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FROM:	J. BRAAM ACTING EXECUTIVE DIRECTOR - PLANNING, ENVIRONMENTAL & ENGINEERING SERVICES
SUBJECT:	APPLICATION BY: AYERSWOOD DEVELOPMENT CORP. 940 SPRINGBANK DRIVE PUBLIC PARTICIPATION MEETING ON APRIL 24, 2012

RECOMMENDATION

That, on the recommendation of the Acting Executive Director of Planning, Environmental & Engineering Services, the following information regarding the standard development agreement clauses and the exceptions for 940 Springbank Drive **BE RECEIVED**.

BACKGROUND

City Council resolved on April 10 and 11, 2012, that the following action be taken with respect to the site plan approval application of Ayerswood Development Corp. relating to the property located at 940 Springbank Drive:

- (a) a special public participation meeting of the planning and Environment Committee **BE HELD** on Tuesday, April 24, 2012 at 7:00 p.m. with Civic Administration to make every reasonable effort to give notice to members of the public who have spoken or made written submissions at previous public participation meetings regarding this matter, and
- (b) The Civic Administration **BE DIRECTED** to provide the following:
 - standard site plan approval clauses;
 - any exceptions that have made; and,
 - at which stage of the process the exemptions were made;

it being noted that the Planning and Environment Committee received communications, dated February 21 and March 26, 2012, from A.R. Patton, Patton Cormier and Associates, with respect to this matter. (2012-D25-00)

STANDARD DEVELOPMENT AGREEMENT

The standard development agreement clauses were amended by City Council in 2011. Attached is a copy of the standard clause approved by City Council.

EXCEPTIONS THAT HAVE BEEN MADE

Through the site plan approval process staff reviewed the standard clauses to determine which clauses are applicable to the development application as well as the clauses that do not apply, and clauses that need to be modified or additional clauses (Special Provisions) needed to ensure the success of the project.

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The following is a review of clauses either deleted by staff, modified clauses and additional clauses.

Standard Clauses Deleted

a) Standard Clauses deleted were 9, 23, 24

(i) Clause 9 Works Oversized for Industrial Use

The clause provides for payment for the oversizing of services for industrial lands.

Residential projects are not eligible to make claims to this fund and consequently the clause was not included in the development agreement for 940 Springbank Drive.

(ii) Clause 23, Common Internal Driveways

The proposed site plan does not include any Common Internal Driveways and consequently the clause was not included in the development agreement for 940 Springbank Drive.

(iii) Clause 24, Joint Access

The proposed site plan does not include any Joint Accesses and consequently the clause was not included in the development agreement for 940 Springbank Drive.

Standard Clauses Modified

b) Standard Clauses 3, 4, 12, 27, and 32 were modified to fill in the blanks or modify words to suit the development at 940 Springbank Drive.

(i) Clause 3 Work According Plans.

The list of Schedules was modified to include all the plans and drawing to accommodate all the work in the site.

(ii) Clause 4, Drawings and Construction of External Works

The clause was modified to include all works external to the site. These works include the construction of a 1.5m sidewalk on Springbank Drive; the construction of a left turn lane and lane improvements on Springbank Drive and the extension of storm and sanitary sewers on both Springbank Drive and Commissioners Road and the schedules for the drawings for the external works.

(iii) Clause 12, Grading and Lot Grading

This clause was modified to indicate the correct schedule for the grading restrictions.

(iv) Clause 27, Security for Performance

The clause has been modified to insert the security amounts for on-site works and the external works.

(v) Clause 30, Default

This clause was modified to insert the paragraph number based on the re-numbered Standard Clause in the proposed development agreement.

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(vi) Clause 32, Notice

This clause has been modified to include the name and address of the owner in the event of notice is required to be given by the city to the Owner.

c) Additional Clauses

Typically additional clauses are added in Standard Clause 34, Special Provisions. These clauses provide additional direction, detail, or steps to be carried out by the developer. A number of additional clauses have been added in the Special Provisions of the development agreement for 940 Springbank Drive.

- (i) Clause 32(a) has been added to ensure the contract for the sanitary and storm sewers have been awarded and committed before the issuance of a building permit.
- (ii) Clause 32(b) requires a Traffic Management Plan has been prepared and accepted before commencing work in the road allowance.
- (iii) Noise Study as part of the review process a noise study was required for the new building; this clause requires the Owner's consultants to certify all abutment measures were carried out.
- (iv) Clause 32(d) provides for warning Clauses to be included in all agreements of purchase and sale and all rental agreements.
- (v) Clause 32(e) this clause makes provision for the city to review the trees designated for preservation, request and further report and assessment to mitigate any damage, and it also deals with the replacement of trees where preservation measures are not successful.
- (vi) Clause 32(f) the owner is required to dedicate 2.0 acres of parkland to the City.
- (vii) Clause 32(g) (h) the owner required to dedicate a road widening on Springbank Drive and Commissioners Rd at no expense to the City.
- (viii) Clause 32(i) the owner is to implement the Traffic Management Plan.
- (ix) Clause 32(j) the owner is required to receive certificate of Approvals for some of the servicing works. These certificates are required before any construction is commenced.
- (x) Clause 32(k) this deals with Inspection and Completion of works and the Certificate of Final Approval.
- (xi) Clause 32(l) this clause deals with the release of the security after the issuance of the Certificate of Final Approval and including the holding of 15% to the end of the one year warrantee.
- (xii) Clause 32(m) this deals with the owner's guarantee of works and the City's assumption of the external works.
- (xiii) Clause 32(n) reiterates construction and restoration of off-site works.
- (xiv) Clause 32(o) sets out Occupancy Requirements.

The complete agreement and schedules is attached to the report pertaining to the final package for approval.

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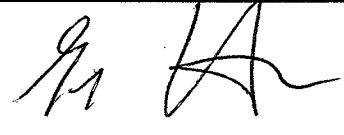
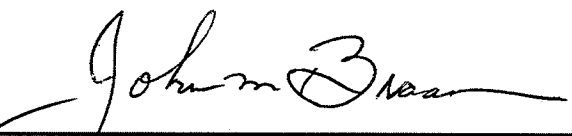
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Notice of Public Meeting

Notice of public meeting was sent out to property owners within 120m of the site and additional notices were sent out to members of the public who have spoken or made submissions at the previous public participation meetings. In addition to this, notice of public meeting was placed in the London Free Press on April 14, 2012 and on the main page of the City's website.

CONCLUSION

The material provided includes the standard development agreement clause, the standard clauses to be deleted or modified and any new clauses required for the development of the site.

PREPARED BY:	REVIEWED BY:
	
B. HENRY MANAGER, DEVELOPMENT PLANNING	G. KOTSIFAS DIRECTOR, BUILDING CONTROLS
RECOMMENDED BY:	
	
J. BRAAM, P.ENG ACTING EXECUTIVE DIRECTOR, PLANNING, ENVIRONMENTAL AND ENGINEERING SERVICES	

"Attach."

CC

AYERSWOOD DEVELOPMENT CORP.
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London, ON N6C 4P4
Fax 519-281-6769

Mr. & Mrs Hopkins
928 Springbank Drive
London ON N6K 1A5

Mrs. Polatajko – Howell
929 Commissioners Road West
London ON N6K 2C1

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STANDARD DEVELOPMENT AGREEMENT

This Agreement made in duplicate this day of , 2012.

BETWEEN:

THE CORPORATION OF THE CITY OF LONDON,
hereinafter called "the City" OF THE FIRST PART;

- and -

COMPANY NAME
hereinafter called "the Owner" OF THE SECOND PART;

WHEREAS the Owner represents that it is the registered owner of the lands situate in the City of London, in the County of Middlesex, more particularly described in the **Schedule "A"** attached hereto (the "Land"), consisting of description which is known municipally as Municipal Address;

AND WHEREAS as a condition of the approval of site plans and drawings for a development on the Land pursuant to Section 41 of the Planning Act, R.S.O.1990, c.P.13., the Owner is entering into this Agreement with the City dealing with the buildings and structures to be erected on the Land and all facilities and works to be provided in conjunction therewith including the provision and maintenance thereof (hereinafter called "the Development ") by the Owner and any and all subsequent owners to the satisfaction of and at no expense to the City.

NOW THEREFORE THIS AGREEMENT WITNESSETH that for other valuable consideration and the sum of Two Dollars (\$2.00) of lawful money of Canada, now paid by the City to the Owner (the receipt and sufficiency whereof is hereby acknowledged) the parties hereto covenant and agree each with the other to comply with, keep, perform and be bound by each and every term, condition and covenant herein set out to the extent that the same are expressed to be respectively binding upon them, and the same shall ensure to the benefit of and shall be binding upon their respective heirs, executors, administrators, successors and assigns.

1. **Definitions:** The words and phrases defined in this section shall, for all purposes of this Agreement and of any subsequent agreement supplemental hereto, have ascribed to them the meanings herein specified unless the context expressly or by necessary implication otherwise requires:

"Chief Building Official, (CBO)" means the person holding the position of Chief Building Official for the City of the London, or his/her designate;

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“Building” means any structure consisting of walls and a roof which is used or intended to be used for the shelter, accommodation or enclosure of persons, animals, or chattels, and includes accessory buildings and structures such as heat pumps or air exchangers, but does not include any vehicle or a fence.

“Fire Chief” means the person holding the position of Fire Chief for the City of London on his/her designate.

“City Engineer” shall mean that the person holding the position of City Engineer for the City of London or his/her designate;

“Fully Serviced” shall be deemed to include but not limited to those works, services and other requirements as set out in this Agreement.

“Lot” shall include **“Block”** and vice-versa.

“Professional Engineer” shall mean a licensed Professional Engineer who, holds a current certificate of authorization issued by the Association of Professional Engineers of Ontario or, is employed by a partnership or corporation authorized by the Association to offer Professional Engineering services to the public and who is retained by the Owner to provide professional engineering services in connection with the Development.

“The Development” shall mean the Buildings and structures to be constructed, erected or placed on the Land or a commercial parking lot established on the Land, and includes all facilities and works to be provided in conjunction therewith as described herein, including the provision and maintenance thereof which shall be undertaken by the Owner and all subsequent owners and that are contained within the limits of the Land or as otherwise indicated herein.

2. Incontestability: The Owner shall not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any administrative or other tribunal the right of the City to enter into this Agreement and to enforce each and every term, covenant and condition thereof and this provision may be pleaded by the City in any such action or proceeding as a complete and conclusive estoppel of any denial of such right.

3. Work According to Plans: The Owner shall develop the Land in accordance with the approved site plan, site servicing plan, elevation drawings, and landscape plan which are attached hereto as Schedules “B”, “C”, “D”, and “E” respectively. The Owner shall submit from time to time one or more plans and drawings as may be required pertaining to any of the buildings, structures, facilities, works and matters to be erected, constructed or installed on the Land, including but not restricted to any plans or drawings specifically mentioned herein. Such plans and drawings as and when approved by the City, whether before or after the date upon which this Agreement is entered into shall be treated as forming part of this Agreement in the same manner and to the same extent as if such plans and drawings had been approved and actually attached to this Agreement at the time that it is entered into. In all matters not herein provided for, the Owner shall develop the Land and shall use the same in accordance with the Site Plan Design Manual and plans and drawings required to be filed and as approved. The provisions of this Agreement and any approved site plan or drawing pertaining to a facility, work or matter shall be construed and applied as complementary to each other but in the event of any conflict the plan or drawing receiving the last approval shall govern.

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Upon completion of the Development, the Owner agrees that the responsibility for the repair, maintenance and replacement of any or all of the facilities and works within this Development will rest with the Owner at its sole expense and that the City will have no liability for repair, maintenance or replacement of any works within this Development.

4. Drawings and Construction of External Works: Prior to the issuance of a Permit of Approved Works (PAW) the Owner shall have its Professional Engineer submit detailed design drawings of external road, sewer and other improvements, together with associated internal facilities and works and detailed final estimates of the total cost and the City's share of construction costs, to and for the approval of the City Engineer. Prior to occupancy of any building, (unless otherwise approved by the City Engineer, the Owner shall construct solely at its expense and to the specification and satisfaction of the City Engineer, the following works:

(a) description

5. "As-constructed" Drawings: Prior to the release of any security posted under this Agreement, or any portion thereof, the Owner shall supply to the City with "as constructed" drawings for all municipal services installed under this Agreement and to be assumed by the City, all to the specifications and satisfaction of the City Engineer, and all at no cost to the City.

6. Inspection and Completion of Works: The Owner shall have its Professional Engineer provide on-site inspection by a qualified inspector approved by the City Engineer of all facilities, works and services required by this Agreement that are to be assumed for maintenance by the City. Upon completion of the facilities, works and sewers prior to requesting the City to assume the facilities, works and services the Owner shall supply to the City Engineer, a certificate of the Owner's Professional Engineer substantially in the form attached as **Schedule "F"**.

When all facilities, works and services required to be constructed, installed or done by the Owner have been accomplished strictly in accordance with this Agreement and the approved plans and drawings, to the specifications and satisfaction of the City Engineer. The City Engineer shall issue to the Owner a Certificate of Assumption approval to that effect (the "Assumption Certificate"). The City will not issue an Assumption Certificate until the Owner has provided the City Engineer with final "as-constructed" drawings to the current standards of the City Engineer.

7. Completion of Work: All work required under this Agreement, including but not restricted to asphalt surfacing, fencing, establishment of landscaping and development "as constructed" drawings, shall be completed or delivered, as the case may be, within a period of nine (9) months of the date of substantial completion of construction of the Development as determined by the CBO. All such work shall be performed to the satisfaction of the City Engineer, and the CBO as the case may be.

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8. Methane Gas Report: If, during the building or constructing of all buildings, structures, facilities, works and services within this Developments, any deposits of organic materials or refuse are encountered, these deposits must be reported to the City Engineer and the CBO immediately and if required by the City Engineer or the CBO; the owner shall at its expense retain a Professional Engineer competent in the field of methane gas to investigate these deposits and submit a full report on them to the City Engineer and the CBO. If the report indicates the presence of methane gas, then all of the recommendations of the Professional Engineer, contained in any such report submitted to the City Engineer and the CBO shall be Implemented and carried out by and at the expense of the Owner under the supervision of the Professional Engineer, to the satisfaction of the City Engineer and the CBO before any construction progresses in such an instance. The report shall include provision for an ongoing methane gas monitoring program, if required; subject to the approval of the City Engineer for review for the duration of the approved program.

If a permanent venting system or facility is recommended in the report, the owner shall register against the title of each affected Lot and Block and include in any agreement for the sale or transfer of each of the affected Lots and Blocks, a covenant by the purchaser or transferee (and by each successive Owner after such purchaser or transferee) stating that the owner of the subject Lots and Blocks must have the required venting system or facility designed constructed and monitored to the specifications of the City Engineer and, that the owner must maintain the installed venting system or facilities in perpetuity at no cost to the City. The report shall also include measures to control the migration of any methane gas to abutting lands outside the Land.

9. Works Oversized For Industrial Use: In this clause "industrial oversizing" means the extra capacity of any municipal work undertaken by the Owner and assumed by the City to serve lands designated or zoned for industrial use other than those of the Owner, and "oversizing" and "oversized services" shall have a corresponding meaning. If the Owner is required under this Agreement to construct oversized services concurrently with this Development, the City shall commit an amount of money up to but not exceeding ~~Insert \$ amount~~ from the Fund (hereinafter called the Fund") established by the Fund By-law (A.-5840-172), as amended from time to time, for contribution by the City toward the cost paid by the Owner in constructing such oversized services. Notwithstanding any other provision of this Agreement, the commitment against the Fund and the City's obligation in law or otherwise if an, to pay or contribute toward the Owner's oversizing costs shall be at an end either if the Owner failed to execute this Agreement and deliver it to the City within a period of sixty (60) days after the date of approval of this Development by the City under Section 41 of the Planning Act, R.S.O.1990, c.P.13., pursuant to the Site Plan Control Area By-law (C.P.-1455-541), as amended from time to time, or if, although the agreement is received by the City within the said period construction of the oversizing is not commenced or such construction is commenced but not fully completed to the satisfaction of the City Engineer within one (1) year of the date of

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receipt by the City of this Agreement executed by the Owner. Where a commitment remains outstanding, the Owner may upon supplying a certificate of completion of works pursuant to this Agreement, make application to the City for payment from the Fund up to but not exceeding the sum mentioned above toward the Owner's oversizing costs as confirmed by the City Engineer. Payment up to but not exceeding the sum mentioned above shall be made pursuant to the policy established by Council to govern the Fund. The Owner acknowledges that no words or phrases used in this Agreement relating to the calculation of any credit, where such are permitted due the Owner or entitlements from the Fund or elsewhere shall be interpreted as an obligation or promise on the part of the City to pay from the Fund except in conformity with the policies governing its administration as provided in this clause, and further no payment shall be made except from the Fund and only after appropriate application is made as herein set out. Notwithstanding the other provisions of this clause, if the Owner chooses to construct the oversized services at his/her own expense at any time, which the Owner is free to do, the assumption by or any other act or omission by the City shall not obligate it in any way to ever contribute toward or make reimbursement for any part of the Owner's costs of such industrial oversizing.

10. City's Right To Enter: The City or any of its officers, employees, servants or agents and any other persons authorized by the City for this purpose shall have the right at any time and, from time to time to enter upon Land (except any room or place actually used as a dwelling unless the occupant has first been informed that the right or entry may be refused and entry made only under the authority of a search warrant or court order and the occupant has been requested to give and has given consent to enter) and any lands upon which any facility, work or service herein required to be done is being, or has been, erected, constructed, or installed and to make such tests and inspections as it may deem necessary or desirable and to call for and obtain any document, contract, plan, specification, record or other writing or thing, and to give direction to the Owner in any matter touching upon the due completion of the facilities, works and services herein required to be done. The City may require that any or all work shall cease until any breach of plans and specifications or the City Engineer's requirements (of which he shall be the sole judge) has been remedied (other than the work required to be done to remedy such breach) and if the City Engineer shall deem it necessary to engage technical consultants to assist him in the performance of any inspection or supervision, the expense of such technical consultants, if engaged, shall be a debt due to the City by the Owner recoverable upon demand or from any security posted by the Owner. The City, its officers, employees, servants and agents shall not be liable to the Owner or any occupant of the Land for any losses or damages of any kind whatsoever arising in any way from entry for such purposes.

11. Erosion and Sediment Control: The Owner shall construct temporary measures to control silt entering the storm drainage system to the specifications outlined in the Guidelines on Erosion and Sediment Control for Urban Construction Sites (December 2006) prepared by the Ministry of Natural Resources. These measures are to be approved by the CBO and installed

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prior to commencing any construction of this Development, and are to remain in place until construction as required under this Agreement has been completed to the specifications of the CBO. The Owner shall have its Professional Engineer monitor the erosion and sediment control measures installed in accordance with the above-noted Guidelines and submit to the CBO monitoring reports with a log of dates when the facilities were inspected, the condition of the facilities at that time, and what remedial action, if any, was needed and taken. The monitoring reports are to be submitted to the CBO by April 1, July 1 and November 1 of each year until all works and services in this Plan are completed to the satisfaction of the City.

12. Grading and Lot Grading:

The Owner covenants and agrees that each lot and block shall be graded to conform generally to the elevations and grades shown on the approved site servicing plan attached hereto as Schedule "C" for the full developed lot or block including the building, the landscaping and the paved driveway.

The Owner further agrees that he shall either impose by a general registration on the all lots and blocks in the development a building scheme which includes the following lot and block grading restrictions, or include in the agreement of the sale and in the conveyance or transferee (and by each successive owner after such purchaser or transferee) in the following form to observe and comply with the lot grading restrictions (attached as **Schedule "G"**)

13. Storm Water Management: The Owner shall construct the storm water management system in accordance with the accepted drawings. The Professional Engineer shall provide inspection during construction of the storm water management system and certify upon completion that it was constructed in accordance with the accepted drawings. This work shall be completed prior to occupancy of the Development. The Owner shall maintain this storm water management system thereafter so that it is functional as designed all to the satisfaction of the City Engineer, and at no cost to the City.

14. Debris and Soil on City Streets: The Owner shall employ measures during the course of Development (including any demolition) so that debris, dirt or other rubbish or refuse is not deposited on any street by vehicles delivering materials to or removing materials from the Land or, if unavoidably deposited on any street is removed as soon as practicable and the street restored to a clean condition. If the Owner is given notice by the City to restore any such street to a clean condition to the satisfaction of the CBO and the Owner fails to do so within the time (not exceeding 48 hours) specified in the notice, the CBO may take such steps as he considers necessary to rectify the problem and the cost to the City shall be a debt due to the City by the Owner recoverable on demand, or from any security posted by the Owner.

15. Garbage Storage Facilities: Garbage storage facilities that are not located within a Building shall be located, constructed, used and maintained such that odour, noise from use,

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noise from collection (by other than the City or any of its officers, servants or agents,) accessibility by animals and containment of debris are controlled and view from adjoining streets and properties to garbage storage facilities is screened, all to the satisfaction of the City Engineer. If at any time a change in the location, construction, use or maintenance of garbage storage facilities is contemplated, the Owner shall submit a proposal to and for approval by the CBO. The proposal shall include measures as may be required to mitigate the impact of the revised garbage facility. The Owner shall implement the recommendations of the proposal to the satisfaction of the CBO.

16. Lighting Facilities: All lighting of the site shall be oriented and its intensity controlled so as to prevent glare on adjacent roadways and residential properties to the satisfaction of the CBO.

17. Landscaping: The Owner shall landscape the site including transformer and other equipment box screening if applicable, and shall thereafter maintain the landscaping in general conformity with the approved Landscaping Plan attached hereto as **Schedule "E"**, all to the satisfaction of the CBO and at no cost to the City.

18. Fire Routes: The Owner shall construct and maintain fire routes for access for fire fighting and fire fighting vehicles in conformity with the approved site plan attached hereto as **Schedule "B"** and the Owner shall install and maintain fire route signs in accordance with the City's Traffic and Parking By-law No.P.S.-111-11093 as amended thereto along such designated fire routes in accordance with the locations as shown on the approved site plan, all to the satisfaction of the Fire Chief and CBO and at no cost to the City.

19. Water Supply and Fire Fighting Access During Construction: Where construction proceeds beyond the foundation stage and wood frame construction is underway, the Owner shall have regard to the separation distances between the proposed construction and existing Buildings on adjacent properties, ensure that adequate water supply for fire fighting is provided within 90 metres of any building and that a fire fighting access shall be maintained capable of carrying the weight of fire fighting trucks to within 45 metres of any Building under construction, until all construction is finished, all to the satisfaction of the CBO and at no cost to the City.

20. Subsurface Drainage: The Owner shall notify its Professional Engineer in the event that any existing sewer or drain is encountered during the progress of construction. The Owner shall have its Professional Engineer investigate the matter and shall comply with the recommendations of its Professional Engineer as approved by the City Engineer with respect to the sewer or drain encountered. The Owner shall also ensure that there is no interruption of any subsurface drainage flow because of construction on the Land which would have an adverse effect on neighbouring properties. If such an interruption should occur, the Owner shall carry out any necessary remedial work to correct the problem as recommended by its Professional Engineer and to the satisfaction of the City Engineer at no expense to the City.

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21. Abandoned Private Drain Connections: Any abandoned existing private drain connections shown on the site plans or encountered during construction shall be excavated at the street line and sealed to the satisfaction of the City Engineer, all at no cost to the City.

22. Existing Private Drain Connections: Any existing private drain connections which are proposed for re-use shall be excavated at the street line and shall be inspected and approved by the City Engineer for re-use, all at no cost to the City.

23. Common Internal Driveway: The Owner shall construct and maintain its portion of the common internal drive as is shown on Schedule "C".

The Owner shall remove any temporary barriers on the Lands immediately following construction of the connecting portion of the common internal drive on the Lands to the **direction**. The Owner agrees to permit the unrestricted vehicular and pedestrian traffic from the type of lands to the **direction** to pass and re-pass over the joint access area on the subject lands as illustrated on schedule 'X-XX'.

24. Joint Access: In conjunction with this Development the Owner shall, at such time as a Site Plan agreement is approved for Block _____, construct the **direction** half of the joint access with abutting lands to the **direction** as illustrated on Schedule 'X-X' to the satisfaction of the CBO and the City Engineer.

The Owner shall permit the owner of lands to the **direction** access to the subject lands to permit the construction of the west portion of the joint access as such time as the lands to the **direction** are developed pursuant to an approved site plan. The Owner shall reconstruct as necessary the west portion of the joint access, if required by the City Engineer as illustrated on Schedule 'X-X'

The Owner agrees to permit unrestricted vehicular and pedestrian traffic from the lands to the **direction** to pass and re-pass over the joint access area on the subject lands as illustrated on schedule 'X-XX'.

The Owner shall include the obligations for the construction and operational obligations for the joint access in any offers of purchase and sale of Block _____ of this Plan.

25. Work At Owner's Risk: All incidental matters including but not restricted to the removal and planting of trees; cutting, replacing and installing approaches; relocating utilities, pipes, poles, valves and equipment; resetting drains and manholes; and all other things required by this Agreement or by the City Engineer shall be carried out by the Owner at its own risk and expense provided all work is to be done to the satisfaction of the City Engineer and by permission and to the satisfaction of the owner of such utilities.

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26. Indemnity: Except as otherwise expressly provided in this Agreement, the right of the Owner to use and occupy any untraveled portions of road allowances shall at all times be at the will of the City and the construction and maintenance of any and all curb, pavements, plantings and other improvements or works thereon shall at all times be at the risk and expense of the Owner. The Owner shall indemnify and save the City and any of its officers, employees, servants or agents harmless from and against all actions, suits, claims and demands which may be brought against or made upon the City or any of its officers employees, servants or agents, and from all loss, costs, damages and expenses which may be paid, sustained or incurred by the City or any of its officers, employees, servants or agents in consequence of the use and occupation of untraveled portions of road allowances by the Owner or the construction, maintenance or existence of curbs, pavements plantings and other improvements of the Owner thereon, and such indemnity shall constitute a lien and charge upon the Land. Without limiting the foregoing agreement to indemnify the City may, in case any such action, suit, claim or demand is brought or made against the City or any of its officers, employees, servants or agents, settle any such action suit, claim or demand on such terms as the City shall see fit, and the Owner shall thereupon forthwith pay to the City the sum or sums so paid, together with such sum as shall represent the reasonable costs of the City and its solicitor in defending or settling any such action, suit, claim or demand, provided that no such action, claim, suit or demand shall be settled by the City without giving at least fifteen (15) days notice to the Owner and without the consent of the Owner which shall not be unreasonably withheld.

27. Security for Performance: To ensure due performance of all matters required by this Agreement and in order to protect the City in respect of its liability for holdback and costs under Subsection 17(4) of the Construction Lien Act, R.S.O.1990, c.C.30., the Owner shall deposit with Development Finance security satisfactory to Development Finance in the amount of \$ _____. In addition, the Owner shall, prior to signing this Agreement, deposit with the City Treasurer a "CASH" security in the amount of _____ to ensure completion of external works.

28. Release of Security: The release of any or all security shall be subsequent to the completion of work required herein, the submission of acceptable "as-constructed drawing" and the expiration of any warranty period, as determined by and to the specifications of the CBO.

The amount of security released shall be based upon such matters as the submission of a Professional Engineer's Certificate of Completion of Works for works required herein, the submission of a detailed list of costs of required works completed and not completed, and the compliance of other matters required therein, all to the satisfaction of the CBO.

29. Enforcing Performance of Requirements: In addition to any remedy authorized or permitted by this Agreement or by law, the City may, in default of any matter or thing required to be done by the Owner under this Agreement, do such matter or thing at the Owners' expense, and the City may recover the expense incurred in doing it by action, from any security posted by

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the Owner, or by recovery in like manner as municipal taxes. No proceeding by the City under this clause and no waiver under any provision of this Agreement shall prejudice the rights of the City in respect of any subsequent default or any matter or thing required to be done by the Owner under this Agreement. The rights of the City may be enforced by any remedy authorized or permitted by this Agreement or by law, and no such remedy shall be exclusive of or dependent on any other remedy.

30. Default: Time shall be of the essence in this Agreement. Upon breach by the Owner of any covenant, term, condition or requirement of this Agreement, or upon the Owner becoming insolvent or making an assignment for the benefit of creditors, the City may, at its option, declare that the Owner is in default. Notice of such default shall be given as provided in paragraph 33 hereof, and if the Owner has not remedied such default within such time, as provided in the notice, the City may declare that the Owner is in final default under this Agreement, and shall then forthwith give notice thereof to the Owner as provided in said Clause 33.

31. Remedy on Giving Notice of Default: Upon notice of default having been given, the City may require all work by the Owner, its servants, agents, independent contractors and subcontractors to cease (other than any work necessary to remedy such default) until such default shall have been remedied, and in the event of final default may require all work as aforesaid to cease.

32. Notice: Any notices required or permitted to be given pursuant to the terms of this Agreement shall be given in writing sent by prepaid registered post, addressed in the case of notice given by the City to: **NAME OF OWNER AND ADDRESS** London, Ontario _____ and in the case of notice given by the Owner, addressed to: The City Clerk, P.O. 5035, London, Ontario N6A 4L9.

Notice shall conclusively be deemed to have been given on the day that the same is posted. Wherever in this Agreement the CBO is permitted or required to give direction, exercise supervision, or to require work to be done or work to cease in respect of the construction, installation, repair and maintenance of facilities, works and services, he shall be deemed to have done so if he communicates such direction, supervision or requirement, orally or in writing to any person purporting or appearing to be a foreman, superintendent or other servant of the Owner, and if the CBO shall have made such communication orally he shall confirm such communication in writing as soon as conveniently possible.

33. Remedies on Final Default: Upon final default of the Owner the City may, at its option, adopt or pursue any or all of the following remedies, but shall not be bound to do so:

- (a) Enter upon the Land by its employee, servants, agents and contractors and complete any facilities, work, services, repair or maintenance wholly or in part required herein to

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be done by the Owner and collect the cost thereof from the Owner and/or enforce any security available to it;

- (b) Make any payment which ought to have been made by the Owner and upon demand collect the amount thereof from the Owner and/or enforce any security available to it;
- (c) Retain any sum of money heretofore paid by the Owner, to the City, for any purpose, and apply the same in payment or part payment for any work which the City may undertake;
- (d) Assume any facilities, work or services at its option whether the same are completed or not, and thereafter the Owner shall have no claim or title thereto or remuneration therefore;
- (e) Bring action to compel specific performance of all or any part of this Agreement or for damages;
- (f) Exercise any other remedy granted to the City under the terms of this Agreement or available to the City in law.

34. Special Provisions:

The Owner shall make all payments, carry out and perform all the works and satisfy all the provisions hereinafter set out in these Special Provisions.

- (a)

35. By-laws: Notwithstanding any of the provisions of this Agreement, the Owner shall be subject to and comply with all applicable by-laws of the City. In the event of conflict between the provisions of this Agreement and the provisions of any by-law of the City, the provisions of the by-law shall prevail.

36. Subsequent Owners Bound: Subject to the provisions of the Registry Act and the Land Titles Act, the covenants, agreements, conditions and understandings therein contained on the part of the Owner shall be conditions running with the land described in Schedule "A" attached hereto and shall be binding upon it, its heirs, executors, administrators, successors and assigns, as the case may be, as subsequent owners and occupiers of the Land from time to time (and "Owner", wherever used in this Agreement, is intended and shall be construed to include such subsequent owners and occupiers), and shall be appurtenant to the adjoining highways in the ownership of the City.

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37. Separate Covenants: All of the provisions of this Agreement are, and are to be construed as, covenants and agreements as though the words importing such covenants and agreements were used in each separate clause hereof. Should any provision of this Agreement be adjudged unlawful or not enforceable, it shall be considered separate and severable from the agreement and its remaining provisions as though the unlawful or unenforceable provision had never been included.

38. Number and Gender: This Agreement shall be read will all changes to gender required by the context.

39. Assignment: The Owner shall not assign this Agreement without the prior written consent of the City, wherein consent shall not unreasonably be withheld.

40. Payment of Registration Costs: Prior to construction, the Owner shall register this Agreement upon the title of the Land, and agrees to pay forthwith, on demand, all solicitors' fees and disbursements incurred by the City in any way arising out of this Agreement, including the preparation or review thereof and of other deeds, conveyances, registrations and agreements.

IN WITNESS WHEREOF the City has executed this Agreement by its authorized officers pursuant to C.P. Bylaw 1213-340 as amended and the Owner has hereunto set its hand and seal, or hereunto affixed its corporate seal attested by the hands of its duly authorized officers.

THE CORPORATION OF THE CITY OF LONDON
by its authorized officers:

Name and Title

Name and Title

We have the authority to bind the Corporation.

OWNER'S NAME

(seal)

(seal)

I/We have the authority to bind the Corporation.

Agenda Item # Page #

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Description of Schedules

Schedule "A"

Title: **Legal Description**

Schedule "B" Page 1 of 1

Drawing Title: **Site Plan**
Drawing Author:
Drawing Number:
Date of Drawing:
Drawing Latest Revision Date:
Items Amended by Hand:
Date Amended by Hand:
Municipal Address:
Drawing Sealed by:
City File Number:

Schedule "C" Page 1 of 2

Drawing Title: **Site Servicing Plan**
Drawing Author:
Drawing Number:
Date of Drawing:
Drawing Latest Revision Date:
Items Amended by Hand:
Date Amended by Hand:
Municipal Address:
Drawing Sealed by:
City File Number:

Schedule "C" Page 2 of 2

Drawing Title: **Site Engineering Details**
Drawing Author:
Drawing Number:
Date of Drawing:
Drawing Latest Revision Date:
Items Amended by Hand:
Date Amended by Hand:
Municipal Address:
Drawing Sealed by:
City File Number:

Schedule "D" Page 1 of 4

Drawing Title: **North Elevation**
Drawing Author:
Drawing Number:
Date of Drawing:
Drawing Latest Revision Date:
Items Amended by Hand:
Date Amended by Hand:
Municipal Address:
Drawing Sealed by:
City File Number:

Agenda Item # Page #

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Schedule "D" Page 2 of 4

Drawing Title: **South Elevation**
Drawing Author:
Drawing Number:
Date of Drawing:
Drawing Latest Revision Date:
Items Amended by Hand:
Date Amended by Hand:
Municipal Address:
Drawing Sealed by:
City File Number:

Schedule "D" Page 3 of 4

Drawing Title: **East Elevation**
Drawing Author:
Drawing Number:
Date of Drawing:
Drawing Latest Revision Date:
Items Amended by Hand:
Date Amended by Hand:
Municipal Address:
Drawing Sealed by:
City File Number:

Schedule "D" Page 4 of 4

Drawing Title: **West Elevation Page**
Drawing Author:
Drawing Number:
Date of Drawing:
Drawing Latest Revision Date:
Items Amended by Hand:
Date Amended by Hand:
Municipal Address:
Drawing Sealed by:
City File Number:

Schedule "E" Page 1 of 2

Drawing Title: **Landscape Plan**

Drawing Author:
Drawing Number:
Date of Drawing:
Drawing Latest Revision Date:
Items Amended by Hand:
Date Amended by Hand:
Municipal Address:
Drawing Sealed by:
City File Number:

Agenda Item # Page #

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Schedule "E" Page 2 of 2

Drawing Title: **Landscape Details**
Drawing Author:
Drawing Number:
Date of Drawing:
Drawing Latest Revision Date:
Items Amended by Hand:
Date Amended by Hand:
Municipal Address:
Drawing Sealed by:
City File Number:

Schedule "F" Page 1 of 1

Title: Certificate of Completion of Works

Schedule "G" Page 1 of 1

Title: Lot and Block Grading Restrictions

Agenda Item #	Page #

SCHEDULE "F"

This is Schedule "F" to the Site Plan Agreement dated this _____ day of _____, 20____, between The Corporation of the City of London and _____ to which it is attached and forms a part.

TO: The Corporation of the City of London

Certificate of Completion of Works

For Good and Valuable Consideration now paid by The Corporation of the City of London hereinafter called the "City", the receipt and sufficiency of which I hereby acknowledge, I hereby certify that the municipal services constructed pursuant to the Subdivision Agreement registered as Number _____ relating to Plan Number _____ have been -

- (a) inspected during installation in accordance with standard engineering practice; and
- (b) constructed and installed in accordance with the plans and specifications approved by the City Engineer.

Certified and delivered under my/our hand and professional seal at the City of London, Ontario this _____ day of _____, 20____

Registered Professional Engineer

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SCHEDULE "G"

Lot and Block Grading Restrictions

The Transferee covenants with the Transferor to observe and comply with the following lot and block grading restrictions, the burden which shall run with these Lands. This covenant shall be binding upon and ensure to the benefit of the respective heirs, executors, administrators, successors and assigns of the parties.

(i) Obligation to Grade According to Accepted Plan: These lands shall not be graded except in general conformity with the grades and elevations shown on the approved site servicing plan attached to the development agreement or filed with the City Engineer of the City of London.

(ii) Certified Lot Grading Plan: No building shall be constructed on these lands until a Certified Lot Grading Plan has been filed with the Chief Building Official of the City of London showing:

the proposed finished elevation of these lands at each corner of the lot or block;

the proposed finished elevation of these lands at the front of and rear of the building;

the proposed finished elevations of the underside of the footings and the proposed finished height of the foundation of the building;

the proposed finished elevation of any retaining walls, the proposed elevation of any walk-out onto these lands from the basement of the building, and the proposed elevation for any basement window openings;

the proposed finished elevation and slope of any driveway and the proposed location of any swale or rear yard catch basin; and,

any abrupt changes in the proposed finished elevation of these lands.

The plan shall bear the signature and seal of an Ontario Professional Engineer who certifies thereon that the Plan generally conforms with the approved site servicing plan attached to the development agreement or filed with the City Engineer.

(iii) Owner's Interim Grading Certificate: No building shall be constructed beyond the readiness to construct structural framing until has been filed with the CBO an Owner's Interim Grading Certificate bearing the signature and seal of either an Ontario Professional Engineer or an Ontario Land Surveyor that the elevations and footings or the foundations generally conform with the Certified Lot Grading Plan.

(iv) Owner's Final Grading Certificate: No newly constructed building shall be occupied or used unless there is filed with the CBO an Owner's Final Grading Certificate bearing the signature and seal of an Ontario Professional Engineer that the actual finished elevation and grading of these lands generally conform with the approved site servicing plan and the Certified Lot Grading Plan, either:

a) prior to occupancy , in the case of substantial completion on or between June 1 and October 31, or;

Agenda Item #	Page #

b) by the following June 1, in the case of substantial completion on or between November 1, and May 31:

(v) Obligation to Maintain Grading: After the Land is graded in accordance with Clause (i) of these restrictions, no change shall be made to the actual finished elevation and grading of the Lands in any way that results in a material alteration of drainage on or across the Lands are adjacent lands from that shown on the approved site servicing plan and the Certified Lot Grading Plans for these lands adjacent lands.

(vi) Continuation of Covenant: The Transferee agrees to obtain from any subsequent purchaser or transferee from him a covenant to observe and comply with the restrictions set forth above including this clause.

The Owner further agrees that the existing property line grades abutting developed lands are not to be altered or disturbed, except as approved otherwise by the City Engineer.

The Owner shall construct silt fences or other facilities as required during construction to control overland flows from this development to ensure that mud, silt, construction debris, etc. does not adversely affect abutting properties, all to the specification of the City Engineering.