

Case Nos. PL030412
PL030514

The Ontario Municipal Board has received appeals under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from a decision of the Ministry of Municipal Affairs and Housing to approve in part, the new Official Plan for the City of Toronto, as adopted by By-law 1082-2002, to provide policy direction in the six municipalities of the former Metropolitan Toronto

MMAH File No. 20-0P-2002

O.M.B. File No. PL030412

Harbour Remediation and Transfer Inc., Ontario Realty Corporation, Royal Canadian Yacht Club, and others, have appealed to the Ontario Municipal Board under subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from a decision of the City of Toronto to approve Proposed Amendment No. 257 to the Official Plan of the City of Toronto to redesignate lands identified as the Central Waterfront

O.M.B. File No. 0030096 (PL030514)

Queen's Quay Investments Incorporated, Michael Gregg, Tate & Lyle Canada Limited, and others, have appealed to the Ontario Municipal Board under subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, against Zoning By-law 1049-2006 of the City of Toronto

O.M.B. File No. R060297 (PL030514)

MINUTES OF SETTLEMENT dated this 14th day of November, 2011.

BETWEEN:

REDPATH SUGAR LTD.

(hereinafter referred to as "**Redpath**")

-and-

TORONTO WATERFRONT REVITALIZATION CORPORATION

(hereinafter referred to as "**Waterfront Toronto**")

-and-

CITY OF TORONTO

(hereinafter referred to as "**City**")

WHEREAS Redpath, Waterfront Toronto and the City are hereinafter collectively referred to as the "**Parties**";

AND WHEREAS Redpath is the registered owner of certain freehold lands and premises and is the tenant of certain other lands and premises, both of which are known municipally as 95 Queens Quay East, in the City of Toronto, which are more particularly described in Schedule A-1 attached hereto (hereinafter collectively referred to as the "**Redpath Lands**");

AND WHEREAS Waterfront Toronto is the registered owner of freehold interests in lands situated within the East Bayfront - West Precinct area, north of Queens Quay East and east of Lower Sherbourne Street, more particularly described in Schedule A-2 attached hereto (hereinafter referred to as the "**Waterfront Toronto Lands**");

AND WHEREAS the City is the registered owner of freehold interests in lands situated within the East Bayfront - West Precinct area, north of Queens Quay East and east of Lower Sherbourne Street, more particularly described in Schedule A-3 attached hereto (hereinafter collectively referred to as the **“City Lands”**);

AND WHEREAS the Waterfront Toronto Lands and the City Lands are referred to as Sherbourne Commons, the Parkside Lands and the Quayside Lands, more particularly shown on Schedule “B” attached hereto, (hereinafter referred to as the Park Lands, the Parkside Lands and the Quayside Lands, respectively, which are collectively referred to herein as the **“Park, Parkside and Quayside Lands”**);

AND WHEREAS in November 2002, City Council adopted a new Official Plan to guide future development of the City of Toronto. The Plan was the subject of 163 appeals to the Ontario Municipal Board (**“OMB”**). Several landowners in the Central Waterfront area appealed provisions of the Plan to the OMB;

AND WHEREAS on April 16, 2003 City Council adopted the Central Waterfront Secondary Plan, Amendment No. 257 (the **“OPA”**) redesignating lands to permit the development of the various precincts within the Central Waterfront. The adoption of the OP A resulted in a number of appeals of the OP A to the OMB;

AND WHEREAS on September 27, 2006 City Council adopted Zoning By-law 1049-2006 (the **“ZBA”**) to rezone land within the East Bayfront precinct (**“East Bayfront”**) to permit the development of a mixed-use neighbourhood with associated open space. At the same meeting, City Council also adopted modifications to the OPA to ensure consistency between the OPA and the ZBA. The adoption of the ZBA has resulted in a number of appeals of the ZBA to the OMB and these appeals have been consolidated with the appeals of the new Official Plan, as they relate to the Central Waterfront, and the OPA;

AND WHEREAS Redpath, the City and Waterfront Toronto and a number of other parties are all parties to the Central Waterfront OMB hearing dealing with the East Bayfront - West Precinct area, at which appeals of the new Official Plan, the OPA and the ZBA will be considered under OMB Case File No.s PL030412 and PL030514 (**“OMB Hearing”**);

AND WHEREAS the OMB has approved in part the OPA and ZBA, with modifications, as applied to the portions of East Bayfront located south of Queens Quay East, by way of Decision/Order No. 1905 on July 6, 2007 and by way of a subsequent Decision/ Order issued on November 27, 2007;

AND. WHEREAS Redpath currently operates a refining, processing, packaging, and storage of sugar and sugar related products facility which, among other things includes the operation of an electrical co-generation system on the Redpath Lands (the **“Redpath Facility”**);

AND WHEREAS Redpath raised concerns that, due to the noise, air emissions, vibration, odour, fugitive dust, and light emanating from the Redpath Facility:

- (a) the introduction of certain types of new development that do not currently exist on the Park, Parkside and Quayside Lands on the date of this Agreement may cause undue adverse impacts on Redpath’s ability to comply with various regulatory approvals, guidelines and standards relative to its current and future operations; and
- (b) Redpath’s current and future operations may adversely impact occupants and visitors to the Park, Parkside, and Quayside Lands with respect to the existing and proposed uses of the Park, Parkside and Quayside Lands;

AND WHEREAS the Parties have, in good faith, attempted to resolve their differences relative to the Park, Parkside and Quayside Lands, and have worked closely with the Ministry of the Environment (**“MOE”**) to that end;

AND WHEREAS modifications to the OPA and ZBA to accommodate development on the Park, Parkside and Quayside Lands were endorsed by City Council on October 25 and 26, 2011;

NOW THEREFORE WITNESSETH THAT in consideration of the sum of two dollars (\$2.00) of lawful money of Canada, now paid by each party to the other (the receipt and sufficiency of which whereof by each party is hereby acknowledged), the Parties hereby agree upon a full and complete settlement in respect of all matters arising from the appeal and addressed in this Agreement (the “**Agreement**”), on the following terms and conditions:

Article 1 DEFINITIONS

1.1 Definitions

The following terms, whenever used in this Agreement, shall have the meanings set out in this Section:

“**Approved Mitigation Features**” means the ~~m~~Mitigation ~~f~~Features ~~approved as a condition of a Development Approval, including any~~ Receptor-based Mitigation, ~~and~~ Required Performance Standards and any mitigation features included as a condition of Development Approval;

“**Assumption Agreement**” means an agreement in the form attached hereto as Schedule “F”;

“**Building Permit**” means a permit to construct a building, or any part thereof, pursuant to Section 8 of the *Building Code Act, 1992*, S.O. 1992, c.23, as amended, superseded or replaced from time to time, including but not limited to, excavation and shoring permits;

“**Built-Form Requirements**” means the requirements set out in paragraphs 9, 10 and 12 and 17.1 through 17.5 of this Agreement;

“**City as Landowner**” means the City acting in its capacity as the registered owner from time to time of the City Lands and/or the Quayside Lands (other than portions thereof acquired for public streets), or any part of them, and not in any other capacity, and other references to the City in this Agreement are to the City acting in its other capacities;

“**Class 4 Area Classification**” means the classification of the Quayside Lands as a Class 4 Area under MECP Environmental Noise Guideline: Stationary and Transportation Noise Sources – Approval and Planning (Publication NPC-300) (“NPC-300”), as may be amended or replaced from time to time, by resolution effecting the classification passed by City Council that does not by its terms require any further or other instrument or act to effect the classification.

“**Development Approval**” means approval of any Development Approval Application.

“**Development Approval Application**” means any application(s) for and approval of an official plan amendment, rezoning, site plan approval or modification, minor variance, consent, draft plan of subdivision and draft plan of condominium in accordance with the *Planning Act*, R.S.O. 1990, c.P.13, or the *City of Toronto Act, 2006*, each as amended, superceded or replaced from time to time;

“**Draft Form of Order**” means the draft form of Order attached hereto as Schedule “C”;

“**ECA**” means an Environmental Compliance Approval issued by the MECP;

“**Emissions Study**” has the meaning ascribed to it in the Modified ZBA, as may be amended from time to time, and as further qualified by paragraphs 8, ~~and~~ 10, 17.2, 17.3, Schedule “H” and Schedule “K” of this Agreement, and for clarity does not require an analysis air quality (other than odour) or dust as they relate to the Redpath Facility. ~~and~~
“**Emissions Studies**” are the plural of Emissions Study;

“**Executive Director, Development Review**” means the Executive Director of the City’s Development Review Division (or any successor official), and includes their delegates;

“**Future Full Capacity**” means the capacity of Redpath, as a heavy industrial sugar processing and storage facility, to move goods by ship and truck/tanker, including the

operation of outdoor cranes on a 4.3 hectare site, in order to accommodate the processing of approximately 780,000 metric tonnes of raw material annually, and, the future capacity, with reasonable modifications, to process up to approximately 1,000,000 metric tonnes of raw material annually. Future Full Capacity also includes the enhancement or replacement of existing boilers with an electrical co-generation facility or district energy, heating and cooling plant as can reasonably be expected to be implemented in the future and all noise resulting from such activities including emissions from Redpath-related ship manoeuvring/turning and berthing and ship engines when docked;

“Holding Symbol Removal Application” means an application to remove a holding symbol pursuant to Section 36 of the *Planning Act*, as amended;

“including,” “includes” and “include” mean “including (or includes or include) without limitation.”

“Mitigation Features” means any mitigation and related performance standards recommended in the Emissions Study, Noise Study, Vibration Study, Permit Reports and required by this Agreement, as the case may be, along with all mitigation and related performance standards recommended or required by the MOE and/ or the City of Toronto;

“Modified OPA” means the Official Plan Amendment attached to the Draft Form of Order;

“Modified ZBA” means, in relation to the Quayside Lands, the Zoning By-law Amendment 1049-2006 as amended by ● and ●.; ~~attached to the Draft Form of Order~~;

“MOE” or “MECP” means the Ontario Ministry of the Environment, Conservation and Parks, as may be renamed or reconstituted from time to time.

“NOAC” means a Notice of Approval Conditions, or such other notice or document that the City adopts as indicating the conditional approval of a Site Plan Application, issued pursuant to City protocol in the Site Plan Approval process.

“Noise Model” has the meaning given to it in Schedule “I”.

“Noise Study” has the meaning ascribed to it in the Modified ZBA, prepared in accordance with Schedule “I” and Schedule “J” of this Agreement and using the built form expressed in the drawings to be submitted to the City by Quayside in connection with the relevant Development Approval Application. ~~and as further qualified by paragraph 8 of this Agreement, and “Noise Studies” are the plural of Noise Study;~~

“Odour Model” has the meaning given to it in paragraph 17(2)(A) of the MOS.

“OMB” means the Ontario Municipal Board and its successor Tribunal, the Ontario Land Tribunal (or any successor thereof);

“Permit Reports” means noise and emissions reports to be completed during the development of Building Permit drawings and filed with the City in support of an application for Building Permit. Such reports shall set out the manner in which the Approved Mitigation Features and Built-Form Requirements have been implemented in the Building Permit application, shall provide specificity where necessary in respect of any ambiguities in the Noise Study and/or Emissions Study concerning the implementation of the Approved Mitigation Features and Built-Form Requirements, and, where applicable, shall set out the updates to the Noise Study and Emissions Study required by paragraph ~~180(a)~~ of this Agreement;

“Person” means an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or departments of any such government, and the executors, administrators, or other legal representative of an individual in such capacity;

“Quayside Lands” means the lands described under the heading “Quayside” in Schedule “A-2” of this Agreement.

“**Receptor-based Mitigation**” means ~~the~~at ~~receptor-based~~ mitigation works or measures (i) recommended in any Noise Study and/or Emissions Study, (ii) required by this Agreement, including that described or required pursuant to ~~in~~ paragraphs 9, 10 ~~and~~ 12 and 17.1 through 17.5; and/or (iii) described or recommended in any Permit Report; of this Agreement;

“**Redpath Acoustical Model**” has the meaning given to it in Schedule “I”.

“**Required Performance Standard**” means the performance standards identified in the Emissions Study and required by the City as a condition of a Development Approval that will include, but not be limited to, any performance standards for the Approved Mitigation Features and Built-form Requirements, performance standards for the installation and maintenance of Filter Systems (as defined below), including the Filter Specifications (as defined below), and Filter Units (as defined below), including the Filter Unit Specifications (as defined below), where such filters are to be installed, and minimum performance standards for maintaining static positive pressure under normal operating conditions inside the development;

“**Sensitive Land Use**” has the meaning ascribed to it in the Environmental Protection Act and the Provincial Planning Statement, 2024, as supplemented by the Modified ZBA;

“**Site Plan Application**” means an application for the approval of plans and drawings pursuant to ~~Section 41(4) of the Planning Act, as amended or~~ the Site Plan Control provisions of the City of Toronto Act, 2006, as is applicable;

“**Site Plan Agreement**” means the agreement associated with the approval of a Site Plan Application;

“**Site Plan Approval**” means the approval by Council of a Site Plan Application pursuant to ~~Section 41(4) of the Planning Act, as amended or~~ the City of Toronto Act, 2006, as is applicableamended, revised or replaced from time to time;

“**successor and assign**” and similar references includes tenants, other than tenants of individual residential condominium units or individual residential rental units;

“**Warning Clause**” has the meaning ascribed to it in the Modified ZBA and, if and when the Class 4 Classification occurs, shall also include the following:

“Purchasers and tenants are advised that this development has been classified as a Class 4 area under Ministry of Environment, Conservation and Parks publication NPC-300, “Environmental Noise Guideline, Stationary and Transportation Sources – Approval and Planning” and that sound levels due to nearby industrial facilities are required to comply with sound level limits that are protective of indoor areas and area based on the assumption that windows and exterior doors are closed. This dwelling unit has been supplied with a ventilation system which will allow windows and exterior doors to remain closed for noise control purposes. Notwithstanding any noise mitigation at source or in the design of this development and individual dwellings, noise from the industrial facilities may at time interfere with some activities of the dwelling occupants. In the event of such an occurrence, residents are advised to close the windows.”

“**Zoning By-law**” means former City of Toronto Zoning By-law No. 438-86, as amended, re-enacted or substituted from time to time.

1.2 Schedules

The following is a list of the schedules to these Minutes of Settlement which shall form part of this Agreement for all purposes:

Schedule A-1	Legal Description of the Redpath Lands
Schedule A-2	<u>Legal Description of the Quayside Lands</u> Legal Description of the Waterfront torontoQuayside Lands

Schedule A-3	Legal Description of the City Lands
Schedule “B”	Plan of the Park, Parkside and Quayside Lands
Schedule “C”	Draft Form of Order, including Modified OPA and Modified ZBA
Schedule “D”	Evaluation Method and Matrix of Design Features dated November 11, 2011
Schedule “E”	Letter from MOE to the City and Redpath, dated November 14, 2011
Schedule “F”	Form of Assumption Agreement re: Minutes of Settlement
Schedule “G”-	Form of Assumption Agreement re: Confidentiality Agreement
<u>Schedule “H”</u>	<u>Odour Matrix</u>
<u>Schedule “T”</u>	<u>Noise Evaluation Method and Selection of Exterior Envelope Sound Isolation</u>
<u>Schedule “J”</u>	<u>Noise Study Requirements</u>
<u>Schedule “K”</u>	<u>Emission Study Requirements</u>
<u>Schedule “L”</u>	<u>Materials to be provided to Redpath pursuant to Section 17.3(B)</u>
<u>Schedule “M”</u>	<u>Materials to be provided to Redpath pursuant to Section 18(b)</u>
<u>Schedule “N”</u>	<u>NTD – what is Schedule N?</u>

Article 2

~~2.1.~~ The Parties confirm that the foregoing recitals are true and correct.

~~3.2.~~ The Parties acknowledge and agree that, to facilitate development on the Park, Parkside and Quayside Lands, the Modified OPA and the Modified ZBA be approved in part by the OMB for the Park, Parkside and Quayside Lands, and that such approvals may precede the OMB’s adjudication of the remaining appeals of the OP A and ZBA for the lands in East Bayfront West Precinct.

~~4.3.~~ The Parties agree to provide the OMB with a copy of the Modified OPA, Modified ZBA and the Draft Form of Order and to request jointly that the OMB:

- (a) approve in part the Modified OPA and Modified ZBA for the Park, Parkside and Quayside Lands; and
- (b) reserve judgement on the parts of the Modified OPA and Modified ZBA identified in the Draft Form of Order as items to be adjudicated at a later date.

~~5.4.~~ The Parties agree and acknowledge that this Agreement is conditional on the following:

- (a) That Redpath, Waterfront Toronto and the City as Landowner execute an agreement under the *Industrial and Mining Lands Compensation Act*; and
- (b) that the OMB approve the Modified OPA and the Modified ZBA for the Park, Parkside and Quayside Lands substantially in accordance with the Draft Form of Order.

If the foregoing conditions are not satisfied or are not waived in whole or in part by the Parties, this Agreement shall be null and void and have no further force and effect, and the Parties shall consent to the filing of an application to the OMB for a review under section 43 of the *Ontario Municipal Board Act*, R.S.O. 1990, c. 0.28 and any replacement or

successor legislation and a revocation of the OMB decision to approve a modified Draft Form of Order.

6.5. The Parties acknowledge and agree that this Agreement shall not prejudice positions taken by any of the Parties and the MOE at the OMB Hearing relative to:

- (a) the deferred policies and provisions of the OP A and ZBA applicable to the lands located north of Queens Quay East, other than the Park, Parkside and Quayside Lands; and
 - (b) the deferred policies and provisions of the Modified OPA and the Modified ZBA;
- any and all of which may be adjudicated by the OMB at a later date.

Development Review and Implementation

7. The Parties agree that any Development Approval Application and/or Holding Symbol Removal Application for the Quayside Lands shall conform and/or comply, as the case may be, with the following provisions, as applicable:

- (a) Site Plan Application drawings submitted to the City for Site Plan Approval shall include express detailed reference and/or illustrations of the Mitigation Features, including any Receptor-based Mitigation. For any Development Approval Application or Holding Symbol Removal Application for the Quayside Lands, the applicant shall submit to the City a Noise Study and Emissions Study as part of its application;
- (b) Quayside and the City as Landowner agree that they shall require any applicant to give written notice to Redpath and its counsel, Stikeman Elliott LLP, of the filing/resubmission of any Development Approval Application and/or Holding Symbol Removal Application and shall require the applicant to provide Redpath, at the time the application/resubmission is submitted to the City, with a copy of the complete application, including electronic copies of all drawings, and all materials revising or updating any such applications, including electronic copies of all drawings, at the time of submission to the City:
 - (i) the applicant shall deliver the electronic copies of the drawings referred to in paragraph 7(b) of this Agreement to Redpath in CAD and PDF formats on CD, DVD, memory stick, or memory card; and
 - (ii) for clarity, the applicant will not post the drawings referred to in paragraph 7(b) of this Agreement to an FTP site or similar, unless the files may be downloaded freely by Redpath, its solicitors and its consultants;
- (c) Quayside and the City as Landowner agree that they shall require any applicant to provide copies of any Noise Studies, Noise Models, Emission Studies and/or Odour Models, as applicable, including all revisions/modifications to said studies and/or models and/or reports, to Redpath and its counsel, Stikeman Elliott LLP, at the time of submission of the Noise Studies and/or Emissions Studies to the City];
- (d) The City shall use best efforts to give written notice to Redpath of the filing of any Site Plan Application or modification, any request for extension of a Site Plan Approval, or any Holding Symbol Removal Application for the Quayside Lands or portion thereof, including any appeals or referrals of the same to the OMB or other adjudicative body;
- (e) Redpath will have a period of 45 days from the date that it receives the materials described in (c) to subject said studies to peer reviews by qualified consultants and to provide its written comments to the Executive Director, Development Review; and
- (f) Neither the City as Landowner nor Quayside shall request (i) that the Executive Director, Development Review issue NOAC or Site Plan Approval and (ii) approve

a Holding Symbol Removal Application, and the City shall not issue NOAC/Site Plan Approval or approve a Holding Symbol Removal Application, until:

- (i) the 45-day review period required by paragraph 7(e) has expired or has been waived by Redpath in its sole discretion;
- (ii) the Executive Director, Development Review has had regard for Redpath's comments, if any, delivered within the 45-day review period required by paragraph 7(e);
- (iii) in the case of a Site Plan Application, the Mitigation Features are conditions of Site Plan Approval;
- (iv) in the case of a Site Plan Application, the drawings and plans submitted as part of the Site Plan Application include express detailed reference to and/or illustrations of the Mitigation Features and the Approved Mitigation Features, to the satisfaction of the Executive Director, Development Review; and
- (v) in the case of a Site Plan Application, that NOAC and/or the Site Plan Approval requires that the following be included in the Site Plan Agreement: the provision of the Mitigation Features and Approved Mitigation Features; that such features be maintained in good condition or in accordance with a Required Performance Standard; and, that no changes to the Mitigation Features and Approved Mitigation Features that are materially inconsistent with or that otherwise materially detract from the intended purpose of such measures shall be made.

~~7. The Parties agree that any Development Approval Application, Holding Symbol Removal Application and applications for Building Permits for the Parkside Lands and Quayside Lands shall conform and/or comply, as the case may be, with the following provisions, as applicable:~~

- ~~(a) Site Plan Application drawings submitted to the City for Site Plan Approval shall include express detailed reference and/or illustrations of the Mitigation Features, including any Receptor-based Mitigation;~~
- ~~(b) Waterfront Toronto and the City as Landowner agree that they shall require any applicant to give written notice to Redpath and its counsel, Stikeman Elliott LLP, of the filing of any Development Approval, Holding Symbol Removal Application or any applications for a Building Permit and shall require the applicant (excepting in the case of an application for a Building Permit, in so far as it relates to excavation and/or demolition) to provide Redpath, at the time the application is submitted to the City, with a copy of the complete application, including electronic copies of all drawings, and all materials revising or updating any such applications, including electronic copies of all drawings, at the time of submission to the City:~~
 - ~~(i) the applicant shall deliver the electronic copies of the drawings referred to in paragraph 8(b) of this Agreement to Redpath in CAD and PDF formats on CD, DVD, memory stick, or memory card; and~~
 - ~~(ii) for clarity, the applicant will not post the drawings referred to in paragraph 8(b) of this Agreement to an FTP site;~~
- ~~(c) Waterfront Toronto and the City as Landowner agree that they shall require any applicant to provide copies of any Noise Studies and Emission Studies including all revisions/modifications to said studies, to Redpath and its counsel, Stikeman Elliott LLP, at the time of submission to the City;~~
- ~~(d) The City shall use best efforts to give written notice to Redpath of the filing of any application for Site Plan Approval or modification, any request for extension of a Site Plan Approval, or any Holding Symbol Removal Application for the Parkside Lands and Quayside Lands or portion thereof, including any appeals or referrals of the same to the OMB or other adjudicative body;~~

- ~~(e) Redpath will have a period of 45 days from the date that it receives the Noise Study and the Emissions Study to subject said studies to peer reviews by qualified consultants and to provide its written comments to the City's Chief Planner and Executive Director; and~~
- ~~(f) Neither the City as Landowner nor Waterfront Toronto shall request a Site Plan Application to proceed to Council for a decision, or alternatively, shall request the Chief Planner and Executive Director to issue Site Plan Approval, until:~~
 - ~~(i) the 45-day review period required by paragraph 8(e) has expired;~~
 - ~~(ii) the Chief Planner and Executive Director has had regard for Redpath's comments;~~
 - ~~(iii) the Chief Planner and Executive Director has made recommendations to require certain Mitigation Features as a condition of Site Plan Approval;~~
 - ~~(iv) the drawings and plans submitted as part of the Site Plan Application include express detailed reference to and/or illustrations of the Mitigation Features" recommended by the Chief Planner and Executive Director and the Approved Mitigation Features, to the satisfaction of the Chief Planner and Executive Director; and~~
- ~~(v) that a Site Plan Agreement has been prepared, to the satisfaction of the Chief Planner and Executive Director, requiring: the provision of the Mitigation Features and Approved Mitigation Features; that such features be maintained in good condition or in accordance with a Required Performance Standard; and, that no changes to the Mitigation Features and Approved Mitigation Features that are materially inconsistent with or that otherwise materially detract from the intended purpose of such measures shall be made.~~

8. Waterfront Toronto and the City as Landowner agree that:

- (a) any Noise Study and Emissions Study as may be required by the Modified ZBA and any Permit Reports for the Parkside Lands and Quayside Lands shall take the Future Full Capacity of the Redpath Facility into account. To facilitate this obligation, Redpath for its part agrees to provide the qualified consultants undertaking such studies with information of the current and future operations of the Redpath Facility, including any information respecting any potential electrical co-generation facility or district energy, heating and cooling plant, that is relevant to and for the exclusive purpose of preparing a Noise Study, Emissions Study, or Permit Report provided that any subsequent owner or developer of the Park, Parkside, and Quayside Lands (or any part thereof) and any such qualified consultant execute a confidentiality agreement or an assumption agreement to such confidentiality agreement in the forms attached hereto as Schedule "G" or to the satisfaction of Redpath respecting the disclosure of such information. The Parties acknowledge that any information or documentation submitted to the City as part of any Development Approval Application may be made public by the City. The Parties agree and acknowledge that the determination of the Future Full Capacity of the Redpath Facility will be based on the information provided by Redpath for the Noise Study and Emissions Study;
- (b) any Emissions Study as may be required by the Modified ZBA and any Permit Report shall make specific recommendations for maintaining appropriate air quality within any development on the Parkside Lands and Quayside Lands and where such study/ report addresses the requirement to provide Filter Systems (as defined below) Filter Units (as defined below) or recommends the provision of carbon or other absorptive filters, and/or addresses the requirement to maintain static positive pressure in the internal building space, it shall include, but not be limited to, recommendations on appropriate maintenance protocol for any Filter Systems and any Filter Units, and minimum performance standards for maintaining

a static positive pressure under normal operating conditions inside the development.

9. In addition to the requirements set forth by the Modified OPA and Modified ZBA, Waterfront Toronto and the City as Landowner, agree that any Development Approval Application drawings and Building Permit drawings for the Parkside Lands and Quayside Lands and development constructed on the Parkside Lands and Quayside Lands in accordance with the Modified ZBA, shall comply with, include and maintain the following requirements:
 - (a) the internal building space (including individual residential units except where the units have operable windows and at the times when said windows are open) shall maintain a static positive pressure in normal operating conditions in accordance with the Required Performance Standard; and
 - (b) for all permitted Sensitive Land Uses, all vents, air intakes, exhausts and like building elements shall be designed and constructed to maintain the sound isolation of interior spaces from the exterior environment, as provided by the building envelope or other noise mitigation features.
10. In addition to the requirements set out in the Modified OPA and Modified ZBA, Waterfront Toronto and the City as Landowner, agree that any Development Approval Application drawings and Building Permit drawings for the Parkside Lands [and Quayside Lands](#) and development constructed on the Parkside Lands [and Quayside Lands](#) in accordance with the Modified ZBA, shall comply with, include and maintain the following requirements:
 - (a) all internal building space (excluding mechanical rooms, service spaces and underground parking garages) shall be supplied exclusively with outdoor air that flows either through a Filter System (as defined below) from a centralized air handling and ventilation system or through a Filter Unit (as defined below) from a unit ventilation system;
 - (b) all air intakes and like building elements on the development will be constructed with a carbon or other odour absorptive filter system, and all building HVAC systems will be constructed with a carbon or other odour absorptive filter system (the “**Filter System**”);
 - (c) the Filter System will be designed by a professional engineer having expertise in the removal of odorous contaminants entering building ventilation systems (the “**Air Engineer**”), and will be installed and maintained by a qualified mechanical contractor at the sole expense of Waterfront Toronto and/or the City as Landowner. The centralized air handling and ventilation systems of the Filter System will meet the following minimum specifications (collectively, the “**Filter Specifications**”):
 - (i) all building air supply units will be supplied with 100% outdoor air;
 - (ii) all outdoor air supplied to the air supply units will pass through the filters of the Filter System; and
 - (iii) the Filter System shall be maintained, by the condominium corporation that is the successor or assign of Waterfront Toronto and/ or the City as Landowner, in accordance with a maintenance protocol to be developed in accordance with the requirement in paragraph [1014](#)(d);
 - (d) any Emissions Study as may be required by the Modified ZBA and any Permit Report shall make specific recommendations on a maintenance protocol for each of the Filter Systems in the development of the Parkside Lands [and Quayside Lands](#), including an appropriate filter change-out protocol. Part of the Filter Systems maintenance protocol shall also include recommendations for a filter testing protocol; requiring an Air Engineer, amongst other things, to: (i) assess filter efficacy in the Filter Systems at regular intervals after installation to confirm optimum filter change frequency; and (ii) prepare a report on his/her findings (the “**Efficacy Report**”). A copy of any Efficacy Report shall be provided to Redpath

within ten (10) days of such Efficacy Report being filed with Waterfront Toronto or the City of Toronto as Landowner;

- (e) each individual residential condominium unit in the development shall be provided with outside air by means of a unit ventilation system. Such ventilation systems shall be operated and maintained in accordance with the ventilation system's manufacturer's specifications;
 - (f) each unit ventilation system shall be equipped with a filter unit (the "**Filter Unit**") within the unit ventilation system. Each Filter Unit will contain activated charcoal or other absorptive odour control filters (the "**Filters**") and will meet the following minimum specifications (collectively, the "**Filter Unit Specifications**"):
 - (i) all unit ventilation systems will be supplied with 100% outdoor air;
 - (ii) all outdoor air supplied to the unit ventilation systems will pass through the Filters in the Filter Units;
 - (iii) the Filter Unit and Filters will be specified by an Air Engineer and will be installed by a qualified mechanical contractor at the sole expense of Waterfront Toronto and/ or the City as Landowner; and
 - (iv) the Filter Units shall be operated and maintained, by a condominium corporation that is the successor or assign of Waterfront Toronto and/ or the City as Landowner, in accordance with manufacturer's specifications and a maintenance protocol to be developed in accordance with the requirement in paragraph 10.14(g); and
 - (g) any Emissions Study as may be required by the Modified ZBA and any Permit Report shall make specific recommendations on a maintenance protocol for the Filter Units, including an appropriate Filter change-out protocol. Part of the Filter Unit maintenance protocol shall also include recommendations for a Filter testing protocol: requiring an Air Engineer, amongst other things, to: (i) assess Filter efficacy in the Filter Units at regular intervals after installation to confirm optimum Filter change frequency; and (ii) prepare a report on his/her findings (the "**Filter Efficacy Report**"). A copy of any Filter Efficacy Report shall be provided to Redpath within ten (10) days of the final version of such Filter Efficacy Report being provided to Waterfront Toronto or the City of Toronto as Landowner.
11. Waterfront Toronto and the City as Landowner acknowledge that to change the Filter Specifications or Filter Unit Specifications, which includes the filter/Filter change-out protocol, will require applications to modify Site Plan Approval and/ or Building Permits, amongst other Development Approval Applications, and that such processes will invoke the review, commenting, and approval processes outlined in this Agreement.
12. In addition to the requirements set out in the Modified OPA and Modified ZBA, the Parties agree that any applications for Development Approval, Holding Symbol removal and Building Permits for Sensitive Land Uses on the Parkside Lands shall comply with the following provisions:
- (a) implementation and maintenance of the Approved Mitigation Features and Approved Mitigation Details to address exceedances of the MOE Guidelines (LU-131), as amended or replaced from time to time related to industrial source noise and Future Full Capacity with reference to the Evaluation Method and Matrix of Design Features (hereinafter the "**Matrix**") attached hereto as Schedule "D"; and
 - (b) development of the Parkside Lands shall be consistent with the recommendations of the MOE, if any, regarding:
 - (i) the determination of noise exceedances in the Noise Study and Permit Report prepared in support of such application in accordance with the procedures in the evaluation method set out in the Matrix, and

- (ii) the technical specifications of the mitigation from the Matrix, as identified in the Noise Study and Permit Report and subject to the approval of the City, in order to ensure that the noise exceedances are appropriately mitigated, using measures described in the Matrix, in accordance with LU-131r as amended or replaced from time to time.
- 13. The Parties acknowledge and agree that the MOE has advised that within the unique circumstances of the proposed development of the Parkside Lands, the MOE shall accept the more flexible approaches described in LU-131, as amended or replaced from time to time as set out in the Matrix, as it relates to determining whether or not the Redpath Facility complies with NPC-205r as amended or replaced from time to time (e.g. for the purpose of responding to complaints and for the purpose of the issuance of approvals and other regulatory approvals) on the terms and conditions set out in the letter from the MOE to the City and Redpath, attached hereto as Schedule “E”.
- 14. The Parties further acknowledge and agree that Redpath will be entitled to rely on both the interpretations and application of the MOE noise guidelines as set out in the MOE letter attached hereto as Schedule “E” for its current and future operations.
- 15. For further clarity, Redpath’s future operations include plant or process modifications or expansions permitted by the existing zoning or by any Development Approval or Building Permit application related to the same.
- 16. The Parties acknowledge and agree not to make any changes to the Approved Mitigation Features and Built-Form Requirements that are inconsistent with, or otherwise detract from the intended purpose of such Approved Mitigation Features and Built-Form Requirements.
- 17. The Parties acknowledge and consent to the MOE relying on this Agreement in its review and processing of existing and requested Certificates of Approval/Environmental Compliance Approvals pertaining to the current and future operations at the Redpath Facility.

17.1 Provisions relating to NPC-300 Class 4

(A) Unless and until the Class 4 Area Classification occurs, in addition to the requirements set out in the Modified OPA and Modified ZBA, any applications for Development Approval, Holding Symbol removal and Building Permits for Sensitive Land Uses on the Quayside Lands shall require Approved Mitigation Features and Approved Mitigation Details to address exceedances of the MOE Guideline NPC-205, related to industrial source noise and Future Full Capacity, for greater certainty, without reference to the Matrix or other mitigating factors in the MOS.

(B) From and after the date on which Class 4 Area Classification occurs, then the following provisions will apply:

- (i) The parties acknowledge and agree that obligations of Quayside for at-receptor noise mitigation arise herein independently in each of two separate and distinct analyses as follows:
 - (a) Compliance with NPC-300: Quayside shall provide for at-receptor noise mitigation as is necessary to provide for compliance with NPC-300 (Class 4) as between the development proposed on the Quayside Lands and the Redpath Facility, as determined by the Noise Model, except that all noise originating from any ship will be removed from the Noise Model (i.e. ship noise will be “turned off” as a source in the Noise Model); and
 - (b) Reduce the Risk of Complaint: Quayside shall also provide for at-receptor noise mitigation in accordance with Schedules “I” and “J” hereto, as determined by the Noise Model. Except where indicated otherwise, ship noise is included as a source in the Noise Model as is set out in Schedule “I”.
- (ii) The Noise Model as provided for herein shall be used wherever required for all purposes related to the determination of any obligation herein, including any Noise Study or Permit Report related to noise emissions contemplated or referred to

herein. For each Development Approval Application and Building Permit application, Quayside shall request an updated Redpath Acoustical Model from Redpath and Redpath shall provide the updated Redpath Acoustical Model within a reasonable period provided the proposed recipient has executed and delivered a confidentiality agreement covering the Redpath Acoustical Model in form satisfactory to Redpath, acting reasonably. The Noise Model shall be created by incorporating into the Redpath Acoustical Model the proposed development and intervening substantially complete buildings and proposed buildings that will create reflections of sound from Redpath, and material changes to transportation and ambient noise levels, as further described in Schedule "I". In addition, the Noise Model must be updated if MECP regulations so require and/or if any regulatory noise emission standards applicable to Redpath are introduced, amended or replaced, including noise emission standards imposed as conditions of Redpath's ECA.

(iii) Quayside shall update the Noise Model, and any Noise Study that relies on such Noise Model, within 20 business days of regulatory changes or conditions in paragraph (ii) taking effect. Such Noise Model and any Noise Study that relies on such Noise Model shall continue to be updated as set out in paragraph (ii), and such updates filed with the City, subject to the confidentiality agreement dated January 24, 2024 between Redpath and Quayside.

(iv) Any Noise Model to be utilized pursuant to this Agreement shall be on the basis that:

(a) the sound level ascribed to the ship noise source shall remain the same as what is established in the Redpath Acoustical Model as of **[Note to draft: This will be the date of the amending agreement.]**;

(b) Redpath's sources, not including the ship, shall remain in compliance with the Class 4 noise level limits of NPC-300 at existing and proposed sensitive receptors on the Quayside Lands and in compliance with NPC-300 or such other limits or conditions as imposed by Redpath's ECA.

(v) In addition to the requirements set out in the Modified OPA and Modified ZBA, the Parties agree that any applications for Development Approval, Holding Symbol removal and Building Permits for Sensitive Land Uses on the Quayside Lands shall comply with the following provisions:

(a) implementation and maintenance of the Approved Mitigation Features and Approved Mitigation Details to address exceedances of the MOE Guideline NPC-300, as amended or replaced from time to time, related to industrial source noise and Future Full Capacity with reference to the Evaluation Method and Matrix of Design Features attached hereto as Schedule "I" (hereinafter the "**Quayside Noise Matrix**").

(vi) The Parties acknowledge and consent to the MOE relying on this Agreement in its review and processing of existing and requested ECAs and annual updates thereto pertaining to the current and future operations at the Redpath Facility.

(C) Quayside shall not seek, cause to be sought or facilitate in any manner whatsoever, revocation of the Class 4 Area Classification.

17.2 Odour - General

(A) In order to determine its obligations hereunder respecting Receptor-based Mitigation in respect of odour on the Quayside Lands, Quayside shall employ AERMOD model (USEPA Version 14134, provided by RWDI and dated July 17, 2017 but modified so as to include balconies as receptors at all times and also to remove all buildings that are not substantially complete, including development on the Quayside Lands that is not the subject of the particular site plan application/building permit application that is under consideration)(the "**Odour Model**"), subject to paragraphs (B), (C), (D), and (E) below, and the requirements of Schedule "H" herein. The obligation herein of Quayside respecting odour mitigation shall arise if concentrations calculated

by this Odour Model fall within one of the mitigation odour levels set out on Schedule “H” using the 99.5 percentile of the modelled results. Receptor-based Mitigation, which may include self-closing doors, shall be provided in accordance with the requirements of Schedule “H”.

(B) An Emissions Study shall be required concurrent with preparing any Development Approval Application and a Permit Report shall be required concurrent with preparing a Building Permit application for the development of the Quayside Lands, or any portion thereof.

(C) Off-site building(s) and on-site building(s) on the Quayside Lands will only be considered in the Odour Model and in any Emissions Study for screening a proposed building or buildings on the Quayside Lands for the purpose of any Emissions Study where the exterior(s) thereof of such off-site building(s) and building(s) on the Quayside Lands are substantially complete. For clarification, buildings on the Quayside Lands that are proposed to be built simultaneously or concurrently with the building that is the subject of a specific Site Plan Application may not be included in the Odour Model or the Emissions Study in support of the specific Site Plan Application if such building(s) potentially provide complete or partial screening of the building that is the subject of the specific Site Plan Application.

(D) For each Emissions Study and/or Permit Report required, the Odour Model shall be updated with input from Redpath to account for: current conditions at the Redpath Facility; planned and predictable future conditions at the Redpath Facility; development conditions in the area, and conditions in the surrounding area.

(E) Every Emissions Study and Permit Report shall make specific recommendations to minimize the potential for complaint about Redpath’s emissions and to lessen the potential for adverse effect, having assessed Redpath’s Future Full Capacity.

(F) Notwithstanding any other section(s) of this Agreement and Schedule “H”, all exterior building openings that provide outside air by mechanical means into a building or a portion of a building shall provide such air through filter(s), with carbon or other odour absorptive filter material with a hydrocarbon and VOC removal efficiency of 95% or greater. Exterior building openings which connect directly to air handling units exclusively for parking garages, loading docks or service areas are exempt from this requirement.

17.3 Process to Determine Mitigation

(A) Without limiting the generality of Section 18, Quayside shall include in the plans constituting any Site Plan Application all Receptor-based Mitigation recommended by the accompanying Noise Study and/or Emissions Study all Receptor-based Mitigation contemplated by this Agreement to be provided in addition thereto, either by drawing or notation thereon.

- (i) If the Noise Study does not address the matters set out in Section 2 of Schedule “J”, then sub-sections 3.01, 3.02, 3.03, 4.01, 5.01 and 5.02 and Table 1 of Schedule “T” shall be incorporated as a notation of mitigation on plans submitted with an application for Site Plan Approval as described in Section 17.3(A); and
- (ii) If the Noise Study does not address the matters set out in Section 3 of Schedule “J”, then sub-section 2.02 of Schedule “T” shall be incorporated as a notation of mitigation on plans submitted with an application for Site Plan Approval as described in 17.3(A).

Such notations may not be amended or removed once they have been prepared to Redpath’s satisfaction, acting reasonably.

(B) Quayside shall provide copies of all materials referred to in Section 17.3(A) and a copy of each of the Noise Model and Odour Model that are the basis for the Noise Study and/or Emissions Study in accordance with Schedule “L”, respectively, to Redpath within 2 business days of the delivery of the application referred to in Section 17.3(A) to the City. Quayside shall also provide Redpath with copies of all resubmissions respecting the Site Plan Application made to the City including modifications, supplements or addenda to the Noise Study and/or Emissions Study and any changes or modifications to any mitigation shown or notated on the drawings therewith, along with a copy of the Noise Model and Odour Model, if such was used in such modifications, supplements or addenda, within 2 business days of the delivery of such resubmission to the City and Schedule “L” shall also apply in this circumstance.

(C) If Redpath provides comments to the City respecting any Site Plan Application, resubmission or modifications thereto filed by Quayside within the 45-day review period set out in paragraph 7(e) of Redpath's receipt of all of the materials specified in 17.3(B) (for clarity, if such materials are delivered in installments, upon Redpath's receipt of the final such installment), then the Executive Director, Development Review shall consider Redpath's comments prior to the issuance of NOAC and/or Site Plan Approval. In this respect, if the Executive Director, Development Review receives comments from Redpath within the time period set out in this section, he/she shall provide to Redpath a written acknowledgement of the receipt of same and a written acknowledgement of the obligation herein to consider such comments.

(D) Without limiting the generality of Section 18, concurrently with any application for a Building Permit for any building or part of a building that affects, implements or relies upon any Receptor-based Mitigation and/or Required Performance Standards, Quayside shall deliver to the City and Redpath Permit Reports that:

- (i) confirm that:
 - (a) the Receptor-based Mitigation are the same as shown, or are the same as, or meet the requirements of, the notation(s), on the Site Plan drawings referred to in the NOAC subject only to changes permitted under Section 17.1(B)(iii). For clarity, if such a notation provides a formula or method to determine the final form and/or specifications of any Receptor-based Mitigation and/or Required Performance Standards, the Permit Report will apply the formula or method and determine the final form and/or specifications thereof;
 - (b) all Receptor-based Mitigation and/or Required Performance Standards required to be incorporated have been shown or notated on the Building Permit drawings;
 - (c) the Receptor-based Mitigation and/or Required Performance Standards for the building or portion thereof that is the subject of the Building Permit will deliver Compliance with NPC-300 and Reduce the Risk of Complaint as specified in Section 3.1;
 - (d) the Receptor-based Mitigation and/or Required Performance Standards for the building or portion thereof that is the subject of the Building Permit will comply with the requirements of Sections 17.2(A), (B) and (C) and Schedule "H"; and
- (ii) set out protocols for the maintenance of Receptor-based Mitigation and/or Required Performance Standards where such is necessary for the work in question to retain its functional characteristics as relied upon in the Permit Report and this Agreement;
- (iii) set out the matters referred to Section 2 and Section 3 of Schedule "J" where the Permit Report determines the final form and/or specifications of Receptor-based Mitigation and/or Required Performance Standards contemplated by Schedule "J" as set out in Section 17.3(D)(i); and
- (iv) set out the matters referred to in Section 2, Section 3, Section 4, Section 5, Section 6 or Section 7 of Schedule "K" where the Permit Report determines the final form and/or specifications of Receptor-based Mitigation and/or Required Performance Standards contemplated by Schedule "K" as set out in Section 17.3(D)(i).

17. (F) Notwithstanding the requirements under Schedule "H", unit-specific air intakes will be designed and constructed to accommodate carbon filters only where an Emissions Study indicates that the unit in question is subject to odour levels greater than 1 OU using the 99.5 percentile of the modelled results.

18. Waterfront Toronto and the City as Landowner agree:

- (a) that as part of any application for a Building Permit for the Parkside Lands and Quayside Lands where the applicable Site Plan Approval has expired, qualified consultants

shall update the Noise Study and Emissions Study as necessary, and the ~~Chief Planner and Executive Director~~ Executive Director, Development Review shall not extend or renew the Site Plan Approval until he has had regard to the updated Noise Study and Emission Study;

(b) In connection with any application for a Building Permit for the Quayside Lands, the Air Engineer and a professional engineer with expertise in acoustics ("Acoustical Consultant"), respectively, shall, prior to the submission of an application for the Building Permit prepare and deliver to Redpath the materials described in Schedule "M" together with Permit Reports and an opinion in writing (an "Opinion") to Redpath, that all Building Permit plans provided to Redpath which are to be submitted to the City for approval have incorporated the: Approved Mitigation Features; Built-Form Requirements; Filter Systems and Filter Specifications; Filter Unit and Filter Unit Specifications and, Mitigation Features outlined in the detailed Permit Reports, if any, as required design features on the drawings even where such measures are not usually required to be shown on Building Permit plans (collectively the "Mitigation Details").

(b.1) In connection with the filing of an application for a Building Permit with the City for the Quayside Lands, the Air Engineer and Acoustical Consultant, respectively, shall, deliver Permit Reports and the Opinion to the Executive Director, Development Review and the Chief Building Official that all Building Permit plans submitted for approval have incorporated the Mitigation Details.

(b.2) Simultaneously with the filing of an application or an application resubmission for Building Permit with the City for the Quayside Lands, the Air Engineer and Acoustical Consultant, respectively, shall deliver a certification in writing (a "Certification") to Redpath, that the Permit Reports, Opinion and all Building Permit plans submitted for approval have not been modified compared to the versions provided to Redpath for review in (b), (b.3) and/or (c), as applicable. Such Certification will also constitute notice to Redpath that the Building Permit application or resubmission has been filed with the City and must provide the particulars of the municipal file number associated with the Building Permit application. A failure to provide such Certification within 5 days of the Building Permit application or modification being filed with the City will result in Redpath's period of review specified in (b.3) below being suspended until such Certification is provided and Redpath's period of review specified in (b.3) below will be extended accordingly.

(b.3) Redpath will have a period of 45 days from the date (the "Materials Receipt Date") that it receives a copy of the Permit Reports, Opinions, Noise Models and Odour Models, together with a copy of the proposed application for the Building Permit and any plans, drawings or specifications (for clarity, if such materials are delivered in installments, upon Redpath's receipt of the final such installment) which are to be submitted to the City as part of the application for a Building Permit, and which are relied upon by the Air Engineer and Acoustical Consultant in accordance with this Section, to review and provide written comments about the Building Permit application to Quayside or the City as Landowner, as applicable. The 45-day period may be extended in accordance with (b.2) above. Quayside and/or the City as Landowner shall deliver to Redpath electronic copies of the drawings referred to above in CAD and PDF formats on CD, DVD, memory stick, or memory card and, for clarity, the applicant will not post the drawings referred to in paragraph 7(b) of this Agreement to an FTP site or similar, unless the files may be downloaded freely by Redpath, its solicitors and its consultants.

(c) Quayside and/or the City as Landowner, as applicable, shall revise the Building Permit application and/or supporting materials to reflect comments from Repath relating to the incorporation of the Mitigation Details and shall deliver the revised versions to Redpath for review. Quayside and/or the City as Landowner shall provide copies of all proposed Building Permit application resubmissions to be made to the City that involve modifications, supplements or addenda to a Permit Report and any changes or modifications to any Receptor-based Mitigation and/or Performance Standards shown or notated on the Building Permit drawings, along with a copy of the Noise Model and Odour Model, if such was used to prepare such modifications, supplements or addenda to Redpath prior to submission to the City, together with reports from an Air Engineer and an Acoustical Consultant with a detailed description of the revisions and/or changes in such resubmission, as applicable, as compared with the original. Redpath shall have a period of ten (10) business days from the date it receives the materials described in the first sentence

or the second sentence of this paragraph, as applicable, to review such materials and provide comments (or further comments, as applicable) on the same. The preceding sentence shall not apply to a Building Permit application resubmission which does not relate to or affect the Mitigation Features, Mitigation Details or Performance Standards provided that Quayside or the City as Landowner delivers to Redpath at the time of delivery of the materials described in the second sentence of this paragraph the written opinion of its Air Engineer or Acoustical Consultant, as applicable, confirming the same (an “**Exempt Resubmission**”). This paragraph shall apply to any comments Redpath may provide on any revised versions and further resubmissions, *mutatis mutandis*.

(c.1) Quayside and the City as Landowner shall not apply for a Building Permit or make any resubmission in respect of a Building Permit application until the expiry of fifteen (15) days after the Materials Receipt Date and shall not make any resubmission in respect of a Building Permit Application (other than an Exempt Resubmission) until the expiry of the review period specified in (c) above.

(c.2) Quayside and the City as Landowner shall include the Permit Reports and the Opinions with every Building Permit application. Quayside and the City as Landowner shall give the Certification to Redpath and its counsel, Stikeman Elliott LLP, of the filing of any Building Permit application and shall provide to Redpath and its counsel, at the time the application is submitted to the City, a copy of the complete application, including electronic copies of all drawings, all Noise Models and Odour Models and all materials revising or updating any such applications, including electronic copies of all drawings, the Permit Reports and the Opinions, at the time of submission to the City.

(c.3) Quayside and the City as Landowner shall not request the issuance of a Building Permit, collect a Building Permit, or commence construction on the Quayside Lands unless and until it has complied with the provisions of this Section 18 and all review periods provided for in this Section 18 have expired.

(d) Quayside and the City as Landowner shall, prior to the first occupancy of each and every development on the Quayside Lands, cause an Air Engineer and an Acoustical Consultant to provide opinions in writing to the City and to Redpath that the development as constructed includes the Mitigation Details, and that all such Mitigation Details meet the required specifications for such features and are operating as anticipated in accordance with the Required Performance Standard, Filter Specifications, Filter Unit Specifications, and other requirements as may be applicable.

~~(a) — that as part of any application for a Building Permit for the Parkside Lands and the Quayside Lands, Air Engineer and a professional engineer with expertise in acoustics (“**Acoustical Consultant**”), respectively, shall prepare Permit Reports and an opinion in writing (an “**Opinion**”) to the Chief Planner and Executive Director, the Chief Building Official, and to Redpath, that all Building Permit plans submitted for approval have incorporated the: Approved Mitigation Features; Built-Form Requirements; Filter Systems and Filter Specifications; Filter Unit and Filter Unit Specifications and, Mitigation Features outlined in the detailed Permit Reports, if any, as required design features on the drawings even where such measures are not usually required to be shown on Building Permit plans, and:~~

~~(i) — Redpath will have a period of 45 days from the date that it receives a copy of the Permit Reports and the Opinions, together with a copy of any plans, drawings or specifications which have been submitted to the City as part of the application for a Building Permit, including any substantive changes made after the Building Permit is issued, and which are relied upon by the Air Engineer and Acoustical Consultant in accordance with this Section, to provide written comments about the Building Permit application to the Chief Planner and Executive Director.~~

~~(b) — Not to demand the issuance of an above-grade Building Permit from the Chief Building Official until:~~

~~(i) — the expiry of the 45-day review period required by paragraph 18(b)(i); and~~

~~(ii) — the Chief Planner and Executive Director has advised the Chief Building Official in writing that, having had regard to Redpath’s comments about the Building Permit application:~~

~~(A) — the Building Permit plans submitted for approval have incorporated the: Approved Mitigation Features; Built Form Requirements; Required Performance Standard, if any; Filter System and Filter Specifications; Filter Unit and Filter Unit Specifications; and detailed and/or additional Mitigation Features outlined in the Permit Reports (collectively the “Mitigation Details”);~~

~~(B) — the Mitigation Details have been provided to the satisfaction of the Chief Planner and Executive Director, acting reasonably (the “Approved Mitigation Details”); and~~

~~(C) — the Building Permit plans submitted for approval incorporate the Approved Mitigation Details or have been modified to incorporate the Approved Mitigation Details, to the satisfaction of the Chief Planner and Executive Director.~~

~~(e)(a) to have, prior to the first occupancy of any development on the Parkside Lands, an Air Engineer and an Acoustical Consultant, respectively, each provide an opinion in writing to the City and to Redpath that the development as constructed includes the Approved Mitigation Details, and that all such Approved Mitigation Details meet the required specifications for such features and are operating as anticipated in accordance with the Required Performance Standard, Filter Specifications, Filter Unit Specifications, and other requirements as may be applicable.~~

19. The successors and assigns of Waterfront Toronto or the City as Landowner in respect of the Parkside Lands or Quayside Lands will not oppose any MOE Certificate of Approval, MOE Environmental Compliance Approval or Development Application applied for by Redpath or issued to the Redpath Facility for the continued employment use of the Redpath Lands that would result in noise, air emissions, dust, vibration or odour impacts that are no greater than the least restrictive of:

- (a) what would be generated by the Future Full Capacity of the Redpath Facility;
- (b) the emissions permitted by the MOE in accordance with the MOE’s letter attached hereto as Schedule “E”; or
- (c) the noise emissions permitted by NPC-205, as amended or replaced from time to time.

The Parties acknowledge and agree that the provisions of this paragraph shall not apply to Waterfront Toronto or the City as Landowner but shall bind Waterfront Toronto’s and the City’s successors and assigns, including but not limited to, condominium corporations.

The Parties acknowledge and agree that the provisions of this paragraph shall not operate nor shall they have the effect of operating in any way to fetter the City Council that authorized the execution of this Agreement or any of its successors in the exercise of any of the City’s discretionary, regulatory and statutory powers.

20. The Parties agree and acknowledge that any development of the Park Lands that has the effect of substantially increasing the usability of the Park Lands or a portion thereof, or substantially changing the use(s) or the intensity of the use(s) of the Park Lands or a portion thereof, shall be subject to the following:

- (a) The City will require the completion of an Emissions Study and detailed design plans that take into account and acknowledge the environmental constraints in which the open space and park uses are situated and demonstrates that mitigation measures, where appropriate, are implemented; and
- (b) Redpath will be given 30 days to review the Emissions Study and such detailed design plans, in order to provide a response to the City on air emissions, noise and

other matters, and the City has regard to such a response, prior to any approval of final designs for such open space or Public Park uses.

The Parties agree and acknowledge that these requirements do not apply to the development of the Park Lands completed or under construction at the time that this Agreement is executed.

21. The Parties agree and acknowledge that none of the provisions of these Minutes of Settlement shall apply to restrict the laying out and dedication of public roads within the Park, Parkside and Quayside Lands.

Agreements

22. Waterfront Toronto and the City as Landowner agree to insert into any agreement of purchase and sale and any lease of land and premises (other than the resale or leases of individual residential condominium units within any condominium existing on the Parkside Lands and Quayside Lands), and any disclosure statement and any declaration for any proposed condominium with respect to the Parkside Lands and Quayside Lands, [the complete text of the Warning Clause](#), notice of the terms of this Agreement and of the obligation of any future successor or assign to assume and comply with the obligations herein, in sufficient detail such that any such successor or assign will be fully aware of and cognizant of the obligations contained herein, including those to implement and maintain in good condition the Approved Mitigation Features, Built-Form Requirements and Approved Mitigation Details and not to make any changes that are inconsistent or otherwise detract from the intended purpose of such Approved Mitigation Features, Built-Form Requirements and Approved Mitigation Details.

The Parties agree and acknowledge that purchasers who signed agreements and purchase and sale for residential condominium units on the Parkside Lands prior to the date of execution of this Agreement are bound by the terms of this Agreement, as are their successors and assigns, even if the purchasers' respective agreements of purchase and sale do not include the notice referred to above.

The City agrees to include a clause in the Section 37 Agreement for the Parkside Lands obliging the owner and its successors and assigns to assume and comply with the terms herein, including, inter alia, the obligations to implement and maintain in good condition the Approved Mitigation Features, Built-Form Requirements and Approved Mitigation Details and not to make any changes that are inconsistent or otherwise detract from the intended purpose of such Approved Mitigation Features, Built-Form Requirements and Approved Mitigation Details.

[Without limiting the generality of the first paragraph of this Section 22, with respect to any condominiums to be created on all or any part of the Quayside Lands, Quayside hereby agrees that:](#)

- [\(a\) The disclosure statement and declaration for such condominium shall include the Warning Clause;](#)
- [\(b\) The declaration for such condominium will require the condominium corporation to enter into an Assumption Agreement in respect of the property governed by such declaration and that the condominium corporation will deliver a copy of the same to Redpath; and](#)
- [\(c\) The declaration for such condominium shall provide that the condominium corporation is responsible for operating, maintaining, repairing and replacement of the Approved Mitigation Features, Built-Form Requirements and Approved Mitigation Details in accordance with this Agreement, and not to make any changes that are inconsistent or otherwise detract from the intended purpose of such Approved Mitigation Features, Built-Form Requirements and Approved Mitigation Details, and has the right to enter into units and exclusive use common element areas in order to implement compliance with the condominium corporation's obligations in this Agreement with respect to the installation, operation, maintenance,](#)

repair and replacement of the Approved Mitigation Features, Built-Form Requirements and Approved Mitigation Details.

23. Waterfront Toronto and the City as Landowner acknowledge that they have read the Warning Clause and agree that any Assumption Agreement required by paragraph 25 of this Agreement shall include an acknowledgement that the successor or assign has read the Warning Clause.
24. The Parties agree that the covenants, easements, restrictions, rights, duties, provisos, conditions and obligations herein contained shall enure to the benefit of and be binding upon each Party and their successors and assigns. Without limiting the generality of the foregoing, the Parties agree that the Parties and their successors and assigns (with respect to all or any portion of the Park, Parkside and Quayside Lands) shall be entitled to enforce the provisions of this Agreement against each other and their respective successors and assigns. In the event that the City acquires any part of the Park Land or the Parkside Lands for any purpose or any part of the Quayside Lands for a public street, the City shall not be bound by this Agreement as an owner of the lands so acquired except as is otherwise set out in this Agreement. ~~In the event that the City acquires any part of the Park, Parkside and Quayside Lands for any purpose, the City shall not be bound by this Agreement as an owner except as is otherwise set out in this Agreement.~~
25. It is intended that Redpath, Waterfront Toronto and the City as Landowner shall be bound by and shall perform the obligations set out in this Agreement and that such obligations shall run with and bind the Park, Parkside Lands, Quayside Lands and the Redpath Lands. The Parties each covenant and agree, on behalf of themselves and their respective successors or assigns, including any tenant (other than tenants of individual residential condominium units or individual residential rental units) that each shall enter into an Assumption Agreement (excluding the resale or lease of individual residential condominium units) wherein its respective successor or assign acknowledges in writing that it assumes the obligations relating to this Agreement of the Party from which it acquired the interest in land and shall provide a copy of such Assumption Agreement to all of the Parties. ~~In the event that all of a Party's obligations under this Agreement are assumed by another party, the Party whose obligations are assumed shall be relieved of any obligations under this Agreement.~~ In the event that a transferee of all or part of a Party's land affected by this Agreement assumes that Party's obligations under this Agreement that relate to or affect the land transferred, the Party whose obligations are assumed shall be relieved of its obligations under this Agreement as and to the extent they relate to or affect the land transferred. Quayside shall cause every mortgagee of the Quayside Lands or any portion thereof (excluding mortgagees of individual residential condominium units) to enter into an Assumption Agreement provided that such Assumption Agreement shall state that the mortgagee is only to be bound by the covenants and obligations, and is only responsible for the liabilities, in each case, under this Agreement as such covenants, obligations relate to the portion of the Quayside Lands so mortgaged to the mortgagee and only for so long as the mortgagee is the successor in title to or has possession or control of such lands, provided that upon the transfer of the land by the mortgagee or as a result of enforcement of the mortgagee's security it must comply with the provisions of this Section 25.
26. The Parties agree that, should any party to this Agreement allege that another party (the "Notified Party") has failed to comply with the obligations pursuant to this Agreement, then such party shall give written notice to the Notified Party of such alleged non-compliance. If the Notified Party acknowledges the allegation, it shall have 30 days or other such time as the Parties may agree to cure the alleged non-compliance.
27. In the event that the Notified Party refuses to cure the alleged non-compliance, and/or fails to cure the alleged non-compliance, and/or fails to cure the alleged non-compliance within the timeframe provided pursuant to paragraph ~~25~~²⁶ of this Agreement, the Parties agree that all Parties are contractually bound and that the provisions of this Agreement are immediately enforceable by civil action, subject to the paragraph above, should a party be in breach of this Agreement.

28. The Parties agree that if:

(a) the City, in its full discretion, enacts a by-law to repeal the Modified ZBA for any portion of the Park, Parkside and Quayside Lands (the “**Repealed Lands**”), such that the zoning for the Repealed Lands reverts to the zoning that existed prior to the City’s enactment of the ZBA; and

(b) no Sensitive Land Uses have been developed on the Repealed Lands,

then this Agreement no longer applies in any capacity to the Repealed Lands and shall be released from the Repealed Lands. such event, the Parties agree to forthwith execute a partial release, in registerable form, and any other necessary acknowledgement and direction, in order to release this Agreement from title to the Repealed Lands.

29. The Parties agree that should the industrial operations on the Redpath Lands permanently close, the Parties, successors and assigns, including, but not limited to, condominium corporations, shall be released of the obligations under this Agreement.

30. In the event that Redpath makes physical enhancements to the Redpath Facility resulting in a permanent reduction in noise, air emissions, dust, vibration and/ or odour impacts from the Redpath Facility on the Park, Parkside and Quayside Lands, any Party may, with notice to the other Parties, consult with the MOE. In the event that the MOE agrees in writing that any of the requirements of paragraphs [78](#), [89](#), [910](#), [1112](#), [1213](#), [1314](#), [1415](#), [1516](#) and [1617](#) may be changed as a result of the said reduction in emissions from the Redpath Facility, the Parties agree that they will amend this Agreement to reflect the changes approved by the MOE provided that the MOE agrees to take such changes into account in its review and processing of existing and requested Certificates of Approval or Environmental Compliance Approval pertaining to the current and future operations at the Redpath Facility such that Redpath may rely on such an interpretation by the MOE in the application of applicable MOE regulations and guidelines, including all relevant provisions of the *Environmental Protection Act*.

31. The Parties acknowledge that in this Agreement words importing the singular include the plural and vice versa as may be required for the context.

32. The Parties acknowledge that in this Agreement words importing gender include all genders as may be required for the context.

33. The Parties acknowledge that in this Agreement the headings contained herein form no part of this Agreement but shall be deemed to be inserted for convenience of reference only.

34. The Parties acknowledge that a reference to a City official in this Agreement shall be deemed to include a reference to the official of the City who performs the duties of such referenced person from time to time.

35. The Parties acknowledge and consent to this Agreement once executed by all the Parties, being filed with the OMB at the OMB Hearing.

36. Each of the Parties hereto agrees not to request the OMB to order an award of costs against any party arising from these proceedings as they relate to the Park, Parkside and Quayside Lands.

37. The Parties hereto agree that all of the covenants, rights, duties, provisions, conditions and obligations herein contained shall enure to the benefit of and be binding upon each party and their respective successors and assigns.

38. This Agreement and all other documents to be executed and delivered pursuant to this Agreement constitute the entire Agreement between the Parties as to the matters dealt with herein and supersede all prior negotiation and understandings. Any amendment to this Agreement or waiver of any provision of this Agreement must be in writing and signed by the Parties hereto.

39. The Parties agree that should the employment use of the Redpath Lands permanently cease, the Parties, and their successors and assigns, including, but not limited to, condominium corporations, shall be released from their obligations under this Agreement.
40. Waterfront Toronto and the City as Landowner hereby consent to the registration of this Agreement by Redpath against the title to the Park, Parkside and Quayside Lands.
41. If any provision or portion thereof in this Agreement is held by any court of competent jurisdiction or administrative tribunal to be invalid or unenforceable, such holding will not affect the remainder hereof and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.
42. Any notice required by this Agreement shall be sent by registered mail or by facsimile to:

Redpath Sugar Ltd.
95 Queens Quay East
Toronto ON M5E 1A3

Attention: Jonathan Bamberger
Phone No: (416) 933-8309
Fax No: 416-956-4972
E-mail: Jonathan.Bamberger@redpathsugar.com

With a copy to:

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Attention: Calvin Lantz
Phone No: (416) 869-5669
Fax No: (416) 947-0866
E-mail: clantz@stikeman.com

Waterfront Toronto
20 Bay Street, Suite 1310
Toronto, Ontario
M5J2N8

Attention: Vice President, East Bayfront
Phone No: (416) 214-1344
Fax No.: (416) 214-4591

With a copy to:

Goodmans LLP
250 Yonge Street, Suite 2400
Toronto, Ontario
M5B2M6

Attention: Allan Leibel
Phone No.: (416) 979-2211
Fax No: (416) 979-1234
E-mail: aleibel@goodmans.ca

City of Toronto
Planning & Administrative Tribunal Law
Legal Services
Metro Hall, 26th Floor
55 John Street
Toronto, Ontario
M5V 3C6

Attention: Rob Balfour
Phone No: (416) 392-7225
Fax No: (416) 397-4420
E-mail: rbalfour@toronto.ca

43. This Agreement may be executed in several counterparts, each of which so executed will be deemed to be an executed original copy of these Minutes of Settlement and such counterparts together will constitute one and the same instrument. Counterparts may be executed either in original or electronically transmitted form and the parties adopt any signatures received by facsimile machine or other means of electronic communication as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other party an original of the signed copy of this Agreement which was so delivered.

IN WITNESS WHEREOF THE PARTIES HAVE SIGNED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN:

REDPATH SUGAR LTD.

Per: _____
Jonathan Bamberger

I have authority to bind the corporation.

CITY OF TORONTO

Per: _____
G. Carbone
Treasurer
We have authority to bind the corporation.

Per: _____
Marilyn M. Toft
For Ulli S. Walkies, City Clerk
We have authority to bind the corporation.

**TORONTO WATERFRONT
REVITALIZATION CORPORATION**

Per: _____
John W. Campbell
President & CEO
We have authority to bind the corporation.

Per: _____
Victor s. Wong
Vice President, Legal
We have authority to bind the corporation.

SCHEDULE A-1

LEGAL DESCRIPTION OF THE REDPATH LANDS

Freehold Lands:

PIN 21384-0060(LT) comprising PT LT 19-20 PL649E TORONTO PT 1 63R3268; S/T RIGHT IN ES33656; TORONTO, CITY OF TORONTO

Leasehold Lands:

PIN 21384-0104(LT) comprising PART OF LOTS 19 AND 20, PLAN 694E, TORONTO, DESIGNATED AS PART 2 ON REF. PLAN 63R3268. CITY OF TORONTO

SCHEDULE A-2

LEGAL DESCRIPTION OF THE WATERFRONT TORONTO QUAYSIDE LANDS

PARKSIDE

OWNER: TORONTO WATERFRONT REVITALIZATION CORPORATION

PIN 21384-0129 (LT)

Part of Block 12, Plan E694, designated as Part 4 on Plan 66R-24081, City of Toronto, being the whole of the PIN.

QUAYSIDE

OWNER: TORONTO WATERFRONT REVITALIZATION CORPORATION

PIN 21384-0005 (LT)

Parcel 11-1, Section A694E, being Part Block 11, Plan E694 Toronto, designated as Part 1 on Plan R-396, City of Toronto, being the whole of the PIN.

PIN 21384-0082 (LT)

Part Lot 11, Plan 694E, Toronto, designated as Part 1 on Plan 64R-15767, City of Toronto, being the whole of the PIN.

PIN 21384-0083 (LT)

Part Lot 11, Plan 694E, Toronto, as in CA474853 and Part 2 on Plan 64R-15767, City of Toronto, being the whole of the PIN.

PIN 21384-0085 (LT)

Part of Lot 11, Plan 694E Toronto, designated as Parts 1 to 3 on Plan 63R-2862, City of Toronto, being the whole of the PIN.

PIN 21384-0084 (LT)

Part of Lot 11, Plan 694E Toronto, designated as Part 2 on Plan 63R-982 and Part 3 on Plan 64R-15767, City of Toronto, being the whole of the PIN.

SCHEDULE A-3

LEGAL DESCRIPTION OF THE CITY LANDS

SHERBOURNECOMMON

OWNER: CITY OF TORONTO

PIN 21384-0157 (LT)

Part of Block 12, Plan E694, designated as Part 1 on Plan 66R-24081, City of Toronto.

Part of PIN 21384-0127 (LT)

Part of Lot 12, Plan 694-E, designated as Part 2 on Plan 66R-24081, City of Toronto.

Part of PIN 21384-0128 (LT)

Part of Lot 12, Plan 694E, designated as Part 3 on Plan 66R-24081 and Part 1 on Plan 66R- 24967, City of Toronto.

PARKSIDE

OWNER: CITY OF TORONTO

Part of PIN 21384-0127 (LT)

Part of Lot 12, Plan 694-E, designated as Part 5 on Plan 66R-24081, City of Toronto.

Part of PIN 21384-0128 (LT)

Part of Lot 12, Plan 694-E, designated as Part 6 on Plan 66R-24081 and Part 2 on Plan 66R-24967, City of Toronto.

