, Site Plan Application SPA 21/03 be approved, subject to the following conditions:

1. That the Owner enter into a Site Plan (Amending) Agreement with the Town of Shelburne; and
2. That the Owner shall submit final Site Plan drawings and information addressing review comments to the satisfaction of the Town Engineer and the Town Planner.

Be it resolved that By-law 41-2021, being a by-law to enter into a Site Plan Amending Agreement with Barlow Trail Investments Inc., substantially in the form attached to the by-law, for the industrial development of the property at 108 Prentice Drive, 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 Loft Planning Inc. on behalf of Barlow Trail Investments Inc. for a proposed amendment to the approved site plan for the new water bottling facility at 108 Prentice Drive.

The property is subject to a registered Site Plan Agreement dated July 22, 2019, for the development of a water bottling facility and related site works. The purpose of the current application is to amend the approved 2019 Site Plan by adding a proposed private watermain to the plan and connecting to proposed private watermain to be installed along County Road 11 and southerly to an existing private water supply well in the Township of Amaranth, for the purposes of piping water for bottling at the water bottling facility.

Analysis

The subject property is currently designated as Employment in the Town's Official Plan and zoned Employment (M1) in the Town's Zoning By-law 38-2007. The property has a municipal address of 108 Prentice Drive and is 8.31 hectares in area with 247 metres of frontage on Prentice Drive.

The property currently contains a single building for a new water bottling facility, with a total gross floor area of 9,476 m² according to the 2019 site plan. Details of the 2019 site plan are summarized in Report P2019-18 as presented to Council on July 22, 2019. A review of the proposed development under the Official Plan and Zoning By-law was included in that report, which concluded that the development meets the applicable requirements.

The proposed private watermain will enter the subject property from County Road 11, near the south-east corner of the property, and is proposed to be routed through the property along the west and north sides of the stormwater management facility, continuing north along the east property boundary, then turning west along the north property boundary until it reaches the water bottling facility. Once constructed and connected, the watermain will be used to pipe water from the existing water supply well located at Sideroad 25 east of County Road 11 in Amaranth via Second Line to County Road 11 to the site. This is proposed to reduce the need for trucking water to the facility. The existing well is located approximately 3.5km south of the site. The owner is responsible for obtaining the approvals of the County and the Township of Amaranth for the watermain installation withing County and Township rights-of-way, respectively. The owner will also be responsible for maintenance and repair of the watermain.

There are no other changes proposed to the approved Site Plan.

A Site Plan (Amending) Agreement has been prepared and is ready for Council consideration. This agreement, if approved and executed, will amend the original 2019 Site Plan Agreement to reference the revised site plan and amend other applicable provisions of the 2019 agreement as needed to reflect the changes proposed with the addition of the private watermain. No additional servicing allocation is requested or required.

Financial Impact

The applicant has paid the required application fee to cover the Town's costs for processing the application and for preparing and administering the Site Plan (Amending) Agreement. The Town retains a Performance Guarantee security under the 2019 Site Plan Agreement to ensure the site is developed in accordance with the approved site plan. As the proposed watermain is private and no work is required within Town property or right-of-way, an additional security is not required.

Policies & Implications (if any) Affecting Proposal

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

Consultation and Communications

The site plan application has been circulated for review and comments were received from the following:

- The Town Engineer provided the following comments:
 - A cross-section of the watermain where it crosses the road ROW is needed, complete showing the existing services.
 - The watermain will need tracer wire through the ROW and it is suggested to have it along the remainder of the main.
 - Provide a contingency/response plan if a spill/break occurs.
- The Director of Development and Operations indicated no comments or concerns.
- The Township of Amaranth indicated no comments or concerns.
- SDFD indicated no comments or concerns.
- Hydro One indicated no comments or concerns.
- The RMO from the NVCA indicated no comments or concerns.

- Enbridge Gas indicated no comments or concerns.

As a condition of approval, it is recommended that the Town engineering review comments related to the plans submitted are satisfied prior to final approval. All outstanding comments will be required to be addressed, with requirements incorporated in the Site Plan Agreement where needed, before the Site Plan Agreement is finalized and executed.

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

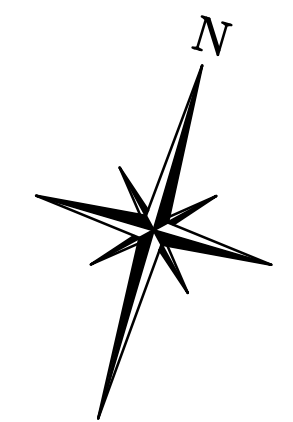
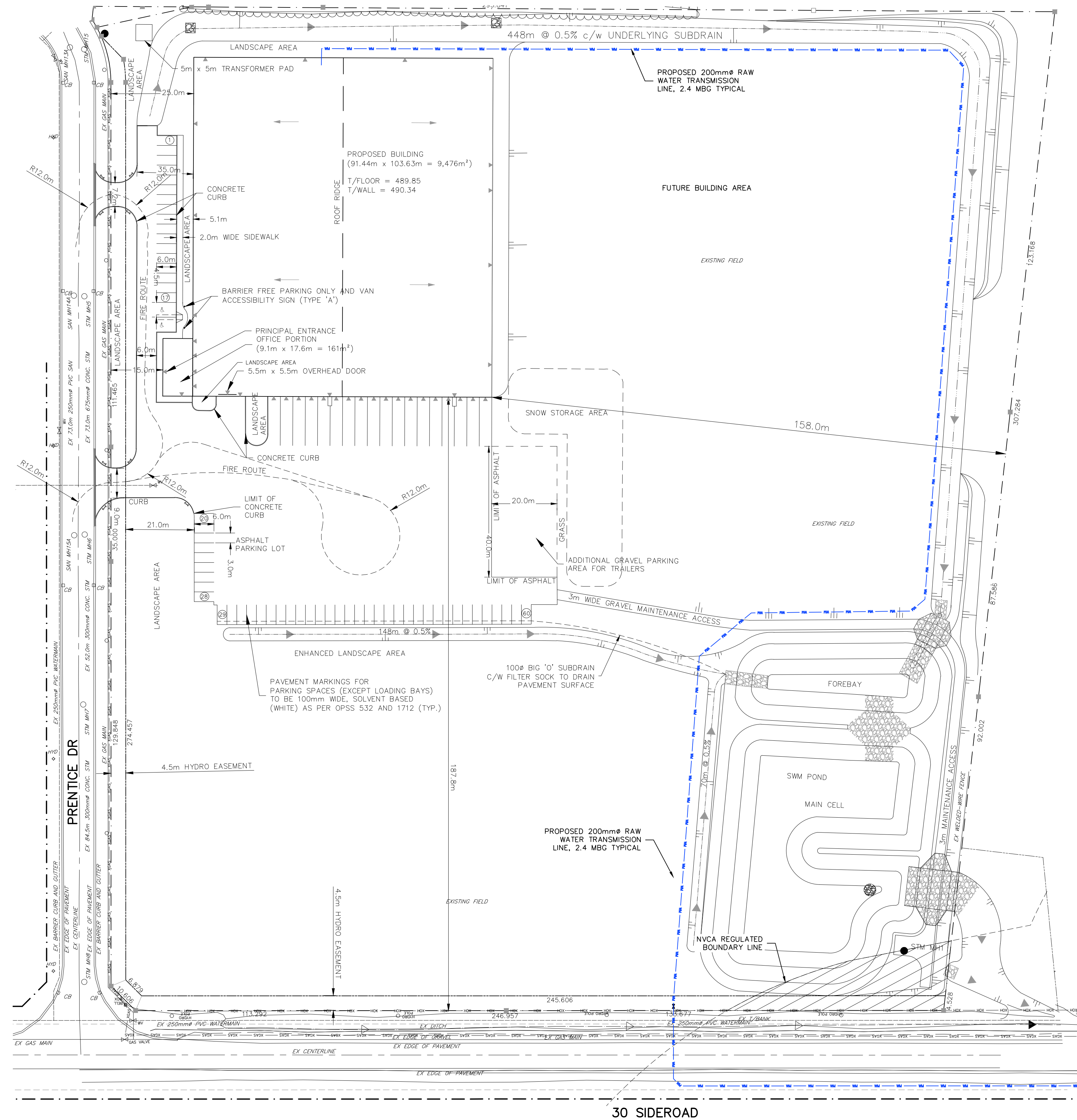
Site Plan C102B

Prepared by:

Steve Wever, Town Planner

Reviewed by:

Denyse Morrissey, CAO



LEGEND

EXISTING OVERHEAD HYDRO	— KH — KH — KH —
EXISTING UNDERGROUND HYDRO	— H — H — H —
EXISTING HYDRO POLES AND GUY WIRE	— H — H — H —
EXISTING GAS LINE	— KGAS — KGAS — KGAS —
PROPOSED WATER TRANSMISSION LINE	— W — W — W — W — W —
LEGAL FABRIC	—
PROPERTY LINE	— · · · —

NOTE: SITE PLAN PREPARED TO INDICATE PIPELINE LAYOUT ONLY. REMAINDER OF SITE WORKS TO BE COMPLETED PER C.C. TATHAM SITE PLAN AND ENGINEERING DESIGN DRAWINGS

1. THIS DRAWING IS THE EXCLUSIVE PROPERTY OF C.F. CROZIER & ASSOCIATES INC. AND THE REPRODUCTION OF ANY PART WITHOUT PRIOR WRITTEN CONSENT OF THIS OFFICE IS STRICTLY PROHIBITED.
 2. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS, LEVELS, AND DATUMS ON SITE AND REPORT ANY DISCREPANCIES OR OMISSIONS TO THIS OFFICE PRIOR TO CONSTRUCTION.
 3. THIS DRAWING IS TO BE READ AND UNDERSTOOD IN CONJUNCTION WITH ALL OTHER PLANS AND DOCUMENTS APPLICABLE TO THIS PROJECT.
 4. DO NOT SCALE THE DRAWINGS.
 5. ALL EXISTING UNDERGROUND UTILITIES TO BE VERIFIED IN THE FIELD BY THE CONTRACTOR PRIOR TO CONSTRUCTION.

TEMPORARY BENCHMARKS
 TBM#1 - SOUTHERN CONCRETE FOOTING OF BLUE MOUNTAIN PLASTICS/ICE RIVER SPRINGS ENTRANCE FEATURE SIGN AT 485.387 COUNTY ROAD 11. ELEV = 485.742
 TBM#2 - TOP OF CONCRETE OF SWM POND OUTLET MAINTENANCE HOLE STRUCTURE IN SOUTHEAST CORNER OF 108 PRENTICE DRIVE. ELEV = 487.195

No.	ISSUE	DATE: MM/DD/YYYY
0	ISSUED FOR SITE PLAN PRE-CONSULTATION	03/04/2021

FOR REVIEW
NOT TO BE USED FOR CONSTRUCTION

Project: ICE RIVER SPRINGS, 108 PRENTICE DRIVE SHELBURNE, DUFFERIN COUNTY
 Drawing: SITE PLAN (PIPELINE INFRASTRUCTURE)

CROZIER CONSULTING ENGINEERS
 THE HARBOUREdge BUILDING, 40 HURON STREET, SUITE 301, COLLINGWOOD, ON L9Y 4R3
 705 446-3510 T 705 446-3520 F
 WWW.CFCROZIER.CA INFO@CFCROZIER.CA

Drawn By: N.L. Design By: N.L. Project: 1837-5491
 Check By: J.P. Check By: B.E. Scale: 1:750 Drawing: C102B

THE CORPORATION OF THE TOWN OF SHELBURNE

BY-LAW NUMBER 41- 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 (Amending) Agreement with Barlow Trail Investments Inc. for the industrial development of the property located at 108 Prentice Drive dated as of July 12, 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 12th day of July, 2021.

Read a Third Time in Open Council, and finally passed this the 12th day of July, 2021.

Mayor

Clerk

SITE PLAN (AMENDING) AGREEMENT

THIS AGREEMENT made this 12th day of July, 2021.

BETWEEN:

BARLOW TRAIL INVESTMENTS 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 expand the existing development on the Subject Lands in accordance with the plans described in **SCHEDULE “B” AMENDED** 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 approved and entered into a Site Plan Agreement with the owner of the Subject Lands (“the 2019 Site Plan Agreement”);

AND WHEREAS this Agreement amends the 2019 Site Plan Agreement and the 2019 Schedule “B”;

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 expanded 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 new one storey industrial facility which has a total building area of 9,476 m² and which is a new building to be constructed on the Subject Lands, as shown on **SCHEDULE “B” AMENDED**.
- (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” AMENDED** 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” AMENDED	Site Plan Drawings
SCHEDULE “C”	Form of Letter of Credit
SCHEDULE “D”	Cost Estimate of Works
SCHEDULE “E”	Levies, Fees, Assessment and Charges Payable
SCHEDULE “F”	Regulations for Construction
SCHEDULE “G”	Insurance Requirements
SCHEDULE “H”	Statutory Declaration

The original drawings for **SCHEDULE “B” AMENDED** 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 further Development and/or Works whatsoever, with the exception of preliminary site grading including stripping and storage of topsoil on the Subject Lands, (which preliminary site grading shall not occur until all erosion and sediment control measures are constructed and are operational in accordance with **SCHEDULE B AMENDED**), 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 Entrance 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" AMENDED** 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 substantial conformity with the plans and specifications as set out in **SCHEDULE "B" AMENDED** and the terms of this Agreement.

SITE PLAN DEVELOPMENT

6. The Town hereby approves **SCHEDULE "B" AMENDED** as to onsite matters. **SCHEDULE "B" AMENDED** replaces Schedule "B" of the 2019 Site Plan Agreement. The Owner covenants and agrees that the Subject Lands shall only be developed in accordance with the **SCHEDULE "B" AMENDED** 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.
7. **SCHEDULE "B" AMENDED** 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" AMENDED** hereto or otherwise required by the terms of this Agreement, all in substantial conformity with the approved **SCHEDULE "B" AMENDED** hereto and to

the satisfaction of the Town. Without limiting the generality of the foregoing, the Owner covenants and agrees with the Town to:

- (i) construct, maintain, and be solely responsible for the installation, care, maintenance, and operation of the proposed private watermain which shall be constructed and installed in accordance with the approved **SCHEDULE "B" AMENDED** and designed and maintained to the requirements of the Town;
 - (iii) be solely responsible for the repair and future replacement of the proposed private watermain shown on **SCHEDULE "B" AMENDED**, and for any damage caused to any property, right-of-way, street, utility or infrastructure, should said damage result from a break in the private watermain or from the Owner's maintenance, repair or replacement of the private watermain, and to restore any lands disturbed to the same or better condition as existed prior to the disturbance, to the satisfaction of the Town;
 - (iv) 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" AMENDED** 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 including obtaining a permit from Nottawasaga Valley Conservation Authority ("NVCA") prior to commencing any site alteration (including topsoil removal) within the area of the Lands that is subject to the NVCA regulations;
- (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";
- (b) The Performance Guarantee shall be as set out in **SCHEDULE "C"** hereto. 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. The Performance Guarantee shall be issued by a bank (or other

equivalent financial institution) in the form of an irrevocable letter of credit(s) satisfactory to the Town's Treasurer.

- (c) 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.
- (d) The Owner may, from time to time, apply to the Town for a partial reduction or reductions in the amount or amounts of the Performance Guarantee by an aggregate amount up to eight-five percent (85%) of the value of the works for which security was deposited, which the Town's Engineer has certified in writing to be satisfactorily completed upon receipt of:
 - (i) a statutory declaration that all accounts relative to the installation of the particular partial completed works have been paid; and
 - (ii) the Requirements of paragraph 18(ii) of this agreement having been complied with relative to the installation of the particular partial completed works.
- (e) The provisions of this section shall be in addition to all other provisions in this Agreement relating to the use of the Performance Guarantee.

USE OF PERFORMANCE GUARANTEE

- 12. 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.

CONSTRUCTION LIENS

- 13. (a) The Owner shall, with respect to work performed on lands owned by the Town and/or the County, 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 per occurrence 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, or as otherwise agreed to in writing by the parties, 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 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.
- (i) In exercising any access rights, the Town will take reasonable steps to avoid interference with work conducted on the Subject Lands, and will abide by the reasonable requirements and policies of the Owner and its contractors related to health and safety of personnel on the Subject Lands and environmental safeguards.

REQUIREMENTS FOR LETTER OF COMPLETION

17. The Owner agrees that the operation and use of the new private watermain 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) execution by the Owner and delivery to the Town a Statutory Declaration in the form of Schedule “H” hereto;
 - (iii) 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;
 - (iv) confirmation from Hydro One, and any other utilities, that any expansion of necessary utilities are constructed to its satisfaction;
 - (v) confirmation from the Town Engineer that the private watermain has been constructed in accordance with **SCHEDULE “B” AMENDED** to the satisfaction of the Town;
 - (vi) confirmation from the Town Engineer that any land, right-of-way, street, services or other property or facilities disturbed, damaged or otherwise impacted by the private watermain installation has been restored, repaired or replaced to the satisfaction of the Town; and,
 - (vii) 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.

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 the Works.

MAINTENANCE GUARANTEE REQUIRED

20. In order to ensure that the Works will be properly maintained for a period of one year from issuance of the Letter of Completion and that all deficiencies

will be rectified, 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 15% of the Total Site Works Cost Estimate set out in **SCHEDULE "D"** hereto. 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 Township. 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 the Works as shown and/or detailed on **SCHEDULE "B" AMENDED**; 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 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:

Barlow Trail Investments Inc.
485387 Sideroad 30
Shelburne, Ontario
L9V 3N4

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) The Owner further acknowledges that this Agreement amends the 2019 Site Plan Agreement which remains in full force and effect as amended by this Agreement. The Owner hereby acknowledges and agrees that, in the event of a conflict between the provisions of this

agreement and/or the provisions of any of the prior Site Plan Agreement the provision that is more onerous on the Owner shall prevail.

- (j) 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.
- (k) 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.
- (l) Time shall always be of essence of this Agreement.
- (m) Notwithstanding anything to the contrary herein contained, where something is required to be done hereunder to the satisfaction of or in the discretion or opinion of a party or official thereof, such party or official shall act reasonably and not arbitrarily or capriciously. Where approval or consent is required hereunder, such approval or consent shall not be unreasonably withheld.

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.

BARLOW TRAIL INVESTMENTS INC.

Per

 Alexandra Gott
 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. 41-2021 of the TOWN OF SHELBURNE enacted the 12th day of July, 2021.

SCHEDULE "A"
Legal Description of Subject Lands

PART OF LOT 31, CONCESSION (GEOGRAPHIC TOWNSHIP OF AMARANTH), PARTS 1-3 OF 7R-6554, SUBJECT TO EASEMENT AS IN INSTRUMENT NO. DC122290 OVER PART 1 OF 7R-5906; SUBJECT TO EASEMENTS AS IN INSTRUMENT NOS. DC62170 AND DC62171 OVER PART 13 OF 7R-5460.

PIN 34219-0387

**SCHEDULE “B” AMENDED
Site Plan Drawings**

Site Plan 2019

Drawing No.	Title	Author	Date of Last Revision or Issue Date
SP-1	Site Plan	Tatham Engineering	OCT/19
SC-1	Erosion and Sediment Control Plan		OCT/19
SC-2	Erosion and Sediment Control – Details		OCT/19
DI-1	Ditch Grading Plan		OCT/19
SG-1	Site Grading Plan		NOV/19
SS-1	Site Servicing Plan		OCT/19
PND-1	Stormwater Management Pond Plan		NOV/19
PND-2	Stormwater Management Pond Details		OCT/19
DE-1	Details and Notes		OCT/19
A1	Proposed Floor Plan		DBD Systems Inc.
A2	Proposed Elevations	04/FEB/19	
A3			
LP-1	Planting Plan	Envision Tatham	SEP. 27 2019
LP-2			
L-SWM-1	SWM Planting Plan		
LD-1	Landscape Details		
-	Illumination Plan		

Amended Site Plan – 2021

Drawing No.	Title	Author	Date of Last Revision or Issue Date
C102B	Site Plan (Pipeline Infrastructure)	Crozier Consulting Engineers	03/04/2021

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 _____, 2017

COUNTERSIGNED BY:

(Name of Bank)

Per:

SCHEDULE "D"
Cost Estimate of Works

As per Schedule "D" of the 2019 Site Plan Agreement. The amount of the Performance Guarantee shall be the amount retained by the Town on the date of this Agreement, pursuant to the 2019 Site Plan Agreement.

SCHEDULE "E"
Levies, Fees, Assessments and Charges Payable

None.

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

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

Any permits required from the Nottawasaga Valley Conservation Authority

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 \$1,000 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__.

A Commissioner of Oaths or
Notary Public, or Justice of the
Peace.

Barlow Trail Investments Inc.
Authorized Signing Officer

I have authority to bind the
corporation.