

COMMUNICATION C1
ITEM NO. 1
COMMITTEE OF THE WHOLE
(PUBLIC MEETING)
February 2, 2022

From: Alan Heisey <heisey@phmlaw.com>
Sent: Thursday, January 27, 2022 10:12 AM
To: Clerks@vaughan.ca
Cc: Carol Birch <Carol.Birch@vaughan.ca>; Meaghan McDermid <meaghanm@davieshowe.com>; 'Eric Harvey' <Eric.Harvey@cn.ca>; Daniel Salvatore <Daniel.Salvatore@cn.ca>; Marilyn lafrate <Marilyn.lafrate@vaughan.ca>
Subject: [External] Tesmar Holdings Inc. - Part of Lot 15, Concession 4 – Phase 2 - OP.21.020 and Z.21.041 - Public Meeting February 2, 2022

I act for Canadian National Railway the owner of the MacMillan Rail Yard one of the most important transportation terminals in North America.

The MacMillan Rail Yard is located to the north and south of Highway 7, north and south of Rutherford Road, east of Jane Street and west of Keele Street in the City of Vaughan. The northwest quadrant of the Yard is located to the east of the property that is the subject matter of these applications and the above referenced VOP2010 appeal.

The Yard is 1,000 acres in size and employs over 1,000 employees. It is one of the largest employers in the City of Vaughan and York Region.

CN has previously entered into Minutes of Settlement with the owners of these lands and has registered an agreement on title addressing its concerns with the development of this property at that time and as originally applied for both of which are attached to this email.

The development approvals for Phase 1 of this property contemplated 20 and 23 storey buildings. Phase 2 now proposes a 30 storey tower.

Our client only became aware of this above referenced meeting yesterday. CN needs to review the noise study filed in support of this application and review the materials filed in support of the applications prior to taking a position on this proposed development.

Please acknowledge receipt of this communication in writing.

Please provide the author with Notice of Adoption of any Official Plan Amendment and Notice of Passing of any Zoning Bylaw passed pursuant to these applications and notice of any future meetings concerning these applications.

I am further requesting a copy of Council's decision arising out of this public meeting.

Thanks

A. Milliken Heisey Q.C.
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O.M.B. Case Nos. PL070347, PL120:

ONTARIO MUNICIPAL BOARD
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Tesmar Holdings Inc.
Subject: Failure of the Regional Municipality of York to announce a decision respecting Proposed Official Plan Amendment No. 653 to the Official Plan for the City of Vaughan
Municipality: City of Vaughan
O.M.B. Case No.: PL070347
O.M.B. File No.: O070048

Tesmar Holdings Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's neglect to enact a proposed amendment to Zoning By-law 1-88 of the City of Vaughan to rezone lands respecting Part of Lot 15, Concession 4, from Service Commercial (C7) Zone to a specific Apartment Residential (RA3) Zone to permit two twenty-eight (28) storey high-rise residential condominium buildings with a commercial component comprised of a minimum of 5000 square metres of office space
O.M.B. File No. PL120974

MINUTES OF SETTLEMENT

BETWEEN:

TESMAR HOLDINGS INC. ("Tesmar")

and

CANADIAN NATIONAL RAILWAY COMPANY ("CNR")

(collectively, the "Parties" and individually, a "Party")

WHEREAS Tesmar is the registered owner of the property located at the northeast corner of Jane Street and Riverrock Gate in the City of Vaughan (the "Subject Site"), legally described as: PART OF LOT 15 CONCESSION 4 VAUGHAN, BEING PARTS 1 TO 9 INCL. ON PLAN 65R32119; S/T EASEMENT OVER PTS 1, 2 & 3 65R32119 IN FAVOUR OF VAUGHAN HYDRO-ELECTRIC COMMISSION AS IN LT 1427859; S/T EASE OVER PTS 2 & 4 65R32119 IN FAVOUR OF THE REGIONAL MUNICIPALITY OF YORK AS IN YR26024, AS ASSIGNED BY YR28405; S/T EASE OVER PT 7 65R32119 IN FAVOUR OF PT LT 15 CON 4, AS DESCRIBED IN R670402, AS IN YR412131; S/T TEMP EASE OVER PTS 6 & 8 65R32119 IN FAVOUR OF PT LT 15 CON 4, AS DESCRIBED IN R670402, AS IN YR412131; S/T EASE OVER PTS 7, 8 & 9 65R32119 IN FAVOUR OF PT LT 15 CON 4, PTS 2, 3, 4 & 5 65R11385, EXCEPT PTS 1 TO 9 INCL. 65R26566, PT 2, 65R14841, PTS 1 TO 7 INCL. 65R21748, PTS 1 & 2 65R22343, PTS 7 & 9 EXPROP PL R593324 & PT 1 65R16732, AS IN YR412213; T/W EASE OVER PT LT 15 CON 4, PTS 10, 11 & 12 65R32119 AS IN YR412213.; SUBJECT TO AN EASEMENT AS IN YR2219047; CITY OF VAUGHAN;

AND WHEREAS CNR is the owner and operator of the MacMillan Rail Yard which is located to the south east of the Subject Site;

AND WHEREAS On September 25, 2006, City Council adopted site specific Official Plan Amendment No. 653 ("**OPA 653**") to re-designate the Subject Site from "Prestige Area" to "High Density Residential/Commercial";

AND WHEREAS On June 4, 2007, Tesmar submitted an application for a zoning by-law amendment to re-zone the Subject Site from "Service Commercial (C7)" Zone to "Apartment Residential (RA3)" Zone with retail, business, and professional office uses permitted;

AND WHEREAS Tesmar appealed the Region's failure to make a decision on OPA 653 and the City's failure to make a decision on the proposed zoning by-law amendment to the Ontario Municipal Board (the "**Board**") (collectively, the "**Site Specific Appeals**");

AND WHEREAS CNR is a party to the Site Specific Appeals;

AND WHEREAS Tesmar has also appealed to the Board the Region's failure to make a decision on the City of Vaughan's new Official Plan adopted by City Council on September 7, 2010 (the "**Vaughan OP 2010**");

AND WHEREAS the Site Specific Appeals and Tesmar's appeal of the Vaughan OP 2010 (collectively, the "**Tesmar Appeals**") have been consolidated with appeals by others of Official Plan Amendment No. 2, the Vaughan Mills Secondary Plan ("**VMSCP**") and appeals by other landowners of their site specific applications (collectively, the "**Consolidated Appeals**");

AND WHEREAS Tesmar and CNR have engaged in mediation with the other parties to the Site Specific Appeals;

AND WHEREAS HGC Engineering prepared a "Noise and Vibration Feasibility Study" for the Subject Site dated January 22, 2014 and a Memorandum dated October 27, 2014 providing additional clarification on the noise modelling (collectively, the "**2014 Noise Report**") which assessed noise impacts on the Subject Lands based on a "worst-case" scenario and modelling parameters agreed to by the parties to the Tesmar Appeals;

AND WHEREAS Poulos and Chung Limited prepared a "2021 Transportation Impact Assessment" for the Subject Site dated May, 2014 (the "**Traffic Report**") which assessed the impact of the proposed development of the Subject Site on the transportation network in the surrounding area to the year 2021;

AND WHEREAS City Council passed a resolution on March 18, 2014 designating the Subject Site as a Class 4 site pursuant to the Ministry of the Environment's *Environmental Noise Guideline, Stationary and Transportation Sources – Approval and Planning, Publication NPC-300* ("**NPC-300**"), subject to conditions;

AND WHEREAS the Parties have agreed upon a revised Official Plan Amendment attached hereto as Schedule "A" (the "OPA") and a revised Zoning By-law Amendment attached hereto as Schedule "B" (the "ZBA") for the Subject Site;

NOW THEREFORE, in consideration of the payment by each Party to the other Party of the sum of two dollars (\$2.00), the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

1. The Recitals above are true.
2. The following is a list of the Schedules to these Minutes which shall form part of these Minutes:
 - (a) Schedule A: Official Plan Amendment
 - (b) Schedule B: Zoning By-law Amendment
 - (c) Schedule C: Evaluation Method and Matrix of Design Features
 - (d) Schedule D: Warning Clauses
 - (e) Schedule E: Plan of Condominium Conditions
 - (f) Schedule F: Easement for Noise, Vibration and Odour to CNR
 - (g) Schedule G: Industrial and Mining Lands Compensation Act Agreement with CNR

Definitions

3. When used herein, the term "**Improvement**" shall mean any building or structure on the Subject Site.

The Appeals

4. The Parties agree to jointly ask the Board to issue a Decision approving the OPA as set out in Schedule "A" and the ZBA as set out in Schedule "B", or such revised versions of the OPA and ZBA as are mutually acceptable to the Parties, confirmation of which shall be provided in writing. The Parties further agree to request the Board to modify the Vaughan OP 2010 to include the OPA, or such revised version as is mutually acceptable to the Parties, as a site specific amendment and to approve the Vaughan OP 2010 as modified.
5. CNR agrees to support a request by Tesmar that the Board hold a hearing of the Tesmar Appeals for the purpose of approving the OPA and ZBA as contemplated in s.4 above, either separately from, or as part of, the Consolidated Appeals. CNR agrees to support any request by Tesmar to have the Tesmar Appeals dealt with on their own separately from any other appeals included in the Consolidated Appeals. For greater certainty, CNR's support as required by this section shall be satisfied by CNR's counsel or representative making oral or written submissions advising of CNR's support.

6. In the event that Tesmar does not reach a settlement of some or all of the Tesmar Appeals with the other parties to those appeals, Tesmar may proceed to a full hearing on the merits of the Tesmar Appeals. In such circumstances, CNR shall advise the Board through oral or written submissions that it supports the approval of the OPA and ZBA. CNR may, at its discretion, call witnesses or otherwise participate in the hearing of the Tesmar Appeals to support the OPA and ZBA, but shall not be required to do so.
7. The Parties agree to file these Minutes, including all of the Schedules, with the Board as an exhibit at the Board's hearing of the Tesmar Appeals.
8. The Parties each agree not to request a costs award from the Board against each other in respect of any aspect of the Tesmar Appeals and the Consolidated Appeals.

Noise

General

9. The Parties acknowledge and agree that based on the findings of the 2014 Noise Report, the proposed development of the Subject Site is capable of being carried out such that sound levels on the Subject Site from CNR transportation and stationary sources will not exceed the sound level limits permitted in a Class 1 Area as set out in NPC 300, provided: (i) any required noise mitigation measures determined by the Noise Report Update, as described in s. 13, are implemented in the design and construction of all Improvements and open spaces on the Subject Site and (ii) the Subject Site is developed in accordance with the requirements of these Minutes, the OPA and ZBA.
10. CNR acknowledges and agrees that following execution of these Minutes, Tesmar may waive any confidentiality with respect to the 2014 Noise Report, and the 2014 Noise Report may be released and form part of the public record either in the City of Vaughan's file on this matter or, if necessary, filed with the Board.

Class 4 Area with Class 1 Sound Level Limits

11. The Parties agree that the Subject Site shall be classified as a "Class 4 Area" as defined in NPC-300, in accordance with the OPA and ZBA, for the purpose of recognizing that noise mitigation measures for these lands may include receptor-based solutions. Notwithstanding the Class 4 Area classification, the sound level limits for a Class 1 Area under NPC-300 shall apply to the Subject Site for the purposes of the obligations in these Minutes and any Improvements on the Subject Site shall be designed and constructed to meet the Class 1 sound level limits in accordance with the terms of these Minutes.

12. In the event that NPC-300 is amended or replaced by other Environmental Noise Guidelines in the future, any reference to NPC-300 in these Minutes and the Schedules shall be deemed to be a reference to the new or amended NPC-300, however, notwithstanding any such amendment to or replacement of NPC-300, the maximum sound level limits applicable to the Subject Site for the purposes of the obligations in these Minutes shall in no event be lower than those currently contained in NPC-300 as it reads as of the date of these Minutes.

Noise Report Update

13. Prior to the issuance of any building permit for an Improvement containing residential units on the Subject Site, Tesmar shall have an update to the 2014 Noise Report prepared by an acoustical engineer duly qualified in the Province of Ontario (the "Noise Report Update"). The Noise Report Update shall be prepared in accordance with the methodology and analysis described in Schedule "C" and the requirements of these Minutes.
14. The Parties acknowledge and agree that the noise model used in the 2014 Noise Report included predicted noise levels from a hypothetical industrial facility on the adjacent lands immediately east of the Subject Site (the "Adjacent Lands"). Due to the change in ownership of the Adjacent Lands, the Parties agree that it is no longer necessary to include these predicted noise impacts from the Adjacent Lands and the noise model referred to in Schedule C as "Tesmar-CUMULATIVE_NPC300-Rev08-2014-10-27_Updated by Jade_October 7 2016.cna" (the "Noise Model") has been revised to reflect this change.
15. The Parties agree that should a structure be constructed on the Adjacent Lands in the future, Tesmar may update or revise the noise model described in Schedule C to reflect any changes to the sound levels experienced at the Subject Site that may result from the construction of that structure (the "Adjacent Lands Revised Noise Model"). In such circumstances, the Adjacent Lands Revised Noise Model shall thereafter be used in place of the noise model described in Schedule C for any and all Noise Report Updates prepared in accordance with s. 13. A complete electronic copy of the Adjacent Lands Revised Noise Model shall be provided to CNR and its acoustical consultant prior to, or in conjunction with, the delivery of the Building Plans, as defined in s. 22. The Parties shall work co-operatively and in good faith to resolve any issues that may arise with respect to finalizing the Adjacent Lands Revised Noise Model consistent with the purpose and intent of these Minutes.
16. For any building permit application for an Improvement containing residential units on the Subject Site that is proposed to be submitted on any date that is five (5) years after the date of execution of these Minutes, CNR may require that the

noise model used for the Noise Report Update be revised from the noise model described in Schedule C in order to include actual and/or planned and predictable expansions, revisions, or other changes in CNR's operations or infrastructure at the MacMillan Yard which have resulted, or will result, in increases in the generation of noise and sound levels from CNR's transportation and stationary noise sources.

17. For any building permit application described in s. 16 above, Tesmar shall provide CNR with written notice that it intends to submit such an application. Within 30 days of this notice, CNR shall provide a description of the changes described in s. 16 above, if any, and the revised data to be included in the revision to the noise model described in Schedule C, or the Adjacent Lands Revised Noise Model, as the case may be (the "CNR Revised Noise Model"). A complete electronic copy of the CNR Revised Noise Model shall be provided to CNR and its acoustical consultant prior to, or in conjunction with, the delivery of the Building Plans, as defined in s. 22. The Parties shall work co-operatively and in good faith to resolve any issues that may arise with respect to finalizing the Revised Noise Model consistent with the purpose and intent of these Minutes.

Mitigation Measures

18. Where the noise model described in Schedule C, or the Adjacent Lands Revised Noise Model or CNR Revised Noise Model, as the case may be, predicts that sound levels on the Subject Site from CNR stationary sources will exceed the sound level limits permitted for a Class 1 area pursuant to NPC-300, the Noise Report Update shall specify the receptor-based design features, as described in Part B of Schedule C, required to eliminate any such exceedances and achieve compliance with the Class 1 Area sound level limits.
19. Tesmar shall incorporate all receptor-based design features required pursuant to the Noise Report Update into all future plans and drawings for any Improvement containing residential units or other noise sensitive spaces as defined in NPC-300 on the Subject Site and shall implement such receptor-based design features in the development of any such Improvement as constructed
20. In addition, Tesmar agrees that on the east facades of all Improvements containing residential units: (i) there shall be no windows or doors associated with any space within a residential unit; and (ii) the exterior walls and cladding (with the exception of glazed areas) shall be constructed of pre-cast concrete, masonry, brick veneer or acoustically equivalent materials. Inoperable (fixed or sealed) windows shall be permitted on those portions of the east facades which are associated with spaces external to any residential units, such as hallways and corridors.

21. The Parties acknowledge and agree that the Noise Report Update will also be required to assess and, if necessary, recommend mitigation for road traffic noise, in accordance with the requirements of NPC-300. Mitigation of road traffic noise may include specific material requirements for exterior walls and windows which will be detailed in the Noise Report Update and implemented in the construction of the buildings on the Subject Site in accordance with the requirements of NPC-300 and the City of Vaughan.

Review of Plans and Drawings by CNR

22. Tesmar agrees that prior to the issuance of a building permit(s) for any Improvement containing residential units on the Subject Site, Tesmar shall deliver to CNR the following (collectively referred to as the "Building Plans"):
- (i) The certified architectural drawings;
 - (ii) The Noise Report Update;
 - (iii) A complete electronic copy of the noise model used in the preparation of the Noise Report Update;
 - (iv) a list of the design elements or features that were included in the plans for purposes of noise mitigation; and
 - (v) A letter from an acoustical engineer duly qualified to practice in the Province of Ontario confirming that all required noise mitigation measures have been incorporated into the architectural drawings in accordance with these Minutes.
23. Tesmar shall provide CNR with a minimum of one (1) week advance notice, or such shorter time period as CNR may agree to acting reasonably, that it will be providing the Building Plans in order to allow CNR time to alert its consultants to be reasonably available.
24. CNR shall provide any comments relating to compliance of the Building Plans with these Minutes to Tesmar within 20 calendar days of receipt of the Building Plans or expiry of the notice period in section 23, whichever is later, or such longer time period as Tesmar may agree to acting reasonably. In response to CNR's comments, if any, Tesmar shall revise the Building Plans as may be necessary to ensure compliance with these Minutes and shall provide the revised Building Plans to CNR. Any issues with the content or conclusions of the Revised Building Plans shall be resolved to the mutual satisfaction of the Parties acting reasonably and in good faith to ensure compliance with these Minutes prior to the issuance of the requested building permit(s).
25. If revisions to the architectural plans and drawings submitted with a building permit application are required by the City of Vaughan as part of its review of the application which affect the noise mitigation measures incorporated in the building design, Tesmar shall, prior to the issuance of any building permit, deliver

to CNR the final certified architectural drawings approved by the City and an acoustical engineer's letter as described in s. 22 (v). The procedure and timing for review of the drawings by CNR shall be as set out in s. 24.

26. Tesmar agrees that prior to the occupancy of any residential unit in any Improvement on the Subject Site, Tesmar shall deliver to CNR the following (collectively the "Built Plans"):
 - (i) The as-built architectural drawings of the particular Improvement;
 - (ii) Written certification from an acoustical engineer duly qualified to practice in Ontario that all noise mitigation measures required by these Minutes have been installed and constructed in accordance with the certified architectural drawings and the requirements of these Minutes; and
 - (iii) Any additional information reasonably required by CNR for purposes of confirming the above certification.
27. Tesmar shall provide CNR with a minimum of one (1) week advance notice, or such shorter time period as CNR may agree to acting reasonably, that it will be providing the Built Plans in order to allow CNR time to alert its consultants to be reasonably available.
28. CNR shall provide any comments relating to compliance of the Built Plans with these Minutes to Tesmar within 20 calendar days of receipt of the Built Plans or the expiry of the notice period in section 27, whichever is later, or such longer time period as Tesmar may agree to acting reasonably. Any issues with the content or conclusions of the Built Plans shall be resolved to the mutual satisfaction of the Parties acting reasonably and in good faith to ensure compliance with these Minutes prior to occupancy.
29. CNR shall have no responsibility or liability whatsoever for the design or adequacy of the work done in order for Tesmar to comply with these Minutes notwithstanding that any plans or specifications or materials or reports may have been reviewed or approved by CNR pursuant to these Minutes. No such review or approval by CNR of plans or specifications shall be deemed to limit Tesmar's full responsibility for the design and adequacy of the works required by these Minutes.

Warning Clauses and Condominium Conditions

30. Tesmar agrees to insert the warning clauses set out in the attached Schedule "D" into each of the following:
 - (a) every agreement of purchase and sale and lease for all or any portion of the Subject Site entered into after the date of execution of these Minutes (including, but not limited to, agreements for proposed or actual condominium units);

- (b) the disclosure statement for any condominium for all or any portion of the Subject Site;
 - (c) any draft condominium declaration for all or any portion of the Subject Site disseminated after the date of execution of these Minutes; and
 - (d) the final declaration of any condominium for all or any portion of the Subject Site.
31. Any condominium declaration for any structure on the Subject Site shall be defined such that all noise mitigation measures required in this agreement form part of the common elements of the condominium. Notwithstanding the foregoing, the noise mitigation measures may be included as common elements with exclusive use by individual unit owners.
32. For greater clarity, the definition of residential unit in any condominium declaration shall contain the following:

Each Residential Unit shall be bounded horizontally by:

I) The backside surface and plane and production of the drywall sheathing on all exterior walls or walls separating the unit from another unit or from the common element.

II) The unfinished unit side surface and plane of all exterior doors and door frames, windows and window frames and the unit side surfaces of all glass panels located therein, the said windows and exterior doors being in a closed position.

For any unit with an enclosed noise buffer, the portion of the unit contained within the enclosed noise buffer and not described above, shall be part of the common elements of the particular condominium corporation.

33. Tesmar agrees that the condominium declaration shall include a provision, enforceable by the condominium corporation, requiring that no owner of a residential unit shall be permitted to make any alterations to, damage, or remove any noise mitigation measures.
34. Tesmar consents to and agrees that it will use its best efforts to cause the City of Vaughan to impose the conditions set out in Schedule "E" as conditions to approval of any plan of condominium application filed by Tesmar for all or any portion of the Subject Site. Tesmar agrees that such best efforts shall include appealing any such refusal to the Board for the purpose of seeking its approval of the Schedule E conditions.

Easement and Industrial Agreement

35. Tesmar agrees to grant and transfer to CNR the easement attached as Schedule "F" to allow CNR to emit noise, vibration and odour over, through, along, upon and across the entirety of the Subject Site and to register same at Tesmar's expense against the entirety of the Subject Site, and the lands owned by CNR

comprising the MacMillan Yard (the latter if required by CNR) within twenty (20) business days following the final approval of any official plan amendment or zoning bylaw amendment (whether the same as or different from the OPA and ZBA) that allows any residential use of any part of the Subject Site. Upon execution of these Minutes, Tesmar shall execute the documents required for such easement, which executed documents shall be held in escrow by the solicitors for CNR and may be registered at the direction of CNR in the event that Tesmar does not register same in accordance with the requirements of this section.

36. Tesmar and CNR agree to execute the agreement made pursuant to the *Industrial and Mining Lands Compensation Act*, R.S.O. 1990 c. I.5, attached hereto (the "Industrial Agreement") as **Schedule "G"** contemporaneously with the execution of these Minutes and, notwithstanding Paragraph 10 of Schedule G, to register the Industrial Agreement and the restrictive covenants contained therein at Tesmar's expense against the entirety of the Subject Site within twenty (20) business days following the final approval of any official plan amendment or zoning bylaw amendment (whether the same as or different from the OPA and ZBA) that allows any residential use of any part of the Subject Site and to provide confirmation of same to CNR. Upon execution of these Minutes, Tesmar shall execute the documents required for the registration of the Industrial Agreement, which executed documents shall be held in escrow by the solicitors for CNR, and may be registered at the direction of CNR in the event that Tesmar does not register same in accordance with the requirements of this section.
37. CNR agrees that nothing in the Industrial Agreement shall be construed to suggest that CNR and Tesmar have not resolved to their mutual satisfaction the development approvals sought by Tesmar for the Subject Site and the future use of the Subject Site (in each case as set out in the OPA and the ZBA), on the terms set out in these Minutes of Settlement.
38. In the event of any conflict between the provisions of the Industrial Agreement and these Minutes as they relate to any portion of the Subject Site of which Tesmar is the registered owner, these Minutes shall govern. 20 ✓ RB
39. CNR agrees that Tesmar shall not be required to comply with section ~~18~~ of the Industrial Agreement, but this covenant applies only to Tesmar and not to any successors or assigns of Tesmar.
40. Tesmar shall, within thirty (30) days after the registrations described in sections 35 and 36 above, obtain and deliver in registrable form from every encumbrancer, mortgagee or holder of a deed of trust which encumbers all or any portion of the Subject Site, postponement agreements in a form acceptable to CNR, acting reasonably, wherein the said encumbrancer(s), mortgagee(s) and holder(s) of the

deeds of trust shall agree that their rights and benefits are postponed to and are subordinate to the terms and provisions of each of the said registrations.

Transportation

41. CNR acknowledges and agrees that based on the findings of the Traffic Report, it has no issues regarding transportation and the proposed development of the Subject Site as described in the OPA and ZBA.

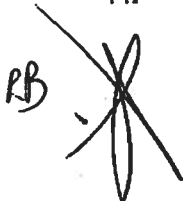
Future Approvals

42. Notwithstanding section 8 of the Industrial Agreement attached as Schedule "G" hereto, CNR agrees that, provided these Minutes are adhered to, it will not oppose either directly or indirectly any applications, permits or approvals that may be required for Tesmar to implement the proposed development of the Subject Site in substantial accordance with the OPA and ZBA, including but not limited to applications for site plan approval, plans of condominium or building permits.
43. Subject to section 42 above, and without otherwise limiting section 8 of the Industrial Agreement attached as Schedule "G" hereto, CNR retains its right to participate in any future development approval process for any proposal in respect of the Subject Site (other than the development proposed by Tesmar as described in the OPA and ZBA) initiated by the municipality or other regulatory body, and CNR may exercise any and all rights and remedies in such development approval process that any participant therein could exercise.

Costs

44. Prior to registration of the first plan of condominium for the first building on the Subject Site, Tesmar agrees to make a payment to CNR in the amount of ¹⁵⁰~~\$125~~,000 representing compensation for a portion of the costs incurred by CNR with respect to the Tesmar Appeals.

RB



General

45. The Parties acknowledge and agree that if the Board refuses to approve the OPA and ZBA or approves modified versions of the OPA and ZBA which do not allow for any residential uses on the Subject Site, these Minutes shall be terminated and any obligations or benefits thereof shall no longer apply.
46. The Parties agree that they are contractually bound to the terms of these Minutes, and without limiting any other rights and remedies available to a Party, that the obligations and benefits thereof are immediately enforceable by civil action should a Party be in breach of them.

47. These Minutes shall be binding upon and enure to the benefit of the Parties, their successors and assigns.
48. Subject to applicable law, the Parties shall execute diligently and expeditiously such further documents and take such further action as may be reasonably required in order to implement and give full legal force and effect to the terms of these Minutes.
49. The Parties agree to act reasonably and with good faith in respect of all dealings between the Parties pursuant to these Minutes.
50. These Minutes constitute the entire agreement between the Parties with respect to the Appeals and supersede all prior agreements, negotiations and understandings with respect thereto.
51. Any amendment to or waiver of any provision of these Minutes must be in writing and signed by the Parties.
52. If any provision of these Minutes is deemed illegal, invalid or unenforceable, by an arbitrator or any court of competent jurisdiction from which no appeal is taken by any person within the applicable time limit for filing such an appeal, or from which no right of appeal exists, that provision will be severed from these Minutes and the remaining provisions will remain in full force and effect.
53. These Minutes may be executed in one or more counterparts, which together shall constitute a complete set of these Minutes, and executed counterparts may be delivered by e-mail or facsimile transmission.
54. Headings are included for ease of reference only and shall not affect the interpretation or construction of these Minutes.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed these Minutes as of the date(s) indicated below:

TESMAR HOLDINGS INC.

Date: *March 3rd, 2017*

Name: *MAURIZIO ROCATO*

Title: *Dir. PLANNING & DEVELOPMENT*

I have authority to bind the Corporation.

CANADIAN NATIONAL RAILWAY COMPANY

Date: *March 3rd, 2017*

Name: *Raymond Bashir*

Title: *Sr Officer - Community Planning and Dev't*

I have authority to bind the Corporation.

Schedule "A" – Official Plan Amendment

Consolidated version of the adopted Official Plan and the policies proposed to strengthen the existing text.

AMENDMENT NUMBER 653 TO THE OFFICIAL PLAN OF THE VAUGHAN PLANNING AREA

The following text to Amendment Number 653 to the Official Plan of the Vaughan Planning Area and Schedules "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12" and "13" constitute Amendment Number 653.

Also attached hereto but not constituting part of the Amendment are Appendices "I", "II" and "III".

I PURPOSE

The purpose of this Amendment to the Official Plan is to amend the provision of the Official Plan of the Vaughan Planning Area respecting Amendment No. 600 and Amendment No. 450 (Employment Area Plan).

The subject Amendment will remove the Subject Lands from the Amendment No.450 (Employment Area Plan) Amendment area and place the Subject Lands into the Amendment No. 600 Amendment area within the Vaughan Centre Secondary Plan. The lands shown as "Area Subject to Amendment No. 653" on Schedules "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12" and "13" hereto, will permit a mix of commercial and high density residential land uses on the Subject Lands located on the northeast corner of Jane Street and Riverrock Gate.

II LOCATION

The lands subject to this Amendment (hereinafter referred to as "Subject Lands"), are shown on Schedules "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12" and "13" attached hereto as "Area Subject to Amendment No. 653". The Subject Lands comprise approximately 1.67 ha and are located on the northeast corner of Jane Street and Riverrock Gate, in Lot 15, Concession 4, City of Vaughan.

III BASIS

The decision to amend the Official Plan to remove the Subject Lands from the Amendment No. 450 (Employment Area Plan) Amendment area and place the Subject Lands into the Amendment No. 600 Amendment area within the Vaughan Centre Secondary Plan is based on the following considerations.

1. Having received statutory Public Hearings held on November 21, 2005 and June 19, 2006, respectively, on September 25, 2006, Vaughan Council approved Official Plan Amendment File OP.05.020 (Tesmar Holdings Inc.) to redesignate the Subject Lands from "Prestige Area" in Amendment No. 450 (Employment Area Plan) to "Vaughan Centre Secondary Plan Area" and further designate the Subject Lands as "High Density Residential/Commercial" within Amendment No. 600, to permit commercial and residential uses. Vaughan Council's resolution further includes policies to permit a commercial component, which would require a minimum of 5,000 m² of employment floor space, and a minimum height of 3-storeys, thus ensuring that the proposed development will incorporate a significant commercial component, thereby preserving the employment uses on the Subject Lands as part of a mixed-use development.
2. The Subject Lands are currently designated as "Prestige Area" by OPA No. 450 (Employment Area Plan), which permits a wide range of industrial, office, business, and civic uses. This Amendment proposes to redesignate the Subject Lands as "High Density Residential/Commercial" within Amendment No. 600, to permit commercial and residential uses.

3. The Subject Lands are separated from the existing employment areas to the east and south by a physical separation consisting of Riverrock Gate, a future northerly extension of Caldari Road and an existing valley and wooded area, which together have the effect of minimizing future opportunity for incursion of non-employment uses into the surrounding employment area. Furthermore, the City of Vaughan Official Plan 2010, includes policies that will serve to prevent the destabilization of employment areas by non-employment uses including retail and residential.
4. High-Density Residential/Commercial Mixed uses on the Subject Lands will support the overall intensification planned along the Jane Street Corridor and within the Vaughan Mills Centre Secondary Plan which is currently under review.
5. The Subject Lands include a minimum of 1880m² to be used for privately owned and publically accessible amenity space.
6. The Subject Lands and the lands to the north have been included within the boundary of the Vaughan Mills Centre Secondary Plan Area given their important location near the intersection of Rutherford Road and Jane Street, the planned infrastructure and transit improvements along the Jane Street corridor, the intensification planned within the Vaughan Mills Centre Secondary Plan and their physical separation from adjacent employment uses.
7. Employment uses are being provided on the lands through the provision of a policy which requires a minimum of 5000m² of employment floor space consisting of a minimum of 4,200m² of office space and a maximum 800m² of retail space within the first phase of development, thus ensuring employment uses are maintained and incorporated into the proposed mixed-use development.
8. At such time as Vaughan Official Plan (2010) comes into effect, the lands will be included in the Vaughan Mills Centre Secondary Plan Area, and Section 2.2.4.6 of the Vaughan Official Plan (2010) would prevent the conversion of employment lands to non-employment uses pending completion of a Regional Municipal Comprehensive Review.
9. The existing automotive manufacturing operations and other key industries are important and integral components of the existing Vaughan Employment Area bounded by Regional Road 7 on the south, Jane Street on the west, Rutherford Road on the north and Keele Street on the east. These specific employment uses, and the employment area as a whole, contribute significant economic activity and jobs to the City to meet its employment forecasts as set out in the Region of York Official Plan and the Growth Plan for the Greater Golden Horseshoe.
10. The Employment Area described above contains a variety of industrial uses which may be considered to fall within Class I, II or III as described in the Ministry of the Environment ("MOE") Guidelines. A Class III industrial facility is defined in MOE Guideline D-6 as *"A place of business for large scale manufacturing or processing, characterized large physical size, outside storage of raw and finished products, large production volumes, and continuous movement of products and employees during daily shift operations. It has frequent outputs of major annoyance and there is a high probability of fugitive emissions."*

11. The vacant lands adjoining to the east of the Subject Lands, which are zoned for industrial uses, are recognized as part of the Vaughan Employment Area described above.
12. The McMillan Rail Yard plays an important and strategic role in providing rail access and truck access to industries within the adjoining employment area and in the GTA and provides vital rail and intermodal connections with the rest of Canada and North America. The McMillan Rail Yard is a Class III industrial facility having a potential influence area of over 1km.
13. This Official Plan Amendment is consistent with the Provincial Policy Statement and conforms to Provincial Plans which encourage intensification and growth. Where there may be a potential conflict between a proposed new use that is defined as a noise sensitive land use by the MOE and an adjacent existing land use that is a source of noise emissions, such as an industrial facility, railway yard and road and rail transportation corridors, among other things, efforts shall be made to minimize any potential impacts. In this regard, guidance is provided to land use planning authorities by the MOE *Environmental Noise Guideline: Stationary and Transportation Sources – Approval and Planning – Publication NPC-300* ("NPC 300") which may be amended from time to time.
14. In accordance with the exercise of its responsibility and authority under the Planning Act, Vaughan Council may formally confirm by resolution the classification of an area as a "Class 4 area" at its sole discretion pursuant to procedures set by the municipality and based on considerations identified in NPC 300. This will be implemented through the use of a Zoning By-law with the holding symbol "H" and a site plan approval.
15. A Noise and Vibration Study prepared by HGC Engineering, dated January 22, 2014 concluded that noise sources, including the nearby Rail Yard, Maple Stamping Plant, surrounding industrial facilities and a predictable worst case scenario for a hypothetical industrial facility on the adjoining vacant industrial lands, can be effectively mitigated.
16. Prior to Site Plan Approval, an update to the January 22, 2014 Noise and Vibration Study prepared by HGC Engineering may be required to address any noise mitigation measures in conjunction with the detailed building design.
17. In the operative part of this Official Plan Amendment, the McMillan Rail Yard, the Maple Stamping Plant, and the adjoining vacant industrial lands at the north east corner of Caldari Road and Riverrock Gate are referred to as "Rail Yard" and "Existing and Future Industrial Lands" respectively.
18. Accordingly, High Density Residential/Commercial Mixed Uses on the Subject Lands can achieve appropriate land use compatibility based on the implementation of the various environmental reports required in this Amendment.
19. The Subject Lands about the Jane Street Corridor that is planned for additional transit and transportation improvements within the 2021 planning horizon.
20. Transportation improvements, such as the extension of Caldari Road north to Rutherford Road with a new signalized intersection and related improvements at Rutherford Road and a new east-west public street along the northern boundary of the Subject Lands, will support phased development of the Subject Lands and will contribute to the future development of the lands to the north as well as other development in the Vaughan Mills Centre Secondary Plan area.

21. Where deemed necessary, development shall be phased to coincide with transportation improvements in order to ensure that the progression of development occurs in an orderly fashion and reflects the most efficient and economic use of existing and planned infrastructure.

IV. DETAILS OF THE AMENDMENT AND POLICIES RELATIVE THERETO

1. Amendment No. 450 (Employment Area Plan) to the Official Plan of the Vaughan Planning Area, is hereby amended by:

- a) Deleting the Subject Lands designated "Prestige Area" under Amendment No. 450 (Employment Area Plan), shown as "Area Subject to Amendment No. 653" on Schedules "1", "2", "3", "4" and "5" attached hereto, from the Amendment No. 450 amendment area and redesignating the Subject Lands to "Vaughan Centre Secondary Plan Area" under Amendment No.600, thereby removing the lands from Amendment No. 450.

2. Amendment No. 600 to the Official Plan of the Vaughan Planning Area, is hereby amended by:

- a) Adding the Subject Lands, shown as "Area Subject to Amendment No. 653" on Schedules "6", "7", "8", "9", "10", "11", "12" and "13" attached hereto, to the Amendment No. 600 Amendment area by redesignating the Subject Lands from "Prestige Area" under Amendment No. 450 (Employment Area Plan) to "Vaughan Centre Secondary Plan Area" under Amendment No. 600, thereby including the lands within the Amendment No. 600 Amendment area.
- b) Schedules "B2" and "B3" to Amendment No .600 are amended by further designating the Subject Lands, shown as "Area Subject to Amendment No.653" on Schedules "12" and "13" attached hereto, to "High Density Residential/Commercial" within the Vaughan Centre Secondary Plan Area.

- c) Subsection 4.1.1 vi) is amended by deleting it in its entirety and replacing it with the following:

"vi) Vaughan Centre is expected to accommodate more than 6000 residents at full development, in predominantly medium and high density housing forms."

- d) Subsection 4.2.1.4 is amended by adding the following:

"ix Notwithstanding any other provision herein, the 1.67 ha. parcel of land located at the northeast corner of Jane Street and Riverock Gate shall be subject to the following site specific policies:

- a) General

The Subject Lands are intended to contribute to a comprehensively planned, high quality, transit supportive and pedestrian friendly district. Mixed-use development along with a strong open space and public realm system will create a sense of community, sustainability and vitality through:

- the location of taller buildings along Jane Street;
- buildings with active frontages of retail, commercial and residential uses to create a vibrant street level environment;
- pedestrian oriented streets and pathways with a green streetscape, intimately scaled open spaces and public realm where appropriate, safe and well-connected boulevards and pathways, active at grade uses and gathering spaces;
- pedestrian and bicycle trails and pathways that assist in making connections to the Vaughan Mills Centre and to natural heritage features and open spaces;
- in addition to implementing the objectives and policies of the *City's Community Sustainability and Environmental Master Plan (Green Directions)*, the sustainable development policies of Volume 1 of *VOP 2010* and any other sustainability performance policies/guidelines shall apply.

The extent of the High-Density Residential/Commercial designation shall be separated from the existing employment areas to the east and south by means of existing and planned roads (Riverrock Gate and Caldari Road). Accordingly, no future expansions of non-employment uses into the surrounding employment area shall be permitted.

b) **Permitted Uses**

- Residential Uses having a total maximum Gross Floor Area of 45,000 m²
- Employment Uses having a minimum Gross Floor Area of 5000 m² consisting of:
 - Office uses having a minimum Gross Floor Area of 4200 m²
 - Retail uses having a maximum Gross Floor Area of 800 m² with no outdoor storage

c) A publically accessible privately owned amenity space located at grade level having a minimum size of 1880m² and subject to a public easement in favour of the City of Vaughan shall be required on the Subject Lands. Underground parking may be permitted below the publically accessible privately owned amenity space to the satisfaction of the City of Vaughan. Residential, commercial/retail and employment uses are not permitted on the publically accessible privately owned amenity space.

d) **Building Types**

- The permitted building type shall be High-Rise Buildings.

e) **Building Design Criteria**

1. Building Design shall incorporate a minimum 3 storey high podium along the Jane Street frontage which is setback a minimum of 3.0 m.
2. A podium with a minimum height of 1-storey and 6.0 metres shall be provided along Riverrock Gate and Road 'B' (north).

3. Podium Design shall incorporate active street related dwellings, and/or retail and amenity uses with building frontages oriented toward public streets and publicly accessible privately owned amenity space and connections.
4. Towers above the podium shall generally be setback a minimum of 6.0 m from any public street and setback 3.0 m from any publicly accessible privately owned amenity space.
5. The tower elements of high-rise buildings shall be designed as slender towers with floorplates not exceeding 770 m² in area. The towers shall be designed to minimize shadow and wind impact, particularly on open spaces and publicly accessible privately owned amenity space. Sun/shadow and wind impact analysis and mitigation studies shall be submitted to the satisfaction of the City.
6. In order to maintain privacy by appropriately spacing taller building elements, the distance between any portion of the high-rise building above twelve storeys and another tower shall be a minimum of 28 metres.
7. Rooftop mechanical shall be integrated into the overall design and screened from view. All roof areas are required to incorporate green roofs, solar capture equipment and/or cool roof materials.

The incorporation of green roofs, amenity space, and other features into podium roof tops to reduce the urban heat island effect and enhance the views of those overlooking the roof top is strongly encouraged.

8. Buildings should be designed with high quality materials selected for their performance, durability and energy efficiency. The use of Exterior Insulation Finish Systems (EFIS) is strongly discouraged. The building facades related to streets and amenity spaces should be varied in form and materials.

f)

Site and Urban Design

An urban design brief shall be submitted, prior to site plan approval, with related plans which shall address the streetscape with respect to landscape, pedestrian and transit elements, building locations and their relationship to complement the public street, the provision of cohesive architectural features, and such other matters as may be defined by the City and shall include the following:

1. Site Design shall incorporate a minimum 1880m² publicly accessible privately owned amenity space which shall be subject to a public easement in favour of the City of Vaughan.
2. The publicly accessible privately owned amenity space shall be connected to Jane Street by a mid-block at-grade landscaped pedestrian connection with a minimum width of 6 m. Other landscaped/streetscaped connections on the development site will be secured at the site plan stage.

3. Pedestrian access to buildings will be integrated with adjacent public streets to ensure access is convenient and safe. Multiple entrances and active grade related uses should be provided along Jane Street and along the mid-block pedestrian connection. The ground floor of buildings with retail and commercial should be highly transparent with a minimum 50% of the frontages to be glazed and transparent.
4. Building podiums fronting on Jane Street and Riverrock Gate should have a minimum 80% of the building frontage built to the setback line, with a maximum of 20% of the street wall permitted to setback further to provide building recesses for lobby entrances, cafes or other architectural elements.
5. All residential units located at grade on a public street or publicly accessible connection shall have a direct entrance from the street/connection and have the characteristics of a front entrance. Internal courtyards are encouraged to provide additional transition between the public realm and private uses.
6. A distinctive and coordinated landscape treatment shall be established.
7. Safe, efficient and convenient vehicular access which minimizes pavement and is pedestrian friendly shall be provided.
8. Structured parking for uses may be provided and surface parking shall be restricted to lay-by parking on driveways, where feasible. Where parking is provided in above-grade structures, each level of such use shall be faced with other active uses such as office, retail, residential etc. Parking garage entrances and service areas shall be located within the buildings, consolidated to the extent possible, and located on the site so as not to dominate the streetscape or publicly accessible privately owned amenity space.
9. A safe and attractive street environment for pedestrians including a double row of trees where feasible on the boulevards and setbacks associated with the proposed east-west and north-south streets shall be provided.
10. Ground floor retail and commercial uses are permitted to front onto a publicly accessible private amenity space at the discretion and satisfaction of the City.
11. In order to maintain a strong relationship to the street and to be universally accessible, entrances to retail establishments shall be generally flush with the sidewalk. The ground floor of buildings occupied by other uses such as office and residential should be raised no higher than generally 0.5 m above the ground level elevation.
12. The floor to floor height of ground floor retail/commercial units shall be a minimum of 4.5 metres.

13. The urban design brief and plans shall be reviewed and approved by the City.

g)

Building Height and Density

1. The maximum building height shall not exceed 18, 20 and 22 storeys respectively for the 3 proposed residential buildings. The minimum required office uses and maximum permitted retail uses shall be located in a building having no less than 3 storeys.
2. The maximum density of both residential and commercial uses combined shall not exceed 3.7 times the area of the site (FSI).

For the purposes of calculating the maximum residential density, the area of the site shall be 1.323 hectares and shall include land for the buildings, private roads and driveways, landscaping, at grade amenity areas, publicly accessible privately owned amenity space, walkways and any road widening or daylighting triangles taken after the date of approval of this Amendment.

For greater clarity it shall not include public roads or publicly owned parkland.

3. For the purposes of calculating the maximum commercial density, the site area shall be 1.67 hectares irrespective of any road widening or daylighting triangles taken after the date of approval of this Amendment.

h) Phasing

1. Development of the Subject Lands shall occur in phases. The minimum required office and maximum permitted retail uses shall be constructed concurrently with the first phase of development and the necessary infrastructure shall be in place to support the uses, to the satisfaction of the City.
2. Notwithstanding any other provision herein respecting the maximum FSI, any phase of development may exceed the maximum FSI of 3.7 provided that it is demonstrated to the satisfaction of the City that the overall FSI of the entirety of the Subject Lands when fully developed does not exceed 3.7.
3. To align development phasing with required infrastructure improvements, the City shall ensure through the use of the Holding Symbol "H" included in the implementing Zoning By-law that progression of development occurs and results in orderly development and ensures the most efficient and economic use of existing and planned infrastructure.

i) Transportation Requirements

1. The submission of a Traffic Impact Study, approved to the satisfaction of the City of Vaughan and York Region, shall be required to support each phase of development.

2. The northerly extension of Caldari Road as a public road from Riverock Gate to the new east-west public street along the northerly boundary of the Subject Lands, and the east-west public street from the Caldari Road extension to Jane Street or suitable interim alternative shall be required prior to first occupancy of the first phase of development of the Subject Lands. In the event that the portion of the east-west public street to be located on the adjacent lands to the north of the Subject Site is not constructed prior to first occupancy of the first phase of development, a temporary road shall be constructed on the Subject Site to the City's satisfaction.
3. The further northerly extension of Caldari Road as a public road from the new east-west public street to Rutherford Road, together with a new signalized (when warranted) intersection at Caldari Road and Rutherford Road and any required, related upgrades to Rutherford Road and the east-west public street, shall be constructed prior to first occupancy of the second phase of development of the Subject Lands in accordance with the zoning by-law.
4. The City shall require the preparation of a Transportation Demand Management (TDM) Program for all site development applications to encourage the use of TDM strategies. The TDM program should consider the initiatives and specific measures which can be implemented to promote more efficient use of existing road facilities, encourage car-pooling and car-sharing programs, promote transit use, active transportation, and other approaches for reducing parking demand and the use of single-occupancy vehicle travel.
5. The minimum width of the public roadways for the Caldari Road extension and the east-west local road shall be 23m and 20m, respectively.
6. The Zoning By-law will provide as a condition of removal of the holding symbol "H" the requirement that agreements be executed to the satisfaction of the City before each phase of development securing the provision of the foregoing public roads and related improvements and requiring completion of said roads and improvements before occupancy.

j) Land Use Compatibility

General

1. These policies shall be applicable to any application for Site Plan Approval on the Subject Lands.
2. In this section the McMillan Rail Yard is referred to as the "*Rail Yard*" and the Maple Stamping Plant, and the adjoining vacant industrial lands at the north east corner of Caldari Road and Riverock Gate are referred to as the "*Existing and Future Industrial Lands*".

3. Residential development on the Subject Lands shall be designed to minimize adverse impacts from the adjacent "*Rail Yard*" and "*Existing and Future Industrial Lands*" and any required mitigation measures shall be addressed in the studies required in this section.
- 3.
4. The Subject Lands may be appropriate for and confirmed by Vaughan Council by resolution as a "Class 4 Area" pursuant to the MOE *Environmental Noise Guideline Stationary and Transportation Sources – Approval and Planning Publication NPC 300* ("NPC 300"), as amended from time to time, subject to compliance with the City's requirements. The classification will be implemented through the use of a Zoning By-law with the holding symbol "H" and a site plan approval. The Zoning By-law must include the following conditions for the removal of the holding symbol "H":
 - i. Site plan approval;
 - ii. The submission of a Noise Impact Study satisfactory to the City which addresses any noise mitigation and control measures required in conjunction with the detailed building design;
 - iii. The provision and/or securing of any required noise mitigation and control measures at the Owner's expense, as the City may require;
 - iv. If appropriate, the execution of agreements satisfactory to the City between the Owner and owner(s) of neighbouring lands containing stationary noise sources to secure any noise mitigation measures which may be required on those neighbouring lands, as the City may require;
 - v. The execution of a site plan agreement, or other such agreement, satisfactory to the City which obligates the Owner to register noise warning clauses on title to the Subject Lands and provide notice of the Class 4 Area classification to prospective purchasers of residential units on the Subject Lands.
 - vi. A resolution is passed by Vaughan Council classifying the site as a Class 4 Area.
5. When considering development approval applications on the Subject Lands, regard shall be had to all applicable Federal, Provincial and municipal policies, regulations and guidelines to ensure that compatibility will be achieved and maintained with regard to noise, vibration, dust, odour and air quality, so as to achieve the goals of:
 - (a) Preventing undue adverse impacts from the existing and future operations of the "*Rail Yard*" and the "*Existing and Future Industrial Lands*" within the Employment Area shown on Schedule 2, onto the proposed residential uses to be located on the Subject Lands;

- (b) Minimizing and where possible, preventing complaints from residents of residential development on the Subject Lands.
 - (c) Permitting the *"Existing and Future Industrial Lands"* to comply with existing and/or future Environmental Compliance Approvals (ECA) issued by the Ministry of the Environment.
 - (d) Ensuring the continued operation of the *"Rail Yard"* on a 24 hour, 365 day/year basis.
6. Sensitive land uses may be limited in the implementing zoning (through massing, siting, buffering, and design mitigation measures) in proximity to the *"Rail Yard"* and *"Existing and Future Industrial Lands"* to ensure compatibility.

Environmental Noise Impact Study

7. A detailed environmental noise impact study and detailed design plans shall be required in support of a development application for sensitive land uses on the Subject Lands. Such report is to specify how compatibility will be achieved and maintained between the *"Rail Yard"* and *"Existing and Future Industrial Lands"* and the proposed development on the Subject Lands and shall include measures aimed at eliminating or minimizing impacts.
8. The environmental noise impact study and design of noise attenuation measures shall be based on the relevant noise criteria of the City of Vaughan, the Region of York and the Ontario Ministry of Environment and approved by the City in consultation with other public agencies, and the operator of the *"Rail Yard"*.
9. The environmental noise impact study shall include:
- (a) The assessment of the Subject Lands in accordance with the applicable MOE Guidelines.
 - (b) A determination of the planned and predictable worst case noise impact from all relevant noise sources, taking into account expansion or alteration plans identified by the stationary source(s) that can reasonably be expected to be implemented in the future.
 - (c) A determination of the impact from all noise sources at the Rail Yard, taking into account the existing 2013 operation processing approximately 1,000,000 rail cars a year, Cargoflo, diesel shop, truck terminal, general rail operations and future capacity of the Rail Yard that could include, in addition to the existing operations, the processing of in excess of 1,000,000 rail cars a year, attendant additional truck movements, a new CargoFlo operation in the northwest quadrant of the Rail Yard and other rail operations operating 24 hours a day, 365 days per year.
 - (d) The identification of all receptor locations in the proposed development with the potential to experience adverse noise impacts;
 - (e) A determination of the numerical noise excess at such receptors, if any;
 - (f) The preparation of specific recommendations for mitigation at receptor and/or at source to create an appropriate sound environment for future occupants/users of the proposed development;
 - (g) an assessment of: applicable Ministry of the Environment regulations and guidelines, and existing Certificates of Approval, or Environmental Compliance

Approval, if publicly available, for those industries that are the source of the relevant noise emissions.

(h) The environmental noise impact study shall be prepared by a qualified acoustical engineer and shall be consistent with professional standards and good practice for such studies.

10. Where an environmental noise impact study completed to the satisfaction of the City identifies and recommends appropriate mitigation measures, the recommendations shall be implemented in the Zoning By-law or as conditions of Site Plan and/or Condominium Approval, where appropriate. Mitigation Measures may include:

(a) Sound isolation or sound reduction measures, construction techniques, and materials including the acoustical performance of exterior walls, windows and doors;

(b) Layout and design of the structure including the size and location of windows and doors, or outdoor living areas, and the location of non-noise sensitive space within the structure to further mitigate impacts;

(c) Spatial separation from the noise source, including the insertion of permitted non-sensitive land uses between the source and the receptors; and/or

(d) Where needed, the construction of the residential buildings may incorporate balconies that are enclosed to act as a barrier to the noise experienced at the interior living room and/or bedroom windows.

11. (a) The analysis and design of any mitigation measures and their architectural details shall take into account the full frequency spectrum characteristics of sound sources, in accordance with good engineering practice and the noise guidelines.

(b) Mitigation to be installed at the source will be at the cost of the proponent of the sensitive land use, subject to acceptance and agreement of the user.

(c) New technologies may offer opportunities for innovative noise and vibration abatement techniques not yet contemplated. The development and use of such techniques shall be considered and encouraged, where appropriate.

Environmental Vibration Report

12. A detailed environmental vibration report and detailed design plans may be required in support of a development application for sensitive land uses on the Subject Lands. Such report is to specify how compatibility will be achieved and maintained between the "Rail Yard", the *"Existing and Future Industrial Lands"* and the proposed development on the Subject Lands and shall include measures aimed at eliminating or minimizing impacts.

13. The environmental vibration report, if required, and design of any necessary vibration attenuation measures shall be based on the relevant criteria of the Ontario Ministry of Environment and approved by the City in consultation with other public agencies and the operators of the "Rail Yard".

14. The environmental vibration report, if required, shall include a study of vibration from transportation sources, and stationary source(s) and include specific recommendations for mitigation features to be incorporated into the design of the development taking into account commonly used criteria in Ontario for assessing vibration in building(s).

15. The environmental vibration report, if required, shall be prepared by a qualified engineer and shall be consistent with professional standards and good practice for such studies.

Environmental Emissions Report

16. A detailed environmental emissions report and detailed design plans may be required in support of a development application for sensitive land uses on the Subject Lands. Such report is to specify how compatibility will be achieved and maintained between the "Rail Yard", the "Existing and Future Industrial Lands" and the proposed developments on the Subject Lands and shall include measures aimed at minimizing adverse impacts.
17. The environmental emissions report and design of emissions attenuation measures, if required, shall be based on the relevant emissions criteria of the Ontario Ministry of Environment and approved by the City in consultation with other public agencies and the operators of the "Rail Yard".
18. The environmental emissions report, if required, shall include a study of emissions from transportation sources, and stationary source(s) and include specific recommendations for mitigation features to be incorporated into the design of the development taking into account commonly used criteria in Ontario for assessing emissions abatement.
19. The environmental emissions report, if required, shall be prepared by a qualified engineer and shall be consistent with professional standards and good practice for such studies.

Environmental Site Assessment Report

20. Environmental site assessment reports shall be required in support of development applications, in accordance with City policy.

IMPLEMENTATION

It is intended that the policies of the Official Plan of the Vaughan Planning Area pertaining to the Subject Lands will be implemented by way of an amendment to the Vaughan Zoning By-law (including the use of the Holding Symbol (H) as may be required), Site Plan Approval, and if required, by way of a Draft Plan of Condominium, pursuant to the Planning Act.

Warning Clauses

1. Specific warning clauses shall be included in all agreements of purchase and sale and lease, including agreements pertaining to the resale or lease of individual residential condominium units. Such warning clauses shall specify that, notwithstanding the inclusion of certain mitigation features within this development to lessen potential noise, air emissions, dust, odour, vibration, and visual impact from "Rail Yard" and the "Existing and Future Industrial Lands", from time to time noise is likely to be audible, odours may be unpleasant, and dust and light emissions may be bothersome and such potential noise, air emissions, dust, odour, vibration, and visual impact may impact the enjoyment of indoor and outdoor areas of the development. The "Rail Yard" and the "Existing and Future Industrial Lands" will not be responsible for any complaints or claims arising from any of the activities at or relating to such facilities, property or operations thereon.

Implementation of Environmental Studies

1. The recommendations of the Environmental Reports described above shall be incorporated into the design of the residential buildings on the Subject Lands and shall be included in the drawings required to be approved pursuant to the Site Plan Control provisions of the Planning Act.

2. Prior to issuance of building permits, the architectural drawings shall be reviewed and certified by a qualified acoustical engineer indicating that any required noise mitigation measures have been incorporated into the building design.
3. Prior to occupancy of the residential units, any required mitigation measures will be inspected by a qualified acoustical engineer and a letter prepared certifying that the noise mitigation measures have been installed in accordance with the approved drawings.
4. Where the environmental noise report completed to the satisfaction of the City identifies and recommends that actual or potential noise impacts should be indicated to future tenants or purchasers, the recommendations may be implemented through conditions of Site Plan and/or Condominium approval, and may include noise impact advisories such as warning clauses, or clauses in subdivision and condominium agreements.

VI INTERPRETATION

The provisions of the Official Plan of the Vaughan Planning Area as amended from time to time regarding the interpretation of that Plan shall apply with respect to this Amendment.

Schedule “B” – Zoning By-Law Amendment

The City of Vaughan BY-LAW

BY-LAW NUMBER - 2014

A By-law to amend City of Vaughan By-law 1-88.

WHEREAS the matters herein set out are in conformity with the Official Plan of the Vaughan Planning Area, which is approved and in force at this time;

1 AND WHEREAS there has been an amendment to the Vaughan Official Plan adopted by Council but not approved at this time, with which the matters herein set out are in conformity;

NOW THEREFORE the Council of the Corporation of the City of Vaughan **ENACTS AS FOLLOWS:**

1. That City of Vaughan By-law Number 1-88, as amended, be and it is hereby further amended by:
 - a) Deleting Exception 9(1032) from Section 9.0 "EXCEPTIONS" and substituting therefor the following paragraph:

"(1032) Notwithstanding the provision:

 - a) Subsection 6.1.2 and Schedule "A" respecting zone requirements in Employment Area Zones,
 - a) the following provisions shall apply to the lands shown as "Subject Lands" on Schedule "E -1128";
 - b) ai) A minimum 10 metre setback from an OS1 Open Space Conservation Zone shall apply to all buildings and structures."
2. That City of Vaughan By-law Number 1-88, as amended, be and it is hereby further amended by:
 - b) Rezoning the lands shown as "Subject Lands" on Schedule "1" attached hereto from C7 Service Commercial Zone, subject to Exception 9(1032), to RA3 Apartment Residential Zone, subject to site specific zone exceptions and with addition of the Holding Symbol "(H)" in the manner shown on the said Schedule "2".
 - b) Adding the following Paragraph to Section 9.0 "EXCEPTIONS":

"9()

 - A. The following provisions shall apply to all lands zoned with the Holding Symbol "(H)" as shown on Schedule "E-* ", until the Holding Symbol "(H)" is removed pursuant to Subsection 36 (3)

or (4) of the Planning Act:

- i) Lands Zoned with the Holding Symbol "(H)" shall only be used for a use legally existing as of the date of enactment of By-law XX-2014, being for the production of field crops, or a Temporary Sales Office;

B. Removal of the Holding Symbol "(H)" from the Subject Lands shall be contingent on the following:

Phase 1

- i. Water and sewer servicing capacity being identified and allocated by the City of Vaughan;
- ii. City of Vaughan being in receipt of confirmation of the Ministry of Environment's Acknowledgement/Registration of the Record of Site Condition;
- iii. The submission of a noise and vibration impact study to the satisfaction of the City of Vaughan;
- iv. The provision and/or securing of any required noise mitigation and control measures at the Owner's expense as the City of Vaughan may require;
- v. If necessary, the execution of agreements satisfactory to the City of Vaughan between the Owner and owner(s) of neighbouring lands containing stationary noise sources to secure any noise mitigation measures which may be required on these neighbouring lands, as the City may require;
- vi. The execution of a site plan agreement, or other such agreement, satisfactory to the City of Vaughan to be registered on title which obligates the Owner to include in all Offers of Purchase and Sale, warning clauses for the Subject Lands and to provide notice of the Class 4 Area classification to prospective purchasers of residential units on the Subject Lands;
- vii. A resolution is passed by Vaughan Council classifying the site as a Class 4 Area;
- viii. The approval of a Site Development Application by Vaughan Council for the proposed development;
- ix. The execution of an agreement with the City of Vaughan to construct the proposed public road "A" (extension of

Caldari Road) to the new proposed public road "B" (east-west road) and the construction of proposed public road "B" to Jane Street, or suitable interim alternative to the satisfaction of the City of Vaughan, and requiring said public roads to be completed prior to first occupancy of Phase 1; and,

- x. Submission of a Traffic Impact Study for Phase 1 to the satisfaction of the City of Vaughan and York Region.

Phase 2

- i. Water and sewer servicing capacity being identified and allocated by the City of Vaughan;
- ii. The City of Vaughan being in receipt of confirmation of the Ministry of Environment's Acknowledgement/Registration of the Record of Site Condition;
- iii. The submission of a noise and vibration impact study to the satisfaction of the City of Vaughan;
- iv. The provision and/or securing of any required noise mitigation and control measures at the Owner's expense as the City of Vaughan may require;
- v. The execution of agreements satisfactory to the City of Vaughan between the Owner and owner(s) of neighbouring lands containing stationary noise sources to secure any noise mitigation measures which may be required on these neighbouring lands as the City of Vaughan may require;
- vi. The execution of a site plan agreement, or other such agreement satisfactory to the City of Vaughan to be registered on title which obligates the Owner to include in all Offers of Purchase and Sale, warning clauses for the subject lands and to provide notice of the Class 4 Area classification to prospective purchasers of residential units on the Subject Lands;
- vii. A resolution is passed by Vaughan Council classifying the site as a Class 4 Area;
- viii. The approval of a Site Development Application by Vaughan Council for the proposed development;

- ix. That public road "A" (extension of Caldari Road) to public road "B" (east-west road) and public road "B", or suitable interim alternative, are constructed to the satisfaction of the City of Vaughan;
- x. The execution of an agreement with the City that provides for the extension of public road "A" (Caldari Road) north of public road "B" to a signalized (when warranted) intersection with Rutherford Road, including the signalized intersection and any required, related upgrades to Rutherford Road and public road "B" in its ultimate form, to the satisfaction of the City of Vaughan and York Region. Said agreement shall require that these roads be constructed prior to first occupancy of Phase 2;
- xi. Submission of a Traffic Impact Study to the satisfaction of the City of Vaughan and York Region; and,
- xii. That the non-residential component of a minimum of 5,000 square metres (GFA) has been provided in Phase 1.

C. Notwithstanding the provisions of:

- a) Section 2.0 respecting the Definition of a 'Lot', 'Lot Line, Front', and "Accessory Building";
- b) Subsection 3.8 a) respecting Minimum Parking Requirements;
- c) Subsection 3.8 g) respecting the access and/or driveway requirements;
- d) Subsection 3.9d) respecting Loading Space Requirements;
- e) Subsection 3.13 respecting Minimum Landscaped Areas;
- f) Subsection 3.17 respecting Portions of Buildings Below Grade;
- g) Subsection 3.16 respecting Accessory uses, Building and Structures and Subsection 4.1.1a), c), e), g), h) and k) respecting Accessory Buildings and Structures;
- h) Subsection 4.1.4 b)i) and 4.1.4 b)ii) respecting Parking Areas for Multiple Family Dwellings;
- i) Subsection 4.1.6 a) and c) respecting Minimum Amenity

Areas;

- j) Schedule "A" respecting the zone requirements in the RA3 Apartment Residential Zone; and,
- k) Subsection 4.12 respecting permitted uses within the site specific RA3 Apartment Residential Zone.

the following provisions shall apply to the lands shown as "Subject Lands" on Schedule "E-*":

- ai) **Lot:** For the purposes of zoning conformity the lands shown as "Subject Lands" on Schedule "E-*" shall be deemed to be one lot regardless of the number of buildings or structures erected and regardless of any conveyances, consents, subdivisions, easements, or condominiums, or other permissions granted after the approval of this By-law, shall be deemed to comply with the provisions of this By-law;
- aii) For the purposes of this By-law, the Lot Line, Front shall be deemed to be Jane Street;
- aiii) An Accessory Building shall not include a private garage or carport;
- bi) The minimum number of parking spaces shall be as follows
 - 0.85 parking spaces per one bedroom unit;
 - 0.95 parking spaces per two bedroom unit;
 - 0.20 parking spaces per residential unit for visitors;
 - 74 parking spaces for the 5,000 m² of non-residential GFA. For non-residential GFA above 5,000 m², additional parking shall be provided at a rate of 1.5 spaces per 100 m²;
 - Additional parking will not be required for outdoor patios. All parking spaces, either in part or in whole, dedicated to parking either above or below ground shall remain fully unenclosed.
- ci) A two-way access driveway shall be provided with a maximum width of 15.0 m and shall include a minimum 2 m wide landscaped island/median;
- di) Loading and unloading shall only be permitted between a building and Street "A", provided it is incorporated into

building design;

- ei) A strip of land not less than 3.0 m in width shall be provided along a lot line which abuts a street line, and shall be used for no other purpose than landscaping. This shall not prevent the provision of access driveways across the said strip and shall include both soft and hard landscaping including but not limited to trees, shrubs, flowers, grass, unit pavers, patio stones, concrete, decorative stonework or other architectural elements designed to enhance the visual amenity areas of the property;
- fi) The minimum setback from a lot line to the nearest building or structure below finished grade shall be 1.0m;
- gi) The maximum Gross Floor Area of all accessory buildings and structures shall not exceed 500 m², of which a maximum of 20% shall be permitted on the lands to be used for publically accessible private amenity space;
- gii) Any accessory building or structure shall be located between any portion of the building and the rear lot line, and within the roof-top amenity area located above the podiums.
- giii) In addition to Section 4.1.1 k) Accessory buildings or structures and architectural features may be permitted within the roof top amenity areas. Where any accessory structure or building or architectural feature is located within the roof top amenity areas, the maximum height of the accessory building or structure or architectural feature shall be measured from the top of the roof surface and shall not be included in determining the overall building height of the podiums
- hi) Landscaping and screening is not required around the periphery of an outdoor parking area;
- ii) A Minimum Amenity Area of 16,000 m² shall be required; and shall include a publically accessible privately owned amenity space having a minimum area of 1880m². For the purposes of this By-law *Publically accessible private amenity space* shall be defined as follows:

Publically accessible private amenity space: "Means open space lands owned by a Condominium Corporation(s) with an easement for public access in favour of the City of Vaughan located at grade level. Underground parking may be permitted below the publically accessible private amenity space to the satisfaction of the City of Vaughan. Residential, commercial/retail and employment uses are not permitted on the publically accessible private amenity space as shown on Schedule E-____;

ji) The Minimum Lot Area shall be deemed to be 1.67 ha in accordance with subsection (ai) of this By-law;

jiii) The Minimum setback from any public street to any portion of the podium shall be 3.0m;

jiv) A maximum of three Apartment Dwellings shall be permitted on the subject lands as follows: Phase 1 – One Apartment Dwelling with a maximum building height of 22-storeys and 80m, whichever is the lesser. Phase 2 – One Apartment Dwelling of 20-storeys and 73 m, whichever is the lesser, and one Apartment Dwelling of 18-storeys and 66 m, whichever is the lesser;

For the purposes of this By-law, the maximum building height shall exclude accessory roof construction and architectural roof features, such as elevators, mechanical room, antenna, parapet wall or roof top equipment;

jv) The following provisions shall apply:

i. A podium shall be a minimum of 3-storeys along Jane Street;

ii. Any portion of the podium above the first storey may be set back a maximum of 2.0 m;

iii. A one-storey podium with a minimum height of 6.0m shall be provided along Riverrock Gate and Road 'B' (north) and may include an open mezzanine area not exceeding 40 percent of the open area of the unit and in accordance with the provisions of the Ontario Building Code;

- An open mezzanine within a podium

shall not be located along the exterior wall facing a street.

- An open mezzanine shall not be considered to be a storey;

- iv. A pedestrian connection from Jane Street to the Publicly Accessible Private Open Space with a minimum width of 6.0m is required;
 - v. A minimum of 80% of any podium fronting on Jane Street or Riverrock Gate shall be built to the podium setback line.
 - vi. All residential, and commercial units at grade shall provide a direct entrance to the street, pedestrian connections, or Publically accessible private amenity space;
 - vii. The ground floor of any building and any entrance to any unit facing a public street shall be no greater than 0.5 m above the average finished grade;
 - viii. Where commercial uses are proposed on the ground floor, the floor to floor height shall be a minimum of 4.5m;
 - ix. Towers above the podium shall be setback a minimum of 6.0 m from any public street and a minimum of 3.0 m from any Publically accessible private amenity space;
 - x. The maximum floorplate of a residential apartment tower above the podium shall not exceed 770 m²; and
 - xi. The distance between any portion of a tower to another tower above the podium shall be a minimum of 28 m;
- ki) The permitted uses within the site-specific RA3 Apartment Residential Zone on Schedule "E-" shall include the following:
- i. Residential uses having a total maximum Gross Floor Area (GFA) of 45,000m²;
 - ii. Non-residential uses having a minimum Gross Floor Area (GFA) of 5,000 m² consisting only of:

•Business or Professional Office uses having a minimum GFA of 4,200 m², within a minimum 3 storey building; and, Commercial uses restricted to the following and having a maximum combined GFA of 800 m² with no outdoor storage as follows:

- Banking or Financial Institution;
- Club or Health Centre;
- Day Nursery;
- Dry Cleaning Depot
- Eating Establishment;
- Eating Establishment – Take Out;
- Eating Establishment – Convenience;
- Outdoor patio accessory to an Eating Establishment;
- Personal Service Shop;
- Pharmacy
- Museum or Art Gallery
- Retail store; and
- Studio including Photography Studio;

- The total maximum Gross Floor Area (GFA) for all development on the subject lands as shown on Schedule "E-1" shall be 50,000 m²

- c) Deleting Schedule "E1032" and substituting therefor the Schedule "E-1032" attached hereto as Schedule "1".
- d) Adding Schedule "E-2" attached hereto as Schedule "2".
- d) Deleting Key Map 4C and substituting therefor the Key Map 4C attached hereto as Schedule 3.

3. Schedules "1", "2", and "3" shall be and hereby form part of this By-law.

SUMMARY TO BY-LAW - 2014

The lands subject to this By-law are located on the northeast corner of Jane Street and Riverrock Gate, in Lot 15, Concession 4, City of Vaughan.

The purpose of this By-law is to rezone the Subject Lands from C7 Service Commercial Zone to a site specific RA3 Apartment Residential Zone with the addition of the Holding Symbol "(H)". The development requires the following site specific exceptions to facilitate the proposed use of the lands:

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- The lands will be zoned with the "(H)" Holding Symbol and may permit legally existing uses and a Temporary Sales Office until such time that the conditions to remove the Holding Symbol are fulfilled;
- An amendment to the definition of a lot is proposed that would allow the subject lands to be considered one lot for purposes of zoning irrespective of any future severances, conveyances after the day this By-law is approved;
- For the purpose of this By-law, Jane Street is deemed to be the Lot Line, Front;
- Establishes a minimum parking ratio requirement for the proposed development;
- Permits a maximum driveway width of 15 m;
- A provision that will allow a loading space between a building and Street "A";
- A reduction in the landscape strip requirements to 3.0 proposed adjacent to a street line;
- A reduction in the minimum setback to a lot line of 1.0 for those portions of building below grade is proposed;
- Accessory building and structures and architectural features shall be permitted between any part of the building and the rear lot line and within the rooftop amenity area, up to a maximum GFA of 500 m² for all buildings and structures;
- An exemption from the landscaping and screening requirements required in 4.1.4 is proposed for any surface parking proposed including but not limited to the provision of lay-by parking;
- A Minimum Amenity Area of 16,000 square m shall be required and includes the requirement for a publically accessible but privately owned amenity space area of 1880 m²;
- Minimum lot area is deemed to be 1.67 hectares;
- Minimum setback of 3.0 m to a podium is proposed;
- Maximum building heights of 18-storeys (66 m), 20-storeys (73 m) and 22-storeys (80 m), exclusive of any architectural roof features, mechanical rooms, roof top equipment, etc. is proposed;
- Establishes the following additional buildings standards:
 - o Requirement for a minimum 3-storey podium along Jane Street and 1-storey and 6.0 m podium along Riverrock gate and Road 'B' (north);
 - o Any portion of the podium above the first storey may be set back a maximum of 2.0 m;
 - o The 1-storey/6.0 m podium may include an open mezzanine/loft area not exceeding 40 percent of the open area of the unit and in accordance with the provisions of the Ontario Building Code;
 - An open mezzanine/loft shall not be located along the exterior wall facing a street;
 - An open mezzanine/loft shall not be considered to be a storey;
 - o Requires a pedestrian connection from Jane Street to the publically accessible private amenity space with a minimum width of 6.0 m;
 - o Requires 80% of the building frontage in the podium to be built to the setback line along Jane Street;
 - o Residential and commercial and/or office units at grade shall provide direct entrance into the public realm;
 - o Ground floor of buildings no greater than 0.5 m above the average finished grade;
 - o Minimum floor to floor height of 4.5 m for commercial and/or offices uses at grade;
 - o Towers above the 3 storey podium are required to be setback a minimum of 6.0m from a public street and 3.0 m from publically accessible private amenity space;
 - o Maximum residential apartment tower floor plate above 3 storey podium shall not exceed 770 square m;
 - o Minimum distance between apartment residential towers above 3 storey podium shall be 28 m;
- Permits residential uses with a maximum gross floor area of 45,000 m²;
- Permits non-residential uses with a minimum gross floor area of 5,000 m²;
 - o Business and Professional Office uses shall have a minimum gross floor area of 4,200 m²;
 - o Commercial uses shall have a maximum gross floor area of 800 m²;
- Total maximum gross floor area for all development on the subject lands shall be 50,000 m²;
- The By-law includes provisions regarding the phasing of development;

- The By-law includes provisions regarding the process by which the site may be classified as a Class 4 Area, which includes requirements such as the submission of a noise impact study, among other things.

Schedule “C” – Evaluation Method and Matrix of Design Features

SCHEDULE C

EVALUATION METHODOLOGY AND ASSUMPTIONS AND MATRIX OF DESIGN FEATURES FOR THE DEVELOPMENT OF THE TESMAR LANDS

SCOPE

For the Subject Site located at Jane Street and Riverrock Gate in the City of Vaughan, the evaluation method contained in Section A, the matrix of design features for receptor-based mitigation set out in Section B (the “Matrix”) and the requirements of NPC-300 will be used to assess and mitigate excess impulsive and non-impulsive noise, occurring where sensitive land uses are proposed.

The Subject Site has been identified as a Class 4 area, as defined in the Ministry of Environment’s Environmental Noise Guideline, Stationary and Transportation Sources – Approval and Planning, Publication NPC-300 (“NPC-300”). However, in accordance

with the terms of the Minutes of Settlement between the owner of the Subject Site (Tesmar) and the owner and operator of the MacMillan Rail Yard (CN), for purposes of development approvals for the Subject Site, the Class 1 sound level limits under NPC-300 shall be applied. Allowance has been made for on-building receptor based noise controls permitted in a Class 4 area to be employed, as outlined in NPC-300 and described below.

Any terms used herein which are defined terms in NPC-300 shall have the same meaning as in NPC-300. Any amendments to NPC-300 occurring after the date of execution of the Minutes of Settlement shall be dealt with in accordance with the terms of the Minutes of Settlement.

METHOD

Any noise impact assessment for the Subject Site shall be prepared in accordance with the requirements of NPC-300, unless otherwise stated herein.

A) Prediction Method

- i) Sound levels on the Subject Site will be predicted in accordance with the electronic CadnaA model (the "Noise Model") "Tesmar-CUMULATIVE_NPC300-Rev08 - 2014-10-27_Updated by Jade_October 7 2016.cna", including the accompanying "Update to Acoustic Model Memo, dated October 28, 2016" and subject to the following clarifications:
- ii) For the purposes of assessment of the impulses, only the impulses generated by CN activities will be assessed;
- iii) The source "Generator MS" shall be assessed separately, not cumulatively.
- iv) Oil Waste sources (3) and Scrap Bin Rollout sources (2) shall be assessed on the basis of the associated locations that most impact any given receptor, since the corresponding source is not active at more than one location at a time.
- v) Prior assumptions regarding operating characteristics of sources that are not part of the Magna or CN facilities shall be maintained.
- vi) The Noise Model was developed using source data reviewed by Tesmar, CN, Magna/Granite and the City of Vaughan including site measurements and equipment information provided by the industries, where applicable. The hypothetical noise sources which were previously included for the Stronach lands are no longer included in the Noise Model.
- vii) Plane-of-window sound levels will be assessed using the Building Evaluation feature of the CadnaA model to assess all relevant building facades.
- viii) Non-impulse sound levels ("Leq (1 hr)") will be calculated on a cumulative basis. Impulse sound levels will be calculated on an individual basis only. Impulsive and non-impulsive sources shall be assessed separately.
- ix) The Noise Model will also be utilized to predict background sound levels from road traffic during daytime and night-time hours, to establish the applicable sound level limits at each point of reception. Minimum hourly traffic data shall be as included within the Noise Model with no change to the traffic data.
- x) Representative noise-sensitive receptor locations shall be identified using the building evaluation tool in CadnaA. The evaluation will use a maximum façade length (laterally) of 3.0 metres and a minimum façade

length of 0.5 metres. The evaluation will be calculated every 3.0 metres vertically and the distance of each building evaluation point to the façade will be 0.05 metres.

- xi) Windows leading into noise-insensitive spaces, such as windows for bathrooms, hallways, storage rooms, etc., shall not be considered to be noise-sensitive receptors, unless the noise-insensitive space is an extension of a noise sensitive space such as a bedroom, living/dining room, or den. Areas having no windows (i.e. blank walls) shall not be considered receptors for the purposes of assessment.
- xii) Sound level criteria at each identified receptor shall be determined. The estimated background sound level in the minimum daytime or night-time hour shall be calculated by the road traffic model, at each identified location. The criteria shall be the higher of 50 dBA or the calculated minimum daytime background sound level Leq (1 hr) from road traffic, and the higher of 45 dBA or the calculated minimum night-time background sound level Leq (1 hr) from road traffic, for the daytime and night-time periods respectively.
- xiii) For Outdoor Living Areas (ie. common outdoor amenity terrace, private terraces/balconies as defined by NPC-300 if common outdoor amenity areas are not provided and open space at grade), the sound level criteria at each identified receptor shall be determined for the daytime period only. Receptors for outdoor living areas (OLAs) shall be identified in the centre of the space at a height of 1.5 metres. The criteria shall be the higher of 50 dBA or the calculated minimum daytime background sound level Leq (1hr) from road traffic.
- xiv) Any noise sensitive receptors where the predicted sound levels exceed the sound level criteria shall be identified along with the quantum of the predicted exceedance.

B) Determination of Receptor-Based Design Features for Noise Control

- i) Where there is a predicted excess at a sensitive receptor location for either impulsive or non-impulsive sources, as determined according to the prediction method described in (A), one or more of the receptor-based design features listed in Table 1 and permitted by NPC-300 shall be included in the building design and OLAs to eliminate these excesses.

Table 1: Matrix of Receptor-Based Design Features

| Receptor Type | Design Feature |
|--|--|
| Daytime Outdoor Living Areas (0700-2300h only) | Barrier, parapet, berm, or other architectural or landscaping features to shield area [1,2] |
| Plane-of-Windows (noise-sensitive spaces only) | a) Barrier, parapet, or other architectural features to shield area [1,2] b) Enclosed Noise Buffer abutting sensitive space, can include partially operable windows [1,3] |

Notes:

- [1] Design feature shall be shown to achieve a sufficient reduction in the predicted excess, such that the predicted residual sound level excess is reduced to nil. The residual sound level excess is defined as the difference between the source sound

levels and the sound level criteria at the receptor, evaluated with mitigation in place.

[2] Structure shall meet the minimum requirements of an acoustic barrier as defined in NPC-300.

[3] An enclosed noise buffer shall be designed in accordance with NPC-300.

Schedule “D” – Warning Clauses

SCHEDULE "D"

The Purchaser hereby acknowledges being warned and/or notified of the following matters and/or that title to the Condominium and/or the Unit is, or will be, subject to the following restrictive covenants and/or restrictions:

...

- (k) Purchasers and tenants and any other persons presently having or who may in the future acquire any interest in the Lands or the Condominium or any part thereof are hereby notified as follows with respect to certain lands and operations of CN in the vicinity of the Lands:
- i. Canadian National Railway Company (CN) is the owner of certain lands known as its "MacMillan Rail Yard" (the "CN Lands"). The CN Lands are located within the environmental influence area of the MacMillan Rail Yard as a Class 3 Industrial Facility under the Ministry of Environment Guideline D. The CN Lands are now and will continue to be used for the present and future railway and trucking facilities and operations of CN on a continuous basis (24 hours of each day in each year) including, without limitation, the operation and idling of diesel locomotives and trucks with the generation of diesel fumes and odours, 24 hours a day artificial lighting of the CN Lands which may illuminate the sky, the loading, unloading and switching of rail cars containing bulk and other commodities including hazardous substances and/or goods containing the same, and the operation of various processes for the maintenance of rail equipment;
 - ii. the use of such present and future railway and/or trucking facilities and operations may result in the discharge, emanation, emission, emptying, expelling releasing or venting upon or other effect upon the Lands at any time during the day or night of or by dust, smoke, fumes, odours and other gaseous and/or particulate matter, noise, vibration electromagnetic interference (EMI), stray current, and other sounds, light, liquids, solids and other emissions of every nature and kind whatsoever (herein collectively called the "Operational Emissions"), any or all of which may be annoying, unpleasant, intrusive or otherwise adversely affect the use and enjoyment of the Lands or any part thereof notwithstanding the inclusion of features within the development of the Lands and the Condominium which are intended to attenuate, lessen or otherwise minimize or eliminate the impact of the Operational Emissions upon the use and enjoyment of the Lands;
 - iii. CN and its operators, licensee, agents, tenants, occupants, invitees, and customers will not be responsible for any complaints or claims by or on behalf of the owners and occupants of any portion of the Lands and/or Condominium from time to time arising from or out of or in any way in connection with the operations on the CN Lands and/or the Operational Emissions and any and all effects thereof upon the use and enjoyment of the Lands and the Condominium or any part thereof, and whether arising from (i) the presently existing facilities and operations of CN and its operators, licensee, agents, tenants, occupants, invitees, lessees, and customers upon or from the CN Lands or from (ii) any and all future renovations, additions, expansions and other changes to such facilities and/or future expansions, extensions, increases, enlargements and other changes to such operations which could include the acquisition of additional lands for the purpose of expanding the facilities and operations of CN in relation to the CN Lands;
 - iv. CN shall not be required to change any of its facilities or operations upon the CN Lands as a result of or in response to any such complaints or claims;
 - v. That CN may in the future renovate, add to, expand or otherwise change its facilities on the CN Lands and/or expand, extend, increase, enlarge or otherwise change its operations conducted upon the CN Lands;

- vi. owners, tenants, guests and all other occupants, invitees and users of any portion of the Lands and the Condominium or any part thereof may be required by Governmental Authorities to evacuate the Condominium and the Lands by reason of a hazardous situation upon or an accidental release of hazardous substances from the CN Lands;
- vii. a permanent and perpetual easement or right and interest in the nature of a permanent and perpetual easement has been or will be granted to CN over, under, along and upon the whole of the Lands and every part thereof for the purposes of permitting the Operational Emissions;
- viii. That an agreement under the *Industrial and Mining Lands Compensation Act* (the "Industrial Agreement") has been entered into between the owner of the whole of the Lands and CN releasing any right any owner of any of the Lands may have now or in the future to sue CN, its customers, invitees, lessees and/or licensees for nuisance arising out of the operation of an activity at the CN Lands including any noise, vibration, light, dust, odour, particulate matter emanating therefrom.
- ix. in accordance with the required restrictive covenant in favour of CN that will run with title to the Lands and the Condominium units and form part of the Declaration, each owner and/or lessee of a unit with sealed inoperable exterior windows may not replace the exterior sealed inoperable windows in such unit with windows that may open;
- x. within seven (7) days of registration of any Transfer of all or any portion of the Lands in favour of any Purchaser or of a tenant occupying all or any portion of the Lands, the Purchaser and the tenant shall by written agreement under seal delivered to CN and/or to the Vendor:
 - A. acknowledge that he/she has read and is aware of the above-noted and below-noted warning and indemnity clauses provided to him or her by the Vendor in the purchase agreement, and of each of the Easement, and Industrial Agreement which will be or has been entered into between the Vendor and CN, and which agreement will be or has been registered against title to and run(s) with the Lands;
 - B. agree to fully and forever release and discharge CN from any and all actions, causes of action, proceedings, claims and demands of every nature and kind whatsoever which such Purchaser or tenant has had, now has or may in the future have against CN at law or in equity and directly or indirectly, and from and against any and all liabilities, costs and expenses (including, without limitation, legal costs on a solicitor and his own client basis) of every nature and kind whatsoever which such Purchaser or tenant now has or may incur in the future, at law or in equity and directly or indirectly, whether arising from or out of or in any way in connection with the Operational Emissions which are in conformity with federal regulations governing same or certain Operational Emissions which are not in conformity with federal regulations governing the same, as more particularly described in any of the aforementioned Easement, and Industrial Agreement or both, any and all effects thereof upon the use and enjoyment of the Condominium and the Lands or any part thereof; and
 - C. agree to jointly and severally with all other such persons indemnify and save CN harmless from and against any and all actions, causes of action, proceedings, claims, demands, liabilities, damages, costs and expenses (including, without limitation, legal costs on a solicitor and his own client basis) of every nature and kind whatsoever which may be made against or incurred by CN and arising at law or in equity and directly or indirectly from or out of or in any way in connection with one or more of the Operational Emissions which are in conformity with federal regulations governing same and certain Operational Emissions which are not in conformity with federal regulations governing the same, as more particularly described in each of the aforementioned Easement, and Industrial Agreement, and any and all effects of both upon the use and

enjoyment of any or all of the Condominium and the Lands or any part thereof; and

- xi. the purchaser agrees to obtain from any subsequent purchaser or transferee the above-noted acknowledgement, release and indemnity in favour of CN and to deliver same to CN upon request.
- xii. For units of buildings on the Lands that have unenclosed balconies, patios or terraces: Noise levels from CN's MacMillan Rail Yard on the CN Lands may exceed the maximum noise limits of Ministry of the Environment and Climate Change ("MOE") criteria as defined in Guideline NPC 300 in any outdoor areas accessible from your unit. Such outdoor areas have not been designed to be used as Outdoor Living Areas as defined in MOE Guideline NPC 300. Among other things, noise levels from activities from the CN MacMillan Rail Yard could potentially cause discomfort or annoyance and/or interrupt conversations in these outdoor areas.

Schedule "E" – Easement of Noise, Vibration and Odour to CNR

SCHEDULE "E"

GRANT OF EASEMENT

This Schedule forms part of the attached Transfer of Easement. The Transfer of Easement and this Schedule are collectively called the "Transfer".

The Transfer is made between the party identified in the Transfer as Transferor and the party identified in the Transfer as Transferee, in respect of the lands described in the Transfer.

WHEREAS the Transferor is the owner of those lands located in the City of Vaughan, in the Province of Ontario, and legally described as:

(*)

Currently designated as all of P.I.N. *** (LT)

(hereinafter referred to as the "Easement Lands")

AND WHEREAS the Transferee is the owner of those lands located in the City of Vaughan, in the Province of Ontario, and legally described as:

(*)

Currently designated as all of P.I.N. *** (LT)

(hereinafter referred to as the "Dominant Tenement").

IN CONSIDERATION OF the sum of TWO DOLLARS (\$2.00) now paid by the Transferee to the Transferor (the receipt and sufficiency of which are hereby acknowledged by the Transferor), the Transferor grants and transfers to the Transferee, a permanent and perpetual non-exclusive easement or right and interest in the nature of a permanent and perpetual non-exclusive easement, in favour of and for the benefit of the Transferee and any other owner or owners from time to time of all or any portion of the Dominant Tenement and the successors and assigns from the Transferee and any such other owner or owners of all or any portion of the Dominant Tenement (collectively the "Dominant Owners"), for the benefit of the Dominant Tenement, and for the use by the Transferee and the other said owners from time to time, and their successors and assigns, and including without limitation each of the Transferee's and other said owners' respective officers, directors, shareholders, agents, employees, servants, tenants, sub-tenants, customers, licensees, other operators, occupants, invitees, heirs, executors, legal personal representatives, successors and assigns (collectively the "Dominant Users"), all of which easements, rights of way and/or rights in the nature of easements shall be enjoyed and used by the Dominant Owners without any charge, fee or cost being billed or levied in respect thereof by the Servient Owners (as defined below), a free, uninterrupted and unobstructed easement or right and interest in the nature of an easement over, through, across, along and upon the whole and every part of the Easement Lands for the purposes of discharging, emitting, releasing or venting on any or all of the Easement Lands or otherwise affecting any or all of the Easement Lands at any time during the day or night with dust, smoke, fumes, odours, and other gaseous and/or particulate matter, artificial lighting, glare from lighting, , noise (including brake retarder squeal), vibration and other sounds, light, liquids, solids, and other emissions of every nature and kind whatsoever, arising from, out of or in connection with any and all present and future railway facilities and operations of any of the Dominant Users from or upon the Dominant Tenement and including without limitation all such facilities and operations presently existing and all future renovations, additions, expansions, extensions, increases, enlargements and other changes to such facilities and operations.

THE Easement Lands, as servient tenement, shall be and are hereby appurtenant to the Dominant Tenement, as dominant tenement.

THIS Easement and all rights and obligations arising from same shall run with the Easement Lands to the benefit of the Dominant Owners and Dominant Users from time to time, and shall bind the Easement Lands and the Transferor and the owners from time to time of all and any portion of the Easement Lands, and their successors and assigns and including without limitation each of the Transferor's and other said owners' respective officers, directors, shareholders, agents, employees, servants, tenants, sub-tenants, customers, licensees, other operators, occupants, invitees, heirs, executors, legal personal representatives, successors and assigns (herein collectively the "Servient Owners").

IT IS the intention of the parties that the foregoing easement shall be in perpetuity, but it is acknowledged and agreed that if any consent (if any) is required pursuant to the Planning Act (Ontario) for purposes of granting the within perpetual easement, the aforesaid perpetual easement shall be conditional on obtaining such consent, and until such time as the Transferee obtains same, at its sole cost and expense, the within easement shall expire 21 years less one day after the date of execution of this agreement.

This Easement shall be read with all changes of gender and number as required by the context in each case and the covenants and obligations of each party hereto, if more than one person, shall be joint and several.

Schedule "F" - Plan of Condominium Conditions

Plan of Condominium Conditions

1. The applicant shall enter into a condominium agreement with the City of Vaughan to implement the Conditions listed below. The condominium agreement shall require that it be registered on title and will not be cleared from title to remain on title in perpetuity.
2. The applicant shall agree in the condominium agreement that prior to the issuance of a building permit in respect of any residential building or units proposed to be constructed on the lands, written confirmation by an Acoustical Engineer shall be submitted by the applicant to the City and to CN, that the builder's plans for such

building shall incorporate mandatory air conditioning as the primary means of ventilation for all units and such other noise mitigation measures as are required in accordance with the Minutes of Settlement between Tesmar and CN.

3. The applicant shall agree in the condominium agreement to include in all offers or agreements of purchase and sale or lease, respecting lands proposed for residential uses within the plan the warning clauses which are set out in Schedule D to the Minutes of Settlement between Tesmar and CN (the "Warning Clause").
4. The applicant shall agree in the condominium agreement that the Warning Clause shall also be included in any residential condominium disclosure statement applicable to the applicant's lands or any portion thereof.
5. The applicant shall agree in the condominium agreement that prior to each residential condominium unit on the Lands receiving final inspection and release for occupancy, an Acoustical Engineer shall confirm that the subject unit is in compliance with the certified plans and any conditions or requirements contained in the confirmations required pursuant to Condition 2. The applicant shall provide copies of this confirmation of compliance to CN upon request.
6. If applicable, the applicant shall agree in the condominium agreement to include in all the Condominium Declarations created or registered respecting the Project Lands that each owner and/or lessee of a unit with sealed inoperable bedroom windows may not replace the exterior sealed inoperable windows in their unit with windows that may open. Such agreement to maintain shall be secured by way of a restrictive covenant between the condominium corporation and CN that will run with title to the land and form part of the condominium declaration.
7. The applicant shall agree in the condominium agreement to the inclusion of the following condition: "That prior to signing the final plan by the Commissioner of Planning and Building, or his designate, the Commissioner or the OMB, as the case may be, is to be advised by CN acting reasonably and in a timely fashion that the applicant has executed with the City a Condominium Agreement including those conditions in numbers 1 through 6 above with the City to CN's satisfaction." 10 calendar days after CN receives an executed copy of the Condominium Agreement, it will respond to a request by the City to clear conditions 1 through 6 above.

**Schedule “G” - Industrial and Mining Lands Compensation Act Agreement with
Canadian National Railway Company**

AGREEMENT

Pursuant to the *Industrial and Mining Lands Compensation Act* R.S.O. 1990, c. I.5.

This Agreement made as of the 3rd day of March, 2017.

AMONG:

CANADIAN NATIONAL RAILWAY COMPANY

(hereinafter referred to as "CN")

- and -

TESMAR HOLDINGS INC.

(hereinafter referred to as "Land Owner")

RECITALS

- (a) CN is the registered owner of the freehold interest in a railway corridor and a rail yard known as the McMillan Yard and lands, some of which are more particularly described in Schedule "A" hereto (the "CN Lands").
- (b) The Land Owner is the registered owner of the freehold interest in lands situated within the City of Vaughan more particularly described in Schedule "B" attached hereto (the "Owner's Lands");
- (c) CN currently operates a rail corridor, Cargo Flo and rail yard on the CN Lands (the "CN Use") which constitute works under the *Industrial and Mining Lands Compensation Act*;
- (d) "Future Operations" in this agreement means the capacity of CN from time to time, as a North American Rail operator operating the McMillan Rail Yard to move goods by train and truck, and the operating activities to support such movement of goods by train and truck. It includes a 24 hour, 7 day a week, 365 day a year rail car shunting operation on a 1,000 acre rail yard site, in order to accommodate the current processing of approximately 1,000,000 rail cars annually and (without limitation but as an illustration only) the future capacity, with reasonable modifications and to process up to approximately 1,500,000 rail cars annually. Future Operations also includes all vibrations, noise, light, odours, stray current and EMI and other emissions resulting from such operations and activities.
- (e) The Land Owner is seeking development approvals and building permits from time to time to permit residential uses on a portion of the Owner's Lands near to the McMillan Rail Yard;
- (f) The development of the Owner's Lands requires the provision of impact mitigation measures in respect of rail noise and other noise, arising from or associated with the CN Lands and the CN Use;
- (g) The Land Owner hereby agrees to implement noise mitigation measures in the development of the Owner's Lands as described herein;
- (h) Notwithstanding the inclusion of the noise mitigation measures required by this Agreement, CN has raised concerns about the proposed future uses of the Owner's Lands and CN's potential liability to

defend and possibly to pay compensation for damage or injury resulting or likely to result to the Land Owner, its tenants, occupants, licensees and successors in title, actionable at the instance of such parties against CN, its tenants, occupants, licensees and successors in title for damages and/or injunctions;

(i) Pursuant to certain provisions of the *Industrial and Mining Lands Compensation Act*, R.S.O. 1990, c. I.5, and the regulations made thereunder, if any, as the same may have been or may from time to time be amended or re-enacted (the "*Act*"), and for other reasons also, the parties have agreed, *inter alia*, to enter into this Agreement.

NOW THEREFORE in consideration of the payment of \$2.00 by each party to the other and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. The parties hereto confirm that the foregoing recitals are true and correct.

2. When used herein:

- (a) "Dominant Owner" means any owner from time to time of all or part of the CN Lands;
- (b) "Dwelling" means one or more habitable rooms used or capable of being used as a permanent or seasonal residence by one or more persons and usually containing cooking, eating, living, sleeping and sanitary facilities;
- (c) "Enclosed Noise Buffer" means an enclosed area outside the exterior wall of a building, such as an enclosed balcony, specifically intended to buffer one or more windows of Noise Sensitive Spaces that are part of an Improvement on the Owner's Lands, and which has all of the following characteristics:
 - (i) is not less than 1 metre and not more than 2 metres deep;
 - (ii) is fully enclosed with floor to ceiling glazing or a combination of solid parapet plus glazing above (which glazing may be operable to the extent permitted by the Ontario Building Code);
 - (iii) is separated from interior space with a weatherproof boundary of exterior grade wall, exterior grade window, exterior grade door, or any combination thereof, in compliance with exterior envelope requirements of the Ontario Building Code;
 - (iv) is of sufficient horizontal extent to surround windows of Noise Sensitive Spaces; and
 - (v) the architectural design is not amenable to converting the enclosed space to be a Noise Sensitive Space.
- (d) "Improvement" means any building, structure or other improvement.
- (e) "Noise Model" means a particular analysis iteration of a computer modelling program or application known as "CadnaA" (or such other computer modelling program or application as may be stipulated by the Dominant Owner from time to time) using and analyzing data that is relevant to the determination of sound levels on the Owner's Lands from transportation and stationary sources on the

CN Lands, the said data inputs being those agreed by the Dominant Owner and Servient Owner at that time (or failing such agreement, shall be determined by the professional acoustical consultant of the Dominant Owner and shall be binding on the Dominant Owner and Servient Owner), together with a date or other distinguishing reference such that the particular iteration can be distinguished from other iterations of the Noise Model.

- (f) "Noise Sensitive Commercial Land Use" means a property of a person that accommodates a building used for a Noise Sensitive Commercial Purpose.
- (g) "Noise Sensitive Commercial Purpose Building" means a building used for a commercial purpose that includes one or more habitable rooms used as sleeping facilities such as a hotel and a motel.
- (h) "Noise Sensitive Institutional Land Use" means a property of a person that accommodates a building used for a Noise Sensitive Institutional Purpose.
- (i) "Noise Sensitive Institutional Purpose Building" means a building used for an institutional purpose, including an educational facility, a day nursery, a hospital, a healthcare facility, a shelter for emergency housing, a community centre, a place of worship and a detention centre. but a place of worship located in commercially or industrially zoned lands is not considered an institutional purpose).
- (j) "Noise Sensitive Land Use" means any or all of (i) property of a person that accommodates a Dwelling and includes a legal nonconforming residential use; or (ii) property of a person that accommodates a building used for a Noise Sensitive Commercial Purpose; or (iii) property of a person that accommodates a building used for a Noise Sensitive Institutional Purpose Building;
- (k) "Noise Sensitive Space" means the living and sleeping quarters of Dwellings, and sleeping quarters of any Noise Sensitive Commercial Land Use or Noise Sensitive Institutional Land Use. Examples include, but are not limited to: bedrooms, sleeping quarters such as patient rooms, living/dining rooms, eat-in kitchens, dens, lounges, classrooms, therapy or treatment rooms, assembly spaces for worship, sleeping quarters of detention centres. The Outdoor Living Area (as defined in NPC 300) associated with a noise sensitive land use is a Noise Sensitive Space.
- (l) "Noise Study" means a written report by a professional engineer qualified to carry on such profession in the province of Ontario and who is qualified in and specializes in acoustical engineering (who is approved by the Dominant Owner acting reasonably) prepared in accordance with any applicable Environmental Noise Guidelines and industry standards and best practices, which contains analysis and recommendation based upon the then-current Noise Model of measures or actions required to ameliorate (on the Owner's Lands and without impact to the CN Lands) any noise emanating from the CN Lands so as to ensure that no part of the Owner's Lands experiences noise levels higher than the maximum noise level limits for a Class 1 area as set out in NPC 300 (whether or not the Owner's Lands are then designated as Class 1 or designated as Class 4), and which recommendations and conclusions have been approved in writing by the Dominant Owner, and which may be obtained from time to time by either the Dominant Owner or the Servient Owner.

- (m) "NPC 300" means the Ontario Ministry of the Environment & Climate Change *Environmental Noise Guideline, Stationary and Transportation Sources – Approval and Planning, Publication NPC-300* as it read at the date of this Agreement.
 - (n) "Predicted Noise Excess" means the difference between (i) the sound level predicted by the then-current Noise Model to be experienced at a particular Point of Reception on the Owner's Lands without any noise mitigation features utilized, and (ii) the maximum sound level permitted at the particular Point of Reception for a Class 1 area from any source as prescribed in NPC- 300 (whether or not the Owner's Lands are then designated as Class 1 or designated as Class 4).
 - (o) "Point of Reception" means Point of Reception as defined in NPC-300.
 - (p) "Servient Owner" means any owner from time to time of all or part of the Owner's Lands
3. The parties acknowledge and agree that this Agreement is governed by and entered into under the provisions of the *Act*.
4. The parties hereby acknowledge and agree that CN's agreement to not oppose (or to settle its opposition to) the residential portion of the current development proposal for the Owner's Lands constitutes the payment of compensation in full for any damage or injury resulting or likely to result to any Servient Owner and/or any or all of the Owner's Lands or to its use and enjoyment (now or in future), from the CN Lands and/or the CN Use, for the purposes of and as set out in Section 1 of the *Act*.
5. The parties hereby acknowledge and agree that, as provided for in Section 2 of the *Act*, this Agreement binds and enures to the benefit of the heirs, executors, administrators successors and assigns, of the parties hereto relating to all existing works and all works that may hereafter be established on the CN Lands. Without limiting the foregoing, such works include the Future Operations. Without limiting the generality of the foregoing, all successors in title to the Servient Owners are deemed to have notice of the Warning Clauses contained in Schedule "C".
6. The parties acknowledge this Agreement constitutes and affords a complete answer and defence to any action that may be brought against the Dominant Owner for damages or for an injunction, or both (or for other relief), now or at any time in the future for or in respect of noise, vibration, dust, odor, air quality, light and any other Operational Emissions (as defined in Schedule "C"), and any other circumstances, characteristics, aspects of, or emissions arising from or associated with any or all of the CN Use or the CN Lands.

RESTRICTIVE COVENANTS

7. The Servient Owner hereby covenants with the Dominant Owner, for the benefit of the CN Lands that the Owner's Lands shall at all times hereafter be subject to each and all of the following covenants and restrictions (collectively the "Restrictions"):

- (a) No Improvement or any portion of any Improvement located in whole or in part on the Owner's Lands which contains or is intended to contain a Noise Sensitive Space shall, at any time hereafter, be constructed or be used or occupied as a Noise Sensitive Land Use:
- (i) unless and until a Noise Study has been obtained at the expense of the Servient Owner based upon the detailed building design for that particular Improvement, and which Noise Study confirms either (i) sound levels from the CN Lands and/or the CN Use do not result in any Predicted Noise Excesses or (ii) that mitigation measures specified in the Noise Study can be implemented on the Owner's Lands which will eliminate the Predicted Noise Excess;
 - (ii) unless each of the design and drawings and the construction of such Improvement incorporates and implements at the sole cost of the Servient Owner (and thereafter is maintained in accordance with) all of those noise mitigation measures that are recommended in the Noise Study as described in (a) above
 - (iii) unless the design and construction of such Improvement incorporates and implements at the sole cost of the Servient Owner the additional requirements set out in Paragraphs 7 (d) to (i) inclusive (whether same are required by the Noise Study or not):
- (b) No windows or doors associated with any space within a residential unit, not including inoperable (fixed or sealed) windows associated with spaces external to any residential unit including hallways and corridors, shall be permitted on the east facades of any Improvements containing residential units.
- (c) The exterior walls and cladding (with the exception of glazed areas) on the east facades of any Improvements containing residential units shall be constructed of pre-cast concrete, masonry, brick veneer or acoustically equivalent materials.
- (d) Any sealed inoperable exterior windows forming part of any Dwelling unit or other Noise Sensitive Space contained in any Improvement shall not be replaced with windows that may open. Any glazing forming part of any Enclosed Noise Buffer, which glazing is constructed (if otherwise permitted in compliance with the provisions of this Agreement) such that it can be partially opened, shall not be altered to permit it to open to a larger extent than the extent to which it could open when originally constructed.
- (e) Any Enclosed Noise Buffer forming part of any Dwelling unit or other Noise Sensitive Space contained in any Improvement shall not be modified at any time following its initial construction to convert, in any way, the Enclosed Noise Buffer into sleeping quarters.
- (f)

No building permit for any portion of an Improvement located in whole or in part on the Owner's Lands which contains or is intended to contain a Noise Sensitive Space shall be applied for or taken out by the Servient Owner or by any person unless and until each of the following have occurred:

(i) each of the certified architectural drawings and proposed construction details to be submitted to the municipality for building permit application, and the Noise Study for that Improvement that has been approved by the Dominant Owner, and a complete electronic copy of the Noise Model used in the preparation of that Noise Study, and a list of the design elements or features that were included in the plans for purposes of noise mitigation, have been provided to the Dominant Owner a minimum of 30 days in advance, for review by the Dominant Owner;

(ii) a certificate of a professional engineer licensed to carry on that profession in the province of Ontario obtained by the Servient Owner at its cost certifying that the plans submitted for purposes of obtaining such building permit comply with and will fully implement the requirements of Paragraph 7 herein, have been provided to the Dominant Owner a minimum of 30 days in advance, for review by the Dominant Owner; and

(iii) the Servient Owner has provided the Dominant Owner with a minimum of one (1) week advance notice, or such shorter time period as the Dominant Owner may agree to acting reasonably, that it will be providing the aforesaid materials; and

(iv) the Dominant Owner has provided any comments thereon to the Servient Owner regarding compliance by the Servient Owner with the requirements of this Agreement within 20 calendar days following receipt of all such drawings and proposed construction details or expiry of the notice period in subsection (iii), whichever is later, or such longer time period as the Servient Owner may agree to acting reasonably. In response to the Dominant Owner's comments, if any, the Servient Owner shall revise the building plans as may be necessary to ensure compliance with this Agreement and shall provide the revised building plans to the Dominant Owner, and any issues raised by the Dominant Owner with the content or conclusions of such drawings and certificate have been resolved to the satisfaction of the Dominant Owner prior to the issuance of building permits for the Improvements as aforesaid.

(g) If revisions to the architectural plans or drawings are thereafter required by the municipality as part of its review of the application which affect the noise mitigation measures incorporated into the building design, the Servient Owner shall, prior to the issuance of any building permit, deliver to the Dominant Owner the final revised certified architectural drawings that are approved by the municipality and a certificate from an acoustical engineer duly qualified to practice in Ontario obtained by the Servient Owner at its cost certifying that the plans submitted for purposes of obtaining such building permit comply with and will fully implement the requirements of this Agreement in accordance with their terms. The procedure and timing for review of the materials by the Dominant Owner shall be as set out in Paragraph 7 (j) (iv);

(h)

No Improvement (or any part thereof) located in whole or in part on the Owner's Lands which contains or is intended to contain a Noise Sensitive Space shall be constructed by the Servient Owner unless such construction is in accordance with the engineering plans approved by the Dominant Owner pursuant to Paragraph 7 (j) or (k) above.

- (i) No Improvement (or any part thereof) located in whole or in part on the Owner's Lands which contains or is intended to contain a Noise Sensitive Space shall be used or occupied by any person unless and until each of the following have occurred:

(i) each of the certified as-built architectural drawings and construction details of the particular Improvement, and written certification from an acoustical engineer duly qualified to practice in Ontario that all noise mitigation measures required by this Agreement have been installed and constructed in accordance with the certified architectural drawings and the requirements of this Agreement, and any additional information reasonably required by the Dominant Owner for purposes of confirming the above certification have been delivered to the Dominant Owner, for review by the Dominant Owner, within a reasonable timeframe;

(ii) the Servient Owner's professional engineer licensed to carry on that profession in the province of Ontario obtained by the Servient Owner at its cost shall have inspected the as-constructed Improvement prior to occupancy and

(iii) the Servient Owner has provided the Dominant Owner with a minimum of one (1) week advance notice, or such shorter time period as the Dominant Owner may agree to acting reasonably, that it will be providing the aforesaid materials; and

(iv) the Dominant Owner has provided any comments thereon to the Servient Owner regarding compliance by the Servient Owner with the requirements of this Agreement within 20 calendar days following receipt of all such drawings and proposed construction details or expiry of the notice period in subsection (iii), whichever is later, or such longer time period as the Servient Owner may agree to acting reasonably. In response to the Dominant Owner's comments, if any, any issues with the content or conclusions of the aforesaid materials shall have been resolved to the satisfaction of the Dominant Owner prior to the use or occupancy of any Improvements as aforesaid.

- (j) the definition of common elements in any condominium declaration for any Improvement on the Owner's Lands shall be defined such that all noise mitigation measures contained within that condominium development are part of the common elements and not part of any residential unit, and such that no owner of a residential unit shall be permitted to make any alterations to, or to damage, or to remove any noise mitigation measures (and such that such provision can be enforced by the condominium corporation as against the owner of the particular residential unit).

8. Nothing contained in this Agreement, including but not limited to the restrictions on the Owner's Lands set out herein, shall be construed as a waiver of any right or entitlement of the Dominant Owner to participate in any future development approval process in respect of the Owners Lands initiated by the municipality or other regulatory body, and the Dominant Owner may exercise any and all rights and remedies in such development approval process that any participant therein could exercise, notwithstanding the existence of the within Agreement.

DESIGN AND ADEQUACY

9. The Dominant Owner shall have no responsibility or liability whatsoever for the design or adequacy of the work done in order for the Servient Owner to comply with this Agreement notwithstanding that any

plans or specifications or materials or reports may have been reviewed or approved by the Dominant Owner pursuant to this Agreement. No such review or approval by the Dominant Owner of plans or specifications shall be deemed to limit the Servient Owner's full responsibility for the design and adequacy of the works required by this Agreement.

REGISTRATION

10. The Servient Owner shall, at its expense, register this Agreement on title to the Owner's Lands and the CN Lands (the latter if required by the Dominant Owner), and provide a copy to the Dominant Owner. The Servient Owner shall also, at its expense, separately register such portions of this Agreement as the Dominant Owner shall require as a restrictive covenant, on title to the Owner's Lands and the CN Lands (the latter if required by the Dominant Owner), and provide a copy to the Dominant Owner within 20 days of the request by the Dominant Owner.

POSTPONEMENT

11. The Servient Owner shall, within thirty (30) days after the registrations as described in Paragraph 10 above, obtain and deliver in registrable form from every encumbrancer, mortgagee or holder of a deed of trust which encumbers all or any portion of the Owner's Lands, postponement agreements in the form attached hereto as Schedule "D" or on such other form as may be acceptable to the Dominant Owner, acting reasonably, wherein the said encumbrancer(s), mortgagee(s) and holder(s) of the deeds of trust shall agree that their rights and benefits are postponed to and are subordinate to the terms and provisions of each of the within Agreement and the registrations as described in Paragraph 10 above (the "Postponement Agreements").

Injunctive Relief

12. The Servient Owner acknowledges that the property and rights and restrictions that are the subject matter of this Agreement are unique and special to the Dominant Owner. The provision in this Agreement of certain remedies which are available after the occurrence of any default is not intended to be exclusive, and the remedies contained in this Agreement are intended to be cumulative and in addition to any other remedies which may be available. Without limiting the generality of the foregoing, in the event that Servient Owner shall at any time commit a default and, after being provided reasonable notice of the default and a reasonable period of time to remedy or cure the said default, continues to be in default, then the Dominant Owner shall be entitled to specific performance or an Order restraining and enjoining such default, as the case may be, (including without limitation restraining occupancy) and Servient Owner hereby consents thereto and shall not plead in defence thereto that there would be an adequate remedy at law.
13. The parties hereto acknowledge and covenant with each other that it is their intention that the burden of this agreement, the rights, privileges, restrictions, obligations and duties contained herein, and all of the covenants to be observed and performed by the Servient Owner contained herein shall run with (and shall be construed as covenants and restrictions running with) the Owner's Lands and the benefit of this agreement, the rights, privileges, restrictions, obligations and duties contained herein, and all of the covenants and obligations to be observed and performed by the Servient Owner contained herein shall run with (and shall be construed as covenants and restrictions running with) the CN Lands. Without limiting the foregoing, this Agreement and all rights and obligations arising from same shall extend to,

be binding upon and enure to the benefit of the parties hereto and their respective agents, servants, tenants, sub-tenants, customers, licencees and other operators, occupants and invitees and each of its or their respective heirs, executors, legal personal representatives, successors and assigns.

14. It is the intention of the parties that the restrictions and conditions on the Owner's Lands and the Servient Owner contained herein, and the covenants of the Servient Owner contained herein, shall be perpetual, but it is acknowledged and agreed that if any consent is required pursuant to the *Planning Act* (Ontario) for purposes of entering into any particular provision(s) herein, the aforesaid particular provision(s) shall be conditional on obtaining such consent, and until such time as the Servient Owner obtains same, at its sole cost and expense, the said particular provision(s) shall expire 21 years less one day after the date of execution of this Agreement. Upon notice from the Dominant Owner, the Servient Owner shall expeditiously take all steps that are necessary or advisable to obtain such consents as are required pursuant to the *Planning Act*, in default of which the Dominant Owner may take such steps and the Servient Owner shall reimburse the Dominant Owner for all reasonable cost and expense incurred by the Dominant Owner in requesting and prosecuting the application for such consents.
15. (a) The Servient Owner shall not transfer all or any portion of the Owner's Lands unless and until it provides the Dominant Owner with a written agreement of the transferee (including any condominium corporation) in which the transferee agrees to assume all of the burden and obligations of the Servient Owner contained herein, including the obligation to obtain a further assumption agreement from any subsequent transferee (including any condominium corporation), signs an Acknowledgment and Release regarding the subject matter of the warning clauses in Schedule C hereto, and confirms it has received and read a copy of this Agreement. For the purposes of this section, "transfer" shall mean any disposition of all or any portion of the Owner's Lands including, without limitation, a deed, transfer, registration of a condominium declaration, lease, option, agreement to sell, agreement to lease or agreement to grant an option. Any transfer shall not be effective to convey or create any interest in all or any portion of the Owner's Lands until the Servient Owner has complied with this provision. Notwithstanding the above, where the transfer is of title to a residential condominium unit or a condominium parking unit or condominium storage unit (or any combination of such units) comprising part of the Owner's Lands, to an individual purchaser purchasing only such unit(s) and no other portion of the Owner's Lands, the requirement for an assumption agreement detailed herein shall not apply. An individual purchaser shall obtain from any subsequent purchaser or transferee the agreement referred to in the warning clauses in Schedule C, and deliver such agreement to CN upon request.
- (b) The Servient Owner shall not enter into any agreement of purchase and sale or lease for all or any portion of the Owner's Lands after the date of execution of this Agreement (including but not limited to agreements for proposed or actual condominium units), nor issue after the date of execution of this Agreement any disclosure statement, or any draft condominium declaration in respect of any condominium comprising all or any portion of the Owner's Lands, unless same contains the warning clauses set out in the attached Schedule "C", The Declaration for any condominium corporation that is acquiring title to some or all of the Owner's Lands shall also include the warning clauses in Schedule "C" hereto, when required by the Dominant Owner. Any condominium corporation that is an owner of any portion of the Owner's Lands from time to time shall enforce all obligations of unit owners in such condominium Improvement to repair and maintain such of the noise mitigation measures that are located within the particular condominium unit, so that the

general noise attenuation standards applicable to the Improvement continue to be met at all times.

16. The Servient Owner hereby fully and forever releases and discharges the Dominant Owner from any and all actions, causes of action, proceedings, claims and demands of every nature and kind whatsoever which the Servient Owner has had, now has or may in the future have against the Dominant Owner at law or in equity and directly or indirectly, and from and against any and all liabilities, costs and expenses of every nature and kind whatsoever which the Servient Owner now has or may incur in the future, at law or in equity and directly or indirectly, arising from or out of or in any way in connection with the CN Lands and the CN Use (including but not limited to Operational Emissions) and any and all effects thereof upon the use and enjoyment of the Owner's Lands or any part thereof.

FURTHER ASSURANCES

17. Each of the Servient Owner and the Dominant Owner shall from time to time hereafter execute such further assurances or documents as are reasonably required by the other of them to give effect to and more effectually implement and carry out the intent and meaning of this Agreement. If requested by the Dominant Owner, the Servient Owner agrees to furnish evidence to the Dominant Owner that all claims hereunder have been duly paid and that there are no outstanding liens or other encumbrances.
18. The Dominant Owner agrees to grant partial releases of this Agreement, from time to time, in respect of lands required to be conveyed by the Servient Owner to the municipality or other public authority unless such lands are expected to be (or are) used for any Noise Sensitive Land Use (in which case this Agreement shall still apply thereto). Provided that the Dominant Owner shall not be required to undertake or assume any financial or other obligations with respect to such transaction or documentation, and provided that the Servient Owner pay to the Dominant Owner in advance the estimated costs and expenses that may be incurred by the Dominant Owner in reviewing and evaluating such request (including legal fees and expenses).

COSTS

19. Prior to registration of the first plan of condominium for first building constructed on the Owner's Lands, the Land Owner will make a payment to CNR in the amount of \$150,000 representing compensation for a portion of the costs incurred by CN with respect to the appeals of development approvals for the Owner's Lands. This is a one-time payment to be made prior to registration of the first building only and shall not be required for any subsequent Improvements that may be constructed at any time in the future on the Owner's Lands.
20. The Servient Owner shall promptly pay the Dominant Owner, as a condition of the Dominant Owner evaluating for approval any Improvements, transfers, assumptions, charging, or other actions by the Servient Owner or others that are required to be performed by the Servient Owner hereunder or are otherwise requested by the Servient Owner, the reasonable legal and other costs incurred by the Dominant Owner in reviewing (and to the extent agreeable to the Dominant Owner approving and executing) such actions or documents.

INDEPENDENCE OF PROVISIONS

21. Each covenant and agreement contained in this Agreement shall for all purposes be construed to be a separate and independent covenant and agreement. If any term of this Agreement or the application thereof is found to any extent to be invalid or unenforceable, the remainder of the Agreement or the application of such term, covenant or provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby and each term, covenant and provision of this Agreement shall be separately valid and shall be separately enforceable to the extent permitted by law.

GENERAL

22. If the Land Owner, pursuant to this Agreement, is more than one legal entity ("legal entity" to include persons and corporations), then any and all obligations of the Land Owner hereunder shall be joint and several as between the said legal entities.
23. In this Agreement, the use of the male gender includes all genders, and, where the context permits, may include the neuter gender, furthermore, the singular shall be deemed to include plural whenever the context so requires and the use of plural shall be deemed to include singular whenever the context so requires.
24. The division of this Agreement into articles and sections and the insertion of articles and section headings are for convenience of reference only and shall not affect the interpretation or construction of this Agreement.
25. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision hereof and no waiver will be binding unless executed in writing by the party to be bound by the waiver.
26. This Agreement and any other contractual agreement between the parties constitutes the entire agreement between the parties with respect to the matters contemplated in this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written of the parties.
27. The Land Owner and CN each acknowledges having read and fully understood this Agreement and acknowledges having had the opportunity to seek independent legal advice. The Land Owner and CN each further acknowledges that it has not been pressured in any way, nor been subjected to any duress or undue influence by any person, for purposes of causing the execution of this Agreement.
28. The Land Owner and CN each agree not to challenge the validity of this Agreement in the future.
29. This Agreement may be executed in one or more counterparts, which together shall constitute a complete agreement, and executed counterparts may be delivered by e-mail or facsimile transmission.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

)

TESMAR HOLDINGS INC.

Per: _____

Name: *MARIZO RIVATO*

Position: *DIN. PLANNING & DIRECTOR*

I have the authority to bind the Corporation.

CANADIAN NATIONAL RAILWAY COMPANY

By: _____

Name: *Raymond Beshro*

Title: *Sr Officer - Community Planning and Dev't*

I have authority to bind the Corporation.

**Schedule "A" to Agreement
(CN Lands)**

1. Lands currently designated as PIN 03276-0772 (LT)

Pt Lt 15 Con 4 (VGN) as in exprop PL VA43110, VA52025, Pt 1, 65R8133, save & except Pts 2 & 3 on Plan 65R27933;

Pt Lt 14, Con 4 (VGN) in exprop PI VA4310, VA41542, VA49653, VA42694 & VA51761, Pt 1, 64R2133, except exprop PI VA53894, Pts 1 & 2, 65R20649, except Pts 4 & 5 65R20649, lying within the limits of Lt 14 Con 4 (VGN), except Pts 1, 2, 3, on Plan 65R21743, except Pts 1 to 12, 65R21744, except Pt 1 on Plan 65R22253, lying within the limits of said Lt 14 Con 4 except Pts 3, 4, 5, 65R22253; s/t ease in favour of Pt Lts 13 & 14 Con 4 (VGN), Pts 4 & 5, 65R20649, over Pt 3 65R20649, as in LT1379798, partially released as in YR907547;

Pt Lt 13 Con 4 (VGN) as in exprop PI VA51542, VA41658, VA41979, except Pts 1, 2, 3, 65R11574, exprop PI VA53894, except Pts 4 & 5 65R20649, lying within the limits of Lt 13 Con 4 (VGN) & except PT 1, 65R22253, lying within the limits of Lt 13 Con 4 (VGN);

Pt Lt 12 Con 4 (VGN) as in exprop PI VA41542, VA41879, except VA57230, Pt 1, 65R8064 & except Pt 1, 65R22253, lying within the limits of Lt 12 Con 4 (VGN) & except Pt 1, 65R22423;

Pt Lt 11 Con 4 (VGN) as in exprop PI VA41542, VA41879 and except VA5730, Pts 1 to 7, 65R7811, Pts 1, 2, 3, 65R3818, Pt 1, 65R8064, Pt 1, 65R16395 & except Pt 1, 65R22253, lying within the limits of Lt 11 Con 4 (VGN);

Pt RDAL between Lts 10 & 11 Con 4 (VGN) as in VA47611 & Pt 3, 65R15567, closed by bylaw R61477 & VA46597 as confirmed by bylaw VA46598 & VA50053, except Pts 5, 7, 8, 9, 64R7811, VA57230;
Pt Lt 10 Con 4 (VGN) as in VA41774, except R399094, VA57230, R689418, Pts 8 & 9, 64R7811, Pt 1, 64R1271, Pt 1, 65R13662;

Pt E ½ of Lt 9 Con 4 (VGN) as in exprop PI VA41542, except VA57230, R339190, R689418, Pts, 1 & 2, 64R3122, Pt 1, 65R18341, Pt 1, 65R13316, Pt 1, 65R13662;

Pt E ½ of W ½ Lt 9 Con 4 (VGN) as in VA69403 (secondly), except Pt 1 65R13316 & R316750;

Pt Lt 8 Con 4 (VGN) as in exprop PI VA41542, VA69403 (firstly) VA70180, except VA57230, R599544, R316750, Pts 1, 2, 3, 4 & 5, 65R15906, Pts 1 & 2, 64R3122, Pt 1, 65R13316, Pt 1, 65R18341, except Pt 1, 65R20716;

Pt Lt 7 Con 4 (VGN) as in exprop PI VA41542, VA69917, VA70180, except VA57230, VA54230, VA66348, R599544, R316750, Pts 1, 2, 3, & 4, 64R6730, Pt 1, 64R7724 & except Pt 1, 65R20716;

Pt Lt 6 Con 4 (VGN) as in exprop PI VA41542, Pt 2, 64R2758, VA62759, VA 61270, Pt 1, 64R1741, Pts 1, 2, 3 & 4 64R6730, Pt 1 65R7724 & Pt 1, 65R14223 except Pts 1 & 2, 65R20794 S/T interest in VA69403 & R703035; T/W VA60394. S/T VA70509, R692110, R707129, R735185, partially released as in YR907536;

T/W easements over Pt block 16, 17 & 18, PI 65M2696, Pts 4, 5 & 6, 65R12853, Pts 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, & 14, 65R22706 & Pts 1 to 14 incl., 65R22706 as in LT1496639. S/T ease in favour of Pt Lt 6 Con 4 (VGN), Pts 1 & 2, 65R20794, over Pts Lts 6 & 7 Con 4 (VGN), Pt 3, 65R20794 as in YR81374. T/W ease over Pt Lt 6 Con 4 (VGN), Pt 2, 65R20794, as in YR81374. S/T ease in favour of Pt Lts 7 & 8 Con 4 (VGN), Pt 1, 65R20716, over Pt Lt 7 Con 4 (VGN), Pt 1, 65R25470, as in YR529390;

S/T right of way over Pt Lt 14 Con (VGN), Pt 3, 65R20649 in favour of Pt Lt 14 Con 4, Pt 1 65R20649, as in YR712521. S/T ease over 65R25470, as in YR529390;

S/T right of way over Pt Lt 14 Con 4 (VGN), Pt 3, 65R20649 in favour of Pt Lt 14 Con 4, Pt 1, 65R20649, as in YR712521. S/T ease over Pt Lt 7 Con 4 (VGN), Pt 1, 65R25470, in favour of Pt Lts 7 & 8, Con 4 (VGN), Pt 1, 65R20716, as in YR908514. T/W ease over Pt Lt 15 Con 4 (VGN), Pt 2, 65R27933, as in YR721705. T/W ease over Pt Lot 3 Con 3 Pts 1 & 2, 65R28943 as in YR963917; City of Vaughan

**Schedule B to Agreement
(Owner Lands)**

Part of Lot 15, Concession 4 Vaughan described as Parts 1 to 9 inclusive, on Plan 65R-32119, City Of Vaughan, S/T EASE OVER PTS 1, 2 & 3 65R32119 IN FAVOUR OF VAUGHAN HYDRO-ELECTRIC COMMISSION AS IN LT 1427859; S/T EASE OVER PTS 2 & 4 65R32119 IN FAVOUR OF THE REGIONAL MUNICIPALITY OF YORK AS IN YR26024, AS ASSIGNED BY YR28405; S/T EASE OVER PT 7 65R32119 IN FAVOUR OF PT LT 15 CON 4, AS DESCRIBED IN R670402, AS IN YR412131; S/T TEMP EASE OVER PTS 6 & 8 65R32119 IN FAVOUR OF PT LT 15 CON 4, AS DESCRIBED IN R670402, AS IN YR412131; S/T EASE OVER PTS 7, 8 & 9 65R32119 IN FAVOUR OF PT LT 15 CON 4, PTS 2, 3, 4 & 5 65R11385, EXCEPT PTS 1 TO 9 INCL. 65R26566, PT 2, 65R14841, PTS 1 TO 7 INCL. 65R21748, PTS 1 & 2 65R22343, PTS 7 & 9 EXPROP PL R593324 & PT 1 65R16732, AS IN YR412213; T/W EASE OVER PT LT 15 CON 4, PTS 10, 11 & 12 65R32119 AS IN YR412213.; SUBJECT TO AN EASEMENT AS IN YR2219047; CITY OF VAUGHAN

currently designated as PIN (*)

**Schedule C to Agreement
(Warning Clauses)**

WARNING CLAUSES

All persons presently having or who may in the future acquire any interest in the Owner's Lands or any portion thereof (also referred to as the "Subject Lands") are hereby notified as follows:

1. Canadian National Railway Company (CN) is the owner of certain lands known as its "MacMillan Rail Yard" (the "CN Lands"). The CN Lands are located within the environmental influence area of the MacMillan Rail Yard as a Class 3 Industrial Facility under the Ministry of Environment Guideline D. The CN Lands are now and will continue to be used for the present and future railway and trucking facilities and operations of CN on a continuous basis (24 hours of each day in each year) including, without limitation, the operation and idling of diesel locomotives and trucks with the generation of diesel fumes and odours, 24 hours a day artificial lighting of the CN Lands which may illuminate the sky, the loading, unloading and switching of rail cars containing bulk and other commodities including hazardous substances and/or goods containing the same, and the operation of various processes for the maintenance of rail equipment;
2. the use of such present and future railway and/or trucking facilities and operations may result in the discharge, emanation, emission, emptying, expelling releasing or venting upon or other effect upon the Lands at any time during the day or night of or by dust, smoke, fumes, odours and other gaseous and/or particulate matter, noise, vibration electromagnetic interference (EMI), stray current, and other sounds, light, liquids, solids and other emissions of every nature and kind whatsoever (herein collectively called the "Operational Emissions"), any or all of which may be annoying, unpleasant, intrusive or otherwise adversely affect the use and enjoyment of the Lands or any part thereof notwithstanding the inclusion of features within the development of the Lands and the Condominium which are intended to attenuate, lessen or otherwise minimize or eliminate the impact of the Operational Emissions upon the use and enjoyment of the Lands;
3. CN and its operators, licensee, agents, tenants, occupants, invitees, and customers will not be responsible for any complaints or claims by or on behalf of the owners and occupants of any portion of the Lands and/or Condominium from time to time arising from or out of or in any way in connection with the operations on the CN Lands and/or the Operational Emissions and any and all effects thereof upon the use and enjoyment of the Lands and the Condominium or any part thereof, and whether arising from (i) the presently existing facilities and operations of CN and its operators, licensee, agents, tenants, occupants, invitees, lessees, and customers upon or from the CN Lands or from (ii) any and all future renovations, additions, expansions and other changes to such facilities and/or future expansions, extensions, increases, enlargements and other changes to such operations which could include the acquisition of additional lands for the purpose of expanding the facilities and operations of CN in relation to the CN Lands;
4. CN shall not be required to change any of its facilities or operations upon the CN Lands as a result of or in response to any such complaints or claims;
5. That CN may in the future renovate, add to, expand or otherwise change its facilities on the CN Lands and/or expand, extend, increase, enlarge or otherwise change its operations conducted upon the CN Lands;
6. owners, tenants, guests and all other occupants, invitees and users of any portion of the Lands and the Condominium or any part thereof may be required by Governmental Authorities to evacuate the Condominium and the Lands by reason of a hazardous situation upon or an accidental release of hazardous substances from the CN Lands;
7. a permanent and perpetual easement or right and interest in the nature of a permanent and perpetual easement has been or will be granted to CN over, under, along and upon the whole of the Lands and every part thereof for the purposes of permitting the Operational Emissions;
8. That an agreement under the *Industrial and Mining Lands Compensation Act* (the "Industrial Agreement") has been entered into between the owner of the whole of the Lands and CN releasing any right any owner of any of the Lands may have now or in the future to sue CN, its customers, invitees, lessees and/or licensees for nuisance arising out of the operation of an activity at the CN Lands including any noise, vibration, light, dust, odour, particulate matter emanating therefrom.
9. in accordance with the required restrictive covenant in favour of CN that will run with title to the Lands and the Condominium units and form part of the Declaration, each owner and/or lessee of a

unit with sealed inoperable exterior windows may not replace the exterior sealed inoperable windows in such unit with windows that may open;

10. within seven (7) days of registration of any Transfer of all or any portion of the Lands in favour of any Purchaser or of a tenant occupying all or any portion of the Lands, the Purchaser and the tenant shall by written agreement under seal delivered to CN and/or to the Vendor:

- A. acknowledge that he/she has read and is aware of the above-noted and below-noted warning and indemnity clauses provided to him or her by the Vendor in the purchase agreement, and of each of the Easement, and Industrial Agreement which will be or has been entered into between the Vendor and CN, and which agreement will be or has been registered against title to and run(s) with the Lands;
- B. agree to fully and forever release and discharge CN from any and all actions, causes of action, proceedings, claims and demands of every nature and kind whatsoever which such Purchaser or tenant has had, now has or may in the future have against CN at law or in equity and directly or indirectly, and from and against any and all liabilities, costs and expenses (including, without limitation, legal costs on a solicitor and his own client basis) of every nature and kind whatsoever which such Purchaser or tenant now has or may incur in the future, at law or in equity and directly or indirectly, whether arising from or out of or in any way in connection with the Operational Emissions which are in conformity with federal regulations governing same or certain Operational Emissions which are not in conformity with federal regulations governing the same, as more particularly described in any of the aforementioned Easement, and Industrial Agreement or both, any and all effects thereof upon the use and enjoyment of the Condominium and the Lands or any part thereof; and
- C. agree to jointly and severally with all other such persons indemnify and save CN harmless from and against any and all actions, causes of action, proceedings, claims, demands, liabilities, damages, costs and expenses (including, without limitation, legal costs on a solicitor and his own client basis) of every nature and kind whatsoever which may be made against or incurred by CN and arising at law or in equity and directly or indirectly from or out of or in any way in connection with one or more of the Operational Emissions which are in conformity with federal regulations governing same and certain Operational Emissions which are not in conformity with federal regulations governing the same, as more particularly described in each of the aforementioned Easement, and Industrial Agreement, and any and all effects of both upon the use and enjoyment of any or all of the Condominium and the Lands or any part thereof; and

11. the purchaser agrees to obtain from any subsequent purchaser or transferee the above-noted acknowledgement, release and indemnity in favour of CN and to deliver same to CN upon request.
12. For units of buildings on the Lands that have unenclosed balconies, patios or terraces: Noise levels from CN's MacMillan Rail Yard on the CN Lands may exceed the maximum noise limits of Ministry of the Environment and Climate Change ("MOE") criteria as defined in Guideline NPC 300 in any outdoor areas accessible from your unit. Such outdoor areas have not been designed to be used as Outdoor Living Areas as defined in MOE Guideline NPC 300. Among other things, noise levels from activities from the CN MacMillan Rail Yard could potentially cause discomfort or annoyance and/or interrupt conversations in these outdoor areas.

The applicant(s) hereby applies to the Land Registrar.

Properties

PIN 03276 - 0768 LT

Description PT LT 15 CON 4 VAUGHAN, PTS 1 TO 9 INCL. 65R32119; S/T EASE OVER PTS 1, 2 & 3 65R32119 IN FAVOUR OF VAUGHAN HYDRO-ELECTRIC COMMISSION AS IN LT 1427859; S/T EASE OVER PTS 2 & 4 65R32119 IN FAVOUR OF THE REGIONAL MUNICIPALITY OF YORK AS IN YR26024, AS ASSIGNED BY YR28405; S/T EASE OVER PT 7 65R32119 IN FAVOUR OF PT LT 15 CON 4, AS DESCRIBED IN R670402, AS IN YR412131; S/T TEMP EASE OVER PTS 6 & 8 65R32119 IN FAVOUR OF PT LT 15 CON 4, AS DESCRIBED IN R670402, AS IN YR412131; S/T EASE OVER PTS 7, 8 & 9 65R32119 IN FAVOUR OF PT LT 15 CON 4, PTS 2, 3, 4 & 5 65R11385, EXCEPT PTS 1 TO 9 INCL. 65R26566, PT 2, 65R14841, PTS 1 TO 7 INCL.65R21748, PTS 1 & 2 65R22343, PTS 7 & 9 EXPROP PL R593324 & PT 1 65R16732, AS IN YR412213; T/W EASE OVER PT LT 15 CON 4, PTS 10, 11 & 12 65R32119 AS IN YR412213.; SUBJECT TO AN EASEMENT AS IN YR2219047; CITY OF VAUGHAN

Address VAUGHAN

Consideration

Consideration \$ 2.00

Applicant(s)

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

Name CANADIAN NATIONAL RAILWAY COMPANY

Address for Service Attn. Ernie Longo
1 Administration Road
Concord, Ontario L4K 1B9

I, A. Milliken Heisey, solicitor, have the authority to bind the corporation.

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

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

| | | | | |
|-------------------|---|-------------------------|--------|------------|
| Paul Felix Rooney | 121 King St. West, 5th Floor, Suite 500 Toronto M5H 3T9 | acting for Applicant(s) | Signed | 2018 03 08 |
| Tel 416-601-1800 | | | | |
| Fax 416-601-1818 | | | | |

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

Submitted By

| | | |
|-------------------------|---|------------|
| PAPAZIAN, HEISEY, MYERS | 121 King St. West, 5th Floor, Suite 500 Toronto M5H 3T9 | 2018 03 09 |
| Tel 416-601-1800 | | |
| Fax 416-601-1818 | | |

Fees/Taxes/Payment

| | |
|----------------------------|---------|
| Statutory Registration Fee | \$63.65 |
| Total Paid | \$63.65 |

The applicant(s) hereby applies to the Land Registrar.

| |
|--------------------|
| File Number |
|--------------------|

Applicant Client File Number : 88070

Schedule "A"

This registration is notice of an Agreement pursuant to the Industrial and Mining Lands Compensation Act (Ontario) made as of March 3, 2017 between the Applicant and Tesmar Holdings Inc., in respect of lands described in the said Agreement, which lands include the lands described herein.

L:\WORKING\CONVEY\88070\Tesmar\Section 71 (Schedule A).docx

AGREEMENT

Pursuant to the *Industrial and Mining Lands Compensation Act* R.S.O. 1990, c. 15.

This Agreement made as of the 3rd day of March, 2017.

AMONG:

CANADIAN NATIONAL RAILWAY COMPANY

(hereinafter referred to as "CN")

- and -

TEMMAR HOLDINGS INC.

(hereinafter referred to as "Land Owner")

RECITALS

- (a) CN is the registered owner of the freehold interest in a railway corridor and a rail yard known as the McMillan Yard and lands, some of which are more particularly described in Schedule "A" hereto (the "CN Lands").
- (b) The Land Owner is the registered owner of the freehold interest in lands situated within the City of Vaughan more particularly described in Schedule "B" attached hereto (the "Owner's Lands");
- (c) CN currently operates a rail corridor, Cargo Flo and rail yard on the CN Lands (the "CN Use") which constitute works under the *Industrial and Mining Lands Compensation Act*;
- (d) "Future Operations" in this agreement means the capacity of CN from time to time, as a North American Rail operator operating the McMillan Rail Yard to move goods by train and truck, and the operating activities to support such movement of goods by train and truck. It includes a 24 hour, 7 day a week, 365 day a year rail car shunting operation on a 1,000 acre rail yard site, in order to accommodate the current processing of approximately 1,000,000 rail cars annually and (without limitation but as an illustration only) the future capacity, with reasonable modifications and to process up to approximately 1,500,000 rail cars annually. Future Operations also includes all vibrations, noise, light, odours, soot, dust and EMI and other emissions resulting from such operations and activities.
- (e) The Land Owner is seeking development approvals and building permits from time to time to permit residential uses on a portion of the Owner's Lands near to the McMillan Rail Yard;
- (f) The development of the Owner's Lands requires the provision of impact mitigation measures in respect of rail noise and other noise, arising from or associated with the CN Lands and the CN Use;
- (g) The Land Owner hereby agrees to implement noise mitigation measures in the development of the Owner's Lands as described herein;
- (h) Notwithstanding the inclusion of the noise mitigation measures required by this Agreement, CN has raised concerns about the proposed future uses of the Owner's Lands and CN's potential liability to

(signature)

defend and possibly to pay compensation for damage or injury resulting or likely to result to the Land Owner, its tenants, occupants, licensees and successors in title, actionable in the instance of such parties against CN, its tenants, occupants, licensees and successors in title for damages and/or injunctions;

(f) Pursuant to certain provisions of the *Industrial and Mining Lands Compensation Act*, R.S.O. 1990, c. 15, and the regulations made thereunder, if any, as the same may have been or may from time to time be amended or re-enacted (the "Act"), and for other reasons also, the parties have agreed, *inter alia*, to enter into this Agreement.

NOW THEREFORE in consideration of the payment of \$2.00 by each party to the other and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. The parties hereto confirm that the foregoing recitals are true and correct.

2. When used herein:

- (a) "Dominant Owner" means any owner from time to time of all or part of the CN Lands;
- (b) "Dwelling" means one or more habitable rooms used or capable of being used as a permanent or seasonal residence by one or more persons and usually containing cooking, eating, living, sleeping and sanitary facilities;
- (c) "Enclosed Noise Buffer" means an enclosed area outside the exterior wall of a building, such as an enclosed balcony, specifically intended to buffer one or more windows of Noise Sensitive Spaces that are part of an improvement on the Owner's Lands, and which has all of the following characteristics:
 - (i) is not less than 1 metre and not more than 2 metres deep;
 - (ii) is fully enclosed with floor to ceiling glazing or a combination of solid parapet plus glazing above (which glazing may be operable to the extent permitted by the Ontario Building Code);
 - (iii) is separated from interior space with a weathertight boundary of exterior grade wall, exterior grade window, exterior grade door, or any combination thereof, in compliance with exterior envelope requirements of the Ontario Building Code;
 - (iv) is of sufficient horizontal extent to surround windows of Noise Sensitive Spaces; and
 - (v) the architectural design is not amenable to converting the enclosed space to be a Noise Sensitive Space.
- (d) "Improvement" means any building, structure or other improvement.
- (e) "Noise Model" means a particular analysis iteration of a computer modelling program or application known as "CadnaA" (or such other computer modelling program or application as may be stipulated by the Dominant Owner from time to time) using and analyzing data that is relevant to the determination of sound levels on the Owner's Lands from transportation and stationary sources on the

(part 1000000)

CN Lands, the said data inputs being those agreed by the Dominant Owner and Servient Owner at that time (or failing such agreement, shall be determined by the professional acoustical consultant of the Dominant Owner and shall be binding on the Dominant Owner and Servient Owner), together with a date or other distinguishing reference such that the particular iteration can be distinguished from other iterations of the Noise Model.

- (f) "Noise Sensitive Commercial Land Use" means a property of a person that accommodates a building used for a Noise Sensitive Commercial Purpose.
- (g) "Noise Sensitive Commercial Purpose Building" means a building used for a commercial purpose that includes one or more habitable rooms used as sleeping facilities such as a hotel and a motel.
- (h) "Noise Sensitive Institutional Land Use" means a property of a person that accommodates a building used for a Noise Sensitive Institutional Purpose.
- (i) "Noise Sensitive Institutional Purpose Building" means a building used for an institutional purpose, including an educational facility, a day nursery, a hospital, a health-care facility, a shelter for emergency housing, a community centre, a place of worship and a detention centre, but a place of worship located in commercially or industrially zoned lands is not considered an institutional purpose).
- (j) "Noise Sensitive Land Use" means any or all of (i) property of a person that accommodates a Dwelling and includes a legal nonconforming residential use; or (ii) property of a person that accommodates a building used for a Noise Sensitive Commercial Purpose; or (iii) property of a person that accommodates a building used for a Noise Sensitive Institutional Purpose Building;
- (k) "Noise Sensitive Space" means the living and sleeping quarters of Dwellings, and sleeping quarters of any Noise Sensitive Commercial Land Use or Noise Sensitive Institutional Land Use. Examples include, but are not limited to: bedrooms, sleeping quarters such as patient rooms, living/dining rooms, eat-in kitchens, dens, lounges, classrooms, therapy or treatment rooms, assembly spaces for worship, sleeping quarters of detention centres. The Outdoor Living Area (as defined in NPC 300) associated with a noise sensitive land use is a Noise Sensitive Space.
- (l) "Noise Study" means a written report by a professional engineer qualified to carry on such profession in the province of Ontario and who is qualified in and specializes in acoustical engineering (who is approved by the Dominant Owner acting reasonably) prepared in accordance with any applicable Environmental Noise Guidelines and industry standards and best practices, which contains analysis and recommendation based upon the then-current Noise Model of measures or actions required to mitigate (on the Owner's Lands and without impact to the CN Lands) any noise emanating from the CN Lands so as to ensure that no part of the Owner's Lands experiences noise levels higher than the maximum noise level limits for a Class 1 area as set out in NPC 300 (whether or not the Owner's Lands are then designated as Class 1 or designated as Class 4), and which recommendations and conclusions have been approved in writing by the Dominant Owner, and which may be obtained from time to time by either the Dominant Owner or the Servient Owner.

(continued)

- (m) "NPC 300" means the Ontario Ministry of the Environment & Climate Change *Environmental Noise Guidelines, Stationary and Transportation Sources - Approval and Planning, Publication NPC-300* as it read at the date of this Agreement.
- (n) "Predicted Noise Excess" means the difference between (i) the sound level predicted by the then-current Noise Model to be experienced at a particular Point of Reception on the Owner's Lands without any noise mitigation features utilized, and (ii) the maximum sound level permitted at the particular Point of Reception for a Class 1 area from any sources as prescribed in NPC- 300 (whether or not the Owner's Lands are then designated as Class 1 or designated as Class 4).
- (o) "Point of Reception" means Point of Reception as defined in NPC-300.
- (p) "Servient Owner" means any owner from time to time of all or part of the Owner's Lands

3. The parties acknowledge and agree that this Agreement is governed by and entered into under the provisions of the *Act*.
4. The parties hereby acknowledge and agree that CN's agreement to not oppose (or to settle its opposition to) the residential portion of the current development proposal for the Owner's Lands constitutes the payment of compensation in full for any damage or injury resulting or likely to result to any Servient Owner and/or any or all of the Owner's Lands or to its use and enjoyment (now or in future), from the CN Lands and/or the CN Use, for the purpose of and as set out in Section 1 of the *Act*.
5. The parties hereby acknowledge and agree that, as provided for in Section 2 of the *Act*, this Agreement binds and endures to the benefit of the heirs, executors, administrators successors and assigns, of the parties hereto relating to all existing works and all works that may hereafter be established on the CN Lands. Without limiting the foregoing, such works include the Future Operations. Without limiting the generality of the foregoing, all successors in title to the Servient Owners are deemed to have notice of the Warning Clauses contained in Schedule "C".
6. The parties acknowledge this Agreement constitutes and affords a complete answer and defence to any action that may be brought against the Dominant Owner for damages or for an injunction, or both (or for other relief), now or at any time in the future for or in respect of noise, vibration, dust, odor, air quality, light and any other Operational Emissions (as defined in Schedule "C"), and any other circumstances, characteristics, aspects of, or conditions arising from or associated with any or all of the CN Uses or the CN Lands.

RESTRICTIVE COVENANTS

7. The Servient Owner hereby covenants with the Dominant Owner, for the benefit of the CN Lands that the Owner's Lands shall at all times hereafter be subject to each and all of the following covenants and restrictions (collectively the "Restrictions"):

(page 5 of 7)

(a) No Improvement or any portion of any Improvement located in whole or in part on the Owner's Lands which contains or is intended to contain a Noise Sensitive Space shall, at any time hereafter, be constructed or be used or occupied as a Noise Sensitive Land Use;

(i) unless and until a Noise Study has been obtained at the expense of the Servient Owner based upon the detailed building design for that particular Improvement, and which Noise Study confirms either (I) sound levels from the CN Lands and/or the CN Use do not result in any Predicted Noise Excesses or (II) that mitigation measures specified in the Noise Study can be implemented on the Owner's Lands which will eliminate the Predicted Noise Excess;

(II) unless each of the design and drawings and the construction of such Improvement incorporates and implements at the sole cost of the Servient Owner (and thereafter is maintained in accordance with) all of those noise mitigation measures that are recommended in the Noise Study as described in (i) above

(III) unless the design and construction of such Improvement incorporates and implements at the sole cost of the Servient Owner the additional requirements set out in Paragraphs 7 (d) to (f) inclusive (whether same are required by the Noise Study or not);

(b) No windows or doors associated with any space within a residential unit, not including operable (fixed or sprung) windows associated with spaces annexed to any residential unit including hallways and corridors, shall be permitted on the east facade of any Improvements containing residential units.

(c) The exterior walls and cladding (with the exception of glazed areas) on the east facades of any Improvements containing residential units shall be constructed of pre-cast concrete, masonry, brick veneer or acoustically equivalent materials.

(d) Any sealed imperforate exterior windows forming part of any Dwelling unit or other Noise Sensitive Space contained in any Improvement shall not be replaced with windows that may open. Any glazing forming part of any Enclosed Noise Buffer, which glazing is constructed (if otherwise permitted in compliance with the provisions of this Agreement) such that it can be partially opened, shall not be altered to permit it to open to a larger extent than the extent to which it could open when originally constructed.

(e) Any Enclosed Noise Buffer forming part of any Dwelling unit or other Noise Sensitive Space contained in any Improvement shall not be modified at any time following its initial construction to convert, in any way, the Enclosed Noise Buffer into sleeping quarters.

(f)

No building permit for any portion of an Improvement located in whole or in part on the Owner's Lands which contains or is intended to contain a Noise Sensitive Space shall be applied for or taken out by the Servient Owner or by any person unless and until each of the following have occurred:

(further text)

(i) each of the certified architectural drawings and proposed construction details to be submitted to the municipality for building permit application, and the Noise Study for that improvement that has been approved by the Dominant Owner, and a complete electronic copy of the Noise Model used in the preparation of that Noise Study, and a list of the design elements or features that were included in the plans for purposes of noise mitigation, have been provided to the Dominant Owner a minimum of 30 days in advance, for review by the Dominant Owner;

(ii) a certificate of a professional engineer licensed to carry on that profession in the province of Ontario obtained by the Servient Owner at its cost certifying that the plans submitted for purposes of obtaining such building permit comply with and will fully implement the requirements of Paragraph 7 herein, have been provided to the Dominant Owner a minimum of 30 days in advance, for review by the Dominant Owner; and

(iii) the Servient Owner has provided the Dominant Owner with a minimum of one (1) week advance notice, or such shorter time period as the Dominant Owner may agree to acting reasonably, that it will be providing the aforesaid materials; and

(iv) the Dominant Owner has provided any comments thereon to the Servient Owner regarding compliance by the Servient Owner with the requirements of this Agreement within 20 calendar days following receipt of all such drawings and proposed construction details or expiry of the notice period in subsection (iii), whichever is later, or such longer time period as the Servient Owner may agree to acting reasonably. In response to the Dominant Owner's comments, if any, the Servient Owner shall revise the building plans as may be necessary to ensure compliance with this Agreement and shall provide the revised building plans to the Dominant Owner, and any issues raised by the Dominant Owner with the content or conclusions of such drawings and certificate have been resolved to the satisfaction of the Dominant Owner prior to the issuance of building permits for the improvements as aforesaid.

(g) If revisions to the architectural plans or drawings are thereafter required by the municipality as part of its review of the application which affect the noise mitigation measures incorporated into the building design, the Servient Owner shall, prior to the issuance of any building permit, deliver to the Dominant Owner the final revised certified architectural drawings that are approved by the municipality and a certificate from an acoustical engineer duly qualified to practice in Ontario obtained by the Servient Owner at its cost certifying that the plans submitted for purposes of obtaining such building permit comply with and will fully implement the requirements of this Agreement in accordance with their terms. The procedure and timing for review of the materials by the Dominant Owner shall be as set out in Paragraph 7 (i) (iv);

(h)

No Improvement (or any part thereof) located in whole or in part on the Owner's Lands which contains or is intended to contain a Noise Sensitive Space shall be constructed by the Servient Owner unless such construction is in accordance with the engineering plans approved by the Dominant Owner pursuant to Paragraph 7 (i) or (k) above.

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- (i) No Improvement (or any part thereof) located in whole or in part on the Owner's Lands which contains or is intended to contain a Noise Sensitive Space shall be used or occupied by any person unless and until each of the following have occurred:
- (i) each of the certified as-built architectural drawings and construction details of the particular Improvement, and written certification from an acoustical engineer duly qualified to practice in Ontario that all noise mitigation measures required by this Agreement have been installed and constructed in accordance with the certified architectural drawings and the requirements of this Agreement, and any additional information reasonably required by the Dominant Owner for purposes of confirming the above certification have been delivered to the Dominant Owner, for review by the Dominant Owner, within a reasonable timeframe;
 - (ii) the Servient Owner's professional engineer licensed to carry on that profession in the province of Ontario obtained by the Servient Owner at its cost shall have inspected the as-constructed Improvement prior to occupancy and
 - (iii) the Servient Owner has provided the Dominant Owner with a minimum of one (1) week advance notice, or such shorter time period as the Dominant Owner may agree to acting reasonably, that it will be providing the aforesaid materials; and
 - (iv) the Dominant Owner has provided any comments thereon to the Servient Owner regarding compliance by the Servient Owner with the requirements of this Agreement within 20 calendar days following receipt of all such drawings and proposed construction details or expiry of the notice period in subsection (iii), whichever is later, or such longer time period as the Servient Owner may agree to acting reasonably. In response to the Dominant Owner's comments, if any, any issues with the content or conclusions of the aforesaid materials shall have been resolved to the satisfaction of the Dominant Owner prior to the use or occupancy of any Improvements as aforesaid.
- (j) the definition of common elements in any condominium declaration for any Improvement on the Owner's Lands shall be defined such that all noise mitigation measures contained within that condominium development are part of the common elements and not part of any residential unit, and such that no owner of a residential unit shall be permitted to make any alterations to, or to damage, or to remove any noise mitigation measures (and such that such provision can be enforced by the condominium corporation as against the owner of the particular residential unit).

8. Nothing contained in this Agreement, including but not limited to the restrictions on the Owner's Lands set out herein, shall be construed as a waiver of any right or entitlement of the Dominant Owner to participate in any future development approval process in respect of the Owner's Lands initiated by the municipality or other regulatory body, and the Dominant Owner may exercise any and all rights and remedies in such development approval process that any participant therein could exercise, notwithstanding the existence of the within Agreement.

DESIGN AND ADEQUACY

9. The Dominant Owner shall have no responsibility or liability whatsoever for the design or adequacy of the work done in order for the Servient Owner to comply with this Agreement notwithstanding that any

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plans or specifications or materials or reports may have been reviewed or approved by the Dominant Owner pursuant to this Agreement. No such review or approval by the Dominant Owner of plans or specifications shall be deemed to limit the Servient Owner's full responsibility for the design and adequacy of the work required by this Agreement.

REGISTRATION

10. The Servient Owner shall, at its expense, register this Agreement on title to the Owner's Lands and the CN Lands (the latter if required by the Dominant Owner), and provide a copy to the Dominant Owner. The Servient Owner shall also, at its expense, separately register such portions of this Agreement as the Dominant Owner shall require as a restrictive covenant, on title to the Owner's Lands and the CN Lands (the latter if required by the Dominant Owner), and provide a copy to the Dominant Owner within 20 days of the request by the Dominant Owner.

POSTPONEMENT

11. The Servient Owner shall, within thirty (30) days after the registrations as described in Paragraph 10 above, obtain and deliver in registrable form from every encumbrancer, mortgagee or holder of a deed of trust which encumbers all or any portion of the Owner's Lands, postponement agreements in the form attached hereto as Schedule "D" or on such other form as may be acceptable to the Dominant Owner, acting reasonably, wherein the said encumbrancer(s), mortgagee(s) and holder(s) of the deeds of trust shall agree that their rights and benefits are postponed to and are subordinate to the terms and provisions of each of the within Agreement and the registrations as described in Paragraph 10 above (the "Postponement Agreements").

Interim Relief

12. The Servient Owner acknowledges that the property and rights and restrictions that are the subject matter of this Agreement are unique and special to the Dominant Owner. The provision in this Agreement of certain remedies which are available after the occurrence of any default is not intended to be exclusive, and the remedies contained in this Agreement are intended to be cumulative and in addition to any other remedies which may be available. Without limiting the generality of the foregoing, in the event that Servient Owner shall at any time commit a default and, after being provided reasonable notice of the default and a reasonable period of time to remedy or cure the said default, continues to be in default, then the Dominant Owner shall be entitled to specific performance or an Order restraining and enjoining such default, as the case may be, (including without limitation restraining occupancy) and Servient Owner hereby consents thereto and shall not plead in defence thereto that there would be an adequate remedy at law.
13. The parties hereto acknowledge and covenant with each other that it is their intention that the burden of this agreement, the rights, privileges, restrictions, obligations and duties contained herein, and all of the covenants to be observed and performed by the Servient Owner contained herein shall run with (and shall be construed as covenants and restrictions running with) the Owner's Lands and the benefit of this agreement, the rights, privileges, restrictions, obligations and duties contained herein, and all of the covenants and obligations to be observed and performed by the Servient Owner contained herein shall run with (and shall be construed as covenants and restrictions running with) the CN Lands. Without limiting the foregoing, this Agreement and all rights and obligations arising from same shall extend to,

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be binding upon and enure to the benefit of the parties hereto and their respective agents, servants, tenants, sub-tenants, customers, licensees and other operators, occupants and invitees and each of its or their respective heirs, executors, legal personal representatives, successors and assigns.

14. It is the intention of the parties that the restrictions and conditions on the Owner's Lands and the Servient Owner contained herein, and the covenants of the Servient Owner contained herein, shall be perpetual, but it is acknowledged and agreed that if any consent is required pursuant to the *Planning Act* (Ontario) for purposes of entering into any particular provision(s) herein, the aforesaid particular provision(s) shall be conditional on obtaining such consent, and until such time as the Servient Owner obtains same, at its sole cost and expense, the said particular provision(s) shall expire 21 years less one day after the date of execution of this Agreement. Upon notice from the Dominant Owner, the Servient Owner shall expeditiously take all steps that are necessary or advisable to obtain such consents as are required pursuant to the *Planning Act*, in default of which the Dominant Owner may take such steps and the Servient Owner shall reimburse the Dominant Owner for all reasonable cost and expense incurred by the Dominant Owner in requesting and prosecuting the application for such consents.

15. (a) The Servient Owner shall not transfer all or any portion of the Owner's Lands unless and until it provides the Dominant Owner with a written agreement of the transferee (including any condominium corporation) in which the transferee agrees to assume all of the burden and obligations of the Servient Owner contained herein, including the obligation to obtain a further assumption agreement from any subsequent transferee (including any condominium corporation), signs an Acknowledgment and Release regarding the subject matter of the warning clauses in Schedule C hereto, and confirms it has received and read a copy of this Agreement. For the purposes of this section, "transfer" shall mean any disposition of all or any portion of the Owner's Lands including, without limitation, a deed, transfer, registration of a condominium declaration, lease, option, agreement to sell, agreement to lease or agreement to grant an option. Any transfer shall not be effective to convey or create any interest in all or any portion of the Owner's Lands until the Servient Owner has complied with this provision. Notwithstanding the above, where the transfer is of title to a residential condominium unit or a condominium parking unit or condominium storage unit (or any combination of such units) comprising part of the Owner's Lands, to an individual purchaser purchasing only such unit(s) and no other portion of the Owner's Lands, the requirement for an assumption agreement detailed herein shall not apply. An individual purchaser shall obtain from any subsequent purchaser or transferee the agreement referred to in the warning clauses in Schedule C, and deliver such agreement to CN upon request.

(b) The Servient Owner shall not enter into any agreement of purchase and sale or lease for all or any portion of the Owner's Lands after the date of execution of this Agreement (including but not limited to agreements for proposed or actual condominium units), nor issue after the date of execution of this Agreement any disclosure statement, or any draft condominium declaration in respect of any condominium comprising all or any portion of the Owner's Lands, unless same contains the warning clauses set out in the attached Schedule "C". The Declaration for any condominium corporation that is acquiring title to some or all of the Owner's Lands shall also include the warning clauses in Schedule "C" hereto, when required by the Dominant Owner. Any condominium corporation that is an owner of any portion of the Owner's Lands from time to time shall enforce all obligations of unit owners in such condominium improvement to repair and maintain such of the noise mitigation measures that are located within the particular condominium unit, so that the

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general noise abatement standards applicable to the Improvement continue to be met at all times.

16. The Servient Owner hereby fully and forever releases and discharges the Dominant Owner from any and all actions, causes of action, proceedings, claims and demands of every nature and kind whatsoever which the Servient Owner has had, now has or may in the future have against the Dominant Owner at law or in equity and directly or indirectly, and from and against any and all liabilities, costs and expenses of every nature and kind whatsoever which the Servient Owner now has or may incur in the future, at law or in equity and directly or indirectly, arising from or out of or in any way in connection with the CN Lands and the CN Use (including but not limited to Operational Emissions) and any and all effects thereof upon the use and enjoyment of the Owner's Lands or any part thereof.

FURTHER ASSURANCES

17. Each of the Servient Owner and the Dominant Owner shall from time to time hereafter execute such further assurances or documents as are reasonably required by the other of them to give effect to and more effectively implement and carry out the intent and meaning of this Agreement. If requested by the Dominant Owner, the Servient Owner agrees to furnish evidence to the Dominant Owner that all claims hereunder have been duly paid and that there are no outstanding liens or other encumbrances.
18. The Dominant Owner agrees to grant partial releases of this Agreement, from time to time, in respect of lands required to be conveyed by the Servient Owner to the municipality or other public authority unless such lands are expected to be (or are) used for any Noise Sensitive Land Use (in which case this Agreement shall still apply thereto). Provided that the Dominant Owner shall not be required to underwrite or assume any financial or other obligations with respect to such transaction or documentation, and provided that the Servient Owner pay to the Dominant Owner in advance the estimated costs and expenses that may be incurred by the Dominant Owner in reviewing and evaluating such request (including legal fees and expenses).

COSTS

19. Prior to registration of the first plan of condominium for first building constructed on the Owner's Lands, the Land Owner will make a payment to CNR in the amount of \$150,000 representing compensation for a portion of the costs incurred by CN with respect to the appeals of development approvals for the Owner's Lands. This is a one-time payment to be made prior to registration of the first building only and shall not be required for any subsequent Improvements that may be constructed at any time in the future on the Owner's Lands.
20. The Servient Owner shall promptly pay the Dominant Owner, as a condition of the Dominant Owner evaluating for approval any Improvements, transfers, assumptions, charging, or other actions by the Servient Owner or others that are required to be performed by the Servient Owner hereunder or are otherwise requested by the Servient Owner, the reasonable legal and other costs incurred by the Dominant Owner in reviewing (and to the extent agreeable to the Dominant Owner approving and executing) such actions or documents.

INDEPENDENCE OF PROVISIONS

INDEPENDENCE

21. Each covenant and agreement contained in this Agreement shall for all purposes be construed to be a separate and independent covenant and agreement. If any term of this Agreement or the application thereof is found to any extent to be invalid or unenforceable, the remainder of the Agreement or the application of such term, covenant or provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby and each term, covenant and provision of this Agreement shall be separately valid and shall be separately enforceable to the extent permitted by law.

GENERAL

22. If the Land Owner, pursuant to this Agreement, is more than one legal entity ("legal entity" to include persons and corporations), then any and all obligations of the Land Owner hereunder shall be joint and several as between the said legal entities.
23. In this Agreement, the use of the male gender includes all genders, and, where the context permits, may include the neuter gender; furthermore, the singular shall be deemed to include plural whenever the context so requires and the use of plural shall be deemed to include singular whenever the context so requires.
24. The division of this Agreement into articles and sections and the insertion of articles and section headings are for convenience of reference only and shall not affect the interpretation or construction of this Agreement.
25. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision hereof and no waiver will be binding unless executed in writing by the party to be bound by the waiver.
26. This Agreement and any other contractual agreement between the parties constitutes the entire agreement between the parties with respect to the matters contemplated in this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written of the parties.
27. The Land Owner and CN each acknowledges having read and fully understood this Agreement and acknowledges having had the opportunity to seek independent legal advice. The Land Owner and CN each further acknowledges that it has not been pressured in any way, nor been subjected to any duress or undue influence by any person, for purposes of causing the execution of this Agreement.
28. The Land Owner and CN each agree not to challenge the validity of this Agreement in the future.
29. This Agreement may be executed in one or more counterparts, which together shall constitute a complete agreement, and executed counterparts may be delivered by e-mail or facsimile transmission.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

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per _____

**Schedule "A" to Agreement
(CN Lands)**

1. Firstly: Lands currently designated as all of PIN 03276-0824 (LT)

Pt Lt 15 Con 4 (VGN) as in expropriation PI VA43110, VA52025, Pt 1, 65R8133, save & except Pts 2 & 3 on Plan 65R27933;

Pt Lt 14, Con 4 (VGN) in expropriation PI VA4310, VA41542, VA49653, VA42694 & VA51761, Pt 1, 64R2133, except expropriation PI VA53894, Pts 1 & 2, 65R20649, except Pts 4 & 5 65R20649, lying within the limits of Lt 14 Con 4 (VGN), except Pts 1, 2, 3, on Plan 65R21743, except Pts 1 to 12, 65R21744, except Pt 1 on Plan 65R22253, lying within the limits of said Lt 14 Con 4 except Pts 3, 4, 5, 65R22253; s/t easement in favour of Pt Lts 13 & 14 Con 4 (VGN), Pts 4 & 5, 65R20649, over Pt 3 65R20649, as in LT1379798, partially released as in YR907547;

Pt Lt 13 Con 4 (VGN) as in expropriation PI VA51542, VA41658, VA41979, except Pts 1, 2, 3, 65R11574, expropriation PI VA53894, except Pts 4 & 5 65R20649, lying within the limits of Lt 13 Con 4 (VGN) & except PT 1, 65R22253, lying within the limits of Lt 13 Con 4 (VGN);

Pt Lt 12 Con 4 (VGN) as in expropriation PI VA41542, VA41879, except VA57230, Pt 1, 65R8064 & except Pt 1, 65R22253, lying within the limits of Lt 12 Con 4 (VGN) & except Pt 1, 65R22423;

Pt Lt 11 Con 4 (VGN) as in expropriation PI VA41542, VA41879 and except VA5730, Pts 1 to 7, 65R7811, Pts 1, 2, 3, 65R3818, Pt 1, 65R8064, Pt 1, 65R16395 & except Pt 1, 65R22253, lying within the limits of Lt 11 Con 4 (VGN);

Pt Road Allowance between Lts 10 & 11 Con 4 (VGN) as in VA47611 & Pt 3, 65R15567, closed by bylaw R61477 & VA46597 as confirmed by bylaw VA46598 & VA50053, except Pts 5, 7, 8, 9, 64R7811, VA57230;

Pt Lt 10 Con 4 (VGN) as in VA41774, except R399094, VA57230, R689418, Pts 8 & 9, 64R7811, Pt 1, 64R1271, Pt 1, 65R13662;

Pt E ½ of Lt 9 Con 4 (VGN) as in expropriation PI VA41542, except VA57230, R339190, R689418, Pts, 1 & 2, 64R3122, Pt 1, 65R18341, Pt 1, 65R13316, Pt 1, 65R13662;

Pt E ½ of W ½ Lt 9 Con 4 (VGN) as in VA69403 (secondly), except Pt 1 65R13316 & R316750;

Pt Lt 8 Con 4 (VGN) as in expropriation PI VA41542, VA69403 (firstly) VA70180, except VA57230, R599544, R316750, Pts 1, 2, 3, 4 & 5, 65R15906, Pts 1 & 2, 64R3122, Pt 1, 65R13316, Pt 1, 65R18341, except Pt 1, 65R20716;

Pt Lt 7 Con 4 (VGN) as in expropriation PI VA41542, VA69917, VA70180, except VA57230, VA54230, VA66348, R599544, R316750, Pts 1, 2, 3, & 4, 64R6730, Pt 1, 64R7724 & except Pt 1, 65R20716;

Pt Lt 6 Con 4 (VGN) as in expropriation PI VA41542, Pt 2, 64R2758, VA62759, VA 61270, Pt 1, 64R1741, Pts 1, 2, 3 & 4 64R6730, Pt 1 65R7724 & Pt 1, 65R14223 except Pts 1 & 2, 65R20794 and Part 2, 65R35614; S/T interest in VA69403 & R703035; T/W VA60394. S/T VA70509, R692110, R707129, R735185, partially released as in YR907536;

T/W easements over Pt block 16, 17 & 18, PI 65M2696, Pts 4, 5 & 6, 65R12853, Pts 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, & 14, 65R22706 & Pts 1 to 14 inclusive, 65R22706 as in LT1496639. S/T easement in favour of Pt Lt 6 Con 4 (VGN), Pts 1 & 2, 65R20794, over Pts Lts 6 & 7 Con 4 (VGN), Pt 3, 65R20794 as in YR81374. T/W easement over Pt Lt 6 Con 4 (VGN), Pt 2, 65R20794, as in YR81374. S/T easement in favour of Pt Lts 7 & 8 Con 4 (VGN), Pt 1, 65R20716, over Pt Lt 7 Con 4 (VGN), Pt 1, 65R25470, as in YR529390;

S/T right of way over Pt Lt 14 Con 4 (VGN), Pt 3, 65R20649 in favour of Pt Lt 14 Con 4, Pt 1, 65R20649, as in YR712521. S/T easement over Pt Lt 7 Con 4 (VGN), Pt 1, 65R25470, in favour of Pt Lts 7 & 8, Con 4 (VGN), Pt 1, 65R20716, as in YR908514. T/W easement over Pt Lt 15 Con 4 (VGN), Pt 2, 65R27933, as in YR721705. T/W easement over Pt Lot 3 Con 3 Pts 1 & 2, 65R28943 as in YR963917;

Together with an easement as in YR2665260; Subject to an easement in gross over Part of Lot 6, Concession 4, designated as Part 1 on Plan 65R35614 as in YR 2313475; Subject to an easement in gross over Part of Lot 6, Concession 4, designated as Part 1 on Reference Plan 65R-36030 as in YR2470131; City of Vaughan

2. Secondly: Lands currently designated as all of PIN 03330-1733 (LT)

Part of the West $\frac{3}{4}$ of Lot 16, Concession 4 Vaughan as VA42074 & Expropriation Plan VA43110; Vaughan; T/W Easement over Part of Lot 16, Concession 4, Vaughan, Pt 1, 64R8323 except Part 10, 65R14843 & Parts 1 & 2, 65R12362 as in LT1366599. T/W easement over Part of the West $\frac{3}{4}$ of Lot 16 and Lot 17, Concession 4, Pts 1 to 6 inclusive, 65R26156, Blocks 108 to 118 inclusive, and Blocks 130 to 135 inclusive, Plan 65M2567 as in YR360586.

**Schedule B to Agreement
(Owner Lands)**

Part of Lot 15, Concession 4-Vaughan described as Parts 1 to 9 inclusive, on Plan 65R-32119, City Of Vaughan, S/T EASE OVER PTS 1, 2 & 3 65R32119 IN FAVOUR OF VAUGHAN HYDRO-ELECTRIC COMMISSION AS IN LT 1427839; S/T EASE OVER PTS 2 & 4 65R32119 IN FAVOUR OF THE REGIONAL MUNICIPALITY OF YORK AS IN YR26024, AS ASSIGNED BY YR22405; S/T EASE OVER PT 7 65R32119 IN FAVOUR OF PT LT 15 CON 4, AS DESCRIBED IN R670402, AS IN YR412131; S/T TEMP EASE OVER PTS 6 & 8 65R32119 IN FAVOUR OF PT LT 15 CON 4, AS DESCRIBED IN R670402, AS IN YR412131; S/T EASE OVER PTS 7, 8 & 9 65R32119 IN FAVOUR OF PT LT 15 CON 4, PTS 2, 3, 4 & 5 65R11385, EXCEPT PTS 1 TO 9 INCL. 65R26566, PT 2, 65R14841, PTS 1 TO 7 INCL. 65R21744, PTS 1 & 2 65R22343, PTS 7 & 9 EXCEPT FL R593324 & PT 1 65R16732, AS IN YR412213; T/W EASE OVER PT LT 15 CON 4, PTS 10, 11 & 12 65R32119 AS IN YR412213; SUBJECT TO AN EASEMENT AS IN YR2219047; CITY OF VAUGHAN

currently designated on PIN (*)

**Schedule C to Agreement
(Warning Clause)**

WARNING CLAUSES

All persons presently having or who may in the future acquire any interest in the Owner's Lands or any portion thereof (also referred to as the "Subject Lands") are hereby notified as follows:

1. Canadian National Railway Company (CN) is the owner of certain lands known as its "McMillan Rail Yard" (the "CN Lands"). The CN Lands are located within the environmental influence area of the McMillan Rail Yard as a Class 3 Industrial Facility under the Ministry of Environment Guidelines D. The CN Lands are now and will continue to be used for the present and future railway and trucking facilities and operations of CN on a continuous basis (24 hours of each day in each year) including, without limitation, the operation and filling of diesel locomotives and trucks with the generation of diesel fumes and odour, 24 hours a day artificial lighting of the CN Lands which may illuminate the sky, the loading, unloading and switching of rail cars containing bulk and other commodities including hazardous substances and/or goods containing the same, and the operation of various processes for the maintenance of rail equipment;
2. the use of such present and future railway and/or trucking facilities and operations may result in the discharge, emission, evulsion, emptying, expelling releasing or venting upon or other effect upon the Lands at any time during the day or night of or by dust, smoke, fumes, odours and other gaseous and/or particulate matter, noise, vibration, electromagnetic interference (EMI), stray current, and other sounds, light, liquids, solids and other emissions of every nature and kind whatsoever (herein collectively called the "Operational Emissions"), any or all of which may be annoying, unpleasant, intrusive or otherwise adversely affect the use and enjoyment of the Lands or any part thereof notwithstanding the inclusion of features within the development of the Lands and the Condominiums which are intended to attenuate, lessen or otherwise minimize or eliminate the impact of the Operational Emissions upon the use and enjoyment of the Lands;
3. CN and its operators, licensees, agents, tenants, occupants, invitees, and customers will not be responsible for any complaints or claims by or on behalf of the owners and occupants of any portion of the Lands and/or Condominiums from time to time arising from or out of or in any way in connection with the operations on the CN Lands under the Operational Emissions and any and all effects thereof upon the use and enjoyment of the Lands and the Condominiums or any part thereof, and whether arising from (i) the presently existing facilities and operations of CN and its operators, licensees, agents, tenants, occupants, invitees, lessors, and customers upon or from the CN Lands or from (ii) any and all future renovations, additions, expansions and other changes to such facilities and/or future expansions, extensions, increases, enlargements and other changes to such operations which could include the acquisition of additional lands for the purpose of expanding the facilities and operations of CN in relation to the CN Lands;
4. CN shall not be required to change any of its facilities or operations upon the CN Lands as a result of or in response to any such complaints or claims;
5. That CN may in the future renovate, add to, expand or otherwise change its facilities on the CN Lands and/or expand, extend, increase, enlarge or otherwise change its operations conducted upon the CN Lands;
6. owners, tenants, guests and all other occupants, invitees and users of any portion of the Lands and the Condominiums or any part thereof may be required by Governmental Authorities to evacuate the Condominiums and the Lands by reason of a hazardous situation upon or an accidental release of hazardous substances from the CN Lands;
7. a permanent and perpetual easement or right and interest in the nature of a permanent and perpetual easement has been or will be granted to CN over, under, along and upon the whole of the Lands and every part thereof for the purposes of permitting the Operational Emissions;
8. That an agreement under the *Industrial and Mining Lands Compensation Act* (the "Industrial Agreement") has been entered into between the owner of the whole of the Lands and CN releasing any right any owner of any of the Lands may have now or in the future to sue CN, its customers, invitees, lessors and/or licensees for damages arising out of the operation of an activity at the CN Lands including any noise, vibration, light, dust, odour, particulate matter emanating therefrom.
9. in accordance with the required restrictive covenants in favour of CN that will run with title to the Lands and the Condominium units and form part of the Declaration, each owner and/or lessee of a

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unit with sealed, inoperable exterior windows may not replace the exterior sealed, inoperable windows in such unit with windows that may open;

10. within seven (7) days of registration of any Transfer of all or any portion of the Lands in favour of any Purchaser or of a tenant occupying all or any portion of the Lands, the Purchaser and the tenant shall by written agreement under seal delivered to CN and/or to the Vendor:

A. acknowledge that he/she has read and is aware of the above-noted and below-noted warranty and indemnity clauses provided to him or her by the Vendor in the purchase agreement, and of each of the Basement, and Industrial Agreement which will be or has been entered into between the Vendor and CN, and which agreement will be or has been registered against title to and, res(s) with the Lands;

B. agree to fully and forever release and discharge CN from any and all actions, causes of action, proceedings, claims and demands of every nature and kind whatsoever which such Purchaser or tenant has had, now has or may in the future have against CN or in equity and directly or indirectly, and from and against any and all liabilities, costs and expenses (including, without limitation, legal costs on a solicitor and his own client basis) of every nature and kind whatsoever which such Purchaser or tenant now has or may incur in the future, at law or in equity and directly or indirectly, whether arising from or out of or in any way in connection with the Operational Emissions which are in conformity with federal regulations governing same or certain Operational Emissions which are not in conformity with federal regulations governing the same, as more particularly described in any of the aforementioned Basement, and Industrial Agreement, and any and all effects thereof upon the use and enjoyment of the Condominium and the Lands or any part thereof; and

C. agree to jointly and severally with all other such persons indemnify and save CN harmless from and against any and all actions, causes of action, proceedings, claims, demands, liabilities, damages, costs and expenses (including, without limitation, legal costs on a solicitor and his own client basis) of every nature and kind whatsoever which may be made against or incurred by CN and arising at law or in equity and directly or indirectly from or out of or in any way in connection with one or more of the Operational Emissions which are in conformity with federal regulations governing same and certain Operational Emissions which are not in conformity with federal regulations governing the same, as more particularly described in each of the aforementioned Basement, and Industrial Agreement, and any and all effects of both upon the use and enjoyment of any or all of the Condominium and the Lands or any part thereof; and

11. the purchaser agrees to obtain from any subsequent purchaser or transferee the above-noted acknowledgment, release and indemnity in favour of CN and to deliver same to CN upon request.

12. For units of buildings on the Lands that have unenclosed balconies, patios or terrace: Noise levels from CN's Mackillan Rail Yard on the CN Lands may exceed the maximum noise limits of Ministry of the Environment and Climate Change ("MOE") criteria as defined in Guideline NPC 300 in any outdoor areas accessible from your unit. Such outdoor areas have not been designed to be used as Outdoor Living Areas as defined in MOE Guideline NPC 300. Among other things, noise levels from activities from the CN Mackillan Rail Yard could potentially cause discomfort or annoyance and/or interrupt conversations in these outdoor areas.

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LAND TITLES ACT
Application to register Notice of an
unregistered estate, right, interest or equity
Section 71 of the Act

TO: The Land Registrar for the Land Titles Division of York Region

I, A. Milliken Heisey, am solicitor for Canadian National Railway Company.

I confirm that the applicants have an unregistered estate, right, interest or equity in the land described as all of PIN 03276-0768 (LT)

The land is registered in the name of Tesmar Holdings Inc., and I hereby apply under Section 71 of the Land Titles Act for the entry of a Notice in the register for the said parcel.

This notice will be effective for an indeterminate time.

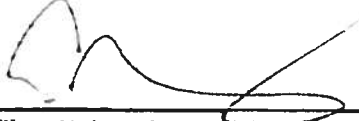
The address for service of the applicants is:

Attn: Ernie Longo

1 Administration Road

Concord, ON L4K 1B9

Dated this 16 day of February, 2018



A. Milliken Heisey Q.C, solicitor for
Canadian National Railway Company