Properties

PIN	71238 - 0003 LT
Description	LOTS 1 TO 11, DONNINTON STREET (CLOSED BY JUDGES ORDER # 10W-4790) PLAN 272, LOTS 2 & 6 PT LOTS 1 & PT BLOCK A PLAN 136, PT 2,3,4, & 5 61R2943, S/T ROS645144 PARTIAL RELEASE OF EASEMENT AS TO PT 1, 61R2552 AS IN WC383725; GUELPH
Address	40 WELLINGTON ST W GUELPH

Consideration

Consideration $ 0.00

Applicant(s)

The notice is based on or affects a valid and existing estate, right, interest or equity in land

Name	THE CORPORATION OF THE CITY OF GUELPH
Address for Service	1 Carden Street GUELPH, ON N1H 3A1

This document is not authorized under Power of Attorney by this party.

This document is being authorized by a municipal corporation KAREN FARBRIDGE - MAYOR and BLAIR LABELLE - CITY CLERK.

Statements

This notice is pursuant to Section 71 of the Land Titles Act.

This notice is for an indeterminate period

Schedule: See Schedules

Signed By

Donna Marie Couto	1 Carden St. Guelph N1H 3A1	acting for Applicant(s)	Signed	2013 10 01

Tel 519-837-5637

Fax 519-822-0705

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

THE CITY OF GUELPH	1 Carden St. Guelph N1H 3A1	2013 10 01

Tel 519-837-5637

Fax 519-822-0705

Fees/Taxes/Payment

Statutory Registration Fee	$60.00
Total Paid	$60.00

SITE PLAN CONTROL AGREEMENT

This Agreement made this 27th day of September , 2013.

B E T W E E N:

2065404 ONTARIO INC.

(the "Owner")

AND

THE CORPORATION OF THE CITY OF GUELPH

("the City")

WHEREAS:

1. The Owner is the registered owner of the lands and premises municipally known as 40 Wellington Street West and legally described as Lots 1 to 11 inclusive, Donnington Street (Closed by Judges Order No. 10W-4790), Plan 272, Lots 2 and 6, and Part Lot 1 and Part Block A, Plan 136, designated as Parts 2, 3, 4 and 5, Reference Plan 61R2943, City of Guelph (the "Lands").

2. The Owner proposes to develop an urban retail development (the "Development") as shown on the plans, drawings and reports listed in section 2 of this Agreement.

3. The Owner covenants that there are no mortgages, charges or liens on the Lands.

4. The City requires the submission of plans and the execution of this Agreement pursuant to Section 41 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (the "*Planning Act*") and City By-law (1986)-12024, prior to the development of the Lands.

5. Subsection 41(1) of the *Planning Act* provides for the registration of Site Plan Agreements on title to the Lands.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the parties covenant and agree as follows:

RECITALS

1. The foregoing recitals are true and accurate and the terms defined therein shall bear the meanings indicated throughout this Agreement.

PLANS, DRAWINGS AND REPORTS

2. The following plans, drawings and reports shall be deemed to be a part of this Agreement:

SP1 – Site Plan
SP2 – Recycling Enclosure Plan & Elevations Site Sign Schedule
A01 – Elevations Building A
A02 – Elevations Building B
A03 – Elevations Building C
A04 – Elevations Building D
A05 – Elevations
L100 – Landscape Plan
L200 – Construction Details
L201 – Construction Details
L202 – Baseball Diamond Construction Details
V1 – Tree Inventory and Preservation Plan
SGD-1 – Site Grading, Drainage & Servicing Plan No. 1
SGD-2 – Site Grading, Drainage & Servicing Plan No. 2
TCP-1 – Site Access & Traffic Circulation Plan
CS-1 – Cross Sections Plan
ND-1 – Notes and Details Plan
TCP-1: - Site Access & Traffic Circulation Plan
E1 – Electrical Legend
E2 – Electrical Specifications
E3 – Electrical Site Plan Lighting
E3A – Electrical Site Plan Analysis
E3B – Electrical Site Plan Details
BEG_-PYN1H3R9.130A2 – D/S Illuminated Pylon Sign
Revised Stormwater Management Design Report
Arborist Report: 40 Wellington Street, City of Guelph, Ontario (October 11, 2012)
Letter dated August 14, 2013 issued by the Ministry of Natural Resources to the City of Guelph re: Proposed Project and the *Endangered Species Act, 2007*

3. In the event of a conflict between the plans, drawings and reports as listed in section 2 of this Agreement and any other plans, drawings and reports, the plans, drawings and reports as listed in section 2 and stamped "final approval" once final approval has been given by the City shall prevail.

PROHIBITION

4. The Owner agrees that no development or redevelopment will proceed or take place on the Lands except as shown on plans, drawings and specifications approved by the Site Plan Review Committee of the City as outlined in Section 2 above (hereinafter referred to as the "Site Development Plans"). For the purposes of this Agreement, "development" and "re-development" shall have the same meaning as prescribed at s.41 of the *Planning Act*.

CONFORMITY WITH SITE DEVELOPMENT PLANS AND CONDITIONS

5. Unless otherwise approved by the City pursuant to paragraph 4 of this Agreement, the Owner shall develop the Lands substantially in accordance with the Site Development Plans identified in section 2 of this Agreement and the conditions contained in sections 49 to 80 of this Agreement.

SECURITY

6. As a condition of approval of any Site Development Plans, the Owner shall provide the City with financial security in the amounts set out in Schedule "A" and in a form satisfactory to the City ("Security"), for the work as specified in Schedule "A" ("Secured Work"). The Security shall remain in effect until the Secured Work to which such Security relates has been completed in accordance with the requirements of this Agreement. In the event the Owner does not comply with the requirements related to the Secured Work under this Agreement, the City shall have the right to draw on the Security for such Secured Work, in whole or in part, from time to time, retain the money secured by such Security and apply such money for the sole purpose of completing the Secured Work to which the Security relates.

RELEASE OF SECURITY

7. Upon certification by the City's General Manager, Planning Services or his delegate that all conditions imposed by this Agreement relating to any Secured Work have been satisfied and provided the Owner is not in default with respect to any other provisions of this Agreement, the Owner shall be entitled to the release of the balance of the Security held by the City at the time of such certification in respect of such Secured Work. The City shall not be required to refund or account for any Security utilized by the City as a result of any default by the Owner under the provisions of this Agreement. If in the opinion of the City, the amount of the Security should be reduced to reflect partial completion of the Secured Work, the Owner may substitute a Security in the reduced amount and the City will return the earlier issued security in its possession to the Owner.

CONSULTANTS

8. The Owner shall retain the services of appropriate professional consultants including an architect, an engineer and a landscape architect, to supervise the installation and construction of the Development and to maintain records of the same, which records shall be made available to the City upon request, and to provide certifications to and as required by the City.

9. Immediately upon execution of this Agreement, the Owner shall advise the City in writing of the names of and contact information for its professional consultants and shall thereafter advise the City in writing of any change in the names of or contact information for its professional consultants within ten (10) days of any such change.

10. Upon completion of the Development, the Owner shall cause its professional consultants to certify to the City that the Development has been completed in accordance with the plans, drawings and reports listed in section 2.

11. If, following receipt of the certifications referred to in paragraph 10 of this Agreement, the City inspects the Lands and finds deficiencies of any nature whatsoever, the City shall notify the Owner, and the Owner shall remedy such deficiencies and shall cause its professional consultants to provide further certifications confirming that the deficiencies have been remedied.

GUIDELINES AND STANDARDS

12. Unless otherwise specified on the plans, drawings and reports listed in section 2, the Owner shall install and construct the Development in accordance with the guidelines of the City, Grand River Conservation Authority and any provincial or federal laws, regulations and standards.

CONSTRUCTION

13. The Owner shall undertake all construction activity on the Lands in such a manner so as not to unreasonably interfere with adjoining lands or traffic on adjacent streets. The Owner shall control all dust, mud and debris resulting from any construction activities and remove the same promptly from any municipal catch basin, manhole, sewer, ditch, culvert, roadway, boulevard or sidewalk. The Owner shall reimburse the City for any damage to any municipal services, facilities or works resulting from the development or redevelopment of the Lands, howsoever caused and the determination of the City's General Manager/City Engineer with respect to whether or not said damage was caused by the Owner or with respect to the extent of the damage shall be final and binding on all parties.

14. The Owner shall maintain in good repair and in a safe and clean condition the Lands, vegetation, structures, buildings, facilities, services, works and landscaping improvements on the Lands at his own expense and shall do all acts necessary to comply with and properly carry out and provide for the maintenance and use thereof, including the replacement or repair of broken, damaged or worn material or parts and the replacement of dead or deceased vegetation. The Owner shall further keep the Lands free and clear of all refuse, debris and obstructions. Without limiting the generality of the foregoing, and in addition to anything else contained herein, the Owner shall:

    a) Keep in a proper state of repair and operation the access roadways to the satisfaction of the City;

b) To rectify, replace or repair any part of the development not constructed in accordance with the Site Development Plans or in accordance with the "as constructed" drawings which the Owner hereby agrees to provide to the City upon completion of construction;

c) To do all maintenance and repairs pursuant to this Agreement as the Owner may be directed to do in writing by the City; and

d) Ensure all snow shall either be placed, stored or deposited on the Lands in accordance with the plans, drawings and reports listed in section 2.

FAILURE TO MAINTAIN OR PERFORM OBLIGATIONS

15. If, in the reasonable opinion of the City, the Owner is not adequately performing its obligations pursuant to this Agreement, or such obligations are not being performed expeditiously or in the best interests of the City, the City may, upon providing 10 days' written notice to the Owner respecting such non-performance, and an opportunity to rectify same within that time, enter upon the Lands and repair, replace or otherwise maintain the Lands at the Owner's expense.

16. The Owner hereby covenants and agrees that should it be in default of any of its obligations with respect to maintenance, without any limitation whatsoever, the City in its sole discretion may add any costs incurred by the City to fulfill or rectify such default to the tax roll for the Lands and that the City shall be permitted to collect such amount outstanding in the same manner as municipal taxes. The Owner further agrees that the amount outstanding shall accrue interest payable to the City in the same manner as taxes in arrears.

CONNECTIONS TO MUNICIPAL SERVICES

17. Relocation of any municipal services, facilities or utilities (including any curbs, gutters, catch basins, poles, bus shelters, manholes, telephone boxes, valves, drains, or transformers), whether owned by the City or any utility company, shall be carried out by the City or the utility company at the Owner's expense.

PARKING AREA

18. The parking spaces shall be laid out and clearly marked on the site by painted lines or such other method approved by the City in accordance with the Site Development Plans.

GARBAGE

19. The Owner shall store all garbage in the garbage storage facilities as shown on the Site Development Plans. If the garbage storage facilities are designed for the use of a bulk lift container, it shall be the Owner's responsibility to provide for such container and for the regular removal and replacement of the same as may

be reasonably required. In the event no garbage storage facilities are shown on the Site Development Plans, all garbage shall be stored indoors.

STORM WATER MANAGEMENT

21. The Owner agrees to develop and maintain the Lands, including the storm water management facilities designed by a Professional Engineer, in accordance with a site plan that has been submitted to and approved by the General Manager/City Engineer or his delegate. Furthermore, the Owner shall have the Professional Engineer who designed the storm water management system certify to the City that he/she supervised the construction of the storm water management system and that the storm water management system was built as it was approved by the City and is functioning properly.

INSPECTIONS

22. The Owner hereby grants permission to the City and its agents, contractors and employees to enter upon the Lands at any time or times to perform such inspections as may be reasonably necessary to determine whether the Development is in compliance with and continue to be in compliance with the provisions of this Agreement.

EMERGENCY REPAIRS

23. During the development of the Lands, the City and its agents, contractors and employees may enter upon the Lands at any time or times for the purpose of making emergency repairs to the Development. Such entry and repair shall not be deemed to be an assumption by the City of any liability in connection with the development of the Lands, nor a release of the Owner from any of its obligations under this Agreement.

ADDITIONAL WORKS

24. If at any time or from time to time during the development of the Lands, the City is of the opinion that, because of previously unknown or unforeseen conditions, it is necessary to supply, install or construct additional works in order to adequately provide services for the Lands or in order to prevent damage to any other lands, the Owner shall supply, install or construct such additional works at the request of the City.

DAMAGE

25. The Owner shall immediately repair any damage done to any property as a result of the development of the Lands.

26. If the Owner fails or neglects to immediately repair any damage done to any property as a result of the development of the Lands, the City shall be entitled to

draw upon the Security if the damage relates to the purpose of the Security and to use the proceeds thereof to repair such damage. In the event there is no Security applicable to the damage, the City shall be entitled to collect the costs and expenses incurred to repair the damage in a like manner as municipal taxes.

OWNER'S EXPENSE

27. The Owner acknowledges that where this Agreement obliges the Owner to perform any work or do anything it is to be done at the Owner's expense and not at the City's expense.

COSTS

28. The Owner shall pay to the City, forthwith upon demand, all costs and expenses incurred by the City, whether directly or indirectly, in connection with this Agreement and the approval of any Site Development Plans. Without limiting the generality of the foregoing, such costs and expenses shall include a charge for the processing of the Site Development Plans by the City, and all legal, surveying and engineering costs and the costs of any consultants retained by the City incurred in connection with this Agreement, the supervision of all of the works undertaken in connection therewith or in ensuring compliance with this Agreement and the registration thereof on title to the Lands.

INDEMNITY

29. Save and except for any actions, causes of action, suits, liens, claims, demands or costs arising out of any fault or neglect of the City, the Owner shall indemnify the City against all actions, causes of action, suits, liens, claims, demands and costs whatsoever which may arise either directly or indirectly as a result of the development of the Lands.

DEFAULT

30. In the event of any default by the Owner pursuant to any of the terms of this Agreement, in addition to any other remedies available to the City and without any limitation thereof, the City may:

a) draw on the Security in whole or in part for the purpose of the Security;
b) undertake or complete any obligation of the Owner hereunder;
c) enter upon the Lands through its servants or agents for any purpose whatsoever;
d) issue a stop work order with respect to any further development, re development or work upon the Lands; and
e) recover from the Owner all costs and expenses incurred by the City whether directly or indirectly, with respect to the default or the remedy

thereof and collect such costs and expenses in like manner as municipal taxes.

CONSTRUCTION LIEN ACT

31. The Owner shall comply with all of the provisions of the *Construction Lien Act,* R.S.O. 1990, c. C.30 as amended, including retention of all holdbacks and funds required. The Owner shall at its own expense, within ten (10) days of receiving written notice from the City to do so, pay or otherwise discharge or vacate any lien, charge or claim brought or registered pursuant to the Act (whether perfected or not) which affects any lands owned by the City or in which the City has an interest, and which arise out of the performance of this Agreement.

32. The Owner hereby indemnifies the City from and against all suits and claims of any nature arising out of or connected with the carrying out of the Owner's obligations pursuant to this Agreement and, particularly, against any claim(s) pursuant to the *Construction Lien Act.* This indemnity does not extend to the negligence of the City, its employees, agents or contractors.

33. Any reductions in the Security are subject to the provisions of the *Construction Lien Act* and the City shall retain a holdback either in accordance with the said Act or in accordance with the *Construction Lien Act* provisions of this Agreement.

34. The City may use all or part of the Security to pay, discharge, vacate and obtain and register a release of all charges, claims, liens, and all preserved or perfected liens, made, brought, or registered pursuant to the *Construction Lien Act* which affect any lands owned by the City including public highways in the event that the Owner defaults in respect of its obligations of this Agreement relating to the purpose of the Security.

OWNER'S EXPENSE

35. 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 unless the context otherwise requires.

FEES

36. Upon execution of this Agreement, the Owner shall pay to the City the fee for preparing the Agreement pursuant to the City's Planning Act Fees By-law.

REMEDIES

37. The rights and remedies provided for in this Agreement are in addition to and shall not limit the ability of the City to take such actions as may be available to it to ensure compliance with the requirements of this Agreement.

NOTICE

38. To be effective, a Notice must be in writing and delivered (a) personally, either to the individual designated below for that party, or to an individual having apparent authority to accept deliveries on behalf of that individual at its address set out below (b) by fax, (c) by registered mail; [or (d) by electronic mail], to the address [or electronic mail address] set out opposite the party's name below or to any other address [or electronic mail address] for a party as that party from time to time designates to the other parties in the same manner:

To the Owner at:

2065404 Ontario Inc.
481 University Avenue
Suite 303
TORONTO, ON M5G 2E9
Attention: Mehroze Mistry
T: 416-593-1366
F: 416-593-4530

To the City at:

City of Guelph,
1 Carden Street
Guelph ON N1H 3A1
Attention: General Manager, Planning Services
T: 519-822-1260
F: 519-822-4632

Any Notice is effective (i) if personally delivered, as described above, on the day of delivery if that day is a Business Day and it was delivered before 5:00 p.m. local time in the place of delivery or receipt, and otherwise on the next Business Day, (ii) if sent by fax, on the day of transmission if that day is a Business Day and the fax transmission was made before 5:00 p.m. local time in the place of delivery or receipt, and otherwise on the next Business Day, or (iii) if by registered mail, on the fourth Business Day following the day on which it is mailed, except that if at any time between the date of mailing and the fourth Business Day thereafter there is a disruption of postal service, Notice must be given by means other than mail, or (iv) if by electronic mail, on the day the sender receives confirmation of receipt by return electronic mail from the recipient, if that day is a Business Day and if the confirmation was received before 5:00 p.m. local time in the place of delivery or receipt, and otherwise, on the next Business Day.

REGISTRATION

39. The City shall be entitled to register this Agreement upon the title to the Lands at the Owner's expense and the Owner shall execute any document that may be required to allow such registration.

TAXES

40. Prior to commencing construction of the Development, the Owner shall pay any and all outstanding taxes.

RELEASE FROM AGREEMENT

41. The Owner, when not in default of this Agreement, shall be entitled to make application for a release in a form acceptable for registration. All applications for a release must include payment of the fee in effect at the time of the request.

COUNCIL DISCRETION

42. Notwithstanding any other provision of this Agreement, the Owner acknowledges and agrees that none of the provisions of this Agreement is intended to operate, nor shall have the effect of operating, in any way to fetter the Council of the City in the exercise of any of its discretionary powers. The Owner hereby acknowledges and agrees that it does not expect and shall not receive any advantageous planning or other consideration by virtue of it having entered into this Agreement or by virtue of the existence of this Agreement.

SEVERABILITY

43. The invalidity of any provision of this Agreement shall not affect any other provision of it, and, if any particular provision of this Agreement is declared to be invalid by a court or tribunal of competent jurisdiction, this Agreement shall be construed as if the invalid provision had been omitted.

GOVERNING LAW

44. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

HEADINGS

45. The headings in this Agreement are for convenience of reference only.

GENDER AND NUMBER

46. This Agreement shall be read with such changes in gender and number as the context may require.

COVENANTS

47. The covenants, agreements, conditions and undertakings contained in this Agreement on the part of the Owner shall run with the Lands and shall be binding upon them and upon the Owner's successors and assigns.

COUNTERPARTS

48. This Agreement may be signed in any number of counterparts, each of which is an original, and all of which taken together, constitute one single document.

Counterparts may be in an electronically scanned form. Parties transmitting electronically will also deliver the original counterpart to the other parties, but failure to do so does not invalidate this Agreement.

ADDITIONAL CONDITIONS

49. The Owner agrees to develop the site generally in accordance with the development concept plan and elevations attached as Attachment 6 to the June 5, 2012 Planning, Building, Engineering and Environment Report Number 12-57, and the Owner shall complete the following requirements to the satisfaction of the General Manager of Planning Services and the General Manager/City Engineer, prior to site plan approval:

a) The Owner agrees to complete all requirements of the GRCA and the Owner's approved Environmental Impact Assessment and all recommendations in the November 9, 2011 resolution of EAC, the January 18, 2012 resolution of RSAC and the Parks Planner comments dated March 13, 2012, all contained in Attachment 9 of the Planning, Building, Engineering and Environment Report 12-57 dated June 5, 2012, to the satisfaction of the General Manager of Planning Services and the General Manager/City Engineer.

b) The Owner agrees to complete all recommendations of the Urban Design Brief, dated August 22, 2011, by MSAi Architecture and Urban Design, as updated in consultation with City Staff, to the satisfaction of the General Manager of Planning Services and the General Manager/City Engineer. This shall include:

i. The Owner shall be encouraged to provide entrances and clear glazing on Wellington Street for all of the future leasable units within Building B;
ii. For the end units in Building B, the Owner shall be required to provide principle entrances with clear glazing at the corners of the building nearest Wellington Street;
iii. The two buildings proposed adjacent to Wellington Street West (Buildings A and B in Attachment 6) are allowed to be one (1) useable storey in height but must have the appearance of two storey buildings; and
iv. The two buildings proposed adjacent to Gordon Street (Buildings C and D in Attachment 6) are allowed to be one (1) storey in height, must appear to have two (2) storeys and will be constructed to allow for the future additional construction of a second useable storey.

50. Prior to site plan approval the Owner agrees to provide the City with written confirmation that the site will be developed and the buildings will be constructed

to a standard that supports the Community Energy Initiative to the satisfaction of the General Manager of Planning and Building Services and in accordance with the Community Energy Initiative Brief submitted by the applicant and attached as Attachment 6 to the June 5, 2012 Planning, Building, Engineering and Environment Report Number 12-57.

51. Prior to site plan approval and development of the site, the Owner agrees to submit a Remediation Summary Report to document the results of the site remediation activities completed by Rockwell Automation and recommendations for any further remediation, if necessary, and risk management measures to the satisfaction of the General Manager of Planning Services and the General Manager/City Engineer.

52. The Owner agrees to pay to the City, as determined applicable by the City's Director of Finance, development charges and education development charges in accordance with the City of Guelph Development Charges By-law (2009)-18729, as amended from time to time, or any successor thereof, and in accordance with the Education Development Charges By-laws of the Upper Grand District School Board (Wellington County) and the Wellington Catholic District School Board, as amended from time to time, or any successor thereof, prior to the issuance of any building permits, at the rate in effect at the time of the issuance of the building permit.

53. Prior to site plan approval, the Owner agrees to pay to the City cash-in-lieu of park land dedication in accordance By-law (1989)-13410, as amended from time to time, or any successor thereof.

54. The Owner agrees to be responsible for the design and cost of construction of demarcation for the site and all affected City property boundaries in accordance with the City of Guelph Property Demarcation Policy.

55. Prior to site plan approval, the Owner shall design a visual and aesthetic buffer where any parking lot or drive aisle abuts Royal City Park.

56. The Owner shall be responsible for the design and cost of construction of pedestrian connections through the Lands and onto the adjacent park land to City standards, as outlined in the Site Development Plans.

57. The Owner shall deed to the City, free of encumbrances and at no expense to the City, if required, any parcel of land for road widening or road improvement across the Gordon Street and the Wellington Street frontage of the Lands.

58. Prior to site plan approval, the preferred option for achieving an appropriate separation distance or mitigation of the nuisance of fly baseballs between the existing ball diamond and the parking spaces proposed on the City owned lands will be determined during the site plan approval process. The Owner will be responsible for the cost of design and development of such improvements including the cost of fencing from the backstop to the outfield limit along the east side of the ball diamond.

59. As identified in the Offer to Purchase Easements Agreement between the Owner and the City dated on or about the date hereof (the "Easement Agreement"), a portion of the parking spaces on the City owned lands will be signed and dedicated for park patron use.

60. The Owner agrees to make satisfactory arrangements with Union Gas for the servicing of the lands, as well as provisions for any easements and/or rights-of-way for their plants, prior to the development of the lands.

61. The Owner agrees that all electrical services to the lands are underground and the Owner shall make satisfactory arrangements with Guelph Hydro Electric Systems Inc. for the servicing of the lands, as well as provisions for any easements and/or rights-of-way for their plants, prior to the development of the lands.

62. The Owner agrees that all service to the lands shall be underground and the Owner shall enter into a servicing agreement with the appropriate service providers for the installation of underground utility services for the lands.

63. Prior to site plan approval, the Owner shall:

a) Submit all environmental site assessment, remediation and monitoring reports prepared in accordance with the Records of Site Condition regulation (O. Reg. 153/04, as amended) describing the current conditions of the property known municipally as 40 Wellington Street, to the satisfaction of the City;
b) Submit detailed design drawings and a Health and Safety Plan related to the implementation of the risk management measures to the satisfaction of the City; and
c) Submit the Record of Site Condition (RSC) and MOE acknowledgment letter for the RSC to the satisfaction of the City.

64. Prior to site plan approval, the Owner shall have a Professional Engineer design a grading plan and stormwater management system, satisfactory to the General

Manager/City Engineer.

65. Prior to site plan approval, the Owner shall provide to the City, to the satisfaction of the General Manager/City Engineer, final versions of any of the following studies, plans and reports that reflect the approved site plan, that may be requested by the General Manager/City Engineer:

a) a traffic impact study covering all aspects of access and egress to the site and the effect of the development on the surrounding roads including recommendations for improvements;
b) a site servicing and stormwater management report certified by a Professional Engineer in accordance with the City's Guidelines and the latest edition of the MOE's "Stormwater Management Practices Planning and Design Manual" which addresses the quantity and quality of stormwater discharge from the site together with a monitoring and maintenance program for the stormwater management facility;
c) a geotechnical report certified by a Professional Engineer to confirm groundwater elevations relative to the D-tanks; and
d) a detailed erosion and sediment control plan in accordance with the Grand River Conservation Authority Guidelines, certified by a Professional Engineer that indicates the means whereby erosion will be minimized and sediment maintained on-site throughout all phases of grading and construction.

The Owner shall, to the satisfaction of the General Manager/City Engineer, address and be responsible for adhering to all the recommended measures contained in the plans, studies and reports outlined in subsections (a) to (d) inclusive, of this clause.

66. Notwithstanding Section 17, the following contribution towards roadworks and municipal services represents the full extent of the Owner's expense for such costs. Prior to site plan approval, the Owner covenants and agrees to pay to the City the amount of $375,000 representing the Owner's share of the cost of improvements, modifications and reconstruction to be completed by the City to Gordon Street, Wellington Street, the intersection of Gordon Street and Wellington Street, the intersection of Wellington Street and Dublin Street. The Owner acknowledges that notwithstanding that some of the above-noted services may be external to the Lands, it derives benefit from the construction and provision thereof and that the development proposed hereunder could not be accommodated without the existence of such services.

67. Prior to public access to the development, the reconstruction of roadwork

outlined in Section 66 shall be substantially completed to the satisfaction of the General Manager/City Engineer.

68. The Owner agrees to pay to the City, the actual cost of constructing and installing the service connections required and furthermore, prior to construction and issuance of a building permit, the Owner shall pay to the City the estimated cost of the service laterals, as determined by the General Manager/City Engineer.

69. The Owner agrees to construct the new buildings at such an elevation that the lowest level of the new buildings can be serviced with a gravity connection to the sanitary sewer.

70. Prior to site plan approval, the Owner shall apply to the City for an easement and/or right-of-way, to be registered on title at the Owner's expense, in favour of 40 Wellington Street, to facilitate the proposed sanitary and storm sewer and for the proposed off-street parking located on the City Lands.

71. Prior to site plan approval, the Owner shall enter into a cost sharing/easement agreement with the City, to be registered on title at the Owner's expense, for the cost sharing including maintenance, between the Owner and City for the use of the City Lands for off-street parking and for the access to the development property.

72. Within a reasonable period of time from the Owner of the property municipally known as 87 Gordon Street (the "87 Gordon Owner") submitting an application for redevelopment of such property to the City, and making a formal request to the Owner that it requires an easement over the Lands in order to redevelop 87 Gordon Street, the Owner shall register on title to the Lands, to the satisfaction of the City Solicitor and City Engineer, acting reasonably, an access easement in favour of the 87 Gordon Street property providing for vehicular and pedestrian access from the 87 Gordon Street property across the Lands in keeping with the alignment identified on drawing SP-1 as 'Future Easement' (the "Easement"). The registration of such Easement shall be subject to the negotiation and agreement of an appropriate payment for a share of the costs to construct and maintain the use of these facilities and reciprocal rights of easement to roads and access. The Owner agrees to act reasonably and negotiate in good faith in the event such Easement is required. The 87 Gordon Owner will be expected to conduct itself in the same manner. If within six (6) months of the 87 Gordon Owner submitting an application for redevelopment to the City of Guelph, the Owner and the 87 Gordon Owner are unable to reach an agreement as to the terms and conditions of the Easement, the Owner, upon request of the City of Guelph, agrees to enter into arbitration with the 87 Gordon Owner as a means of

settling any outstanding terms and conditions with the respect to the Easement pursuant to the *Arbitration Act* (Ontario).

73. Prior to construction, any monitoring wells and boreholes drilled for hydrogeological or geotechnical investigations shall be properly abandoned in accordance with current Ministry of the Environment (MOE) Regulations and Guidelines. The Owner shall submit a Well Record to the satisfaction of the General Manager/City Engineer. Additionally, copies of all Well Abandonment Records shall be submitted by the Owner to the MOE in accordance with O. Reg. 903 as amended and a site plan with the remaining and replacement monitoring wells and groundwater extraction and treatment system identified to the satisfaction of the City.

74. The Owner agrees to provide tree protection fencing and undertake Root-sensitive Excavation supervised by a certified arborist in accordance with the 40 Wellington Street Arborist Report (October 11, 2012) and the Site Development Plans prior to any work (including but not limited to grading, servicing and foundation excavation) occurring on site.

75. All excavation and/or grading work performed by, or on behalf of, the Owner within tree protection zones or within tree drip-lines (as shown on V1 - Tree Inventory and Preservation Plan) must be root-sensitive excavation and supervised by the Owner's certified arborist. After such root-sensitive excavation has been completed, if the Owner's certified arborist is of the opinion that any of the trees identified as tree K, L, M, N, O, P, Q, P1, P2, P4, P5 or P6 on V1 - Tree Inventory and Preservation Plan (collectively, the "Root Sensitive Trees") have been damaged to such an extent that the same need to be removed, then the Owner, at its sole cost and expense, shall remove such trees in accordance with applicable law and the City shall be entitled to draw $500 from the Security for each such tree that is removed as compensation for the removal of tree. For each of the Root Sensitive Trees that is in a condition satisfactory to the City's General Manager, Planning Services or their delegate on the date that is two years from the date of substantial completion, the City shall release $500 from the Security to the Owner.

76. The Owner shall ensure that the two (2) trees straddling the eastern boundary of the Lands are removed in accordance with applicable law, and, notwithstanding the generality of other indemnification provisions of this Agreement, the Owner specifically indemnifies the City against all actions, causes of action, suits, liens, claims, demands and costs whatsoever which may arise either directly or indirectly as a result of this requirement for removal of the trees.

77. The Owner covenants and agrees to provide, construct and install at its sole cost (including design and development costs) the following off site works (collectively, the "Off Site Park Works"):

a. fencing from the backstop to the outfield limit along the east side of the ball diamond located on the park adjacent to the Lands as shown on the Site Development Plans;
b. pedestrian connections through the Lands and onto the adjacent park land to City standards as shown on the Site Development Plans; and
c. any other works external to the Lands that are included on the Site Development Plans as items to be completed by the Owner. For greater certainty, the Off Site Park Works shall not include any works located on lands for which the Owner will obtain easement(s) from the City pursuant to the Easement Agreement (the "Easement Works")

The Owner acknowledges that notwithstanding that the Off Site Park Works and Easement Works may be external to the Lands, it derives benefit from the construction and provision thereof and that the Development proposed hereunder could not be accommodated without the existence of such services. Notwithstanding that the Off Site Park Works and Easement Works are external to the Lands, the Owner acknowledges that all provisions of this Agreement apply to the Off Site Park Works and Easement Works *mutatis mutandis*.

78. The Owner shall not commence construction of any of the Off Site Park Works until:

a. the Owner has provided to the satisfaction of the City: (i) a certificate of comprehensive general liability insurance in an amount of not less than $5,000,000.00 which identifies the City as an additional named insured; (ii) the Owner's contractor's health and safety policy; and (iii) the Owner's contractor's Workplace Safety & Insurance Board certificates, each of which shall be maintained by the Owner's contractor during the entire period of construction of the Off Site Park Works and any applicable warrantee periods;
b. the Owner has submitted to the City the backstop shop drawing and specifications and the same have been approved by the City;
c. the Owner shall provide at least ten (10) business days prior written notice to the City before commencing construction of the any of the Off Site Park Works; and
d. the City has provided its written consent to commence construction of the Off Site Park Works.

79. The Off Site Park Works shall be constructed by the Owner in accordance with

the following provisions:

a. The Owner shall be responsible for park user safety protection and circulation control within and around the work area related to the Off Site Park Works;
b. The Owner shall invite the City to all construction meetings related to the Off Site Park Works;
c. All Off Site Park Works shall be completed, including all restoration and sod establishment, prior to May 1, 2014 and prior to opening of the Development to the public with the exception of the installation of asphalt on the pedestrian paths which shall be completed prior to May 31, 2014; and
d. The Owner guarantees the workmanship and materials for the construction and installation of the Off Site Park Works to be free from defects for a period of two (2) years.
e. Upon completion of the Off Site Park Works to the satisfaction of the City, the Off Site Park Works shall become the property of the City, subject only to maintenance related to the landscape plant material warranties and any other warranties related to the Off Site Park Works outlined in the Site Development Plans.

80. The Owner shall provide the City with the Security as set out in Schedule "A" in connection with the completion of the Off Site Park Works. Upon the Off Site Park Works being completed and subject to the provisions of Section 7, 50% of the Security for the Off Site Park Works shall be released by the City to Owner upon the Off-Site Park Works having been completed and inspected by the City, and all deficiencies identified by the City have been remedied. Subject to the provisions of Section 7, the remaining 50% of the Security for the Off Site Park Works shall be released by the City to the Owner at the end of the two (2) year warranty period for the Off Site Park Works upon the City inspecting the Off Site Park Works, and all deficiencies identified by the City have been remedied.

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81. Notwithstanding anything else contained in this Agreement, the issuance of site plan approval by the City shall serve as confirmation that all the additional conditions in this Agreement that are to be met "prior to site plan approval" have been satisfactorily fulfilled.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

SIGNED, SEALED AND DELIVERED

In the presence of:

2065404 ONTARIO INC.

A.S.O.

Name:
Title: CHAIR A.J. BENNETT

Name:
Title:

I/We have authority to bind the Corporation.

THE CORPORATION OF THE CITY OF GUELPH

KAREN FARBRIDGE – MAYOR

BLAIR LABELLE – CITY CLERK

Dated and Signed at the

City of Guelph, this 01 day of OCTOBER, 2013.

SCHEDULE "A"

LIST OF SECURITY

Secured Work	Amount ($)
Landscaping work in accordance with the Site Development Plans	$27,125
Root sensitive excavation as required by Section 75	$500 per applicable tree, for a total of $6,000.00
Off Site Park Works	$134,430