

THIS CONDITIONAL PERMIT AGREEMENT made in this            day of            , A.D., 2022.

A M O N G:

**THE CORPORATION OF THE CITY OF KITCHENER**  
*(hereinafter called the "City")*

OF THE FIRST PART

- and –

*(hereinafter called the "Owner")*

OF THE SECOND PART

-and-

*(hereinafter called the "Mortgagee")*

OF THE THIRD PART,

WHEREAS the Owner has requested a conditional permit from the CITY to commence construction on the lands described in Schedule 'A' to this Agreement prior to meeting all requirements to obtain a building permit in accordance with the Building Code Act s.8.(2);

AND WHEREAS the Owner is the registered Owner of the lands described in Schedule 'A' to this Agreement, subject to a mortgage in favour of the Mortgagee;

AND WHEREAS the Chief Building Official is satisfied that the proposed construction is in compliance with the By-laws passed under Sections 34 and 38 of the Planning Act and with such other applicable law as set out in section 1.3.1.5(1) of the Building Code;

AND WHEREAS the Chief Building Official is of the opinion that unreasonable delays in the construction would occur if a conditional building permit were not granted;

AND WHEREAS the Chief Building Official considers the restoration of the site to be feasible in the event that all the required approvals are not obtained;

AND WHEREAS the City has, by resolutions of Council dated November 14, 1995 and June 30, 2014, delegated approval authority to the Chief Building Official to approve Conditional Permit Agreements;

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT IN CONSIDERATION OF THE COVENANTS AND AGREEMENTS HERINAFTER MADE BY THE OWNER, TO BE OBSERVED, FULFILLED AND PERFORMED, AND THE SUM OF FIVE (\$5.00) DOLLARS NOW PAID BY THE OWNER TO THE CITY, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE CITY AGREES TO GIVE THE OWNER A CONDITIONAL BUILDING PERMIT, SUBJECT TO THE LIMITATIONS AND PROVISOS HEREAFTER SET OUT, AND THE OWNER IN CONSIDERATION OF THE ISSUANCE OF THE CONDITIONAL BUILDING PERMIT BY THE CHIEF BUILDING OFFICIAL FOR THE CITY HEREBY COVENANTS AND AGREES WITH THE CITY AS FOLLOWS:**

**1. Ownership of the Subject Lands**

The Owner represents that it is the Owner of the lands described in Schedule 'A' attached hereto and hereinafter referred to as the "subject lands".

**2. Construction affected by this Agreement**

The Owner acknowledges that the construction for which this agreement relates (herein referred to as the "subject construction") is that construction proposed in one (1) permit application filed with the City and identified as application number \_\_\_\_\_ for \_\_\_\_\_:

### 3. Acceptance of Risk

The Owner agrees to assume all risks involved in commencing construction before every requirement for the building permit has been met and the Owner hereby agrees to indemnify and hold the City harmless from all actions, suits, claims and demands which may be brought against or made upon the City and from all loss, costs, damages, charges or expenses which may be incurred, sustained or paid by the City in consequence of the conditional building permit having been issued or otherwise by reason of the exercise by the Owner of the permission granted by the issuance of the conditional building permit.

### 4. Tree Preservation

Prior to the issuance of a conditional building permit, the Owner shall produce a detailed Vegetation Plan and/or a Tree Preservation-Enhancement Plan for the subject lands as specified in the City's Tree Management Policies that is satisfactory to the Director of Planning. Prior to the commencement of any construction under the conditional building permit, the Owner shall implement any and all measures required by the said Plan or Plans, including without limitation fencing, signage and erosion control, all to the satisfaction of the Director of Planning. The Owner shall continue and maintain such compliance continuously throughout the construction process.

### 5. Erosion and Siltation Control

Prior to the issuance of a conditional building permit, the Owner shall produce drawings setting out siltation and erosion control measures for the subject lands that are satisfactory to the Director of Engineering Services or the Chief Building Official. Prior to the commencement of any construction under the conditional building permit, the Owner shall implement any and all such measures required by the said drawings, all to the satisfaction of either the Director of Engineering Services or the Chief Building Official. The Owner shall continue and maintain compliance with all such measures continuously throughout the construction process.

### 6. Requirements

The Owner hereby agrees:

- (a) to file any required plans, specifications or other documents that may be required for a complete permit application, not later than \_\_\_\_\_;
- (b) in addition to (a), to take such further steps, including obtaining any necessary approvals or fulfilling any other requirements that may be required so that a full building permit may be issued not later than \_\_\_\_\_;
- (c) to generally comply with all other applicable requirements in respect of the subject lands during construction, including but not limited to requirements in relation to site servicing, grading, landscaping, lighting, emergency protection (to include access for emergency vehicles and water supply to the satisfaction of the Fire Department) continuously throughout the construction process.

### 7. Cessation of Construction

The Owner hereby agrees to stop the subject construction and secure the site to the satisfaction of the Chief Building Official upon the happening of any one of the following events:

- (a) the Chief Building Official determines that there has been a breach of any requirements of this agreement, the Building Code or the Building Code Act;
- (b) the Chief Building Official determines that an impediment has arisen which prevents the lawful continuation of the subject construction; or
- (c) an appeal is filed with the Local Planning Appeal Tribunal with respect to a minor variance that is required for lawful erection of the subject construction.

In the event that the Chief Building Official requires construction to cease pursuant to the foregoing, the site is to remain secured and no construction is to take place until such time as the Chief Building Official authorizes the resumption of construction or the subject construction is removed and the site restored pursuant to the request of the Chief Building Official.

## 8. Site Restoration and Security

(a) The Owner hereby agrees to remove the subject construction and restore the site at its own expense in the manner specified in this section if all necessary approvals have not been obtained by \_\_\_\_\_.

(b) Upon the failure of the Owner to obtain the necessary approvals, the Owner agrees to restore the site back to the condition the site was in at the time of the conditional permit application and said restoration shall include the removal of all construction, the replacement of all vegetative matter, the stabilization of slopes and the restoration of drainage patterns. Restoration must seriously commence within 30 days of the date cited in (a) above or at such later time as may be directed by the Chief Building Official

(c) If the Chief Building Official determines that the subject construction has not been removed or a site restored as required by this agreement, the Chief Building Official may cause the subject construction to be removed and the site restored and for this purpose the Chief Building Official, an Inspector and their agent may enter upon the land and into the building governed by this agreement at any reasonable time without a warrant.

(d) The Owner shall provide an irrevocable standby Letter of Credit to the Chief Building Official in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) for restoration of the site and also as security for all other obligations under this agreement, said Letter of Credit to be in a form satisfactory to the City Solicitor and to be held by the City as security until there has been full compliance with all elements of this agreement.

(e) Other forms of performance security may be substituted for the Letter of Credit, at the request of the Owner, provided that approval is obtained from the City Treasurer and the City Solicitor.

(f) If the Chief Building Official determines that the subject construction has not been removed, the site restored as required by this agreement, or there are other breaches of this agreement, the Letter of Credit may be drawn upon in full and monies used to restore the site in accordance with this agreement or otherwise to remedy any breach of this agreement.

(g) The Letter of Credit shall be kept in force until there is full compliance with this agreement at which time the Letter of Credit will be returned. If the Letter of Credit is about to expire without renewal thereof and full compliance of this agreement has not yet been achieved, the City may draw all of the funds so secured and hold them as security to guarantee full compliance with this agreement unless the City Solicitor is provided with a renewal of the Letter of Credit forthwith.

(h) Should costs associated with the restoration of the site be incurred by the City in excess of the amount of the Letter of Credit the City shall have a lien on the land for the amount spent by the City for removal of the subject construction and restoration of the site and the amount shall be deemed to be municipal taxes and may be added by the Clerk of the municipality to the collector's roll and collected with priority lien status in the same manner as municipal taxes.

## 9. Revocation of Conditional Building Permit

In addition to the other reasons specified in the Building Code Act, the Chief Building Official for the City may revoke the conditional building permit issued in conjunction with this agreement if the Owner fails to comply with the terms of this agreement.

## 10. Interpretation

(a) Nothing in this agreement shall be construed as altering the Owner's obligation to comply with the Building Code, and Building Code Act, nor shall anything in this agreement be construed as limiting the City's ability to enforce the Building Code and Building Code Act against the Owner, if so required.

(b) This Agreement shall be read with such changes in number and gender as the circumstances require.

(c) The Owner acknowledges that the subject construction permitted by this Conditional Permit Agreement does not constitute any other approval for the purpose of the Building Code Act or Planning Act.



SCHEDULE 'A'

ALL and Singular that certain parcel or tract of land and premises situate, lying and being composed of:

SAMPLE