

THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE

BY-LAW NO. 39/2022

*Being a By-law to Authorize Execution of a Subdivision Agreement (SU01-2018)  
Between One Thompson Inc. and the Corporation of the Municipality of Port  
Hope*

WHEREAS Section 51 of the *Planning Act* provides authority for the Municipality regarding Subdivision Approval;

AND WHEREAS Council deems it expedient to enter into a Subdivision Agreement with One Thompson Inc. for the development of 15 townhouse units with a common shared area.

NOW THEREFORE IT IS ENACTED AS A BY-LAW OF THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE AS FOLLOWS:

1. THAT the Mayor and Municipal Clerk are hereby authorized to execute on behalf of the Corporation a Subdivision Agreement with One Thompson Inc. with the terms and conditions as set out in Schedule "A" attached hereto comprising part of this By-law.
2. THAT the Mayor and Municipal Clerk are hereby authorized and directed to sign any related documentation to carry out the purpose of this By-law including registration of the Subdivision Agreement on title at the Land Registrar Office.
3. THAT following the registration of the Subdivision Agreement, that staff be authorized to approve the subject Plan of Subdivision, as Final Approved and then proceed with the necessary arrangements to have the plan registered in accordance with Section 51(58) of the *Planning Act*.

READ a FIRST, SECOND and THIRD time and finally passed in Open Council this 7<sup>th</sup> day of June 2022.

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Bob Sanderson, Mayor

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Brian Gilmer, Clerk

**Subdivision Agreement**

**THIS AGREEMENT** made in sextuplicate this 7<sup>th</sup> of June 2022

**B E T W E E N:**

**THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE**

(hereinafter called the "Municipality")

Party of the FIRST PART

- and -

**ONE THOMPSON INC.**

(hereinafter called the "Owner")

Party of the SECOND PART

**WHEREAS** the lands affected by this Agreement are described in Schedule "A" hereto and are hereinafter called the "Subdivision Lands";

**AND WHEREAS** the Owner warrants that it is the sole owner of the Subdivision Lands;

**AND WHEREAS** the Owner has applied to the Municipality for approval of a plan of subdivision for the Subdivision Lands;

**AND WHEREAS** to comply with one or more of the Municipality's conditions for such approval, the Owner has agreed to enter into this Agreement with the Municipality;

**NOW THEREFORE** in consideration of the mutual agreements, covenants and promises herein contained, and other good and valuable consideration, (the receipt and sufficiency of which is acknowledged by the parties hereto), the parties hereto agree as follows:

**1. DEFINITIONS**

a) "Completion"

The Works shall be deemed to be completed and services or materials shall be deemed to be last supplied to the Works when the price of completion, correction of a known defect or last supply is not more than the lesser of,

- 1% of the Contract price; or
- \$1,000.

b) "Director, Works and Engineering" shall mean the Director, Works and Engineering for the Municipality or such person or persons designated in writing from time to time by the said Director.

c) "Maintenance Guarantee Period"

Maintenance Guarantee period means the period of 24 months from the date of the Substantial Completion or such longer period as may be specified for certain materials or some or all of the Works. Where a date of Substantial Completion is not established, the Maintenance Guarantee shall commence on the date of Completion with a written letter of satisfactory completion to the of Director, Works and Engineering.

d) "Owner" shall mean the Party of the Second Part and shall include any and all subsequent owners of the Subdivision Lands or any part thereof.

e) "Substantial Completion"

The Works are substantially completed,

- i) when the Works to be performed under the Contract or a substantial part thereof are ready for use or is being used to the purpose intended; and
- ii) when the Works to be performed under the Contract are capable of completion or, where there is a known defect, the cost of correction, is not more than
  - 3% of the first \$500,000 of the Contract price,
  - 2% of the next \$500,000 of the Contract price, and
  - 1% of the balance of the Contract price

f) "Works"

Includes but is not limited to all underground services, storm sewer connection, a new sanitary maintenance hole within Thompson Drive with connection to the sanitary main, watermain connection with approved disinfection/chlorination methods, concrete curb and sidewalks, grading, granular road base, base asphalt, surface asphalt, topsoil and sod and pavement markings as illustrated on the engineering drawings forming Schedule 'C' and 'F'.

On-Site Works and Off-Site Works are as set out in Schedule "1" Works Cost Estimate, and for greater certainty, Off-Site Works shall be the portion of the Works to be assumed by the Municipality.

## **2. CERTIFICATION OF OWNERSHIP AND ENCUMBRANCES**

The Owner shall, at the time of execution of this Agreement by the Owner and again upon registration of the Plan, provide the Municipality's Director of Planning and Development Services with a letter, addressed to the Municipality and signed by an Ontario Solicitor in good standing, certifying that the Owner is the sole owner of the Subdivision Lands and that there are no encumbrancers having an interest in the Subdivision Lands.

## **3. PLAN OF SUBDIVISION**

The Municipality hereby approves all plans attached as Schedules hereto and the Owner covenants and agrees that the Subdivision Lands shall only be developed in strict accordance with the Schedules and terms of this Agreement and other plans filed with and approved by the Municipality (but not attached hereto) as part of the Municipality's approval process of the proposed development. The Owner covenants that no work, buildings, structures, facilities, services or other matters shall be performed or constructed on the Subdivision Lands except as provided for in this Agreement without the prior written consent of the Municipality.

The Owner warrants and covenants that the plan of subdivision attached hereto as Schedule "B" (herein called "the Plan") has been prepared for the Subdivision Lands by a registered Ontario Land Surveyor, and has been given draft approval by the Municipality and all approved amendments to the draft Plan have been shown thereon. At the time of registration of this Agreement, Schedule "B" shall be replaced by a written description of the Subdivision Lands referring to all lots, blocks, streets, etc. described in accordance with the Plan as registered.

## **4. SCHEDULES TO AGREEMENT**

The following Schedules which are attached hereto together with all provisions contained therein are hereby made a part of this Agreement as fully and for all intents and purposes as though recited in full herein:

Schedule "A" -	Legal Description of Subdivision Lands
Schedule "B" -	Plan of Subdivision
Schedule "C" -	Approved Engineering Design Drawings
Schedule "D" -	Easements to be conveyed
Schedule "E" -	Lands to be conveyed
Schedule "F" -	Works
Schedule "G" -	Phasing
Schedule "H" -	Duties of Owner's Engineer
Schedule "I" -	Works Cost Estimate
Schedule "J" -	Regulations for Construction
Schedule "K" -	Approved Form of Letter of Credit
Schedule "L" -	Insurance Policies Required
Schedule "M" -	Port Hope Area Initiative

The original drawings for the above-noted Schedules are available at the municipal offices for inspection during regular business hours.

## **5. PAYMENT OF TAXES AND OTHER CHARGES**

The Owner shall, prior to the execution of this Agreement by the Municipality, pay all arrears of taxes, levies, charges, assessment, rates, etc. outstanding against the Subdivision Lands. The Owner further undertakes and agrees to continue to pay all taxes levied on the Subdivision Lands or any part or parts thereof on the basis of and in accordance with the assessment and collector's roll entries as revised from time to time.

The Owner agrees to pay municipal taxes for the full year in which any transfer of lands within the Plan or any part thereof takes place if such transfer results in the lands being exempt from taxation for any part of that year unless the Municipality receives grants in lieu of the taxes which would otherwise be payable. The Owner also agrees that any local improvement charges or other designated charges or imposed rates outstanding against the Subdivision Lands shall be commuted for payment and paid in full by the Owner prior to the execution of this Agreement by the Municipality.

## **6. GRANTS OF EASEMENTS**

The Owner shall, at the time of registration of this Agreement by the Owner, execute and deliver to the Municipality the grants of easements set out in Schedule "D" hereto, free and clear of all mortgages, liens, charges and encumbrances. If, subsequent to the registration of the Plan, further easements are required for drainage, the Owner agrees to grant such easements forthwith upon demand at no expense to the Municipality.

## **7. CONVEYANCE OF TEMPORARY TURNING CIRCLE LANDS**

N/A

## **8. CONVEYANCE OF RESERVES, ROAD WIDENING**

The Owner, at the time of registration of Plan of Subdivision, shall execute and deliver to the Municipality deeds or transfers sufficient to vest in the Municipality as set out in Schedule "E" hereto, free and clear of all mortgages, liens, charges and encumbrances.

## **9. CASH IN LIEU OF PARKLAND**

The Owner covenants and agrees that prior to the execution of this Agreement by the Municipality, the Owner shall have paid to the Municipality cash-in-lieu of the dedication of parkland equal to 5% of the appraised value of the Subdivision Lands. Such value shall be determined by an experienced and qualified land appraiser (CRA or AACI). The appraisal report shall accompany the cash-in-lieu payment. Said amount is \$30,000 dollars based on the appraisal of the entire draft approved plan dated Apr 25, 2021.

**10. BLOCK 1**

The Owner agrees to convey to the Municipality Part 1 Plan 39R- 12666.

**11. PREPARATION AND REGISTRATION OF DOCUMENTS**

All deeds, grants of easements and other conveyances required herein shall be prepared, executed and registered at the Owner's expense and shall be approved by the Municipality's solicitor prior to execution and registration.

The registered number of the Plan shall be left blank in the description in each document to be registered so that such number may be inserted after the Plan has been registered.

The Owner covenants and agrees that prior to the execution of this Agreement by the Municipality, the Owner shall provide the Municipality with a solicitor's undertaking to, prior to the creation of the parcels of tied land ("POTLs"), register a restriction, pursuant to s. 118 of the *Land Titles Act*, R.S.O. 1990, c. L.5, as amended, against each of the lots at the time of their creation that they cannot be further transferred or conveyed without the Municipality's consent.

**12. WORKS REQUIRED**

The Owner shall be responsible, at its own expense, for the design, construction, installation and maintenance of the works, services and facilities generally set out in Schedules "C" and "F" hereto, and collectively hereinafter called the "Works".

**13. UTILITIES**

The Owner shall be responsible, at its own expense, for making design and installation arrangements with all utility companies using the municipal road allowance (hereinafter collectively called the "Utilities"). The Municipality shall not be responsible for any costs of Utilities required for the Subdivision Lands.

**14. OWNER'S ENGINEER**

The Owner shall retain a Professional Engineer, or firm of Professional Engineers, registered by and in good standing with the Professional Engineers of Ontario (PEO) (possessing a current Certificate of Authorization issued by the PEO) satisfactory to the Director, Works and Engineering and hereinafter called the "Owner's Engineer", for the purposes as set out in Schedule "H" hereto and for the other purposes required by this Agreement. The Owner agrees to continue to retain the services of a Professional Engineer until the Works provided for in this Agreement have been completed and accepted by the Municipality. The Owner's Engineer shall provide a full-time resident inspector, who shall be directed by a qualified professional engineer, and will be on-site at all times during active construction of the Off-Site Works to inspect work and certify it has been completed in accordance with the Engineering drawings including conformance with all the applicable Municipal Standards, Ontario Provincial Standards and Specifications (OPSS), Ontario Provincial Standards and Drawings (OPSD) and other specifications and standards outlined in the drawings.

**15. DESIGN OF WORKS**

The Owner agrees that the design and installation of all of the Works shall strictly comply with the approved engineering drawings as set out in Schedule "C" hereto and to the OPSS and OPSD.

**16. APPROVED ENGINEERING DESIGN DRAWINGS**

The Owner shall, prior to commencement of the Works and no later than 90 days following the registration of this Agreement, have the written approval of the Director, Works and Engineering for all drawings of all of the Works hereinafter called the "Approved Engineering Design Drawings" which are appended hereto as Schedule "C" and which shall include the Grading, Drainage and Erosion Control Plans.

If, in the sole opinion of the Director, Works and Engineering, no substantial construction of the Works has commenced within twelve (12) months of the date of the registration of this Agreement, the Approved Engineering Design Drawings, for the Works that have not been installed, shall be resubmitted to the Director, Works and Engineering for review, revision and further approval.

The Director, Works and Engineering may require the Owner's Engineer to provide supplemental plans and/or specifications where, in the course of construction, an absence of detail in the plans and/or specifications appears and/or where unforeseen circumstances arise. The said supplemental plans and/or specifications shall be subject to the written approval of the Director, Works and Engineering. Upon such approval being obtained, the Owner covenants to strictly comply with such supplemental plans and/or specifications.

The approval of the Approved Engineering Design Drawings by the Director, Works and Engineering shall not absolve the Owner of the responsibility for any errors and/or omissions with respect to such Drawings.

#### **17. GRADING, DRAINAGE AND EROSION CONTROL PLANS**

The Owner hereby agrees that the removals and Sediment Plan, Site Grading Plan, Pre-Development Drainage Plan and Post-Development Drainage Plan, shall provide for the proper drainage of the Subdivision Lands and the drainage of all adjacent lands which drain through the Subdivision Lands. Until the roads laid out according to the Plan have been expressly assumed by the Municipality as part of the Municipal road system, The Owner, shall provide adequate drainage of surface water from the Subdivision Lands and shall construct all services in such a manner that no damage shall result by reason of the drainage therefrom or in connection therewith to persons or to adjacent lands. In the event that drainage problems occur prior to the Completion of the Works, the Owner agrees to correct, at its sole expense, the drainage problems by such re-grading and/or construction of swales or other appurtenances as may be necessary in the opinion of the Director, Works and Engineering.

Prior to the commencement of any work, including grading or regrading, on the Subdivision Lands, the Owner shall take all erosion control measures and construct all erosion control works as set out and described in the Approved Engineering Design Drawings. Such erosion control measures may, without limiting the generality of the foregoing, include:

- (a) temporary sodding or seeding;
- (b) temporary grading measures;
- (c) use of barriers, fencing and embankments;
- (d) permanent planting, seeding, or sodding;
- (e) use of rip-rap or other similar methods;
- (f) construction of culverts, drains and spillways;
- (g) The Owner agrees to maintain all erosion and siltation control devices in good repair during the construction period in a manner satisfactory to the GRCA.

#### **18. LOT GRADING AND DRAINAGE**

All lots and blocks within the Plan shall be graded, at no expense to the Municipality, to drain in accordance with the Grading, Drainage and Erosion Control Plans and the provisions of this Agreement.

No person shall change the grade of any lot or block on the Plan contrary to the provisions of this Agreement without the prior written approval of the Director, Works and Engineering.

The Owner acknowledges and agrees that prior to the Assumption by the Municipality for the Works and Utilities, the Owner shall, at its sole expense, be responsible for the drainage of all lots and blocks and shall, on the sale of any such lots or blocks, reserve such rights as may be necessary to enable the Owner and/or the Municipality to enter on such lands and to undertake modifications to the surface drainage features of the said lots or blocks in accordance with the

provisions of this Agreement or for the purpose of correcting any grading and drainage problems relative to the development of the Subdivision Lands.

All building construction within the Subdivision Lands shall be in conformity with the elevation and spot grades shown on the Grading, Drainage and Erosion Control Plans approved by the Municipality. All areas of engineered fill shall be certified by the Owner's qualified Geotechnical Engineer licensed to practice in the Province of Ontario.

No building permit will be issued for any lot or block within the Plan until an individual drainage plan for such lot or block has been submitted to the Municipality showing the proposed final grade elevation, the building location and the immediate points of grade change, all of which must be in conformity with the Master Grading, Drainage and Erosion Control Plans and related road grades.

Upon receiving notice from the builder that a lot is ready for inspection, the Owner's engineer shall inspect the subject lot and provide a written confirmation of grading certification or the presence of any deficiencies in writing to the Municipality.

The lot grading certificate shall include elevations for lot corners, swales, low and/or and high points on split drainage lots as applicable to demonstrate general conformance with the approved Grading, Drainage and Erosion Control Plans. The Municipality shall review a lot grading certification within fifteen (15) days from receipt of same and provide comments or acceptance of the certification to the Owner and Owner's engineer within that time. Any alteration made to the grading of a lot or block which affects the drainage of such lot or block or other lands after certification of the lot grading by the Owner's engineer, and accepted by the Municipality, shall be the sole responsibility of the then owner of such lot or block.

The owner acknowledges that any drainage complaints received by the Municipality prior to completion of a lot certification will be the responsibility of the Owner to rectify.

#### **19. ROUGH GRADING**

The Owner agrees to complete rough grading of the Subdivision Lands such that all surface water is captured within the site where applicable and to the satisfaction of the Director, Works and Engineering.

#### **20. CONSTRUCTION TRAFFIC**

The Owner agrees that all streets to be used for access during the construction of the Works and Utilities and/or buildings on the Subdivision Lands shall be kept in good and usable condition and free of dirt, mud and other debris during the said construction, and if damaged or not kept free as aforesaid, will be restored immediately by the Owner. All trucks making deliveries to, or taking materials from the Subdivision Lands shall be adequately covered and not unreasonably loaded so as to scatter refuse, rubbish or debris on any streets, as well as to prevent the tracking of dirt, mud or other debris onto adjacent streets. If the Owner after being given notice by the Municipality by email, refuses to repair and remedy the aforesaid damage or condition to the streets, the Municipality may remedy the situation and charge the cost thereof to the Owner, who shall forthwith pay the same upon demand, failing which the money shall be deducted from the Performance Guarantee.

The Owner agrees to restrict the hours of the construction route by "heavy construction vehicles" as defined herein from 7:00 am to 7:00 pm, Monday to Friday inclusive and from 7:00 am to 5:00 pm on Saturday, provided exemptions to this restriction may be approved by the Director, Works and Engineering or the Chief Building Official in case of emergencies or any other events justifying such an exemption. For the purposes of this Agreement, a "heavy construction vehicle" means a "vehicle with multiple rear axles".

## **21. COST ESTIMATES**

The estimated cost of construction and installation of all of the Works (hereinafter called the "Works Cost Estimate") shall be prepared by the Owner's Engineer and approved by the Director, Works and Engineering prior to the registration of this Agreement and shall be included as Schedule "I" to this Agreement.

## **22. PERFORMANCE GUARANTEE**

In order to guarantee that the Works will be constructed and installed in accordance with the provisions of this Agreement, the Owner shall, prior to the execution of this Agreement by the Municipality, lodge with the Municipality a "Performance Guarantee" consisting of an irrevocable Bank Letter of Credit in the amount of **\$349,924.50** which is Fifty Percent (50%) of the Works Cost Estimate for On-Site Works and One Hundred Percent (100%) of the Works Cost Estimate for Off-Site Works as shown on Schedule "I" to this Agreement. The form and wording of the Performance Guarantee shall be in the form attached hereto as Schedule "K". The Owner covenants and agrees that the Letter of Credit shall be for a minimum term of one (1) year and shall provide that the Letter of Credit shall be automatically renewed or extended without the need for written notice from the Municipality requesting such extension.

## **23. USE OF PERFORMANCE GUARANTEE**

The Owner agrees that the Municipality 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 Municipality deems fit if the Owner:

- (i) in any way makes or permits default in 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 Works and/or Utilities or the other provisions of this Agreement.

The provisions of this section shall be in addition to all other provisions in this Agreement relating to the use of the Performance Guarantee.

In the event that the Municipality uses all or any part of the Performance Guarantee at any time or times, the Owner hereby agrees that construction and installation of the Works by or on behalf of the Owner within the Subdivision Lands shall cease until the Performance Guarantee has been restored by the Owner to an amount satisfactory to the Director, Works and Engineering and consistent with the provisions of this Agreement regarding the purpose and use of the Performance Guarantee.

The Municipality or Municipal Engineer shall, except in cases of urgency or emergency as determined by the Municipality or the Municipal Engineer in their sole and absolute discretion, provide the Owner with a minimum of fourteen days' written notice of the Municipality's intent to use the Performance Guarantee and to provide a reasonable opportunity for the Owner to remedy the situation complained of prior to exercising the Municipality's right to use the Performance Guarantee.

## **24. REQUIREMENTS FOR RELEASE OF PERFORMANCE GUARANTEE**

The Performance Guarantee can be reduced periodically by the amount of Works which are certified to be Substantially Complete to a maximum of 90% of said Works, less the value of deficiencies, less statutory lien requirements, less the value of other fees owing.

The owner may submit a request for reduction of the Performance Guarantee which will include:

- (a) the value of Works performed to the date;
- (b) the value of outstanding or incomplete Works;



- (c) the amount of the statutory holdback, allowing for any previous releases of statutory holdback to the Contractor in respect of completed subcontracts and deliveries of pre-selected equipment;
- (d) the amount of maintenance security required; and
- (e) the amount due to the Contractor.

The Owner may submit a request for release of the Performance Guarantee upon Substantial Completion of the Works which will include:

- (a) a release by the Contractor in a form satisfactory to the Contract Administrator releasing the Owner from all further claims relating to the Contract, qualified by stated exception such as outstanding work or matters arising out of any claims, negotiations, and/or mediation as outlined in the OPS General Conditions of Contract and Specifications for Construction;
- (b) a statutory declaration in a form satisfactory to the Contract Administrator that all liabilities incurred by the Contractor and the Contractor's Subcontractors in carrying out the Contract have been discharged except for statutory holdbacks properly retained;
- (c) a satisfactory Certificate of Clearance from the Workplace Safety and Insurance Board; and
- (d) proof of publication of the Certificate of Substantial Performance under the *Construction Act*, R.S.O. 1990. c. C.30, as amended.

For purposes of this section, a certificate prepared by the Owner's Engineer and approved in writing by the Director, Works and Engineering shall be conclusive evidence as to the cost of completing all of the Works.

The Owner agrees that the Municipality shall not release to the Owner the balance of the Performance Guarantee until the Owner has deposited with the Municipality the Maintenance Guarantee as hereinafter described.

## **25. CONSTRUCTION LIENS**

The Owner will remove any lien, in accordance with the Construction Act, R.S.O. 1990, c. C.30, as amended from time to time, within 30 days of written notice from the Municipality, failing which it is agreed that the registration of a claim for lien or the giving of a copy of a claim for lien to the clerk of the Municipality shall entitle the Municipality, in addition to any other remedies available to it, to use all or any part of the Performance Guarantee (or the Maintenance Guarantee, as the case may be) to satisfy the liabilities and obligations of the Municipality as may arise pursuant to the Construction Act, R.S.O. 1990, c. C.30, as amended from time to time.

## **26. INDEMNIFICATION**

The Owner hereby covenants and agrees to indemnify and save harmless the Municipality, its employees, workmen, agents, consultants, elected officials and advisors from and against all actions, causes of action, losses, liens, damages, suits, judgments, orders, awards, claims and demands whatsoever, and from all costs to which the Municipality may be put in defending or settling any such action, causes of action, 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 undertaking the development of the Subdivision Lands (including without limitation any or all of the Works) or any provision or breach of any provision of this Agreement and relating to an occurrence which happened prior to assumption of the subdivision development, save and except any action, causes of action, suits, claims or demands which are solely attributable to the acts of the Municipality or any of its authorized agents, servants or employees.

## **27. INSURANCE**

The Owner covenants and agrees to maintain insurance in accordance with the provisions of Schedule "L" of this Agreement at least until the Completion of the Works in accordance with this Agreement.

The Owner shall from time to time, at the request of the Municipality, furnish proof to the Municipality 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 Municipality, 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 Municipality within ten (10) days of written demand being given by the Municipality.

The Owner hereby covenants at its own expense, to obtain prior to the execution of this Agreement by the Municipality a letter from the Owner's insurance company(ies) addressed to the Municipality 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 Schedule "L" of this Agreement. The Owner hereby acknowledges that the Municipality intends to rely on the said letter from the Owner's insurance company(ies).

## **28. APPROVAL OF CONTRACTORS/INSPECTION OF WORKS**

The owner agrees that any contractor employed by the owner to construct, install and/or maintain any of the Works shall be approved by the Director, Works and Engineering in writing prior to the contract being made. The Owner agrees that the Director, Works and Engineering or the employees or agents of the Municipality may, at any time, and from time to time, inspect the work and shall have the power to stop any such work in the event that the work is being performed by an unapproved contractor or in a manner that is not satisfactory to the Director, Works and Engineering. The Director Works and Engineering shall, except in cases of urgency or emergency as determined by the Director, Works and Engineering in their sole and absolute discretion, take all reasonable steps to notify in writing either the Owner or the Owner's Engineer of the situation complained of and to provide a reasonable opportunity to remedy the situation complained of prior to exercising the above-noted power to stop any such work.

As noted above, the Owner's Engineer shall provide a full-time resident inspector who will be on-site at all times during active construction to inspect the Works and certify that it has been completed in accordance with the Engineering drawings including conformance with all the applicable Municipal standards, OPSS and other specifications and standards outlined in the drawings. The inspector shall be under the direction of a qualified Professional Engineer.

## **29. REQUIREMENTS FOR AUTHORIZATION TO COMMENCE WORKS**

The Owner agrees not to commence the construction or installation of any of the Works in the Subdivision without the written permission of the Municipality, referred to herein as an "Authorization to Commence Works" or through a pre-servicing agreement agreed to by the Municipality. In addition to any other requirements contained herein, no Authorization to Commence Works shall be issued for any of the Works until:

- (1) This Agreement has been signed by all Parties or the Owner has entered into a pre-servicing agreement, agreed to by the Municipality;
- (2) The Owner has received final approval for the Engineering Drawings from the Municipality;
- (3) The preliminary M-plan has been endorsed reflecting the draft approved plan;
- (4) The Owner has paid to the Municipality all outstanding charges against the Subdivision Lands;
- (5) The Owner has deposited with the Municipality the Performance Guarantee applying to the plan for which the Owner is seeking such Authorization to Commence Construction Services;
- (6) The Owner has deposited with the Municipality the required policy(ies) of insurance;

- (7) The Owner has obtained and provided to the Director, Works and Engineering written approval for those Works which require approval from the Ministry of the Environment and/or the Ganaraska Region Conservation Authority and/or the Canadian National Railway and/or the Canadian Pacific Railway and/or other statutory bodies; and

In addition to the foregoing, the Owner shall notify the Director, Works and Engineering in writing at least 96 hours prior to the commencement of work. If for any reason there is a cessation or interruption of construction, the Owner shall provide similar notice to the Director, Works and Engineering before work is resumed.

### **30. PROVISIONS FOR CONSTRUCTION AND INSTALLATION**

The Owner shall, upon the issuance of Authorization to Commence Works, proceed to construct and install all of the Works continuously and expeditiously and in accordance with the time limits specified in this Agreement, subject to the overriding direction of the Director, Works and Engineering. All of the Works shall be constructed and installed in accordance with the Approved Engineering Design Drawings and other approved plans and drawings. No variation from the Approved Engineering Design Drawings and other approved plans and drawings shall be permitted unless such variation is authorized in writing by the Director, Works and Engineering. All construction on the Subdivision Lands shall be carried out in accordance with the regulations for construction as set out in Schedule "J" hereto.

The Owner's Engineer shall file with the Municipality, prior to the commencement of construction, a written undertaking with respect to the Works, which undertaking shall include a covenant to provide upon completion the Owner's Engineer's Certificate that the construction and installation of the Works has been completed in accordance with the Approved Engineering Design Drawings and the terms of this Agreement.

### **31. COMPLETION TIME AND SEQUENCE OF CONSTRUCTION AND INSTALLATION**

The Owner agrees to complete the construction of all Works on schedule in consultation with the Municipality in accordance with the approved Engineering Drawings attached as Schedule "C".

### **32. SIDEWALKS**

It is agreed that a suitable walking path shall be provided around the Subdivision Lands prior to first occupancy that will also serve as reasonable grade control for the subsequent construction of concrete sidewalk. The Owner hereby agrees to construct the granular base of the sidewalk to a minimum thickness of 125 mm throughout the entire Plan prior to first occupancy and that driveways for each dwelling unit shall not be hard surfaced until such time that the concrete sidewalk has been completed in front of that dwelling unit. It is acknowledged and agreed that the concrete sidewalk for the Plan will be constructed in accordance with the lines and grades established on the approved construction drawings and will be constructed at the earliest opportunity or:

- (i) No later than the date on which Occupancy has been issued for 100% of the dwelling units within the Plan.

### **33. PERMANENT SIGNAGE**

N/A

### **34. ADDITIONAL FACILITIES OR WORK REQUIRED**

If, in the opinion of the Director, Works and Engineering, any additional facilities or work is required to ensure the Works (or any of them) are satisfactorily completed or function properly, the Owner shall promptly construct or install such additional facilities or perform such additional work as the Director, Works and Engineering may reasonably require from time to time and at any time prior to Completion of the Works.

### **35. INCOMPLETE OR FAULTY WORK**

The Municipality may, at its sole discretion, at any time and from time to time, inspect the Works to be constructed pursuant to this Agreement.

If, in the opinion of the Director, Works and Engineering, the Owner:

- (i) is not proceeding with or causing the work to proceed as required by this Agreement within the time limits specified in this Agreement, or in order that it may be completed within the specified time limits;
- (ii) is improperly performing work required by this Agreement;
- (iii) has abandoned or neglected work required by the Agreement;
- (iv) refuses, fails or neglects to maintain any of the Works or to replace or repair any part or parts of the Works that may be rejected by the Director, Works and Engineering as defective or unsuitable; and/or
- (v) defaults in performance of the terms of this Agreement;

then the Director, Works and Engineering shall promptly notify the Owner in writing of the situation complained of, and if the Owner fails to remedy the situation complained of within ten (10) clear days after the mailing of such notice, the Municipality shall have full authority and power to enter upon the Subdivision Lands, to purchase, lease, or otherwise acquire such materials, tools and machinery and to employ such workman as in the opinion of the Director, Works and Engineering 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 Director, Works and Engineering, such entry and work may be done without prior notice, but the Owner shall be notified thereafter.

The Owner agrees that the Municipality may, in addition to any other remedies it may have, use all or any part of the Performance Guarantee, to pay for the costs incurred by the Municipality and/or its agents in furtherance of the provisions of this section.

It is understood and agreed between the parties hereto that such entry upon the Subdivision Lands shall be as agent for the Owner and shall not be deemed, for any purpose whatsoever, as an acceptance or assumption of the Works or any part thereof by the Municipality.

The cost incurred by the Municipality and/or its agents in furtherance of the provisions of this section shall be calculated by the Director, Works and Engineering whose decision shall be final and binding on all parties hereto. It is understood and agreed by the Owner that such costs shall include a management fee of Fifteen Percent (15%) of the costs of the labour and materials. It being herein declared and agreed that the assumption by the Owner of the obligations imposed by this section is one of the considerations without which the Municipality would not have registered this Agreement.

Nothing herein contained shall be taken to limit the powers, rights, remedies, actions and/or proceedings whatsoever available to the Municipality arising from or out of any breach of the provisions and terms of this Agreement.

### **36. DAMAGE OR RELOCATION OF EXISTING SERVICES**

The Owner agrees to pay the cost of repairing any damage to any existing services and/or roads and the cost of relocating any existing services caused by the development of the Subdivision Lands or any of the Works required by this Agreement, provided all work is to be done to the satisfaction of the Director, Works and Engineering and/or the authorities responsible for such services. The Owner further agrees to pay the cost of moving or altering any of the Works installed in driveways or so close thereto, in the opinion of the Director, Works and Engineering, as to interfere with the use of the driveway.

### **37. USE OF WORKS BY MUNICIPALITY**

The Owner agrees that any of the Works may be used by the Municipality or other authorized persons for the purposes for which the Works are designed. Such use of any of the Works shall not be deemed an acceptance of any of the Works by the Municipality, nor an assumption by the Municipality of any liability in connection therewith, nor a release of the Owner from any of its obligations under this Agreement.

### **38. DEVELOPMENT CHARGES**

The Owner agrees to pay to the Municipality development charges as required by the By-law in effect at the time of issuance of each building permit or as otherwise provided by an agreement pursuant to the By-law.

### **39. REQUIREMENTS FOR BUILDING PERMITS**

Neither the registration of this Agreement by the Municipality, nor the assumption of any Works by the Municipality shall be deemed to give any assurance that building permits, when applied for, will be issued in respect of any of the Subdivision Lands. The Owner agrees that no application for any building permit in respect of any of the Subdivision Lands shall be made until:

- (a) The Municipality is satisfied with adequate road access, municipal water supply, hydro service, sanitary sewers, and storm drainage facilities are available to service the proposed Subdivision.
- (b) The grade of the street in front of the proposed building has been established to the satisfaction of the Director, Works and Engineering and all drainage work and underground services are completed, and base course of asphalt laid and base curb installed, unless otherwise expressly permitted by the Director, Works and Engineering.
- (c) The Owner is not in violation of any of the provisions of this Agreement.
- (d) All charges applicable to any lot or lots for which building permits are sought, have been paid.
- (e) Soil tests, when required by the Chief Building Official, conducted by an independent testing laboratory, confirm the stability of the soil and stability to sustain superimposed loads from building and filling operations.
- (f) The Owner has conveyed to the Municipality all lands and easements as provided in this Agreement to the satisfaction of the Municipality.
- (g) Notwithstanding provisions to the contrary in this Section, the Owner may seek building permit for 1 (one) model dwelling unit ), provided the Owner has fulfilled its obligations to date with respect to paragraph 39c, 39d and 39e inclusive, and the Owner hereby undertakes and agrees:
  - i) not to permit occupancy of any model home until all obligations under paragraph 38 are fulfilled; and
  - ii) to maintain such model homes in a good state of repair.

### **40. REQUIREMENTS FOR AUTHORIZATION TO OCCUPY**

The Owner shall not permit any building on the said lands to be occupied without the written permission of the Municipality, referred to herein as an "Authorization to Occupy". In addition to any other requirements contained herein, no Authorization to Occupy shall be issued for any building until:

- (a) All underground services are installed in a manner satisfactory to OPSD standards and to the Director, Works and Engineering.
- (b) All the Works and Utilities required to be constructed and installed to service such buildings have been constructed and installed to the satisfaction of the Director, Works and Engineering and any authorities who have jurisdiction over such Works.

#### **41. DUST CONTROL**

The Owner agrees to develop a dust control plan to the satisfaction of the Director, Works and Engineering to mitigate the generation and transmission of dust and particles from the Subdivision Lands.

The Owner agrees to comply with the directions of the Director, Works and Engineering from time to time with respect to the suppression of dust and particles from the Subdivision Lands and shall comply with the directions of the Director, Works and Engineering from time to time with respect to removal or cleanup of dust and particles from any affected properties or any buildings, structures, equipment or belongings located thereon.

The Owner undertakes the regular cleaning of the Subdivision Lands as well as adjacent streets, residential and commercial parking lots, as impacted by construction activity, all to the satisfaction of the Director, Works and Engineering.

#### **42. MARKING OF LOTS**

All building lots shall be plainly marked with their lot number from the time construction starts within the Subdivision Lands. This can be done initially with a printed marker on the stake at the front of the lot and when the building has progressed sufficiently, the marker can be fastened to the front wall of the building so as to be legible from the roadway on which the lot fronts.

#### **43. SALES TRAILER**

The Owner covenants and agrees that any placement or construction of a sales trailer pertaining to the Subdivision Lands must be approved by the Director, Works and Engineering as it pertains to location, specifications, timing and other matters as deemed appropriate by the Director, Works and Engineering prior to the construction and/or placement of said trailer. The Owner shall ensure that the trailer(s) is maintained in a manner acceptable to the Director, Works and Engineering. The Owner agrees to remove or relocate the trailer(s) at its sole expense within thirty (30) days of written notification by the Director, Works and Engineering.

#### **44. BUILDING PERMIT RESTRICTIONS FOR FIRE BREAKS**

- (a) The Owner covenants and agrees that no building permits will be applied for or issued for more than seven (7) consecutive lots or blocks within the Plan until such time as the external finishing including cladding, roofing and windows on the units abutting each side lot line has been completed, unless otherwise approved by the Director of Fire and Emergency Services for the Municipality.

#### **45. LIABILITY OF OWNER**

Notwithstanding the sale of any part or all of the Subdivision Lands the Owner shall remain bound by all obligations, covenants and agreements whatsoever created by this Agreement, including those assumed by a purchaser, and shall remain jointly and severally liable therefore to the Municipality provided that upon the sale of each lot or block on the Plan by the Owner, the Owner shall cease to have any responsibility for the obligations created in the section entitled "Weed Control and Removal of Debris" of this Agreement for such lot or block and the Municipality shall be entitled to enforce the provisions of the aforesaid sections of this Agreement against the owners from time to time of every such lot(s) or block(s).

The Owner hereby acknowledges and agrees that neither the Performance Guarantee, Maintenance Guarantee, individual lot grading deposit or any policy of insurance which the Owner is required to provide or maintain according to this Agreement shall in any way be deemed to limit the liability of the Owner.

**46. REQUIREMENTS TO SOD**

The Owner, prior to sodding, shall place clean, weed-free topsoil, as defined by the latest OPSS, in all areas to be sodded. The Owner further agrees that:

- (i) the minimum depth of topsoil required shall be such that the settled, combined thickness of the topsoil and sod is a minimum of 200 mm;
- (ii) Number 1 nursery sod shall be used;
- (iii) all stones and debris shall be removed and disposed of prior to the sod being placed;
- (iv) for building lots, sod work must be completed as soon as practically possible following occupancy of the particular lot, taking into consideration the date of completion of abutting dwellings and seasonal conditions; and
- (v) all sod work on municipal property must be completed prior to Substantial Completion, save where not permitted by seasonal condition, in which case sodding must be completed as soon as possible, and in any event prior to the release of the Maintenance Guarantee.

**47. MAINTENANCE OF ROADS AFTER OCCUPANCY**

N/A

**48. REQUIREMENTS FOR SUBSTANTIAL COMPLETION**

The Owner agrees that the construction and installation of the Works for the subdivision shall not be deemed to be substantially complete for the purposes of this Agreement until:

- (a) all of the Works for the Subdivision Lands have been inspected and approved by the Director, Works and Engineering;
- (b) the Owner has provided the Director, Works and Engineering with satisfactory evidence that there has been complete compliance with the requirements of The Construction Act, R.S.O. 1990, c. C.30, as amended from time to time, that no liens have been preserved and no notices of lien received, and that the period for preserving liens has expired with respect to all work on and development of the Subdivision Lands for which the Municipality or property vested in the Municipality may, in the sole and absolute opinion of the Director, Works and Engineering, be subject or liable;
- (c) the Owner has provided the Director, Works and Engineering with satisfactory evidence that all Utilities have been installed, inspected and approved by the utility companies having jurisdiction for the Utilities;
- (d) the Owner has provided the Director, Works and Engineering a copy of advertisement in the Daily Commercial News of the Notice of Completion;
- (e) the Owner has provided the Director, Works and Engineering two sets of printed as-constructed drawings signed and sealed by a Professional Engineer licensed to practice in the Province of Ontario, as well as one digital copy of said drawings.
- (f)

The drawings shall include all underground utilities and above ground appurtenances, including valves, hydrants, maintenance hole locations, sidewalk elevations, utility pedestals, transformers, light standards and other standards;

- (g) the Owner has provided the Director, Works and Engineering a Certificate of Completion signed and sealed by a Professional Engineer licensed to practice in the Province of Ontario confirming that the Works have been constructed in accordance with the approved drawings and specifications and identifying any and all deficiencies in the Works; and
- (h) the Owner has provided all of the inspector's field notes, inspection and testing reports to the satisfaction of Director. Works and Engineering, including but not limited to geotechnical reports for engineered fill areas, watermain pressure test results, soil laboratory analysis and other reports as applicable.
- (i) For greater certainty, the date of submission of the items set out in subparagraphs (b) to (g) above shall be deemed to be the Date of Substantial Completion.

#### **49. PERIOD OF REQUIRED MAINTENANCE OF WORKS**

The Owner shall, from the Date of Substantial Completion, maintain and keep in good repair all of the Works for a period of two (2) years from the date of the Substantial Completion.

#### **50. ROOF LEADERS**

The Owner covenants and agrees that any sump pumps or roof leaders installed within the Subdivision Lands shall have the roof leaders discharge directed as shown on the approved drawings on schedule ... satisfactory to the Director, Works and Engineering.

#### **51. MAINTENANCE GUARANTEE REQUIRED**

In order to ensure that the Off-Site Works will be properly maintained and that all defects will be replaced and/or repaired, the Owner shall, prior to the release by the Municipality of the Performance Guarantee, lodge with the Municipality a "Maintenance Guarantee" consisting of an irrevocable bank Letter of Credit in an amount equal to 10% of the original Works Cost Estimate for the Off-Site Works or such greater amount as the Director, Works and Engineering, in their sole and absolute discretion, determines is advisable. The form and wording of the Maintenance Guarantee shall be in the form attached hereto as Schedule "K". The Owner covenants and agrees that the Letter of Credit shall be maintained in full force and effect until the Off-Site Works are assumed by the Municipality.

#### **52. USE OF THE MAINTENANCE GUARANTEE**

The Owner agrees that the Municipality 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 Municipality deems fit:

- (a) if the Owner fails to properly maintain, repair or replace any or all of the Off-Site Works; or
- (b) if a claim for lien is registered or a copy thereof given to the Clerk of the Municipality pursuant to The Construction Act, R.S.O. 1990, c. C.30 as amended from time to time; or
- (c) 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:



- (i) the maintenance, repair or replacement of any or all of the Off-Site Works; and/or
- (ii) the other provisions of this Agreement.

In the event that the Municipality uses all or any part of the Maintenance Guarantee at any time or times, the Owner hereby agrees to forthwith restore the Maintenance Guarantee to an amount satisfactory to the Director, Works and Engineering consistent with the provisions of this Agreement regarding the purpose and use of the Maintenance Guarantee.

### **53. REQUIREMENTS FOR RELEASE OF MAINTENANCE GUARANTEE**

The Maintenance Guarantee shall be retained by the Municipality until:

- (a) The Owner has provided the Director, Works and Engineering with satisfactory evidence there has been full compliance with the requirements of The Construction Act, R.S.O. 1990, c. C.30, and that the time for preserving liens has expired in relation to such work, services or materials for which the Municipality may, in the sole and absolute opinion of the Director, Works and Engineering, be liable; and
- (b) the Off-Site Works have been assumed by the Municipality.

### **54. REQUIREMENTS FOR COMPLETION OF WORKS**

The Owner agrees that none of the Works shall be deemed to be accepted by the Municipality until the following requirements have been fulfilled:

- (a) The Municipal Council has received a written report from the Director, Works and Engineering indicating that the Maintenance Guarantee has expired and all of the Off-Site Works have been completed and all deficiencies have been addressed to the satisfaction of the Director, Works and Engineering;
- (c) The Director, Works and Engineering has been advised in writing that all Utilities have been maintained for the required period of time to the satisfaction of the applicable utility company;
- (d) The Owner has paid to the Municipality all outstanding costs and expenses as generally described in the section of this Agreement entitled "Owner's Costs";
- (e) The Owner has provided the Municipality "As-Constructed" Drawings documenting any changes to the original approved drawings on such materials as approved by the Director, Works and Engineering;
- (f) The Owner has supplied a written statement from a registered Ontario Land Surveyor that after the completion of the subdivision work, all survey monuments have been found or replaced as shown on the registered Plan of Subdivision and that a Real Property Survey shall be completed demonstrating that all property bars have been found and are at the final grade; and
- (g) The Owner has provided the Municipality with a copy of the Final Payment Certificate in Excel format so that the Municipality can assign a value to the assumed assets

### **55. OWNERSHIP OF WORKS BY MUNICIPALITY**

The Owner agrees that, upon the assumption of the Off-Site Works through Municipal By-law, the ownership of the Off-Site Works specified in such by-law shall vest in the Municipality and the Owner shall have no right or claim thereto, other than as an owner of land abutting a road in which such Off-Site Works are installed.

**56. INTEREST IN SUBDIVISION LANDS**

- (a) The Owner hereby charges and subordinates all its interest in the Subdivision Lands with and to the obligations contained in this Agreement.

**57. OWNER'S COSTS**

- (a) 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".
- (b) The Owner shall reimburse the Municipality for all reasonable administrative, planning, legal, engineering, inspection and/or other costs or expenses whatsoever incurred by the Municipality in connection with the development of the Subdivision Lands or in respect of this Agreement, including the preparation thereof.
- (c) In the event that the Owner does not reimburse the Municipality as aforesaid, the Municipality may, at its sole discretion, on thirty (30) days written notice to the Owner, use the Performance Guarantee or Maintenance Guarantee (as the case may be), or any part thereof for the payment in full of such costs or expenses.
- (d) The Owner shall pay the Municipality Public Works User Fees in the amount of 4.5% of the Total Development Cost (Schedule "I") up to and including \$200,000 plus 2.5% on the amount above \$200,000, resulting in a value of **\$18,901.93**.

**58. UNPAID CHARGES**

The due dates of any sum of money payable herein shall be forty-five (45) days after the date of the invoice. Interest at the rate established from time to time by resolution of the Council of the Municipality for monies owed to the Municipality shall be payable by the Owner to the Municipality on all sums of money payable herein, which are not paid on the due dates, calculated from such due dates.

**59. NOTIFICATION OF OWNER**

All notices, requests, demands or other communications by the terms hereof required or permitted to be given by one party to another shall be given in writing by personal delivery or by fax or by first class mail, postage prepaid, addressed to such other party or delivered to such other party as follows:

- (a) to the Municipality at:  
The Corporation of the Municipality of Port Hope  
56 Queen Street  
Port Hope, ON L1A 3Z9  
Attn: Brian Gilmer, Municipal Clerk  
Email: bgilmer@porthope.ca
- (b) to the Owner at:  
c/o One Thompson Inc.  
10 Wanless Avenue, Suite 201  
Toronto, ON M4N 1V6  
Attn: Ezriel Y. Gestetner  
Email: ygestetner@plazacorp.com

or at such other address as may be given by any of them to the others in writing from time to time and such notices, requests, demands or other communications shall be deemed to have been received when faxed or delivered, or, if mailed seventy-two (72) hours after 12:01 a.m. on the day following the day of the mailing thereof, or if emailed, upon confirmation of receipt.

**60. REGISTRATION OF AGREEMENT**

The Owner hereby consents to the registration of this Agreement against the title of the Subdivision Lands.

**61. CANCELLATION OF AGREEMENT**

In the event that the Plan has not been registered within twelve (12) months of the date of execution of this Agreement by the Municipality, the Municipality may, at its option, on fifteen (15) days written notice to the Owner, declare this Agreement to be null and void and the Municipality may withdraw its final approval of the Plan.

**62. RENEGOTIATION OF AGREEMENT**

The Owner agrees that the Municipality may, at time or times, at its sole option, on fifteen (15) days written notice to the Owner, declare this Agreement to be subject to renegotiation (whereupon the Owner hereby agrees that construction or installation of the Works by or on behalf of the Owner shall cease until this Agreement has been renegotiated) in the event that:

- (a) construction or installation of the Works has not been substantially commenced within one (1) year from the date of this Agreement; or
- (b) construction or installation of the Works has been commenced but no substantial construction or installation of the said Works has occurred for a period of twelve (12) consecutive months.

In such event, the Owner agrees that the Municipality shall be entitled to register on title to the Subdivision Lands an Inhibiting Order or any other form of registration as may be appropriate to notify all persons having an interest in the Subdivision Lands (or any part thereof) of the situation described above and to control the sale or further sale of lots or blocks within the Subdivision Lands.

**63. ASSIGNMENT OF AGREEMENT**

The Owner shall not assign this Agreement or any of its obligations hereunder without the prior written consent of the Municipality.

**64. HEADINGS**

The headings in this Agreement are for the use of reference only and shall not be read or construed so as to abridge or modify the meaning of any provision in the main text of this Agreement.

**65. NO WAIVER**

The failure of the Municipality 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 Municipality may have and shall not be deemed to be a waiver of any subsequent breach or default of the terms, provisions, covenants and obligations herein contained.

**66. TIME OF ESSENCE**

Time shall be of the essence of this Agreement and every part hereof and no extension or variation of the provisions of this Agreement shall operate as a waiver of this provision.

**67. SEVERABILITY**

If any term or provision of this Agreement or the application thereof to any person shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to all persons other than those to whom it was held to be invalid or unenforceable shall not be affected thereby and each term and provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

**68. PLANNING ACT**

It is acknowledged that the Municipality is entitled, by virtue of *The Planning Act*, R.S.O. 1990, c.P.13, as amended, to enforce the provisions of this Agreement not only against the Owner but also against any and all subsequent owners of the Subdivision Lands or any part thereof.

**69. WEED CONTROL AND REMOVAL OF DEBRIS**

All weeds, grass and other similar growth on the Subdivision Lands shall be kept cut and under control by the Owner at its own expense. Further, the Owner shall keep the Subdivision Lands free from debris, waste building materials, tree stumps, discarded boulders and other similar materials. In the event that the Owner fails to comply with the requirements of this Section within seven (7) days of notice from the Director, Works and Engineering, then in such case the Municipality shall have the right to enter on the applicable lands to undertake the necessary works and to deduct the costs of same from the Performance Guarantee or Maintenance Guarantee or to seek any other remedy available to the Municipality including the provisions of Section 446 of the Municipal Act, 2001, S.O. 2001, c.25 as amended.

**70. SPECIAL PROVISIONS**

- (a) The Owner shall, prior to final approval of the Plan, enter into any servicing agreements as may be required by utility companies for the installation of any of the Utilities to serve the Subdivision Lands, to the satisfaction of the Municipality and the appropriate utility company.
- (b) The Owner agrees that civic addresses shall be assigned by the Municipality and the civic addresses shall be appropriately posted by the Owner in accordance with the Municipality's requirements.
- (c) The Owner covenants to notify the Ministry of Tourism, Culture and Sport immediately if, during the development of the Subdivision Lands, the presence of any archaeological resources is revealed.
- (d) Prior to final approval, the Owner shall:
  - i) Submit a Water Modelling Report to the satisfaction of the Director, Works and Engineering;
  - ii) Submit a Construction Traffic Management Plan, including dust control, to the satisfaction of the Director, Works and Engineering;
  - iii) Obtain a letter from the Historic Waste Management Office that the schedule of the excavation phase of construction is in accordance with the Construction Monitoring Program. This shall include road, sewer and lot development excavations. And further, the Owner agrees to contact the Historic Waste Management Office to implement the scheduled monitoring of excavations referred to above. All excavations are to be carried out in accordance with the requirements of the Historic Waste Management Office.

The Owner further agrees to provide the Municipality and any relevant Federal or Provincial authorities with proof of the inspections and the results thereof, promptly upon completion of the inspections. In the event that levels exceed the permitted levels at any stage, all work and/or use shall cease until remedial action is agreed upon between the Owner and the authorities responsible, and carried out so that permissible levels are again achieved.

- iv) Management of soils is an important consideration for the protection of the Environment. It is agreed that the Owner shall prepare a Soils Management Plan (SMP) in accordance with MOECP regulations and to the satisfaction of the Director, Works and Engineering to ensure that all soils leaving or entering the Subdivision Lands will be certified by a Professional Engineer licensed to practice in the Province of Ontario and demonstrate that the soils are being managed to protect the environment. The SMP shall be provided to the Municipality of Port Hope prior to commencement of any on or off site works and the Owner agrees to provide QA/QC verification documentation to the Municipality and/or MOECP when requested.
- v) Provide written confirmation from a telecom company that satisfactory arrangements, financial and otherwise, have been made with Bell Canada for any Bell Canada facilities servicing this plan of subdivision which facilities are required by the Municipality of Port Hope to be installed underground.
- vi) Prepare a composite utility plan that allows for the safe installation of all utilities, including required separation between utilities, to the satisfaction of the utility providers.
- vii) The Owner agrees to carry out, or to cause to be carried out all of the works, controls and other matters recommended in the report titled "Servicing and Stormwater Management Report" Prepared by Croziers & Associates Inc. Dated May 2020 – The Owner covenants and agrees that all such works and controls shall be in place and operational prior to the initiation of any grading or construction on the Subdivision Lands and shall remain in place and in good repair during construction within the Subdivision Lands, until such time as the site has been adequately stabilized and re-vegetated. The Owner further agrees to maintain all erosion and siltation control devices in good repair during the construction period in a manner satisfactory to the GRCA.
- viii) The Owner covenants and agrees to provide the Municipality of Port Hope with evidence that satisfactory arrangements, financial and otherwise, have been made with Canada Post Corporation for the installation of Community Mail Boxes (CMB) as required by Canada Post Corporation and as shown on the approved engineering design drawings/Draft Plan, at the time of sidewalk and/or curb installation. 2107401 Ontario Inc. further covenants and agrees to provide notice to prospective purchasers of the locations of CMBs and that home/business mail delivery will be provided via CMB, provided 2107401 Ontario Inc., has paid for the activation and equipment installation of the CMBs.
- ix) The Owner agrees to satisfy the following requirements of Canada Post Corporation and the Municipality with respect to the provision of mail delivery to the Subdivision Lands and the provision of community mailbox locations.
  - (i) Developer timeline, obligations and installation:
    1. The owner shall advise Canada Post as to the excavation date for the first foundation/first phase as well as the date development work is scheduled to begin.

2. If applicable, the Owner shall ensure that any street facing installs have a pressed curb or curb cut.
3. If applicable the Owner shall ensure that any condominiums apartments with more than 100 units, incorporates a mailroom with rear loading lock box assemblies (mailboxes).
4. The Owner shall advise Canada Post as to the expected first occupancy date and ensure the future site is accessible to Canada Post 24 hours a day.

(ii) Additional Developer Requirements:

1. The Owner will consult with Canada Post and the Municipality of Port Hope to determine suitable permanent locations for the Community Mail Boxes or Lock box Assemblies (Mail Room). The Owner will then indicate these locations on the appropriate servicing plans.
  2. The Owner agrees, prior to offering any units for sale, to display a map on the wall of the sales office in a place readily accessible to potential homeowners that indicates the location of all Community Mail Boxes or Lock Box Assemblies (Mail Room), within the development, as approved by Canada Post.
  3. The Owner agrees to include in all offers of purchase and sale a statement which advises the purchaser that mail will be delivered via Community Mail Boxes or Lock Box Assemblies (Mail Room). The developer also agrees to note the locations of all Community Mail Boxes or Lock Box Assemblies (Mail Room), within the development, and to notify affected homeowners of any established easements granted to Canada Post to permit access to the Community Mail Boxes or Lock Box Assemblies (Mail Room).
  4. The Owner will be responsible for officially notifying the purchasers of the exact Community Mail Boxes location prior to closing of any home sales with specific clauses in the Purchase offer, on which the homeowner do a sign off.
  5. The Owner will provide a suitable and safe temporary site for a Community Mail Boxes upon approval of the Municipality of Port Hope (that is levelled with appropriate sized patio stones and free of tripping hazards), until curbs, sidewalks and final grading are completed at the permanent locations. Canada Post will provide mail delivery to new residents as soon as the homes or units are occupied.
  6. The Owner agrees to provide the following for each Community Mail Boxes or Lock Box Assemblies, and to include these requirements on the appropriate servicing plans (if applicable):
    - Any required walkway across the boulevard, per municipal standards
    - Any required curb depressions for wheelchair access, with an opening of at least two meters (consult Canada Post for detailed specifications)
- x) The Owner shall provide a Site Servicing Plan including water, sanitary sewer and storm sewer servicing, a Site Grading Plan and Pre/Post Drainage Plan satisfactory to the Director, Works and Engineering.
- xi) The Owner covenants and agrees that all Agreements of Purchase and Sale for every lot and block within the Subdivision Lands shall contain the following clauses:

- (i) **NOTE:** Purchasers are advised that Canada Post will provide mail delivery service to the subdivision through centralized Community Mail Boxes (CMBs) that may be located in several locations within this subdivision;
  - (ii) **WARNING:** Purchasers are advised of location of street furniture, utilities and other appurtenances (manholes, catchbasins, transit shelters, hydro-transformers, Bell and cable TV, pedestals, fire hydrants, valves, etc.) at the time of purchase and sale within the Subdivision Lands.
  - (iii) **WARNING:** Purchasers are advised that the subject lands are located within an area of new development and the construction of services and new homes may result in dust, noise and vibrations which may affect the living environment of residents in the vicinity during such construction.
  - (iv) **WARNING:** Purchasers hereby acknowledge notice of the Port Hope Area Initiative and the Property Value Protection Program. Schedule "M" sets out some information with respect thereto. Additional information can be obtained through the contact details provided on Schedule "M". The Owner agrees to notify purchasers of lots of the Port Hope Area Initiative before a binding agreement of purchase and sale is entered into.
  - (v) **WARNING:** Purchasers are advised that the grading and drainage of the Subject Lands designed utilizing overland sheet flow and underground storage. It is the purchaser's responsibility to not block drainage by the construction of any fencing, decks, landscaping etc. Any proposed changes to the grading, by the purchaser, must be approved by the Municipality.
  - (vi) **WARNING:** Purchasers are advised that the property is in close proximity to the Ganaraska River, where trout and salmon migration occurs annually and results in strong odors and an increase in seagulls during this time.
  - (vii) **WARNING:** Purchasers and/or tenants are advised that this development will function as a common element condominium and all details and associated costs shall be presented in the sales office, and through marketing materials, etc.
  - (viii) **WARNING:** Purchasers are advised that the parcels of tied land (POTLs) will be serviced by private services and the Municipality has no obligations respecting the services.
  - (ix) **WARNING:** Purchasers are advised that the maintenance of the storm water management on site is the responsibility of the landowners.
- (e) The Owner covenants and agrees to carry out or cause to be carried out all measures and recommendations contained within the Construction Traffic Management Plan during the development of the Subdivision Lands.
- (f) In addition to the requirements set out in section 39 of this Agreement, the Owner acknowledges and agrees that no building permit shall be issued for the Subdivision Lands until such time as the Common Elements Condominium has been registered and Completion of the On-Site Works. In the event that the Municipality consents to registration of the Common Elements Condominium before Completion of the On-Site Works, prior to registration the Owner shall lodge with the Municipality a performance guarantee in the amount of one hundred percent (100%) of the cost estimate for the On-Site Works. The provisions of this Agreement relating to the Performance Guarantee shall be applied to this performance guarantee with such modifications as the context requires.

- (g) The Owner acknowledges and agrees that the Parcels of Tied Land (POTLs) will be serviced by private services and the Municipality has no obligations respecting the services.
- (h) The Owner agrees
- (i) to design and implement on-site erosion and sediment control;
  - (ii) to maintain all stormwater management and erosion and sediment control structures operating and in good repair during construction period, and
  - (iii) to obtain any additional permits pursuant to Ontario Regulation 168/06, as amended from time to time, that may be required as a result of any changes to the Plan, and/or as otherwise required.
- all to the satisfaction of the Director, Works & Engineering and the GRCA.
- (i) The Owner shall, a minimum of 30 days prior to occupancy of any building, prepare and maintain an area of compacted gravel to Canada Post's specifications to serve as a temporary Community Mailbox location, in a location a safe area away from construction activity in order that Community Mailboxes may be installed to service addresses that have occupied prior to the pouring of permanent mailbox pads.
- (j) The Owner covenants and agrees that should the well or private water supply of any person be impaired as a result of construction or the development of the subdivision, the Owner shall at its expense, either connect the affected party to municipal water supply system or provide a new well or private water system so that water supplied to the affected party shall be of a quality and quantity at least equal to the quality and quantity of water enjoyed by the affected party prior to the interference. All existing drilled and dug wells must be decommissioned by a licensed water well contractor and existing septic systems shall be decommissioned in accordance with current regulations. Proof of decommissioning for all wells and septic systems shall be provided to the Municipality.
- (k) The Owner agrees to follow the MAINTENANCE GUIDELINES FOR NEWLY PLANTED AND YOUNG TREES:
- Timing:
- Annually for two years after planting when included as part of a tender document
- Scope of Work:
- Removal of broken, damaged, dead or hazardous branches
  - Elevation of branches (pruning of lower branches to a height of approximately 2 meters)
  - Proper framing of crown (including but not limited to the pruning of double leaders and crossover branches)
  - Removal of root and trunk suckers
  - Removal of tree support stakes, wires and ties during the second year
  - Removal of trunk protective guards and wrapping on the day of planting
  - Leveling of water saucers and mulch where they still exist (except where maintained by adjacent landowners) and removed at the end of the second year (in the fall)
  - Removal of weeds and grass
  - Maintain or replace cedar mulch in a 1 meter circle, 10 cm thick in the form of a water saucer (except where maintained by adjacent landowner)
  - Collection and removal from the site of pruned material, sod or other debris
- Conditions:
- All pruning to be done to a standard normally accepted in the landscape and arboriculture trades or under the direct supervision of a qualified arborist
- (l) The Owner shall convey any easements that may be required by utility, telecommunication services, drainage, or servicing purposes to the appropriate authority.



- (m) The Owner agrees to design and construct all servicing requirements (roads, water, sanitary, storm, electrical, etc.) to the specifications of the approving authorities (the Municipality, Veridian Connections Inc., etc.) and the cost thereof shall be paid by the Owner.
- (n) The Owner shall provide proof of an "Offer to Connect" from Veridian Connections Inc., and agrees to protect any existing Veridian facilities during the construction of this Subdivision.
- (o) Without limiting the generality of the foregoing, the Owner shall, in writing, satisfy all the requirements, financial and otherwise, of the Municipality, including the provisions of roads, sidewalks, boulevards, installation of services, stormwater management and drainage.
- (p) The Owner agrees to advise the Historic Waste Management Office prior to commencement of excavation within the Plan and to coordinate with such office the monitoring of excavations within the Plan.

**71. STREET SIGNS**  
N/A

**72. INHIBITING ORDER**

The Owner hereby consents to the registration of an Inhibiting Order pursuant to Section 23 of The Land Titles Act, R.S.O. 1990, c. L.5, as amended from time to time, on the following terms and conditions:

- (i) The Inhibiting Order shall be registered against the lands described in Schedule A;
- (ii) The Inhibiting Order shall not be registered until this Agreement has been executed by all parties hereto; and
- (iii) The Inhibiting Order shall provide that the said Order is to be discharged forthwith upon the presentation by the Municipality to the Land Registrar of this Subdivision Agreement in registerable form and the registration of such transfers of lands and easements as may be required by this Subdivision Agreement.

It is acknowledged by the parties hereto that the purpose of this section is to prevent the conveyance of any lots within the Subdivision Lands until this Agreement has been registered on title and all easements, reserves and other lands to be conveyed in accordance with the provisions of this Agreement have also been registered on title.

**73. GOVERNING LAW**

This Agreement shall be read and construed in accordance with the laws of the Province of Ontario.

**74. GENDER**

In this Agreement, words importing the neuter gender shall include the feminine gender and masculine gender and vice versa and words importing the singular shall include the plural and vice versa where the context requires.

**75. SUCCESSORS**

This Agreement shall enure to the benefit of and be binding upon each of the parties hereto and its, his or her respective heirs, executors, administrators, successors, successors in title and permitted assigns.

**IN WITNESS WHEREOF** the parties hereto have hereunder set their hands and seals the day and year first above written, and the corporate parties hereto have hereunto affixed their corporate seals attested to by the hands of their proper officers duly authorized in that behalf.

**SIGNED, SEALED & DELIVERED**  
in the presence of:

) **THE CORPORATION OF THE  
MUNICIPALITY OF PORT HOPE**

) \_\_\_\_\_  
Per: Bob Sanderson, Mayor

) \_\_\_\_\_  
Per: Brian Gilmer, Clerk

) *I have authority to bind the Corporation.*

) **One Thompson INC.**

) \_\_\_\_\_  
Per: Ezriel Y. Gestetner, President

) *I have authority to bind the Corporation.*

THIS AGREEMENT has been authorized and approved by **By-law No. 39/2022** of the Corporation of the Municipality of Port Hope and passed the **7<sup>th</sup>** day of **June, 2022**.

**SCHEDULE "A"**  
**LEGAL DESCRIPTION**

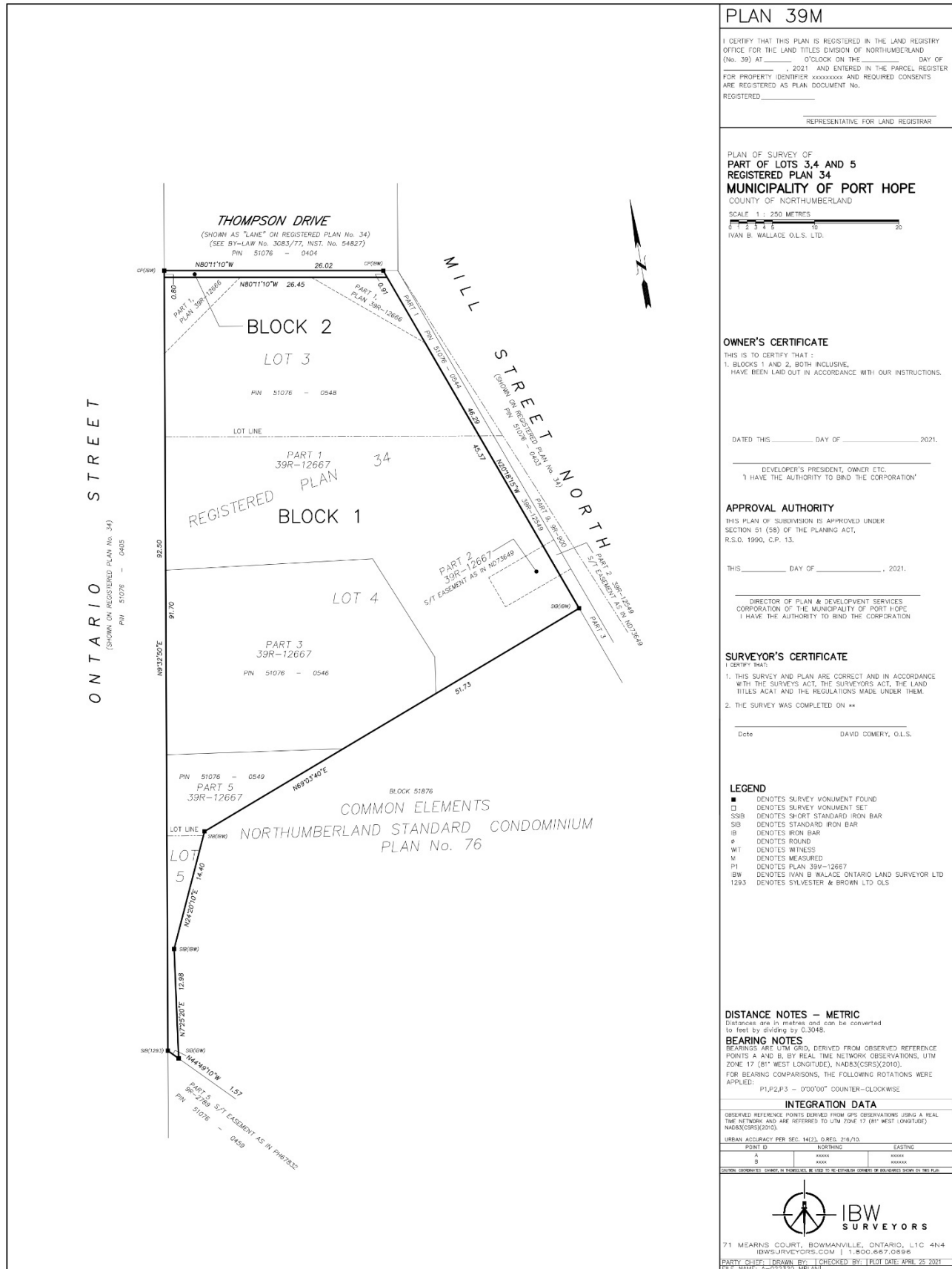
PIN 51076-0546 (LT), being Part Lot 4, Plan 34, designated as Part 3, Plan 39R-12667, Municipality of Port Hope, County of Northumberland.

PIN 51076-0548 (LT), being Part Lots 3 and 4, Plan 34, designated as Parts 1 and 2, Plan 39R-12667, and Part 1, Plan 39R-12666 Municipality of Port Hope, County of Northumberland.

PIN 51076-0549 (LT), being Part Lots 4 and 5, Plan 34, designated as Part 5, Plan 39R-12667 Municipality of Port Hope, County of Northumberland.

being Blocks 1 and 2, BOTH INCLUSIVE, ....., THE RESERVES, , PLAN 39M-\_\_\_\_\_; MUNICIPALITY OF PORT HOPE; COUNTY OF NORTHUMBERLAND.

# SCHEDULE "B" PLAN OF SUBDIVISION



**PLAN 39M**

I CERTIFY THAT THIS PLAN IS REGISTERED IN THE LAND REGISTRY OFFICE FOR THE LAND TITLES DIVISION OF NORTHUMBERLAND (No. 39) AT \_\_\_\_\_ O'CLOCK ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021 AND ENTERED IN THE PARCEL REGISTER FOR PROPERTY IDENTIFIER xxxxxxxx AND REQUIRED CONSENTS ARE REGISTERED AS PLAN DOCUMENT No. \_\_\_\_\_ REGISTERED \_\_\_\_\_

REPRESENTATIVE FOR LAND REGISTRAR

PLAN OF SURVEY OF  
**PART OF LOTS 3, 4 AND 5**  
**REGISTERED PLAN 34**  
**MUNICIPALITY OF PORT HOPE**  
COUNTY OF NORTHUMBERLAND

SCALE 1 : 250 METRES

IYAN B. WALLACE O.L.S. LTD.

**OWNER'S CERTIFICATE**

THIS IS TO CERTIFY THAT:  
1. BLOCKS 1 AND 2, BOTH INCLUSIVE,  
HAVE BEEN LAID OUT IN ACCORDANCE WITH OUR INSTRUCTIONS.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.

DEVELOPER'S PRESIDENT, OWNER ETC.  
I HAVE THE AUTHORITY TO BIND THE CORPORATION

**APPROVAL AUTHORITY**

THIS PLAN OF SUBDIVISION IS APPROVED UNDER SECTION 51 (5B) OF THE PLANNING ACT, R.S.O. 1990, C.P. 13.

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.

DIRECTOR OF PLAN & DEVELOPMENT SERVICES  
CORPORATION OF THE MUNICIPALITY OF PORT HOPE  
I HAVE THE AUTHORITY TO BIND THE CORPORATION

**SURVEYOR'S CERTIFICATE**

I CERTIFY THAT:

- THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEY ACT, THE SURVEYORS ACT, THE LAND TITLES ACT AND THE REGULATIONS MADE UNDER THEM.
- THE SURVEY WAS COMPLETED ON \*\*

Date \_\_\_\_\_ DAVID COMERY, O.L.S.

**LEGEND**

- DENOTES SURVEY MONUMENT FOUND
- DENOTES SURVEY MONUMENT SET
- SSB DENOTES SHORT STANDARD IRON BAR
- SB DENOTES STANDARD IRON BAR
- IB DENOTES IRON BAR
- # DENOTES ROUND
- WT DENOTES WITNESS
- M DENOTES MEASURED
- P1 DENOTES PLAN 39M-12667
- BW DENOTES IVAN B. WALLACE, ONTARIO LAND SURVEYOR LTD 11293
- DENOTES SYLVESTER & BROWN LTD OLS

**DISTANCE NOTES - METRIC**  
Distances are in metres and can be converted to feet by dividing by 0.3048.

**BEARING NOTES**  
BEARINGS ARE UTM GRID, DERIVED FROM OBSERVED REFERENCE POINTS A AND B, BY REAL TIME NETWORK OBSERVATIONS, UTM ZONE 17 (81° WEST LONGITUDE), NAD83(CSPS)(2010). FOR BEARING COMPARISONS, THE FOLLOWING ROTATIONS WERE APPLIED:  
P1,P2,P3 - 0°00'00" COUNTER-CLOCKWISE

**INTEGRATION DATA**

OBSERVED REFERENCE POINTS DERIVED FROM GPS OBSERVATIONS USING A REAL TIME NETWORK AND ARE REFERRED TO UTM ZONE 17 (81° WEST LONGITUDE) NAD83(CSPS)(2010).

URBAN ACCURACY PER SEC. 14(2), O.REG. 216/75:

POINT ID	NO. OF OBS.	EASTING
A	XXXX	XXXXX
B	XXXX	XXXXX

  
**IBW SURVEYORS**

71 MEARNS COURT, BOWMANVILLE, ONTARIO, L1C 4N4  
IBWSURVEYORS.COM | 1.800.667.0866

PARTY CHIEF: [ ] DRAWN BY: [ ] CHECKED BY: [ ] PLOT DATE: APRIL 25 2021  
FILE NAME: A-022320 (MPLAN)

**SCHEDULE "C"**

**APPROVED ENGINEERING DESIGN DRAWINGS**

<b>Drawing</b>	<b>Prepared by</b>	<b>Drawing No.</b>	<b>Final Revision Date</b>
<b>Civil Works</b>			
Removals Plan Erosion & Sediment Plan	Crozier & Associates	C01	May 20/2020
Site Servicing plan	Crozier & Associates	C02	May 20/2020
Site Grading Plan	Crozier & Associates	C03	Sept 17/2019
Pre-Development Drainage	Crozier & Associates	C04	May 20/2020
Post-Development Drainage	Crozier & Associates	C05	May 20/2020
Notes & Details Plan	Crozier & Associates	C06	May 20/2020
Standard Drawings	Crozier & Associates	C07	May 20/2020
<b>Landscape Works</b>			
Landscape Plan	Miriam L.R. Mutton	L1	Mar 2018

**SCHEDULE "D"**  
**EASEMENTS TO BE CONVEYED**

**None**

**SCHEDULE "E"**  
**LANDS TO BE CONVEYED**

**Municipality of Port Hope**

**0.8 METRES ALONG THOMPSON DRIVE FOR SIDEWALK**

Block 2 on Plan 39M-\_\_\_\_\_

**SCHEDULE "F"**

**WORKS**

<b>Drawing No.</b>	<b>Drawing Name</b>	<b>Description</b>
	<b>Civil Works</b>	
C01	Removals Plan Erosion & Sediment Plan	Existing Features and Sediment Maintenance Plan
C02	Site Servicing plan	Service Connections Locations & Details
C03	Site Grading Plan	Existing and Proposed grading Elevations
C04	Pre-Development Drainage	Existing Conditions
C05	Post-Development Drainage	Proposed Conditions
C06	Notes & Details Plan	Details for Construction
C07	Standard Drawings	Provincial & Municipal Standards
	<b>Landscape Works</b>	

*All of the above to the satisfaction of the Director, Works and Engineering.*



**SCHEDULE "G"**

**PHASING**

**Not Applicable**

## Schedule "H"

### **DUTIES OF OWNER'S ENGINEER**

(1) **DESIGN WORKS**

The Owner's Engineer shall design all of the Works.

(2) **PREPARE DRAWINGS, PLANS AND DOCUMENTS**

The Owner's Engineer shall prepare the following for the approval of the Director, Works and Engineering:

- (a) the Approved Engineering Design Drawings; and
- (b) the Site Grading, Pre and Post Development Drainage and Erosion & Sediment Control Plan; and
- (d) the Sequence of Construction of Works; and
- (e) the Works Cost Estimates.

The approval of the Director, Works and Engineering shall not absolve the Owner or the Owner's Engineer of the responsibility for any errors or omissions in the above drawings, plans or documents.

(3) **REPRESENT OWNER AND OBTAIN APPROVALS**

The Owner's Engineer shall act as the Owner's representative in all matters pertaining to the construction and installation of the Works and shall cooperate with the Municipality to obtain the necessary approvals for construction and installation.

(4) **PROVIDE RESIDENT LAYOUT AND FULL TIME RESIDENT INSPECTION**

The Owner's Engineer shall provide fully qualified layout and inspection staff to provide continuous service of the construction and installation of the Works and to perform the following:

- (a) provide field layout including the provision of line and grade to the contractors and, where required, re-staking; and
- (b) full time inspection of the construction and installation to ensure that all work is being performed in accordance with the contract documents; and
- (c) arrange for or carry out all necessary field testing of materials and equipment installed or proposed to be installed; and
- (d) investigate and report to the Director, Works and Engineering any construction changes and/or unusual circumstances which may arise during the construction and installations; and
- (e) obtain field information, during and upon completion of the construction and installation, required to produce the Final "As Built" Engineering Drawings.

(5) **MAINTAIN RECORDS**

The Owner's Engineer shall maintain all records pertaining to the construction and installation.

(6) **PROVIDE PROGRESS REPORTS**

The Owner's Engineer shall provide the Director, Works and Engineering with reports on the progress of the construction and installation on a monthly basis, or at such other interval as required by the Director, Works and Engineering.

(7) **PREPARE FINAL ENGINEERING DRAWINGS**

The Owner's Engineer shall prepare the Final "As Constructed" Engineering Drawings for the approval of the Director, Works and Engineering on such material and in such format as the Director, Works and Engineering shall require, included paper copy and digital copy.

(8) **LETTER FROM ENGINEER**

The Owner shall obtain a written acknowledgement from the Owner's Engineer addressed to the Municipality and filed with the Director, Works and Engineering to the following effect:

- (a) that the Owner's Engineer has received a copy of this Agreement and is aware of all of the terms and conditions contained herein;
- (b) that the Owner's Engineer will perform his or her services for the Owner in accordance with the terms of this Agreement; and
- (c) that the Owner's Engineer will keep the Director, Works and Engineering advised of any and all material facts, changes or developments, pertaining to the Subdivision Lands, the Plan, this Agreement or any default hereunder, and the contravention of any statute, regulation or by-law pertaining to the foregoing to the extent that he or she is aware of such contravention.

**SCHEDULE "I"**

**WORKS COST ESTIMATES**

<b>ITEM NO.</b>	<b>DESCRIPTION</b>	<b>COST ESTIMATE ON-SITE</b>	<b>COST ESTIMATE OFF-SITE</b>
1	Watermain Servicing (incl. PRV's, hydrants, appurtenances)	\$11,900	\$29,400
2	Sanitary Sewer Servicing (incl. manholes, appurtenances, safety grates)	\$40,000	\$16,000
3	Storm Sewer Servicing (incl. manholes, catchbasins, appurtenances)	\$45,500	\$11,250
4	Service Laterals (incl. water, storm, sanitary, curbstops, cleanouts, other)	\$55,400	
5	Water Utility Building (incl. booster station, backflow preventer, meters, other)	\$30,807	
6	Sanitary Pumping Station (incl. forcemain, mechanical / electrical, generator, other)	\$59,200	
7	Roadwork (incl. granulars, asphalt, curb, sidewalks, pavers, shouldering, linepainting, other)	\$53,870	\$44,020
8	Storm Water Management Facilities (incl. pond, oil/grit seperator)	\$42,133	
9	Streetlighting (incl. ductwork, pole base, cabling)	\$29,250	
10	Landscaping (incl. street/park furniture, gateway signs, vegetated buffer strips, garden walls, gazebos, roadway signage)	\$28,453	\$3,101
11	Rough grading (incl. sediment and erosion control, off-site haulage, stockpiling, overland flow routes)	\$91,450	
12	Fine grading (incl. topsoil, sod, swales, other)	\$1,874	
13	Other (incl. designated structures, bridges, retaining walls, guiderail, fencing, TCP, TPP)	\$2,471	
<b>A</b>	<b>SUB-TOTAL (Sum of Items 1 to 13)</b>	<b>\$492,307.00</b>	<b>\$103,771.00</b>
	<b>TOTAL ON-SITE and OFF-SITE COST</b>		<b>\$596,078.00</b>
<b>Notes</b>	1. Costs shall be prepared by a Professional Engineer		
	2. Costs shall be the estimated / tendered / actual value of constructed works (i.e. supply and installation)		
	3. On-site works shall exclude dwellings/buildings		
	4. Landscaping costs are the summation of Items 10 (on and off site), Item 12, and Item 13 = \$35,898.00		
	5. A 17% contingency was added to items 5, 9, 10, 12 and 13 to account for increase in construction costs due to Covid 19.		

## **SCHEDULE "J"**

### **REGULATIONS FOR CONSTRUCTION**

(1) **REQUIREMENTS FOR BLASTING**

The Owner shall, prior to commencing any blasting, obtain from the Director, Works and Engineering, permission to carry out the blasting operation. Any blasting operation shall be supervised on site by a qualified person. In addition, the Owner shall, prior to commencing any blasting, provide the Director, Works and Engineering with proof of insurance, which insurance shall comply with the requirements of this Agreement including the Schedule hereto entitled "Insurance Policies Required". The issuance of such a policy or policies 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.

(2) **DUMPING OF FILL OR DEBRIS**

The Owner agrees to neither dump, or permit to be dumped, any fill, debris or other material, nor to remove or permit to be removed, any topsoil or fill from any lands presently owned by or to be conveyed to the Municipality, without the written consent of the Director, Works and Engineering.

(3) **DISPOSAL OF CONSTRUCTION GARBAGE**

All construction garbage and debris from the Subdivision Lands must be disposed of in an orderly and sanitary fashion, at the expense of the Owner. The Owner agrees to deliver a copy of this Schedule entitled "Regulations for Construction" to each and every builder prior to obtaining a building permit within the Subdivision Lands.

(4) **QUALITATIVE AND QUANTITATIVE TESTS**

The Owner agrees that the Municipality may have qualitative or quantitative tests made of any materials or equipment installed or proposed to be installed on public lands. The costs of such tests shall be paid by the Owner.

(5) **MAINTENANCE, CLOSING AND USE OF EXTERNAL ROADS**

The Owner shall, at all times during the term of this Agreement, ensure that all public roads abutting the Subdivision Lands and all public roads used for access to the Subdivision Lands, during any construction on the Subdivision Lands, shall be maintained in a condition equal to that now existing and to the approval of the Director, Works and Engineering. If damaged, the Owner agrees to restore immediately, at its expense, such road to a condition equal to that existing at the time of such damage and to the approval of the Director, Works and Engineering. No public road shall be closed without the prior written approval of the authority having jurisdiction over such public road. The Owner agrees not to use or occupy any untraveled portion of any public road allowance without the prior written approval of the authority having jurisdiction over such public road allowance. All trucks making delivery to, or taking materials from, the Subdivision Lands shall be covered or loaded so as not to scatter such materials on any public road. In the event that any mud, dust, refuse, rubbish and/or other litter of any type resulting from the development of the Subdivision Lands is found upon highways outside of the Subdivision Lands, the Owner shall clean up same to the satisfaction of the Municipality within 24 hours of the giving of written notice to the Owner or its agent by the Municipality. If the Owner has not caused same to be cleaned up within 24 hours as aforesaid, it is agreed that the Municipality may, at its sole option, carry out the required clean-up work at the Owner's expense plus thirty percent (30%) of the total cost thereof for inconvenience caused to the Municipality.

All construction vehicles going to and from the Subdivision Lands shall use the access routes, if any, designated by the Director, Works and Engineering.

(6) **LAWN REPAIR**

Any damage to existing lawns whether on private or public property shall be reinstated by the Owner at its expense with nursery sod in accordance with the Municipality's specifications and to the satisfaction of the Director, Works and Engineering.

(7) **PONDING CONTROL**

The Owner agrees to carry out such grading and/or drainage works as may be necessary to prevent or eliminate the ponding of surface water or other conditions which may, in the opinion of the Medical Officer of Health, be favourable to the breeding of mosquitoes. This work shall be done before the month of June each year. No work shall be required from October to May.

SCHEDULE "K"

APPROVED FORM OF LETTER OF CREDIT

NAME OF BANK: \_\_\_\_\_ Date Issued: \_\_\_\_\_

Letter of Credit No. \_\_\_\_\_ Amount: \_\_\_\_\_

ISSUED SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICES FOR DOCUMENTARY CREDITS BEING ICC PUBLICATION UCP 500

TO: THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE  
56 Queen Street,  
Port Hope, ON L1A 3Z9

WE HEREBY AUTHORIZE YOU TO DRAW ON THE

\_\_\_\_\_  
(Bank)

\_\_\_\_\_  
(Address)  
for the account of ONE THOMPSON INC. up to an aggregate amount of  
\$ \_\_\_\_\_ (Canadian)  
available on demand.

PURSUANT TO THE REQUEST OF our customer, One Thompson Inc. we the  
\_\_\_\_\_, (Bank)

\_\_\_\_\_  
(Address)  
hereby establish and give you an Irrevocable Letter of Credit in your favour in the above amount which may be drawn on by you at any time and from time to time, upon written demand for payment made upon us by you, which demand we shall honour without enquiring whether you have the right as between yourself and our said customer to make such demand, and without recognizing any claim of our said customer, or objection by our said customer to payment by us. Partial drawings are permitted.

DEMAND shall be made by way of a letter signed by the Clerk of your Municipality under the corporate seal of the Municipality. Presentation shall be made to the  
\_\_\_\_\_ at, \_\_\_\_\_ (Bank)

\_\_\_\_\_  
(Address)  
We acknowledge that this Letter of Credit relates to those works, services and financial obligations set out in an Agreement between One Thompson Inc., and the Corporation of the Municipality of Port Hope relating to the development of lands  
.....  
....., Municipality of Port Hope, County of Northumberland.

This Letter of Credit will continue in force up to \_\_\_\_\_ (Date), 2022 (subject to the condition hereinafter set out) and you may call upon payment of the full or any partial amount outstanding under this Letter of Credit at any time or times up to that date. 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 aforementioned or any future expiration date hereof, unless thirty days prior to any such date we notify you in writing by registered mail that we elect not to consider this Letter of Credit to be renewed for any additional period. After receipt by you of such notice, you may draw on this Letter of Credit in full or in part.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
(NAME OF BANK)

\_\_\_\_\_  
(Authorized Signing Officer)

\_\_\_\_\_  
(Authorized Signing Officer)



## SCHEDULE "L"

### INSURANCE POLICIES REQUIRED

(1) **TYPES AND AMOUNTS OF COVERAGE REQUIRED**

Without restricting the scope of the indemnities required by this Agreement, the Owner shall obtain and maintain insurance of the character commonly referred to as public liability and property damage with an insurance company approved by the Municipality duly authorized by law to underwrite such insurance in the Province of Ontario. Such policy or policies of insurance shall indemnify the Municipality against all claims for loss, damage, injury or death directly or indirectly arising from or as a consequence of or in any way relating to any act or omission of the Owner or any officer, agent, servant, employee, workman, consultant, advisor or contractor of the Owner in the development of the Subdivision Lands, including without limiting the generality of the foregoing:

- (a) any loss or damage that happens to any of the Works or to any part or parts thereof; and
- (b) any loss or damage that happens to any of the materials or any of the equipment or vehicles or any other things used in the construction or installation of any of the Works or any part or parts thereof respectively; and
- (c) any injury or death to any person or persons; and
- (d) any loss or damage whatsoever that results from the storage, use or handling of explosives; and
- (e) any loss or damage that results from the drainage of surface waters on or from the Subdivision Lands; and
- (f) any loss or damage that happens to any public road or to any other property of the Municipality or to the property of any person.

The policy or policies of insurance shall name the Municipality as an Additional Insured and shall provide a minimum coverage of Five Million Dollars (**\$5,000,000.00**) per occurrence for bodily injury, death, and damage to property including the loss thereof.

The policy or policies of insurance shall provide "occurrence type" coverage, that is to say, the policy(ies) will cover any claims which may be presented at any time (subject to the Statute of Limitations) arising from an occurrence that happened within the policy period.

The policy shall not contain a deductible clause, provided however, if the policy does contain a deductible clause, the same shall be approved by the Municipality and the Owner shall provide an additional cash deposit to the Municipality in an amount to be determined by the Municipality. In the event of claims made against the Municipality to which the deductible applies, the Municipality shall appoint an independent adjuster to investigate such claim, and the finding of the independent adjuster shall authorize the Municipality to pay such claims deemed valid by such adjuster out of the additional cash deposit posted with the Municipality. In the event such additional cash deposits are deemed to be insufficient by the Municipality at any time and from time to time, the Owner hereby agrees to pay such additional cash deposits forthwith to the Municipality. All costs of the adjuster shall be borne by the Owner.

The said policy or policies of insurance shall be maintained at least until Certificates of Assumption for the Subdivision has been issued by the Municipality.

The issuance of such policy or policies of insurance shall not be construed to relieve the Owner from responsibility for other or larger claims for which it may be held responsible.

(2)

**EXEMPTIONS OF COVERAGE PROHIBITED**

The policy or policies of insurance shall contain no coverage exemptions or limitations for:

- (a) any shoring, underpinning, raising or demolition of any building or structure; or
- (b) any pile driving or caisson work; or
- (c) any collapse or subsidence of any building, structure or land from any cause.

If explosives are to be stored, handled or used in the development of the subdivision, then the policy or policies of insurance shall contain no coverage exemptions or limitations for storage, handling or use of explosives.

(3)

**OTHER CONDITIONS REQUIRED**

The policy or policies of insurance shall be endorsed to provide that the policy will not be altered, cancelled or allowed to lapse without sixty (60) days' written notice to the Municipality and the Owner.

The said policy or policies of insurance shall have no exclusion for blasting and must contain a twenty-four (24) month "completed operations" clause and "cross-liability" clause.

## SCHEDULE "M"



# FACT SHEET

## Port Hope Project

From 1932 to 1988, radium and uranium refining was Port Hope's major economic activity. In the 1980s, the federal government completed an initial environmental clean-up in Port Hope, removing contaminated materials to a storage facility in Chalk River, Ontario. Approximately 1.2 million cubic metres of historic low-level radioactive waste remained in the Municipality of Port Hope and was secured by the federal government

in licensed and unlicensed locations. Now, a community-driven project, called the Port Hope Area initiative, is underway to remove the remaining historic waste from various sites within the municipality and transport the waste to an engineered facility for long-term safe storage. The map at right identifies the long-term waste management facility site in Port Hope.

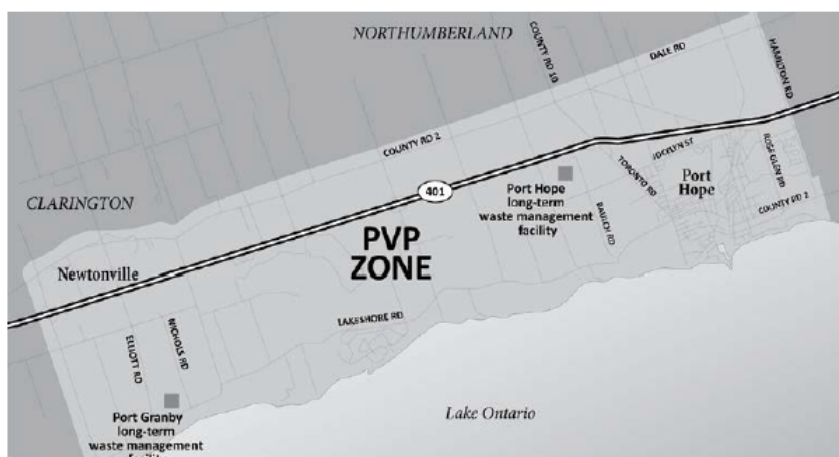
## The Property Value Protection Program

The Property Value Protection (PVP) Program is an integral part of the Legal Agreement between the Municipalities of Port Hope and Clarington and the Government of Canada. It was established to compensate eligible property owners within a defined PVP zone, for

financial losses relating to diminution of property value caused by the project. The PVP Program will remain in effect until two years past the completion of the Port Hope Long-Term Waste Management Facility.

### The PVP Zone

Owners of properties in the PVP Zone – the area shown on the map at right – are eligible to apply for compensation under the PVP Program. The PVP Zone boundaries are: on the west – a line 300 metres west of the western limit of Newtonville Road; on the north – a line 300 metres north of the northern limit of Durham Highway/County Road 2 and Dale Road; on the east – the eastern boundary of the Municipality of Port Hope; and on the south – the shoreline of Lake Ontario.



Following a comprehensive review of the program by the Government of Canada, changes to the program came into effect on June 1, 2016 which made the program easier for the majority of claimants. The renewed program reflects recommendations

made by the government and remains consistent with the Legal Agreement.

The two main changes to the program are increased clarity and transparency and a choice of two routes to file a claim.

### Additional Information

If you would like detailed information about the Port Hope Project or the Property Value Protection Program, please contact:

#### Historic Waste Program Management Office

115 Toronto Road, Port Hope, ON L1A 3S4 • 905.885.0291 • info@phai.ca • PHAI.ca



Canadian Nuclear Laboratories  
Laboratoires Nucléaires  
Canadiens

115 Toronto Road, Port Hope, ON L1A 3S4  
905.885.0291 • PHAI.ca • info@phai.ca

April 2018

**ACKNOWLEDGEMENT**  
**PORT HOPE AREA INITIATIVE**

I/WE \_\_\_\_\_ and \_\_\_\_\_  
Transferee (please print) Transferee (please print)

(hereinafter referred to as the "Transferee")

are acquiring \_\_\_\_\_  
Property description (Lot and Plan or Concession)

on \_\_\_\_\_  
Street Name

and hereby acknowledge notice of the Port Hope Area Initiative and the Property Value Protection Program. Additional information can be obtained from:

Port Hope Area Initiative Management Office  
25 Henderson Street  
Port Hope, ON L1A 0C6

Telephone: 905-885-8830

In the event of the resale of this property before 2023 the Transferee agrees to notify each purchaser of the Port Hope Area Initiative before a binding agreement of purchase and sale is concluded.

**DATED** at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 202\_\_\_\_\_

\_\_\_\_\_  
Signature of Transferee

\_\_\_\_\_  
Print Name of Transferee

\_\_\_\_\_  
Signature of Transferee

\_\_\_\_\_  
Print Name of Transferee