SCHEDULE "A"

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March 28, 2025

DELIVERED

Ontario Land Tribunal
655 Bay Street, Suite 1500
Toronto, ON M5G 1E5

Dear Sir or Madam:

RE: Appeal of Decision of Hamilton Conservation Authority dated January 16, 2025 Pursuant to Subsection 28.1 (20) and 28.1 (21) of the Conservation Authorities Act, R.S.O. 1990, c.C.27

This correspondence constitutes an Appeal on behalf of 7612737 Canada Corp. in respect to the Decision of the Board of the Hamilton Conservation Authority dated January 16, 2025 wherein the Board refused an Application by 7612737 Canada Corp. (hereinafter the "Appellant") seeking a permit to allow for the construction of a six storey residential building in a regulated area of Spencer Creek at 55 Cootes Drive, City of Hamilton (Dundas), Ontario. A copy of the Notice of Decision of the Hamilton Conservation Authority is attached to this correspondence at Tab 2, including the Resolution of the Board.

The subject matter of this Appeal relates to a proposed development by the Appellant to redevelop a property in the downtown vicinity of the historic Town of Dundas comprised of 51, 55, 57 Cootes Drive and 110 King Street East for the construction of a six storey residential condominium building with 129 dwelling units. This is a proposal that would provide much needed housing into downtown Dundas where mixed uses including a variety of residential housing styles already exist. The proposal has conditional site plan approval from the City of Hamilton, under the *Planning Act*, with conditions.

The proposed redevelopment satisfies all of the requirements of the Hamilton Conservation Authority ("HCA") save and except for an issue of safe access, more fully described below.

On January 9, 2025, the Hearing Board of the HCA refused the Application of the Appellant and provided written reasons on January 16, 2025. In its Decision, the Board, among other reasons, concluded the following:

> "The activity is likely to create conditions or circumstances that, in the event of a natural hazard, **might jeopardize the health and safety of persons** or result in the damage or destruction of property." [emphasis added].

It is respectfully submitted that the Hearing Board did not assess or properly assess whether the development "might jeopardize the health and safety of persons". This language is not a prohibition of development in regulated areas. Rather, the language required the Board to make an informed and meaningful assessment of risk to health and safety. The Board failed to do so.

It was demonstrated before the Hearing Board that the proposed building has been designed to meet all regulatory building requirements including complete flood proofing of the building. It has been demonstrated that this building is safe and secure for all of its occupants and its occupants' parking during any regulatory flood event. All of the proposed operating systems of the building will be safe and secure. All of the entrances and exits of the proposed buildings will be safe and secure. The only issue is that the surrounding environs during a regulatory flood event would not enable pedestrians or vehicles to easily get to or leave the building during the duration of a flood event.

The issue of safe access only arises from the issue of a regulatory flood event criteria (the Hurricane Hazel standard) and there is no evidence, and none was provided to the Hearing Board, to demonstrate that this vicinity in Dundas has ever experienced such a regulatory flood event. The only evidence during the Hearing before the Hearing Board was that the regulatory flood event employs a very conservative assumption and factor of seven times any normal rainfall event in setting the regulatory standard. The risk of the regulatory flood event is on the extreme end of the risk spectrum and is extremely low. The Hearing Board did not adequately assess or assess at all the issue of risk.

In addition, the Hearing Board failed to balance the issue of risk against other important objectives for this development including the significant importance of delivering safe and secure housing in this vicinity in historic downtown Dundas. The proposed development will provide a safe and secure location for residents during a regulatory flood event.

On January 28, 2025, a Review Request to the Minister was submitted on behalf of the Appellant. A copy of the Review Request (without attachments) is included at Tab 3 to this correspondence. There has been no response to the Review Request.

The Appellant requests an Appeal Hearing before the Ontario Land Tribunal on such date and upon such terms as is directed by the Tribunal.

The Appellant reserves its rights to submit such further and other grounds for this Appeal as may be allowed by the Tribunal.

In accordance with the requirements for filing this Appeal, my firm's cheque in the amount of $1,100.00, payable to the Minister of Finance, is attached and submitted herein.

I look forward to hearing from the Tribunal in respect to this Appeal.

Yours very truly,

DUXBURY LAW
PROFESSIONAL CORPORATION
Per:

Brian Duxbury
BDD/mc
Encls.

cc: Hamilton Conservation Authority
Attention: T. Scott Peck