

Bill No. 390  
2014

By-law No. A.-\_\_\_\_\_

A By-law to authorize an Option Agreement between The Corporation of the City of London and IO Industries Inc., to authorize the Mayor and City Clerk to execute the Agreement.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS it is deemed expedient for The Corporation of the City of London (the "City") to enter into an Option Agreement with IO Industries Inc., (the "Option Agreement");

AND WHEREAS it is appropriate to authorize the Mayor and City Clerk to execute the Option Agreement on behalf of the City;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Option Agreement attached as Schedule "A" to this By-law, being an Option Agreement between the City and IO Industries Inc. is hereby AUTHORIZED AND APPROVED.
2. The Mayor and City Clerk are authorized to execute the Option Agreement authorized and approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on September 2, 2014.

J. Baechler, Mayor

Catharine Saunders  
City Clerk

First reading – September 2, 2014  
Second reading – September 2, 2014  
Third reading – September 2, 2014

OPTION TO PURCHASE

THIS OPTION AGREEMENT dated the \_\_\_\_\_ day of August, 2014.

Between:

THE CORPORATION OF THE CITY OF LONDON

Hereinafter called the **OPTIONOR**

- and -

IO INDUSTRIES INC., IN TRUST FOR A CORPORATION TO BE INCORPORATED

Address: 12-1510 Woodcock Street, London, ON N6H 5S1

Hereinafter called the **OPTIONEE**

WHEREAS the Optionor is the registered owner of an estate in fee simple in the lands hereinafter referred to;

AND WHEREAS the Optionee requires title in fee simple, free and clear of all liens, claims, charges or encumbrances to the lands of the Optionor described as a 1.65 acre portion, more or less, subject to survey, of northerly portion of Lot 15, 16 & 17 on Plan 33R-17397, in Skyway Industrial Park, Phase II, in the City of London, County of Middlesex and shown outlined in red on the plan attached hereto as Schedule "A" hereinafter referred to as the Lands;

AND WHEREAS the Optionor has agreed to sell the Lands to the Optionee and the Optionee has agreed to purchase the lands from the Optionor upon the terms and conditions hereinafter set forth;

NOW THEREFORE this agreement witnesseth that in consideration of these presents, and in consideration of the payment or payments made or to be made to the Optionor by the Optionee in accordance with the provisions of the agreement, the Optionor agrees to sell to the Optionee and the Optionee agrees to purchase from the Optionor the Lands upon the terms and subject to the conditions hereinafter set forth in respect of which the Optionor and the Optionee respectively covenant and Agree as follows:

1. The Optionee shall have the right at any time prior to **December 31, 2016** (the "Expiry Date") to deliver a notice to the Optionor specifying a date for completion of the transaction of purchase and sale contemplated hereby. The date for completion ("Closing") specified in such notice from the Optionee to the Optionor shall be no less than 30 days and no more than 60 days after the date of such notice. If the Optionee does not give such a notice prior to the Expiry Date then this Agreement shall terminate and neither the Optionor nor the Optionee shall have any further obligations hereunder.
2. The purchase price for the Lands shall be **Sixty-Five Thousand Dollars (\$65,000.00) per acre**. The purchase price shall be paid by cash or cheque of lawful money of Canada as follows:
  - (a) Two Dollars (\$2.00) to be paid within ten (10) days of the date of execution of this agreement by the Optionee as a non-refundable deposit on account of the purchase price, the receipt of which is hereby acknowledged by the OPTIONOR;
  - (b) a further deposit of Six Thousand Five Hundred Dollars (\$6,500.00) (10% of purchase price) to be paid on account of the purchase price by the Optionee upon delivery of the notice referred to in paragraph 1 of this agreement;

- (c) the balance of the purchase price shall be paid by the Optionee on Closing, less the amount of deposits made under paragraphs 2(a) and 2(b) of this agreement.

3. The Optionor shall on Closing execute and deliver to the Optionee a good and valid deed or Transfer (the "Conveyance") of the Lands in appropriate form for registration in the land registration office where the Lands are recorded in order to enable the Optionee to be registered as owner in fee simple of such Lands and the Optionor covenants with the Optionee that it will execute such further assurances of the Lands as may be requisite. The Optionee agrees to be bound by the Policy of the Corporation of the City of London with respect to the sale and / or transfer of City-owned industrial land, which Policy is attached hereto as Schedule "A" to this Option, it being the intent of the parties hereto that the provisions of the said "Policy" shall survive closing of this transaction to such extent as may be required to give effect to the said Policy. As a condition of this Option, the Optionee agrees to accept a Deed with respect to the land herein described in a form sufficient to give effect to the said Policy.

4. The Optionor covenants, represents and warrants that title to the Lands is, and on Closing will be, good and free from all encumbrances. If prior to Closing any valid objection to title or to the fact that the proposed use of the Lands by the Optionee may not lawfully be undertaken is made in writing to the Optionor and which the Optionor is unable or unwilling to remove, remedy or satisfy and which the Optionee will not waive, this agreement, notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and, notwithstanding the provisions of paragraph 2 of this agreement, all monies therefore paid shall be returned to the Optionee without interest or deduction and the Optionor shall not be liable for any costs or damages.

5. The Optionor covenants to the Optionee that it has the right to convey the Lands to the Optionee notwithstanding any act of the Optionor and that the Optionee shall have quiet possession of the lands free from all encumbrances from and after Closing.

6. The Lands and any other things being purchased shall be and remain until Closing at the risk of the Optionor. Pending Closing, the Optionor shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, the Optionee may terminate this agreement or else take the proceeds of any insurance and complete the purchase.

7. The Optionee acknowledges and understands that should the Optionor receive at any time prior to the Expiry Date, a bona fide unconditional offer to purchase the Lands, for a sum in cash exceeding the amount as set out in paragraph 2 of this agreement, the Optionee shall have the right to:

- (a) within thirty (30) days of the date of receipt of notice from the Optionor of a higher offer to increase the purchase price payable under paragraph 2 of this agreement to match the higher offer and upon exercising this right, this agreement shall continue in full force at the new purchase price;
- (b) within thirty (30) days of the receipt of notice from the Optionor of a higher offer to forthwith deliver notice to the Optionor pursuant to paragraph one (1) of this agreement specifying the date of completion of the transaction of purchase and sale contemplated by this agreement, or;
- (c) within thirty (30) days of the receipt of notice from the Optionor of a higher offer to forthwith delivery notice to the Optionor that it does not intend to exercise its right under Subparagraphs 7 (a) or 7 (b). Upon receipt of such notice the Optionor shall be free to enter into an agreement of purchase and sale with a person submitting the bona fide unconditional offer. This agreement shall terminate upon the completion of the sale as provided for in the agreement of purchase and sale except that if an agreement of purchase is not entered into or the sale as provided for in the agreement of purchase and

sale is not completed, then this agreement shall continue in full force and the purchase price shall remain the same as the purchase price in effect prior to the bona fide offer.

The Optionor shall enclose a copy of the bona fide unconditional offer with notice to be given by it to the Optionee pursuant to Subsection 7(a), (b) and (c).

8. The Optionor represents that it is a public service body as defined in Section 123(1) of the Excise Tax Act. The sale of the property subject to this agreement is an exempt supply except when the purchaser is an individual or an unincorporated business enterprise. All Harmonized Sales Tax (HST), if any, which may be payable in connection with this transaction shall be in addition to and not included in the Purchase Price. The Optionee is a HST Registrant and will account for its HST liability, if any, in accordance with Subsection 228(4) of the Excise Tax Act.

9. The Optionor shall pay all charges including, without limitation, taxes (including local improvements) levied against the Lands up to and including Closing and the Optionee shall pay all said taxes after that date.

10. The parties hereto acknowledge each with the other that neither execution nor registration of the Conveyance, nor the issuance of title to the Optionee, shall supersede, cancel or in any way render unenforceable any of the provisions of this agreement.

11. The Optionor represents and warrants that it has done no act to encumber the Lands and the Optionor covenants that it will do no act to encumber the Lands.

12. All notices required or permitted to be given hereunder shall be in writing and may be given by either (i) delivering the same to the other party, or (ii) if postal service is fully operative, by mailing same by registered mail postage prepaid:

in case of the Optionor to:

**The Corporation of the City of London  
Realty Services Division  
300 Dufferin Avenue, 6<sup>th</sup> floor  
London, ON N6A 2L9  
Attention: Manager of Realty Services**

and in the case of the Optionee to:

**IO Industries Inc.  
12 – 1510 Woodcock Street  
London, ON N6H 5S1  
Attention: Andrew Sharpe, President**

or to such other address as the Optionee and the Optionor respectively may from time to time designate in writing and any such notice shall be deemed to have been given to and received by the addressee on the date on which it was delivered or if mailed shall be deemed to have been given to and received by the addressee on the fifth business day following the date on which it was deposited in the mail, except in the event of interruption of mail service after mailing, in which event it shall be deemed to have been given when actually received.


13. Upon delivery of notice, referred to in Paragraph one of this agreement, by the Optionee, the completion of the purchase by the Optionee is conditional upon


14. Schedules A, B and C of Option Agreement attached hereto form part of this Agreement.

IN WITNESS WHEREOF the Purchaser, if a person, has hereunto set his hand and seal or, if a corporation, has hereunto affixed its Corporate Seal duly attested to by its proper signing Officers this \_\_\_\_\_ day of August, 2014.

SIGNED, SEALED & DELIVERED

in the presence of

  
Witness:

)  
) Purchaser  
)  
)   
)  
) Signature of Signing Officer  
) Andrew Sharpe, President, IO Industries Inc.  
) I have authority to bind the Corporation  
  
)  
)  
)  
)  
) Signature of Signing Officer  
) Name & Title:  
) I have authority to bind the Corporation

**ACCEPTANCE**

The Vendor accepts the above Agreement.

**THE CORPORATION OF THE CITY OF LONDON**

\_\_\_\_\_  
J. Baechler, Mayor

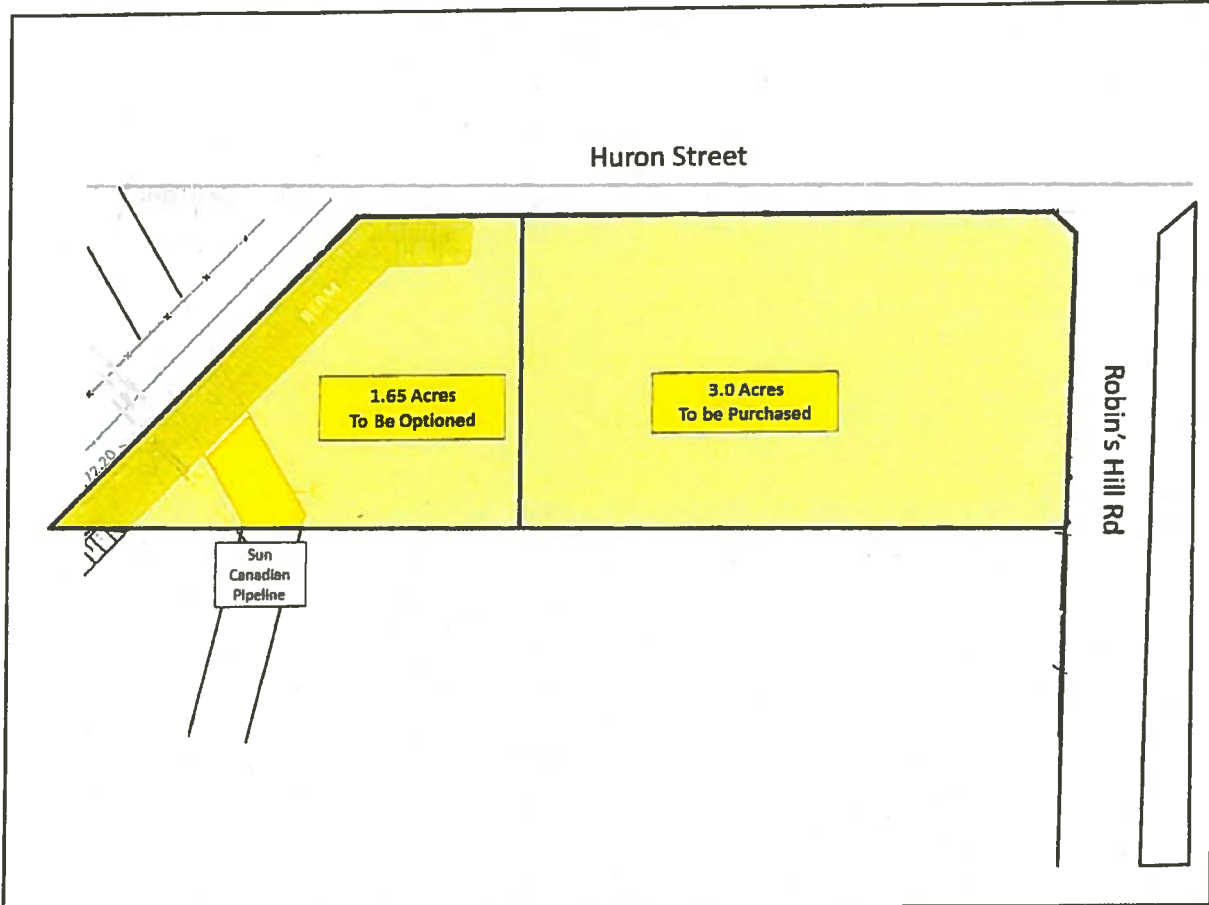
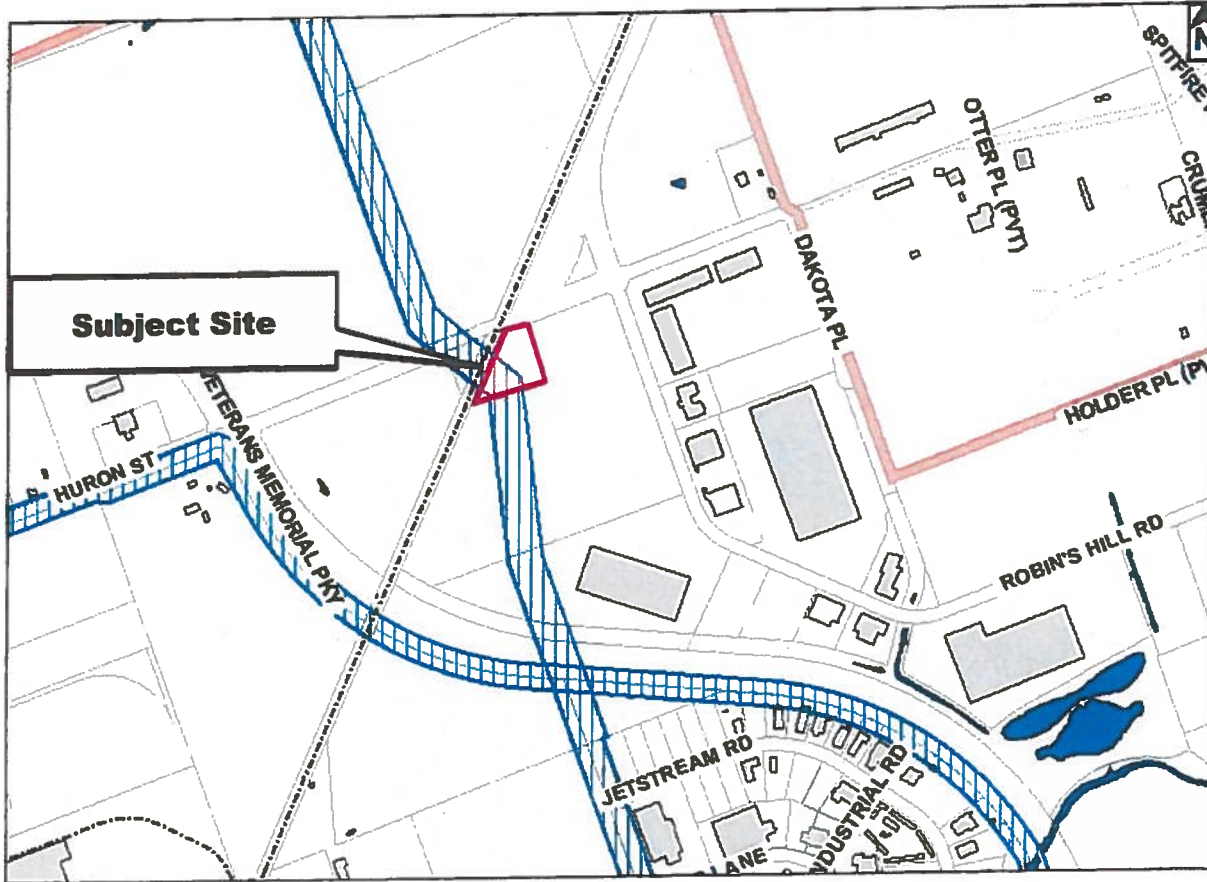
\_\_\_\_\_  
Catharine Saunders, City Clerk

NOTE: Schedule "A" attached - "Map of Property to be Optioned"  
Schedule "B" attached - "City-owned Serviced Land Sale Policy"  
Schedule "C" attached - "Additional Conditions"

Real Estate Agent Representing PURCHASER:  
MARTA MILTON  
SUTTON GROUP PREFERRED REALTY INC. BROKERAGE  
181 COMMISSIONERS RD. W  
LONDON, ON N6J 1X9

SCHEDULE "A" OF OPTION AGREEMENT

Map of property to be Optioned



**SCHEDULE "B" OF OPTION AGREEMENT**

**Excerpt from By-law No. A.-6151-17, Schedule A, Attachment A entitled "Disposal of Industrial Land Procedures"**

**Disposal of Industrial Land Procedures**

1. The purpose of this policy is to establish the terms upon which City-owned serviced industrial land is to be sold and transferred.
2. This policy is to be read and applied fairly and beneficially with such variations as circumstances or the nature of the subject matter require provided the general purpose, intent, meaning and spirit of the policy are maintained.
3. In this policy,
  - (a) Commencement of construction means the date upon which a building permit is issued by the City;
  - (b) Completion of construction is reached when the building or structure or a substantial part thereof is ready for use or is being used for the purpose intended, and;
  - (c) Coverage has the meaning ascribed to it under the applicable zoning by-law.

**CLASS 1 SALE**

4. A class 1 sale is a sale of a land for the purpose of the construction thereon of a building or structure for a detached industrial use.
5. A class 1 sale shall be subject to the following conditions:
  - (a) The purchaser shall commence construction within one year of the registration of the deed or transfer and shall diligently complete construction of the building or structure, in default of which the purchaser shall in the sole discretion of the City reconvey the land to the City in accordance with Section 18 of this policy and free and clear of all encumbrances, easements, restrictions or covenants except as to those originally assumed by the purchaser from the City.
  - (b) The minimum coverage of the building or structure shall be 15 per cent, provided however that, where the maximum coverage permitted under the applicable zoning by-law is 15 percent or less, the maximum coverage under the zoning by-law shall be deemed to be the minimum coverage required by this condition.
  - (c) The purchaser shall not within 10 years of the registration of the deed or transfer convey any vacant part of the land by deed, transfer, grant, assignment, appointment, mortgage, charge, lease or sub-lease (Planning Act, R.S.O. 1990, Chapter P .13), without first notifying the City and, where it has been so notified, the City may either grant its consent (which shall not be unreasonably withheld) to the conveyance or application or may in its sole discretion require the purchaser to reconvey the vacant part to the City in accordance with Section 18 of this policy and free and clear of all encumbrances, easements, restrictions or covenants except as to those originally assumed by the purchaser from the City.
  - (d) The purchaser shall pay local improvement charges and any other special levies assessed at any time against the land on and after completion of the purchase.
6. The Manager of Realty Services may grant one or more extensions (which in total shall not exceed two years) of the time set out in paragraph 5 (a) of Section 5 of this policy within which construction of a building or structure is to be commenced provided the purchaser has filed a written request with the Manager of Realty Services for the extension.
7. A purchaser wishing to notify the City under condition 5 (c) of this policy shall file a written request with the Manager of Realty Services who shall submit a recommendation thereon to Council through the Finance and Administration Committee.



CLASS 2 SALE

8. A class 2 sale is a sale of a land for the purpose of the extension or enlargement of a building or structure erected or to be erected upon land of the purchaser abutting the land.
9. A class 2 sale shall be subject to conditions (c) and (d) of Section 5 of this policy and the further condition that the land shall not be used for any purpose other than the extension or enlargement of a building or structure erected or to be erected upon lands of the purchaser abutting the land.

CLASS 3 SALE

10. A class 3 sale is a sale that is not a class 1 or class 2 sale and that is a sale of a land for the purpose of a use ancillary to a building or structure erected or to be erected upon land of the purchaser abutting the parcel.
11. A class 3 sale shall be subject to conditions (c) and (d) of Section 5 of this policy and the further condition that the land shall not be used for any purpose other than a use ancillary to a building or structure erected or to be erected upon land of the purchaser abutting the parcel.

GENERAL

12. At least annually, the Manager of Realty Services shall review the pricing of industrial land and if a change in pricing is recommended, shall make a recommendation to Board of Control as to the price per acre at which land should be offered for sale during the ensuing year.
13. Pending receipt of an offer to purchase from a prospective purchaser, land may be reserved for a period of 30 days, provided however that, if during the reserve period the City receives an offer to purchase the same land in accordance with this policy from another prospective purchaser, the first prospective purchaser shall be allowed 5 days after notification within which to submit an offer to purchase at the same price and on the same terms; otherwise the City shall be at liberty to accept the second offer to purchase.
14. A prospective purchaser shall complete and execute an offer to purchase in the form provided by the City accompanied by a deposit payable to the City Treasurer by cash or certified cheque equal to 10 per cent of the total purchase price, and the balance shall be payable subject to usual adjustments upon completion of the transaction.
15. The Manager of Realty Services may submit an offer to purchase for acceptance by the City.
16. The transaction shall be completed within 90 days of the passing of the by-law accepting the offer to purchase or within such further period as may be agreed to between the City Solicitor and the purchaser's solicitor in the best interests of the City.
17. Where, in the City's opinion, land is properly sold through a real estate agent, the City shall pay a fee to the agent not exceeding the scale established by the City upon completion of the transaction but no fee shall be payable if the purchaser is permitted to withdraw from the agreement of purchase and sale prior to the completion of the transaction.
18. Where the whole or any part of land is reconveyed by the purchaser to the City pursuant to a condition of sale or otherwise, the amount payable upon the reconveyance shall be 90 per cent of either the original purchase price (exclusive of interest thereon), if the whole land is reconveyed, or the portion thereof that is in the same ratio as the area of the reconveyed part is to the whole land, subject to adjustments as of the date of reconveyance for taxes, local improvements and other rates and subject, where the City considers necessary, to the City's withholding until a new purchaser is found, an amount sufficient to compensate the City for the cost of restoring the land to its original condition if so required by the new purchaser.
19. The development of the property will be subject to the requirements of the Architectural Control Guidelines as published by the City of London from time to time and the purchaser acknowledges the contents thereof and agrees to conform to those Guidelines.
20. The cost of service connections from the main to the property line is the responsibility of the purchaser.
21. The purchaser accepts the current condition of the site and the cost of removal of topsoil from the site if required is the responsibility of the purchaser.



**SCHEDULE "C"**

**SCHEDULE WITH SPECIAL PROVISIONS AND ADDITIONAL TERMS AND CONDITIONS**

**Special Provision of Skyway Industrial Park Subdivision Agreement**

The purchaser will be required to construct sewage sampling manholes, built to City standards in accordance with the City's Waste Discharge By-law No. WM-2, as amended, regulating the discharge of sewage into public sewage systems. The sewage sampling manholes shall be installed on both storm and sanitary private drain connections, and shall be located wholly on private property, as close as possible to the street line, or as approved otherwise by the City Engineer.

The Purchaser shall be provided, in writing, with the final street elevations, as set out in accordance with Section 9 of the General Provisions of the Skyway Industrial Park Subdivision Agreement.

The Purchaser shall provide the City easement rights over the Blocks adjacent to the open channels to permit storm servicing for parcels which, due to the subdividing of the Blocks, no longer have access to the storm outlet.

The City has constructed an earthen berm along the mutual property line of CN Rail and Block 3 of Plan 33M-615. The Owner of Block 3 at all times shall be solely responsible for maintaining these features in satisfactory condition at their own expense, and in accordance with the approved subdivision grading and general servicing plans.

The City has erected a 1.83 metre high chain link fence, without gates, along the mutual property line CN Rail and Block 3 of Plan 33M-615. It is the property owner's obligation to maintain and repair the fence, at their own expense, and in accordance with the approved subdivision grading and general servicing plans.

**Canadian National (CN) Railway Conditions**

Prior to a submission of a site plan application and/or an application, should any building be within 75 metres of the CN railway right-of-way, the Owner shall submit a noise and vibration report prepared by a qualified consultant. A certificate of compliance for the implementation of the report recommendations shall be included in the site plan/building permit application.

The Owner shall include in any submission of a site plan application and/or building permit application for this Plan, notice indicating that buildings and structures shall be set back a minimum of 15 metres from the railway right-of-way.