



Report to: Development Services

Report Date: June 18, 2013

SUBJECT: Markham Centre Parkland Funding and Delivery Agreement
PREPARED BY: Catherine M. Conrad, City Solicitor, Ext. 4737
Linda Irvine, Manager Parks and Open Space Development,
Ext. 2120

RECOMMENDATION:

- 1) That the report titled "Markham Centre Parkland Funding and Delivery Agreement" dated June 18, 2013 be received;
- 2) That the Mayor and Clerk be authorized and directed to enter into the Markham Centre Parkland Funding and Delivery Agreement, generally in the form attached hereto, and amendments thereto, with the Trustee of the Markham Centre Landowners Group and landowners within Markham Centre, in a form satisfactory to the Commissioner of Development Services and the City Solicitor;
- 3) That the staff be authorized to engage a Trustee to manage the trust account and transactions as described in this report, to be funded from the Parkland Delivery Fund, and that the Mayor and Clerk be authorized and directed to execute a contract with the Trustee;
- 4) That the competitive purchasing process for the engagement of the Trustee be waived in accordance with Purchasing By-law 2004-341, Part II, Section 7.1 (h) which states; "where it is necessary or in the best interests of the City to acquire.....Professional Services from a preferred supplier or from a supplier who has a proven track record with the City in terms of pricing, quality and service" to engage the Trustee;
- 5) And that staff be authorized and directed to do all things necessary to give effect to the recommendations set out in this report, including execution of documents.

PURPOSE:

The purpose of this report is to obtain authority to enter into an Agreement with the landowners in Markham Centre and the Trustee of the Markham Centre Landowners Group, establishing a process for the acquisition, by the City, of lands within Markham Centre, as developed parkland, in accordance with the park designs as approved by the City, and the park delivery process as outlined in the Agreement.

BACKGROUND:

In September 2003, Council endorsed a report entitled “Parkland Strategy for Markham Centre” in which a series of ‘Parkland Principles for Markham Centre’ were approved to guide the dedication and delivery of public parks, squares and urban plazas throughout the Markham Centre Secondary Plan Area (OPA 21). Eleven principles were identified, one of which was that “The Town may use cash-in-lieu monies to purchase parkland, including improved parkland within Markham Centre”, and that “The majority of developed parkland will be urban in nature and developed to a higher standard of design and finish (than typical suburban parks).” These principles further described, in general terms, how the improved parkland would be conveyed and what credits, if any, towards Park Development Charge rates, and / or towards cash-in-lieu of land dedication payments would be applied.

In October 2006, Council endorsed a report entitled “Markham Centre Parkland Principles Up-date” in which updated “Markham Centre Parkland Principles” were updated and approved. Twelve principles were identified which were further refinements on the Parkland Principles approved in 2003. Of particular consequence, was the added principle that “The Town negotiate a Parks Delivery Agreement with the Trustee and/or the Markham Centre Landowners Group.”

The development of this Agreement was to consider the following general aspects, related, but not limited to:

- Securement of all the required Markham Centre parkland dedications, by park size and location;
- Establishment of a trust account for cash-in-lieu of parkland contributions;
- Proper and professional accounting practices and regular reporting procedures, including independent audits, related to the trust account for parks delivery;
- Establishment of levels of improvement for parks, by location and type;
- Procedures for delivery of required parkland (in an improved state) to the Town, including the design, construction, contract administration, public consultation, and Town review and approval of park design;
- Arrangements for project management, satisfactory to the Commissioner of Development Services;
- Return of any remaining cash-in-lieu of parkland dollars, retained by the Trustee, following park build-out, to the Town;
- Credit to developers, or reimbursement from the Town for an appropriate portion of the park development component of the Town-wide soft services development charge, whichever option is in the best interests of the municipality;
- Mandatory and regular updating of the agreement;
- Establishing a timing and terms for the termination of the agreement and possible terms for its extension; and,
- On-going monitoring and tracking of development approvals, density and unit counts and associated parkland requirements and, updates to Council to identify any necessary adjustments to the Parkland Principles for Markham Centre.

Outside counsel was hired to work with staff, the Trustee and the Markham Centre Landowners Group to prepare an Agreement in a form satisfactory to the Commissioner of Development Services and the City Solicitor.

OPTIONS/ DISCUSSION:

Now that the respective parties are satisfied, staff are bringing forward the “Markham Centre Parkland Funding and Delivery Agreement” for endorsement and authorization to enter into an agreement with the landowners in Markham Centre and the Trustee of the Markham Centre Landowners Group. A “draft” financial model has been prepared by City staff and provided to the Trustee for further development, management and monitoring coincident with development approvals, development of improved parkland and evolving densities, unit counts and associated parkland requirements.

In summary, each landowner in Markham Centre who has parkland will be required to enter into a site specific “Parkland Implementation Agreement” with the municipality based on the requirements and procedures outlined in the Markham Centre Parkland Funding and Delivery Agreement. The objective is to have each landowner fund and project manage the design, construction and contract administration of all parkland improvements in accordance with approved plans and to the satisfaction of the municipality, and ultimately to convey improved parkland to the municipality at final completion. Reimbursement to the landowner will be from the Park Delivery Fund (cash-in-lieu paid by Markham Centre landowners) and administered by the Trustee, as well as from City’s Development Charges Reserve if agreed to by the municipality. Through this process, the municipality will acquire improved parkland using cash-in-lieu funds held in reserve by the Trustee.

Addition details can be found in the memorandum from outside counsel setting out a summary of the terms and provisions of the draft agreement is attached hereto as Appendix A, and in the draft “Markham Centre Parkland Funding and Delivery Agreement” is attached hereto as Appendix B.

FINANCIAL CONSIDERATIONS AND TEMPLATE: (external link)

The Trustee’s fees will be funded from the Markham Centre Parkland Trust Fund and staff will ensure these fees are aligned with market costs to ensure a competitive rate is attained.

HUMAN RESOURCES CONSIDERATIONS

N/A

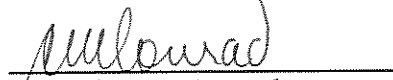
ALIGNMENT WITH STRATEGIC PRIORITIES:

The report aligns with: Growth Management; Municipal Services; and Parks, Recreation, Culture and Library Master Plan.

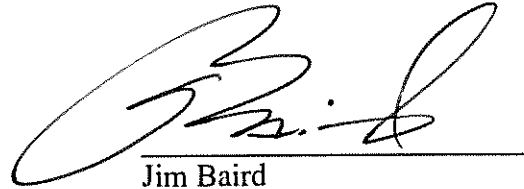
BUSINESS UNITS CONSULTED AND AFFECTED:

This report reflects discussions between Planning and Urban Design, Legal and Finance staff as well as representatives of the Markham Centre development community and the Trustee for the Landowners cost Sharing Agreement.

RECOMMENDED BY:



Catherine M. Conrad
Town Solicitor



Jim Baird
Commissioner of
Development Services

ATTACHMENTS:

Appendix A: Memorandum from Catherine Lyons dated November 19, 2012
Appendix B: Markham Centre Parkland Funding and Delivery Agreement dated
December 13, 2012

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TO: Catherine Conrad
Linda Irvine

November 19, 2012

FROM: Catherine Lyons

FILE NO: 10.1889

SUBJECT: PRIVILEGED

Markham Centre Parkland Funding and Delivery Agreement

The City of Markham has proposed a parkland delivery arrangement within Markham Centre which contemplates the use of cash-in-lieu of parkland contributions to purchase improved parkland within Markham Centre. We were retained to negotiate and draft an agreement to implement this approach.

We have drafted an agreement which addresses both payment of cash-in-lieu of parkland and parkland dedication (the "Markham Centre Parkland Funding and Delivery Agreement"). This Agreement can be executed by any landowner in Markham Centre, whether the owner is making a cash-in-lieu payment, is conveying land or is doing a combination of both.

This memorandum provides a general summary of the Agreement as drafted.

Overview

In general, the Markham Centre Parkland Funding and Delivery Agreement provides that cash-in-lieu of parkland payments made in accordance with development or redevelopment in Markham Centre will be paid into a trust account. The monies in the trust account, together with any interest thereon, will be held for the benefit of the City. The City can access monies in the trust fund for the purpose of purchasing parkland and improved parkland within Markham Centre. Provided that there are no outstanding liabilities (for example, a commitment to buy a park) the City may direct that all of the funds in the trust account be paid to the City.

The Agreement contains provision for the appointment of a trustee called the "Park Delivery Fund Trustee". The duties and obligations of the Park Delivery Fund Trustee are set out in the Agreement and include the delivery of audited financial statements of the Fund to the City on an annual basis. In the event the Trustee resigns or is terminated, the City holds the power to appoint a replacement.

The specific calculation of cash-in-lieu payments and land dedication and the specific obligations of design, construction and delivery of improved parks are to be set out in a subsequent agreement (called the "Parkland Implementation Agreement") which is to be executed at the time of development or redevelopment of land. The Markham Centre Parkland Funding and Delivery Agreement sets out the matters which must be addressed in the Parkland Implementation Agreement but does not set out the details. This allows the City to implement its park plans on a site specific basis.

A further summary is set out below.

Markham Centre Parkland Funding and Delivery Agreement

Principles For Provision of Parkland Within Markham Centre (Part II)

This Section of the Agreement sets out parkland principles which shall generally be applied in Markham Centre. This Part acknowledges that at the time of execution of the Agreement the parkland requirement for Markham Centre will generally be achieved through a combination of land conveyances and cash-in-lieu of land payments. Approximately 60% of the parkland requirement will be satisfied by conveyance of the land to the City and approximately 40% of the requirement will be satisfied by payment of cash-in-lieu to the City. The Agreement notes that this ratio may be amended from time to time but that the principle applies on a Markham Centre community-wide basis and is not to be applied on a parcel-by-parcel basis.

In this Part of the Agreement, it is made clear that “the amount of land required to be conveyed and/or the cash-in-lieu payment to be made to the City shall always remain within the discretion of the City, subject to the provisions of the *Planning Act*.”

The principles expressly state that the City may use cash-in-lieu payments for the acquisition of improved parkland within Markham Centre.

Implementation (Part III)

The City agrees that conveyance of parkland and/or improved parkland and/or the cash-in-lieu payment by the owner in accordance with this Agreement shall satisfy all parkland requirements of the City for the owner's land.

Establishment of Park Delivery Fund (Part IV)

The signatories appoint a “Park Delivery Fund Trustee” in accordance with the terms of the Agreement. The City, the Landowners and the Park Delivery Fund Trustee agree that the Trustee shall assume the sole responsibility for collection cash-in-lieu payments from owners. The Agreement calls for deposit of the money in an interest-bearing separate trust account and accounting to the City on a regular basis. Monies can be deposited, held and disbursed from the Park Delivery Fund only in accordance with the Agreement. This money is held in trust for the benefit of the City.

This Part of the Agreement provides that as long as there are no outstanding payment commitments (for example, to purchase improved parkland) the Park Delivery Fund Trustee must forthwith pay the treasurer of the City the balance of the funds in the trust account upon written demand by the City.

Parkland Financial Projection Model (Part V)

This Part of the Agreement provides that the Park Delivery Fund Trustee must create a financial projection model which takes into account such matters as anticipated timing of development of land, anticipated and actual dedication of land and anticipated and actual cash-in-lieu payments. This will allow the City to establish a budget for the acquisition for improved parkland.

Calculation of Parkland Requirement (Part VI)

This Part of the Agreement sets out the basis on which parkland conveyance and cash-in-lieu payments are calculated. The calculation methods are in accordance with the Parkland Principles for Markham Centre adopted by Council. The cash-in-lieu payments are to be calculated as of the day before subdivision approval. This Part of the Agreement notes that for all other landowners in Markham Centre who are not signatories of the Cost Sharing Agreement, the value of parkland to be dedicated shall be calculated as of the day before the date of the issuance of a building permit.

Satisfaction of the Parkland Requirement (Part VII)

This Part of the Agreement requires that each owner convey to the City improved parkland or parkland as and when the City requires. The Agreement requires that as a condition of any development approval the City may require the Owner to enter into a "Parkland Implementation Agreement". It is intended that this more detailed agreement will address the site specifics of conveyance of parkland, improved parkland and/or cash-in-lieu payments. It is intended that the Parkland Implementation Agreement will deal with the standard requirements such as a certificate signed by an Ontario Land Surveyor confirming areas and boundaries, satisfactory physical condition of the land, warranty periods, etc. This Part also contemplates the conveyance of strata parks provided that the City is satisfied with such a conveyance.

Parkland Improvements (Part VIII)

In this Part of the Agreement, the requirements for the design, construction and delivery of improved parkland are set out.

Duties and Liabilities of the Park Delivery Fund Trustee (Part IX)

In this section of the Agreement, the specific responsibilities of the Parkland Delivery Fund Trustee are set out. These duties include that the Treasurer of the City must be provided each year with an audited financial statement prepared by an independent chartered accountant summarizing the amounts of all cash-in-lieu payments received, the amount of all interest accrued and the amounts of all funds disbursed during the preceding calendar year. The reasonable fees, expenses and disbursements incurred by the Park Delivery Fund Trustee in connection with the performance of its obligations shall be paid out of the Park Delivery Fund. Provision is made for invoices to be approved by the City prior to any such payment. In the event the Parks Delivery Fund Trustee resigns or is removed, the City shall appoint a successor. This Part also contains a dispute resolution mechanism.

Execution of Agreement by Additional Parties (Part XI)

In this Part, the City agrees it shall use all reasonable efforts to require all landowners in Markham Centre to enter into the Agreement or an agreement similar to this Agreement. Whenever a person or company is agreeable to becoming a party to this Agreement, all the existing parties consent to such person or company becoming a party.

Miscellaneous Terms

The Agreement provides for the registration of the Agreement on title to the lands of the owners who have executed the Agreement.

MARKHAM CENTRE PARKLAND FUNDING AND DELIVERY AGREEMENT

THIS AGREEMENT made this ● day of ●, 2012

BETWEEN:

THE CORPORATION OF THE CITY OF MARKHAM

OF THE FIRST PART

-and-

RULAND PROPERTIES INC.

OF THE SECOND PART

-and-

1771107 ONTARIO LIMITED

OF THE THIRD PART

-and-

H&W DEVELOPMENT CORP.

OF THE FOURTH PART

-and-

ARYEH CONSTRUCTION LIMITED

OF THE FIFTH PART

-and-

DELTA URBAN INC.

OF THE SIXTH PART

WHEREAS:

- A. Official Plan Amendment No. 21 to the Markham Official Plan, as amended from time to time (the "**Markham Centre Secondary Plan**") sets out policies for the development of the lands and the provision of parkland within Markham Centre;
- B. It is an objective of The Corporation of the City of Markham ("the City"), pursuant to the Markham Centre Secondary Plan, to secure the future dedication of parkland and the construction of parks and associated improvements within Markham Centre, the

boundaries of which are shown schematically on the plan attached as Schedule "A" to this Agreement and as may be amended from time to time ("**Markham Centre**");

- C. Pursuant to the Markham Centre Secondary Plan and the Parkland Principles endorsed by the City as of the date of this Agreement, the majority of the parkland to be developed, constructed and maintained within Markham Centre is to be "urban" in nature and of a higher standard of design and finish to an average value of three (3) times the park development standard as it exists from time to time on a Town-wide basis;
- D. Ruland Properties Inc. ("**Ruland**") , 1771107 Ontario Limited ("**1771107**"), H&W Development Corp. ("**H&W**") and Aryeh Construction Limited ("**Aryeh**") each own and are developing, or have developed, land in Markham Centre, as more particularly described in Schedule "B" to this Agreement;
- E. Delta Urban Inc. is the duly appointed trustee under this Agreement and has agreed to act as trustee in accordance with the terms of this Agreement;
- F. The policies of the Markham Centre Secondary Plan require the execution of agreements between landowners within Markham Centre and the City, for the dedication of parkland and provision of park improvements through a conveyance of land and/or payment of cash-in-lieu;
- G. The City and the Owners wish to address the dedication, conveyance and improvement of parkland, as well as certain other matters, by entering into this Agreement;
- H. Ruland, 1771107 and H&W have entered into a separate Cost Sharing Agreement dated April 13, 2012, as amended, (collectively the "**Markham Centre Community Cost Sharing Agreement**" or "**CSA**") for the equitable sharing of costs for the provision of community facilities and infrastructure required for the development of Markham Centre, which agreement and amending agreement are on file with the City Solicitor;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the sum of TWO DOLLARS (\$2.00), the receipt and adequacy of which is hereby acknowledged by the parties, and in consideration of the mutual covenants set out herein, the parties agree as follows:

PART I DEFINITIONS

1. In this Agreement and in the Schedules attached hereto, the following words and expressions shall have the following meanings:

"**Added Party**" means an owner of land within Markham Centre who is not an original party to this Agreement but who agrees to be bound by all terms and conditions of this Agreement as fully as if such person had been originally named as a party to this Agreement as a successor in title to an original participating owner or as a non participating owner, and "**Added Parties**" shall mean more than one Added Party;

"**Agreement**" means this agreement and all attached Schedules;

“Approved Park Plan” has the meaning set out in Section 28;

“Building Permit” means a permit to construct any building, pursuant to section 8 of the *Building Code Act*, S.O. 1992, c.23, as amended or re-enacted from time to time;

“CAO” means the Town’s Chief Administrative Officer;

“Cash-in-Lieu Payment” has the meaning set out in Section 2(a);

“City” means the Party of the First Part, the Corporation of the City of Markham, as set out in the recitals above, and includes the Corporation of the Town of Markham as the City was formerly known;

“City-Wide Soft Services Development Charges By-Law” means By-law 2013-81 enacted by the City on May 28, 2013 pursuant to the Development Charges Act, as may be amended, re-enacted or consolidated from time to time;

“Competitive Process” means a process undertaken by an Owner to select a consultant or contractor in which bids are invited from a minimum of three qualified persons as approved by the City and in which the consultant or contractor is selected from amongst the bids received on the basis of merit as set out in the approved terms of the process. A Competitive Process may include a Request for Quotation, Request for Proposal or other form of competition, but does not include a sole source or preferred vendor hire;

“Development” means carrying through such process as is required to permit the land referred to, to be used other than for its present use and/or density and includes a zoning by-law amendment, registration of a plan of subdivision, plan of condominium, land division approvals, site plan approval and obtaining a building permit. Developed, Develops, Developing and other such words have similar meanings but Development does not include servicing;

“Development Agreement” means an agreement between the City and an Owner respecting Development, and includes a Site Plan Agreement or Subdivision Agreement entered into pursuant to the provisions of the Planning Act.

“Development Application” means an application duly submitted to the City for approval of Development.

“Development Approval” means an approval by the City of any Development Application.

“Development Charges” means charges imposed by the City in accordance with any by-laws passed by the City pursuant to Section 2(1) of the Development Charges Act;

“Development Charges Act” means the *Development Charges Act, 1997*, S.O. 1997, c. 27, as may be amended, re-enacted or consolidated from time to time, and any successor statute;

“Development Lands” - shall have the same meaning as Owners’ Lands which form part of an application for Development within Markham Centre;

“Draft Plan Approval” means approval by the City of a draft plan of subdivision in accordance with Section 51 of the Planning Act.

“Final Acceptance” means the decision of the Manager of Parks and Open Space Development, in writing, confirming that the Maintenance and Warranty Period has expired, that the Improved Parkland is satisfactory to the City and that the Owner has no further obligations with respect to the Improved Parkland under this Agreement other than to convey the land.

“Final Completion” means that all construction and improvements to the Park as required by the Approved Park Plan have been 100% completed to the satisfaction of the Project Landscape Architect;

“Grade” means, with respect to Parkland, an elevation(s) determined and derived from a City of Markham benchmark and with such elevation(s) being approved by the Director, Planning & Urban Design for the City;

“Gross Development Site Area” means the total area of land within a Development Application, including the land for the buildings, lands dedicated or to be dedicated for roads, schools, Parkland, open space, parking, servicing, or other services and uses;

“Improved Parkland” means Parkland that has been or is to be constructed or enhanced, in accordance with the terms of this Agreement;

“Indemnified Party” has the meaning set out in Section 72;

“Indemnifying Party” has the meaning set out in Section 72;

“Initial Acceptance” means the decision of the Manager of Parks and Open Space Development, in writing, to accept the Project Landscape Architect’s Certificate and to initiate the Maintenance and Warranty Period for the Improved Parkland.

“Lands” means the lands in Markham Centre owned by the Owners, as described in Schedule “B” hereto;

“Maintenance and Warranty Period” means the two-year period commencing on the date of Initial Acceptance, during which the Owner shall maintain the Improved Parkland in accordance with the terms of a Park Implementation Agreement and during which the Owner warrants certain matters as are identified in the Parkland Implementation Agreement.

“Manager of Parks and Open Space Development” means the City’s Manager of Parks and Open Space Development;

“Markham Centre Community Cost Sharing Agreement” or **“CSA”** has the meaning set out in the recitals above;

“Markham Centre Parkland Financial Project Model” or **“Model”** has the meaning set out in Section 9;

“Markham Centre” has the meaning set out in the recitals above;

“Markham Centre Secondary Plan” has the meaning set out in the recitals above, and as amended from time to time;

“Owners” means Ruland, 1771107, H&W, Aryeh and any other landowner in Markham Centre who has entered into the CSA or otherwise satisfied the City with respect to the fair and equitable cost sharing of required municipal infrastructure, and who has agreed to be bound by this Agreement as an Added Party;

“Mixed Use Development” means Development which includes a building or structure used, or designed or intended for use, for a combination of non-residential and residential uses. For the purposes of this Agreement, Mixed Use Development shall also include a combination of two or more different non-residential uses;

“Park” and **“Parkland”** means those lands which are to be conveyed to the City for park purposes, including a Surface Strata Park;

“Park Delivery Fund” has the meaning set out in Section 6;

“Park Delivery Fund Trustee” means the Party acting as trustee of the Park Delivery Fund as such Party may be appointed pursuant to the terms of this Agreement;

“Parkland Development Fee” means a fee related to parkland development and project administration payable by the Owners in accordance with the City’s fee by-law as determined from time to time.

“Parkland Implementation Agreement” has the meaning set out in Section 17.

“Parkland Principles” means those principles as adopted by City Council on October 17, 2006 for the requirements of Parkland in Markham Centre, as may be amended by Council from time to time;

“Party” or **“Parties”** means the parties of the First to the Sixth Part and any Added Party;

“Planning Act” means the *Planning Act*, R.S.O. 1990, c. P.13, as amended;

“Prior Development Agreements” means a Development Agreement entered into between the City and an Owner prior to the date of this Agreement in respect of the Development of lands within Markham Centre and includes a Site Plan Agreement or Subdivision Agreement entered into pursuant to the provisions of the Planning Act or a resolution of Council prior to the date of this Agreement in respect of the Parkland obligations related to the Development of specific parcels of land within Markham Centre;

“Project Landscape Architect” has the meaning set out in Section 25;

“Project Landscape Architect’s Certificate” has the meaning set out in Section 35;

“Site Plan Agreement” means an agreement between the City and a landowner pursuant to Section 41 of the Planning Act.

“Site Plan Approval” means approval by the City of an application for site plan approval pursuant to Section 41 of the Planning Act.

“Subdivision Agreement” means an agreement between the City and a landowner pursuant to Section 51 of the Planning Act.

“Sufficient Funding Notice” has the meaning set out in Section 34;

“Surface Strata” means, with respect to Parks and Parkland, land situate above Grade;

“Surface Strata Park” means a Park and/or Improved Parkland to be located entirely or partially above Grade; and

“Trustee’s Parkland Notice” has the meaning set out in Section 20;

PART II PRINCIPLES FOR PROVISION OF PARKLAND WITHIN MARKHAM CENTRE

2. The Owners and the City agree that the following principles shall generally be applied within Markham Centre:
 - (a) At the time of execution of this Agreement, the Parkland requirement for Markham Centre will be achieved through a combination of land conveyances and cash-in-lieu of land payments. Approximately 60% of the Parkland requirement is to be satisfied by the conveyance of land to the City and approximately 40% of the Parkland requirement is to be satisfied by the payment of cash to the City in-lieu of parkland (hereinafter **“Cash-in-Lieu Payment”**). This ratio may be amended from time to time by the City. For clarity, this principle applies on a Markham Centre community-wide basis, and is not necessarily to be applied on a parcel-by-parcel basis;
 - (b) Notwithstanding Section 2(a), the amount of land required to be conveyed and/or the amount of Cash-in-Lieu Payment to be made to the City on account of the Development of any individual site within Markham Centre shall always remain within the discretion of the City, subject to the provisions of the Planning Act;
 - (c) The City may use Cash-in-Lieu Payments for the acquisition of Improved Parkland within Markham Centre.
 - (d) The majority of Parkland in Markham Centre will be “urban” in character with a higher level of design and finish based on an average standard of three (3) times

the City's city-wide park development standard as set out in the City-Wide Soft Services Development Charges By-law, as applied from time to time;

- (e) In support of the City's objective to achieve the delivery of Improved Parkland enhanced to a higher level of design and finish, the City will utilize a parkland delivery model that is, in the City's discretion, most appropriate. To that end, the City may undertake the design and construction of Parkland; the City may delegate the responsibility of the design and construction of parkland to others in accordance with this Agreement; and the City may contribute additional funds to Parkland development; the Owners may contribute funds above and beyond an agreed upon amount which will not be reimbursed by the City.

PART III IMPLEMENTATION

- 3. The Owners and the City agree that Parkland in Markham Centre will generally be delivered in accordance with this Agreement; however, the City shall have the right to determine, in its discretion, in conjunction with a Development Application:
 - (a) The total amount of Parkland required on the lands subject to the Development Application;
 - (b) The size, location and configuration of any parcel of land to be conveyed to the City as Parkland in accordance with this Agreement;
 - (c) The extent to which any Parkland dedication requirement shall be satisfied by a conveyance of land to the City and/or Cash-in-Lieu Payment for all or any phase of Development;
 - (d) The specific parkland delivery model to be used for Parkland to be conveyed to the City and the minimum value per acre that the Parkland will be improved to; and
 - (e) The timing of conveyance of Parkland or Improved Parkland.
- 4. Subject to Section 3 above, The City agrees that conveyance of the Parkland and/or Improved Parkland and/or the Cash-in-Lieu Payment by the Owner in accordance with this Agreement shall satisfy all Parkland requirements of the City for the Owner's Lands. The Owners agree that, unless otherwise agreed to in a Parkland Implementation Agreement, they shall not receive any credits against Development Charges as a result of, or arising out of, work done pursuant to this Agreement and further that they will remain liable to pay applicable Development Charges that may be in effect from time to time, prior to the issuance of building permits, for all present and future Development or phases of Development within Markham Centre, subject to the terms of Prior Development Agreement(s).

**PART IV
ESTABLISHMENT OF PARK DELIVERY FUND**

5. The Owners hereby appoint Delta Urban Inc. to act as the Park Delivery Fund Trustee in accordance with the terms of this Agreement, and Delta Urban Inc. hereby accepts such appointment on the terms and conditions of this Agreement.
6. The City, the Owners and the Park Delivery Fund Trustee agree that the Park Delivery Fund Trustee shall assume the sole responsibility for collecting Cash-in-Lieu Payments as determined and calculated by the City from the Owners in accordance with this Agreement. Such Payments will be deposited by the Parks Delivery Fund Trustee in a separate interest bearing trust account at a Canadian financial institution approved by the City, acting reasonably, and held in trust for the benefit of the City. Such monies as may be so deposited from time to time together with interest, if any, constitute the **"Park Delivery Fund"**.
7. Monies will be deposited, held and disbursed from the Park Delivery Fund only in accordance with this Agreement.
8. Notwithstanding Section 7, the parties acknowledge and agree that the City shall have the right to require the Park Delivery Fund Trustee to pay to the Treasurer of the City, all or part of the balance of any funds remaining within the Park Delivery Fund at any time and from time to time, by making a written demand to the said Trustee to pay over such funds. The Park Delivery Fund Trustee shall forthwith pay the Treasurer of the City in accordance with the written demand and without further direction from the Owners, save and except that the Park Delivery Fund Trustee shall withhold sufficient funds to repay outstanding parkland commitments as previously agreed to by the City and Owner(s) through the applicable Development Agreement(s) and/or Parks Implementation Agreement.

**PART V
PARKLAND FINANCIAL PROJECTION MODEL**

9. The Parties acknowledge and agree that for the purpose of establishing the estimated future cost for providing the Parks in Markham Centre, a financial plan will be prepared (the **"Markham Centre Parkland Financial Projection Model"** or the **"Model"**) by the Park Delivery Fund Trustee to the satisfaction of the City. The Markham Centre Parkland Financial Projection Model will be prepared in accordance with the Parkland Principles as they are amended from time to time. The Model will include, inter alia, pending Development Applications, estimates of Cash-in-Lieu Payments and of land contributions; Parkland and Improved Parkland conveyances and Cash-in-Lieu Payment commitments in Development Agreements and Park Implementation Agreements and Cash-in-Lieu payments made and Parkland and Improved Parkland conveyed.
10. The value of the approved design standard for parkland within the Markham Centre Parkland Financial Projection Model shall be adjusted annually on the anniversary of the execution of this Agreement by the City in accordance with the most recent twelve-

month change, preceding the execution of this Agreement, in the Statistics Canada Quarterly, Construction Price Statistics (Catalogue No.62-2007).

11. Nothing in this Agreement precludes the City from making any adjustments or modifications to the Model as in the City's opinion are necessary.
12. The Park Delivery Fund Trustee shall be responsible for updating the Model on a quarterly basis or on any more frequent basis as the City may require acting reasonably and shall forward a copy of the updated Model to the City forthwith upon completion. The updates will take into account, *inter alia*, the conveyance of any Parkland or Improved Parkland, any Cash-in-Lieu Payments made, any disbursements, and any changes in anticipated timing of delivery of Parkland.
13. The Manager of Parks and Open Space Development shall have regard to the financial standards set out in the Markham Centre Parkland Financial Projection Model, the funds available in the Park Delivery Fund, eligible Development Charge funds that may be available, and anticipated funds, as updated from time to time, for the purpose of establishing the budget for construction and delivery of each Park component. In the event that an Owner proposes to achieve an enhanced design for the park component located on its Development Lands at a standard of development greater than that then set out by the budget approved pursuant to Section 28, the Owner shall be solely responsible for the additional expense thereby incurred. The amount of the additional costs resulting from the proposal to provide an enhanced park facility, and the details related to the payment of same, shall be subject to a separate agreement between the City and the Owner which agreement may be secured by the City through the imposition of conditions to the related Development Application.

PART VI CALCULATION OF PARKLAND REQUIREMENT

14. Amount of Land Required to be Conveyed
 - (a) The Parkland requirement in connection with a Development Application shall generally be calculated in accordance with the following rates which may be amended from time to time:
 - (i) Commercial/Industrial land use: 2% of the Gross Development Site Area;
 - (ii) Residential land: a maximum of the lesser of one hectare per 300 dwelling units and three acres (1.214 hectares) per 1000 persons.
 - (iii) Land proposed for all other uses: 5% of the Gross Development Site Area attributable to the other uses; and,
 - (b) Where a Mixed Use Development is proposed within Markham Centre that includes a residential component and if the calculation is to be made at the time of Subdivision Approval, the calculation shall be made in accordance with the following rates which may be amended from time to time:

- (i) Residential component: shall be calculated in accordance with Section 14(a)(ii), plus
 - (ii) Commercial/Industrial: $(50\% * \text{Gross Development Site Area} * 2\%)$.
 - (c) Where a Mixed Use Development is proposed within Markham Centre that includes a residential component and if the calculation is to be made at the time of Site Plan Approval, the calculation shall be made as follows:
 - (i) Residential component shall be calculated in accordance with Section 14(a)(ii), plus
 - (ii) Commercial/Industrial: $(2\% * \text{area of Gross Development Site attributable to the use})$.
 - (d) The calculation made in accordance with Section 14(b) may be refined in accordance with Section 14(c) in the event a calculation has been made at the time of Subdivision Approval and a subsequent site plan approval is given within the same Plan of Subdivision. The municipality and the Owner will work together on a site specific basis to determine how the refinement will affect the related payments.
 - (e) Where a Mixed Use Development does not include a residential component, the Parkland requirement shall be calculated in accordance with Sections 14(a)(i) and (a)(iii).
15. Cash Payment In Lieu of Conveyance of Land
- (a) If the City determines that the Parkland requirement in connection with a Development Application shall be satisfied in whole or in part by a Cash-in-Lieu Payment, the Cash-in-Lieu Payment will be calculated as follows: the amount of land which would be required for dedication will be calculated on the basis of Section 14, and this land area will be multiplied by the land value as determined in accordance with Section 15(b) or 15(c), as the case may be.
 - (b) For Owners who have not entered into a Prior Development Agreement with the City in relation to the Development, the amount of the Cash-in-Lieu Payment to be made by the Owner shall be calculated as follows:
 - (i) The City shall retain on an annual basis a qualified independent land appraiser to prepare a report, for approval by the City's CAO, that will establish as of January 1st each year the value of parkland within Markham Centre for the calculation of Cash-in-Lieu Payments to be applied during the calendar year.
 - (ii) The year of valuation shall be established by regard to the first day prior to the granting of the earlier of either draft plan approval or site plan approval for the Owner's Development provided that the Development

densities (in terms of residential units per acre or gross floor area and/or height) are specifically set out in a zoning bylaw pertaining to such approval. For clarity, the year of valuation only applies to the approved density set out in a zoning bylaw pertaining to such draft plan approval or site plan approval as the case may be and not to any subsequent increase in density for all or any undeveloped part of an Owner's lands or a transferee of a part of an Owner's lands.

- (c) For all other owners of land within Markham Centre who at the time of valuation are not signatories to the CSA, as amended from time to time, or have not otherwise satisfied the City by making alternative arrangements with respect to fair and equitable cost sharing, the amount of the Cash-in-Lieu Payment shall be calculated as of the day before the date of issuance of each building permit, as stipulated under Subsection 42(6) of the Planning Act, as amended, and shall be based upon a site specific appraisal report, prepared by a qualified independent land appraiser acceptable to the City acting reasonably. The appraisal report and valuation shall be subject to review and approval by the City's CAO.

PART VII

SATISFACTION OF PARKLAND REQUIREMENT

Conveyance of Parkland

- 16. Each Owner shall convey to the City those portions of the Improved Parkland or Parkland located on its lands, as and when required by the City in accordance with this Agreement, free of encumbrances save and except those permitted encumbrances as agreed to by the City.
- 17. As a condition of Development Approval, the City may require an Owner, or a landowner who is not party to this Agreement, to enter into a further agreement (a "**Parkland Implementation Agreement**") with the City at the appropriate time which addresses the following matters:
 - (a) The requirement for the owner to prepare and register, at its expense, a Reference Plan of Survey depicting the Parkland to be conveyed and to provide copies to the City together with a certificate signed by an Ontario Land Surveyor certifying the area of the land to be conveyed to at least 3 decimal places;
 - (b) Covenants requiring the owner, at its expense, to maintain the land (to be conveyed) on an interim basis in a physical condition to the satisfaction of the Commissioner of Development Services, until such time as the land has been improved to a final standard determined in accordance with this Agreement;
 - (c) A schedule for the design, budget, construction and delivery of the Improved Parkland, in accordance with the Approved Park Plan;

- (d) Provision of security and escrow transfer arrangements for the Improved Parkland and covenants restricting the use of the lands for Park purposes until the time of conveyance of the lands to the City;
 - (e) Completion of construction of the Park to the parkland standard approved by the City in accordance with the Approved Park Plan and the maintenance of the Improved Parkland during the Maintenance and Warranty Period. Final Acceptance by the City shall not occur unless and until the park improvements are 100% complete without deficiencies, all warranty work has been completed and accepted by the City, if applicable, and the Maintenance and Warranty Period have expired;
 - (f) Provision that the costs and expenses incurred during the Maintenance and Warranty Period related to commissioning the park shall be reimbursable and will form part of the overall park cost;
 - (g) Receipt by the City, prior to conveyance, of an environmental clearance and notice of the filing of a Record of Site Condition in accordance with the *Environmental Protection Act* R.S.O. 1990, c.E.19 as amended and Regulations, to the satisfaction of the City's Commissioner of Development Services, confirming that the land is in a condition suitable for use as public parkland;
 - (h) Requiring, at the time of conveyance of the land to the City, that the land be free of all physical and title encumbrances, unless otherwise acknowledged as being acceptable in the conditions of approval to the development or the Parkland Implementation Agreement;
 - (i) Provision for the City, at its sole option, to assume responsibility for the construction of the Improved Parkland in accordance with an Approved Park Plan, or any portion thereof, by delivery of not less than sixty (60) days written notice to the Park Delivery Fund Trustee and the affected Owner; and
 - (j) Provision for the City to enter upon the owner's Lands to complete the construction of the Improved Parkland in the event of default by the owner.
18. Where an Owner within Markham Centre proposes to convey Parkland to the City on a "phased basis", the City shall have the right to require as a condition to the acceptance of the proposed phasing, that the Owner enter into an agreement with the City, to the satisfaction of the City Solicitor acting reasonably, that addresses the matters referred to in Section 17 above as well as the following matters:
- (a) That the land to be conveyed as Improved Parkland is subject to a phasing plan acceptable to the City;
 - (b) The indexing of any costs or cost estimates to reflect the phased timing of the construction and conveyance of the Improved Parkland;

- (c) The possibility of the Owner being reimbursed on a phased basis for its certified costs associated with the design, construction and contract administration of the Improved Parkland, at the City's sole discretion; and
 - (d) The establishment of a fixed date under the phasing plan for completion of conveyance of Parkland or Improved Parkland, to the City.
19. Notwithstanding Section 17(h) herein, at the discretion of the City, the City may accept conveyance of a Surface Strata in full or in partial satisfaction of Parkland dedication requirements provided the vertical limits of the lands proposed to be conveyed have been defined in a Reference Plan of Survey approved by the City and subject to such further conditions that the City may impose as a condition of accepting a Surface Strata including permitted encumbrances (in respect of title matters and physical structures) and provided the following conditions are met:
- (a) The Owner demonstrates through the submission of detailed studies, to the satisfaction of the City's Commissioner of Development Services that the Surface Strata together with all improvements for park to be constructed thereon, as approved by the City, can be conveyed in such a manner that implements the City's programming and design requirements;
 - (b) The City and Owner agree on (i) the extent of any credit to be given to the Owner for a conveyance of a Surface Strata in satisfaction of Parkland Dedication and (ii) the compensation, if any, to be provided to the City as a result of the conveyance of a Surface Strata and the encumbrance by any below-grade facility or facilities; and.
 - (c) The Owner enters into one or more agreements with the City that addresses, to the satisfaction of the City Solicitor and the Commissioner of Development Services, (i) the future operation, maintenance and repair of the Surface Strata including the Park improvements to be constructed thereon having regard to the presence of the encumbrances, (ii) the recovery by the City of any additional costs incurred or to be incurred by the City by virtue of the presence of any private below grade facility or facilities and the encumbrance and (iii) indemnification of the City.

Cash-in-Lieu Payment

20. Each Owner shall pay any Cash-in-Lieu Payment owing to the City pursuant to this Agreement to the Park Delivery Fund Trustee for deposit into the Park Delivery Fund forthwith upon receipt of written notice from the City which sets out the amount owing. Following receipt of each payment, the Park Delivery Fund Trustee shall forthwith notify the City in writing, with a copy to the payor (the "**Trustee's Parkland Notice**"), of the receipt of the payment and such notice shall include particulars as to the amount received, the Owner on whose behalf payment was made and the Development on account of which the payment was made.
21. The City shall, within 10 days of receipt of the Trustee's Parkland Notice, confirm receipt of such Trustee's Parkland Notice, following which the Trustee's Parkland Notice shall

constitute full satisfaction of such Owner's obligation with respect to the Cash-in-Lieu Payment referred to in such Notice.

PART VIII PARKLAND IMPROVEMENTS

Preparation and Approval of Plans

22. The Manager of Parks and Open Space Development has the right to oversee all aspects of parkland design and development in Markham Centre and the City shall appoint a designated "Project Manager" to provide oversight on each parkland development project within Markham Centre.
23. The City shall determine, as part of the Development Approval process of each Owner's lands, the minimum design and construction standards, the cost of contract administration per acre that is reimbursable from the Park Delivery Fund Trustee and/or the City, and a schedule for the design, construction and delivery of each Park, and such matters shall be referenced in any agreement between the City and Owner required pursuant to Section 17 above.
24. Unless otherwise agreed to by the City, each Owner who is obligated to convey Improved Parkland to the City shall be responsible for the design, construction, and contract administration of all park improvements thereon, together with all costs required to design, construct, contract manage and maintain all such improvements, to the satisfaction of the Manager of Parks and Open Space Development.
25. For the purpose of establishing from time to time the design, budget and construction schedule for each park component to be constructed, each Owner of Development Lands shall retain a duly qualified landscape architect who is a full member in good standing of the Ontario Association of Landscape Architects having custody and use of the Association seal, to act as the "**Project Landscape Architect**". The Project Landscape Architect shall be retained by the Owner through a Competitive Process to provide professional design, contract document, and contract administration services to the satisfaction of the City. The terms of the Competitive Process to retain the Project Landscape Architect shall be determined by the City, in consultation with the Owner, and the Owner shall agree to be bound by the terms prior to commencing the Competitive Process.
26. The Project Landscape Architect to be retained by an Owner pursuant to the Competitive Process in Section 25 shall perform at a minimum, the duties as outlined in Schedule "D" in connection with a proposed parkland improvement in Markham Centre. Schedule "D" is attached for information only and may be amended from time to time by the Commissioner of Development Services without prior notice. The City and Owner shall use reasonable efforts to minimize duplication amongst the Project Landscape Architect, the City and the Owner.
27. Prior to undertaking any parkland improvements, each Owner shall submit a park plan to be approved by the City which shall include a budget which incorporates, *inter alia*, the

Parkland Development Fee, the Project Landscape Architect's fees, the Town's legal fees, any other consultant(s) fees associated with acquisition and development of the Parkland, all applicable taxes (including anticipated land transfer tax) and any costs associated with the transfer (including legal fees). These approved fees and costs are eligible for reimbursement out of the Park Delivery Fund in accordance with this Agreement. For clarity, the budget shall not include any cost of borrowing or financing and the City shall not approve such costs.

28. The City shall have the right in its sole discretion to approve the park plan submitted by each Owner, acting reasonably and in consultation with the Owner, including all matters related to the final design, contract documents, specifications, tender documents, cost estimates and schedule for delivery of each component of the proposed Park improvement by the Project Landscape Architect (the "**Approved Park Plan**"). In preparing the design for the proposed Park improvement, the parties acknowledge and agree that the City's right of review and approval will include the right to assess the conformity of the design with the City's standard park and open space approval process and with the estimated cost for the individual park component, as updated by the City from time to time. The Owners further acknowledge and agree that the City's standard park and open space approval process may include the right of the City to require the convening of community input meetings by the Project Landscape Architect to solicit comments on the proposed design concept and to require circulation for comment of the proposed design concept, delivery schedule and budget by the City's Planning and Urban Design staff and the City's Engineering and Operations staff.
29. Upon acceptance by the City of the Approved Park Plan, the City shall provide written notification of same to the Owner of the Development Lands and shall further deliver a copy of each Approved Park Plan and any related Development Agreement and/or conditions of development approval to the Park Delivery Fund Trustee. The Parties acknowledge and agree that the design, budget and delivery schedule included within each Approved Park Plan shall not be amended or revised without the prior written approval of the Manager of Parks and Open Space Development, acting reasonably, except in the instance of approved change orders or contract modifications approved by the City in association with the contract administration of the construction process. Where an Owner of the Development Lands requests by amendment to the Approved Park Plan an extension of the time set out within the delivery schedule for the Park, the City shall have the right to require as a condition to the approval of the amendment that the Owner be solely responsible for any additional costs occasioned by the delay.
30. The City shall have the right to require the implementation of the Approved Park Plan on an Owner's lands as a condition to Development Approval for those lands giving rise to the related park conveyance or any other lands owned by that Owner within Markham Centre.

Construction and Reimbursement

31. Unless otherwise agreed to by the City, each Owner of Development Lands upon which a park is to be conveyed shall be responsible for the construction and conveyance of the park in accordance with the provisions of this Agreement and the Approved Park Plan,

and including the requirement that the contract documents and administration of contract services will be provided by the Project Landscape Architect. The costs related to the development of each park component shall be paid for by the Owner of the Development Lands, subject to reimbursement out of the Park Delivery Fund, or other sources of funds as determined by the City.

32. Notwithstanding Section 31, the City may at its sole option assume responsibility for the construction of the Improved Parkland in accordance with an Approved Park Plan, or any portion thereof, by delivery of not less than sixty (60) days written notice to the Park Delivery Fund Trustee and the affected Owner. Such notice will not be delivered prior to completion of the below grade structures if a Strata Park has been agreed upon. In such an event, the City may require the Owner to provide reasonable access to the land by the Town, including its agents or contractors, as may be required to permit the construction of the Approved Park Plan and the Park Delivery Fund Trustee shall upon receipt of such notice pay and deliver to the City out of the funds then held in the Park Delivery Fund the budgeted amount for the park as set out in the Approved Park Plan.
33. Each Owner who is responsible for construction of a Park, in accordance with that Owner's Development Agreement and Approved Park Plan, shall tender out construction of the park improvements on the Development Lands through a Competitive Process to the satisfaction of the City. The terms of the Competitive Process for the construction contract shall be determined by the City, in consultation with the Owner, and the Owner shall agree to be bound by the terms prior to commencing the Competitive Process. Issuance of a contractor pre-qualification may be required in certain instances at the discretion of the City. The City will require as part of the tender package that it include a two (2) year detailed maintenance contract for the Park, to the City's satisfaction, one half of the cost of which will form part of the contract of the Approved Park Plan.
34. Prior to tender of construction of the park improvements in accordance with Section 33, the City will seek confirmation from the Park Delivery Fund Trustee that based on the Markham Centre Parkland Financial Projection Model, it is reasonably expected that there will be sufficient funds in the Park Delivery Fund to purchase the parkland for which the work is being tendered, in accordance with the Approved Park Plan and the proposed timing of construction (the "**Sufficient Funding Notice**"). If the Park Delivery Fund Trustee advises that it does not expect that there will be sufficient funds, then the tendering will be postponed until such time as the Park Delivery Fund Trustee provides a Sufficient Funding Notice to the City. If a Sufficient Funding Notice has not been issued on or prior to the date which is five years after the final Building Permit has been issued in respect of the lands related to the Parkland requirement, the City will accept conveyance of the Park or Strata Park as the case may be and release the Owner from the requirement to improve the Park or Strata Park prior to conveyance. Nothing in this Agreement prevents the Owner and the City from extending the five year period set out in this Section.
35. Upon initial completion of the Improved Parkland, the Project Landscape Architect shall certify to the City, to the satisfaction of the Manager of Parks and Open Space Development, with a signed copy to the Owner and the Park Delivery Fund Trustee, that all improvements have been completed in accordance with the Approved Park Plan, and

shall further provide to the City, the Owner and the Park Delivery Fund Trustee a detailed accounting of all costs incurred in connection with the completion of the said parkland improvement (the "Project Landscape Architect's Certificate").

36. Prior to Initial Acceptance of the Project Landscape Architect's Certificate, the Manager of Parks and Open Space Development shall have the right, but not the obligation, to inspect all of the works associated with the completion of the Approved Park Plan.
37. Upon Initial Acceptance of the Project Landscape Architect's Certificate, the Maintenance and Warranty Period shall commence.
38. Within sixty (60) days following Initial Acceptance of the Project Landscape Architect's Certificate, the City shall:
 - (a) Where applicable, pay to the Park Delivery Fund Trustee an amount equal to its contribution, if any, to the cost for provision of the enhanced improvements which amount shall be added to and form part of the Park Delivery Fund;
 - (b) Instruct the Park Delivery Fund Trustee in writing, with a copy to the Owner, to reimburse the Owner by way of a single lump sum payment out of the Park Delivery Fund (the "First Lump Sum Payment") provided that any liens registered in regard to the work performed in constructing the Park have been released and/or paid by the Owner and provided that title to the Park is free and clear of all encumbrances. The amount of the First Lump Sum Payment shall be calculated as follows:
 - (i) 80% of the lesser of:
 - (A) the value of all approved invoices paid by the Owner for all certified and authorized costs associated with the design, construction and contract administration, including all applicable taxes, in accordance with the Approved Park Plan, and
 - (B) the approved budgeted maximum amount,
 - (ii) less the amount determined by the City in its absolute discretion to be of the cost of remedying deficiencies, if any, in construction of the Park.
39. At the City's absolute discretion and only in exceptional circumstances, the City may direct the Park Delivery Fund Trustee to accept a letter of credit on such reasonable terms as the City may accept for the balance of the amount owing for construction of the Park following payment of the First Lump Sum Payment. Should the City so direct and should an Owner provide such a letter of credit, the Park Delivery Fund Trustee shall be authorized in writing to pay to the Owner out of the Park Delivery Fund an amount equalling the amount of the letter of credit.
40. Upon the successful completion of the Maintenance and Warranty Period and conveyance of the Park to the City, the City shall instruct the Park Delivery Fund Trustee in writing, with a copy to the Owner, to return to the Owner, any letter of credit delivered

by the Owner under Section 39 and to reimburse the Owner by way of a single lump sum payment out of the Park Delivery Fund (the "Second Lump Sum Payment") provided that all outstanding deficiencies identified by the Project Landscape Architect have been completed to the satisfaction of the City in accordance with the Approved Park Plan, any liens registered in regard to the contract have been released and/or paid by the Owner, and the Improved Parkland has been conveyed to the City. The amount of the Second Lump Sum Payment shall be calculated as follows:

- (a) The lesser of:
 - (i) the balance of the approved maximum budgeted amount remaining following the payment of the First Lump Sum Payment and
 - (ii) the value of approved invoices paid by the Owner for remaining certified costs which were not reimbursed at the time of the First Lump Sum Payment;
- 41. Notwithstanding Sections 38, 39 and 40, the amount to be paid by the Park Delivery Fund Trustee to the Owner shall be further reduced as required to satisfy all holdbacks for construction liens as required from time to time to be maintained in accordance with then applicable legislation, as well as by any funds to be paid to the City on account of the recovery of internal administration fees as referred to in Section 27. No reimbursement shall be made to the Owner by the Park Delivery Fund Trustee for costs beyond the approved budgeted amount set out in the Approved Park Plan without the prior written consent of the City;
- 42. If at the time of receipt of the Project Landscape Architect's Certificate referred to in Section 35 of this Agreement there are insufficient funds in the Park Delivery Fund to provide reimbursement to an Owner or Owners of the cost of providing a Park in accordance with an Approved Park Plan, then the City shall direct the Park Delivery Fund Trustee that the balance outstanding without interest shall be paid by the Park Delivery Fund Trustee to such Owner or Owners out of the next funds received by the Park Delivery Fund Trustee for deposit in the Park Delivery Fund. If more than one Owner is owed funds, the funds shall be paid to the Owners in priority based on the date of the expiry of the Maintenance and Warranty Period with the Owner of land having the earlier date being paid in priority to the other Owner or Owners.

PART IX DUTIES AND LIABILITY OF PARK DELIVERY FUND TRUSTEE

- 43. On or before March 1st of each year during the term of this Agreement, the Park Delivery Fund Trustee shall provide to the Treasurer of the City an audited financial statement prepared by an independent Chartered Accountant, qualified to provide professional accounting services within the Province of Ontario, summarizing both the amounts of all Cash-in-Lieu Payments received, the amounts of all interest accrued and the amounts of all funds disbursed during the immediately preceding calendar year. The fees associated with the audited financial statement prepared by an independent Chartered Accountant shall be paid for in accordance with Section 48 of this Agreement.

44. The Park Delivery Fund Trustee shall not be liable for any action taken or omitted by it, or any action suffered by it to be taken or omitted, in good faith, and in the exercise of its own best judgment, and shall not be held liable for any error in judgment made in good faith, unless it shall be proved that the Park Delivery Fund Trustee was negligent in ascertaining the pertinent facts or acted intentionally in bad faith.
45. The Park Delivery Fund Trustee may rely, and shall be protected in acting, upon any judgment, order, notice, demand, direction, certificate or other instrument, paper or document which may be submitted to it in connection with its duties hereunder. The Park Delivery Fund Trustee shall in no way be bound to call for further evidence (whether as to due execution, validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so.
46. In the event that the Park Delivery Fund Trustee shall become involved in any arbitration or litigation relating to the Park Delivery Fund, the Park Delivery Fund Trustee is authorized to comply with any decision reached through such arbitration or litigation.
47. The Park Delivery Fund Trustee shall not be required to use, advance or risk its own funds or otherwise incur financial liability in the performance of any of its duties or the exercise of any of its rights under this Agreement other than any such liability as may arise from the failure of the Park Delivery Fund Trustee to perform such duties as are specifically set forth in this Agreement or as a result of the wilful misconduct, fraud or negligent acts or omissions on the part of the Park Delivery Fund Trustee or its representatives.
48. The Parties agree that the reasonable fees, expenses and disbursements incurred by the Park Delivery Fund Trustee in connection with the performance of its obligations hereunder shall be paid to the Park Delivery Fund Trustee out of the Park Delivery Fund. Examples of the reasonable fees, expenses and disbursements may include fees associated with discharging the Parks Delivery Fund Trustee's duties, bank charges, courier charges and photocopying charges. The Parks Delivery Fund Trustee shall provide an invoice to the City from time to time (but no more frequently than 4 times per year) setting out such reasonable expenses and upon approval of such invoice or invoices by the City in writing, the Parks Delivery Fund Trustee will be authorized to pay such approved invoice or invoices out of the Parks Delivery Fund.
49. The Owners shall keep the Park Delivery Fund Trustee indemnified at all times against all actions, proceedings, losses, liabilities, costs, claims and demands incurred or sustained by the Park Delivery Fund Trustee in respect of any matter or thing done by it under, pursuant to or in connection with this Agreement, or otherwise arising in connection with its office as Park Delivery Fund Trustee hereunder, except in so far as the same arose through the negligence or wilful misconduct on the part of the Park Delivery Fund Trustee or otherwise arose from any breach by it of its obligations under this Agreement.
50. The Park Delivery Fund Trustee may resign its trust and be discharged from all further duties and liabilities hereunder after giving thirty (30) days' written notice to the City and

the Owners or such shorter notice as the City and the Owners may accept as sufficient, and may be removed from its office as such Park Delivery Fund Trustee by the City at any time by not less than thirty (30) Business Days' written notice given to the Park Delivery Fund Trustee. Upon discharge or removal, the Park Delivery Fund Trustee shall deliver the Park Delivery Funds and all interest accrued thereon by certified cheque as directed by the City.

51. In the event of the resignation of the Park Delivery Fund Trustee or its removal from office, the City shall make reasonable efforts to replace the Trustee within sixty (60) Business Days of delivery of such resignation or removal.
52. The Park Delivery Fund Trustee who resigns or is removed shall execute such further assurances or documents as, in the opinion of the City, may be necessary or desirable to vest in the new Park Delivery Fund Trustee the same powers, rights, duties and responsibilities as if the new Park Delivery Fund Trustee had been originally named as Park Delivery Fund Trustee.
53. It is understood and agreed that should any dispute arise with respect to the delivery, ownership, right of possession and/or disposition of the Park Delivery Funds, or should any claim be made upon the Park Delivery Fund Trustee or the Park Delivery Funds by a third party, the Park Delivery Fund Trustee, upon receipt of notice of such dispute or claim, is authorized and shall be entitled (at its sole option and election) to retain in its possession without liability, such amount of the Park Delivery Funds which are subject to the dispute or claim until such dispute shall have been settled either by the mutual written agreement of the parties involved or by a final order, decree or judgement of a court or arbitrator of competent jurisdiction, the time for perfection of an appeal of such order, decree or judgment having expired. The Park Delivery Fund Trustee may, but shall be under no duty whatsoever to, institute or defend any legal proceedings which relate to the Park Delivery Funds.

PART X NOTICE

54. If any notice is required to be given with respect to this Agreement, such notice shall be in writing and shall be deemed to be sufficiently given if delivered or sent by facsimile transmission and addressed to each of the Owners at the addresses listed in Schedule "C" attached to this Agreement and to the City and the Park Delivery Fund Trustee at, subject to change from time to time:

City of Markham
101 Town Centre Boulevard
Markham, ON L3R 9W3

Attention: Manager of Parks and Open Space Development

CC: Attention: Treasurer, City of Markham

CC: Attention: City Solicitor, City of Markham

Park Delivery Fund Trustee.
c/o Delta Urban Inc.
8800 Dufferin St. Suite 104
Vaughan, ON L4K 0C5

Attention: Mr. Myron Pestaluky, P.Eng.

55. Any such notice given as aforesaid shall be conclusively deemed to have been given and received, if delivered, on the date of delivery or if sent by facsimile transmission, on the date of transmission.

PART XI EXECUTION OF AGREEMENT BY ADDITIONAL PARTIES

56. The City agrees that it shall use all reasonable efforts to require all other landowners within Markham Centre who are not parties to this Agreement to enter into an agreement similar to this Agreement requiring the provision of parkland as may be required by the City at the time such agreements may be entered into. The Owners agree that they shall have no claim against the City, in law or in equity, if the City is unable to enter into such agreements with some or all of the landowners referred to in this Section.
57. Whenever a person or company who owns land in Markham Centre is agreeable to becoming a Party to this Agreement or is required by the City to become a party to this Agreement, the parties hereto shall consent to such person becoming a party to this Agreement provided such Added Party shall execute a covenant or agreement in a form and content acceptable to the Park Delivery Fund Trustee, acting reasonably, to be bound by all terms and provisions of this Agreement as fully as if such person had been originally named as a party to this Agreement, and Schedule "B" and Schedule "C" shall be updated to reflect the addition of the Added Party to this Agreement without requiring an amendment to this Agreement, and all other appropriate adjustments/additions shall be made to the schedules and to the relevant provisions of this Agreement required thereby. Such Added Party shall agree that it shall have no right or claim in respect of any funds in the Park Delivery Fund at the time of execution of the Agreement by the Added Party or in respect of any disbursement made or to be made out of the funds which were in the Park Delivery Fund prior to execution by the Added Party of the Agreement. All costs associated with the amendment to the schedules and determination of the Added Parties' obligations regarding costs shall be borne exclusively by the Added Party.

Any person interested in purchasing land within Markham Centre shall be entitled to consult the Park Delivery Fund Trustee respecting the particulars of this Agreement, provided that a flat fee of \$1,000 shall be charged for such consultation. The Park Delivery Fund Trustee shall make available to interested parties, for the reasonable cost of duplication, a copy of this Agreement.

**PART XII
REGISTRATION OF AGREEMENT**

58. The covenants, agreements, conditions and undertakings herein contained on the part of each of the Owners shall run with each of their respective lands as set out and described in Schedule "B" or part thereof, and shall be binding upon each of the landowners and upon their successors and assigns. In the event that an Owner transfers, conveys or otherwise disposes of any portion of the Lands, the Owner shall cause the applicable transferee to enter into an agreement with the City wherein the transferee covenants and agrees to assume and be bound by the obligations of the Owner pursuant to this Agreement, and upon receipt by the City of such agreement, the Owner shall be fully released from its obligations hereunder to the extent assumed by such transferee.
59. The Owners consent to the registration of this Agreement, including the provision for any postponements from any mortgagee in favour of this Agreement, on title on the Owners' Lands, or any part thereof, of which the Owners are owners at the time of execution of this Agreement. The Owners agree to provide a complete and accurate legal description of the Lands to the City and to execute all further documents as may be reasonably required to permit registration of this Agreement.

**PART XIII
SCHEDULES**

60. The following Schedules form part of this Agreement:

Schedule "A" - Markham Centre Plan

Schedule "B" – Legal Description of Lands

Schedule "B" – Parties Contact List

Schedule "D" – Duties of Project Landscape Architect

It is acknowledged that the Schedules attached to this Agreement form part of this Agreement, however Schedule "A" is for information purposes only and is subject to change without amendment to this Agreement.

**PART XIV
MISCELLANEOUS**

61. The Owners acknowledge and agree that each Owner shall forthwith upon execution of this Agreement provide the Park Delivery Fund Trustee with a copy of its executed Prior Development Agreement(s).
62. If any individual provision(s) of this Agreement is or are determined by a Court or tribunal of competent jurisdiction to be illegal or beyond the power, jurisdiction, or capacity of any party bound hereby and any appeal period has expired and any appeals commenced during that period have been finally determined, such provision shall be severed from this Agreement and the remainder of the Agreement shall continue in full

force and effect, mutatis mutandis. In such case, the Owners and the City agree to negotiate in good faith to amend this Agreement in order to implement the intentions as set out herein.

63. Save for disputes between the City and the Owner(s) or between one or more of the Owners and other Owners, if any person challenges any of the provisions of this Agreement, the Owners and the City agree that they shall actively support the enforcement, proper interpretation and application of this agreement, in any such proceeding and appeals, including the provision of their own legal counsel and witnesses at their own expense.
64. The parties hereto acknowledge that each is satisfied as to the jurisdiction of the others to enter into this Agreement. Therefore, each of the Owners agrees that it shall not question the jurisdiction of the City to enter into this Agreement, nor question the legality of any portion hereof and likewise the City agrees it shall not question the jurisdiction of the Owners to enter into this Agreement, nor question the legality of any portion hereof. The parties hereto, their successors, assigns and lessees are and shall be estopped from contending otherwise in any proceeding before a Court of competent jurisdiction.
65. Nothing in this Agreement is intended to waive the Owners' obligations to obtain such development approvals, fulfill draft plan conditions or to do such other things required to proceed to the subdivision registration stage and as may be required pursuant to the Planning Act or any other legislation or by-laws. The Owners acknowledge that during the course of such approvals and registrations, the City and other public authorities may seek to impose additional development conditions or conditions of site plan approval or obligations (which the Owner(s) reserve the right to oppose or appeal) in respect of the development of their lands, provided such additional conditions or obligations shall not alter the terms and conditions of this Agreement or increase the Owners' liabilities or obligations (financial or otherwise) with respect to those items which form the subject matter of this Agreement.
66. The Parties acknowledge and agree that the City is obliged to duly consider applications under the Planning Act regarding the development of lands on the merits of such applications, to hear and consider any objections, comments or concerns with respect thereto, and to make appropriate determinations in City Council's unfettered discretion on such applications in accordance with the provisions and procedures of the Planning Act, the City's Official Plan and the Region of York Official Plan, and without regard to this Agreement. The Owners further acknowledge and agree that the City is under no obligation by virtue of this Agreement, or otherwise, to grant any approvals, subject to the terms of a Prior Development Agreement, whatsoever for any contemplated development or use of the Owners' Lands.
67. The City shall provide copies to the Park Delivery Fund Trustee of all agreements that have been or will be entered into, as the case may be, with non-participants to this Agreement relating to the development or acquisition of parkland within Markham Centre.

68. For the purposes of this Agreement, any reference to a plan of subdivision shall be deemed to include, where applicable, a plan of condominium.
69. In the event of a specific conflict between the provisions of this Agreement and the terms of any Prior Development Agreement previously entered into between the City and one of the Parties hereto, the provision(s) of the Prior Development Agreement related to parkland shall prevail and continue to apply to the lands subject to the Prior Development Agreement.
70. Nothing in this Agreement shall preclude the right of any of the Owners to compensation for parkland dedication in accordance with the provisions of the Markham Centre Community Cost Sharing Agreement , as may be amended by the Owners, from time to time.
71. The Owners agree to reimburse the City for all legal fees it has incurred or will incur in connection with the preparation and implementation of this Agreement.
72. **Indemnity** - Each Owner and the Park Delivery Fund Trustee (an “**Indemnifying Party**”) covenants and agrees to indemnify and save each and every other Owner, the Park Delivery Fund Trustee and the City (an “**Indemnified Party**”), harmless from and against any liability, damage, cost, claim, suit, action or cause of action brought by or on behalf of any person or persons, corporation or corporations, or government authority against such Indemnified Party arising by reason of the breach of this Agreement by an Indemnifying Party, its employees, contractors or agents provided that such breach or default did not arise by virtue of circumstances beyond the Indemnifying Party’s reasonable control. Upon any Party hereto becoming aware of any such claim, suit or action, it shall forthwith give notice thereof to the Party thought to be liable in accordance with the provisions of this section and such Party shall be given the opportunity of disputing such claim or defending such suit or action at its own expense.
73. In this Agreement, unless otherwise stated, wherever there is a reference to an action taken by the City, the Commissioner of Development Services shall be the City’s authorized representative to take such action.
74. This Agreement may be executed and delivered in counterparts and any such counterpart may be delivered in its original form or by facsimile transmission and each of which when so executed and delivered shall be deemed to be an original and such counterparts together shall constitute one and the same Agreement.
75. The headings in the body of this Agreement form no part of the Agreement, but shall be deemed to be inserted for convenience of reference only.
76. This Agreement shall be construed with all changes in number and gender as may be required by the context.
77. Time shall be of the essence of this Agreement.

IN WITNESS WHEREOF the parties hereto have signed this Agreement as of the date noted below opposite their respective name.

Date:

**THE CORPORATION OF THE CITY OF
MARKHAM**

Per: _____
Name: _____
Title _____

Per: _____
Name: _____
Title _____

Date:

RULAND PROPERTIES INC.

Per: _____
Name: _____
Title _____

Date:

1771007 ONTARIO LIMITED

Per: _____
Name: _____
Title _____

Per: _____
Name: _____
Title _____

Date:

H&W DEVELOPMENT CORP.

Per: _____
Name: _____
Title _____

Per: _____
Name: _____
Title _____

Date:

ARYEH CONSTRUCTION LIMITED

Per: _____
Name: _____
Title _____

Per: _____
Name: _____
Title _____

Date:

DELTA URBAN INC.

Per: _____
Name: _____
Title _____

Per: _____
Name: _____
Title _____

Schedule "A"

MARKHAM CENTRE PLAN

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Schedule "B"

LEGAL DESCRIPTION OF LANDS

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Schedule "C"

PARTIES CONTACT LIST

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Schedule "D"

GUIDELINE RE: DUTIES OF PROJECT LANDSCAPE ARCHITECT

Design Services:

1. Undertake data collection and base plan preparation.
2. Hire surveyor under surveyor allowance, and prepare an up to date topographic survey, if necessary.
3. If required by the design, include (a) a mechanical engineer to certify flow rate for purposes of water meter sizing, (b) a structural engineer to certify design of all proposed and as-built structures to be structurally sound as well as provide BCIN, (c) an electrical engineer to certify electrical work and obtain ESA (Electrical Safety Authority) certificate, (d) a civil engineer to certify the proposed and as-built civil works have been design and constructed properly, and an irrigation design.
4. Contact development engineer to obtain composite utility plans (above and below ground) including any easements which may affect the design or installation for inclusion on landscape plans.
5. Undertake detailed analysis of site and context.
6. Undertake schematic design work for review by City staff.
7. Meet with City staff as needed to develop a minimum of 2 alternative concepts.
8. Prepare and submit cost estimates complete with signed OALA seal, to ensure design concepts can be built within the allotted budget. Amend plans if required to meet budget.
9. Undertake two public consultation meetings with area residents (two evening meetings). The first meeting will include the presentation of the two rendered park concept alternatives. Evening meeting shall include display panel boards (at either 24"x 36" or 36"x 48" sized for future City storage) as well as prepare a PowerPoint presentation of the boards for the evening meeting. The second meeting will be the presentation of the preferred concept to area residents in greater design detail.
10. Amend/combine concepts as required, to develop a preferred design concept in preparation for developing working drawing package.

Working Drawings and Tender Document Services:

1. Prepare working drawings package of the preferred design.
2. Meet with City staff to refine working drawings as required, until approved by the City.
3. Submit revised cost estimates complete with signed OALA seal, to ensure design concepts can be built within the allotted budget. Amend plans if required to meet budget.

4. Secure all necessary permits and agency approvals for the work as required.
5. Prepare final working drawings, specifications, tender documents, cost estimates and contract documents to City standards for competitive bidding of the work.
6. Undertake a pre-qualification process to select qualified contractors if requested to do so by the City.
7. Provide an appropriate number of sets of tender documents (specifications and drawings) for tender.
8. Attend bidders meeting and document questions arising from the meeting. Provide answers to bidders for questions arising.
9. Tender the park construction works to a minimum of three qualified contractors as approved by the City and be responsible for technical inquiries and/or clarifications, preparing addenda for issue as required
10. Review bids for accuracy and provide recommendations to the City as to the successful bidder and any contract changes required at the time of tender award.

Contract Administration and Warranty Services

1. Undertake Contract Administration to Final Completion.
2. Arrange and host pre-construction meeting.
3. Undertake periodic construction meetings as required including weekly site meetings during active construction.
4. Prepare and distribute all meeting minutes with contractor.
5. Review project schedule on an ongoing basis and assist the contractor in resolving matters affecting the contractor's schedule.
6. Review contractor's construction layouts, provide recommendations to City staff and obtain City approval.
7. Provide recommendations to City staff and obtain approval from City for additional work or work deleted from contractor contract. Prepare Change Orders once approved.
8. Review shop drawings, contractor requested plant and other substitutions or changes, provide recommendations to City staff and obtain City approval prior to directing contractor or proceeding with the works.
9. Review on-going construction to ensure compliance with the contract drawings and specifications. If construction is not compliant with documents, note deficiencies and discuss with City for review and direction. Issue instructions to contractor as required.

10. Visit the site each time the contractor makes a claim for payment to review the work performed. Return invoice to contractor for revision with current date, amount claimed, proper purchase order number, etc if invoiced incorrectly by the contractor.
11. Prepare monthly site reports to be submitted to the City.
12. Provide Progress Payment Certificate to the owner signed with an OALA seal within 10 business days of receipt of an acceptable invoice from the contractor.
13. Perform on site; substantial performance inspection, total completion inspection, one year warranty inspection, two year warranty inspection, and final completion inspection. Include follow-up inspections to ensure contractor compliance with inspections as required and perform final certification of the work including final completion certificate.
14. Provide certification in writing that all rectification work has been satisfactorily completed prior to Acceptance for Maintenance by the City.
15. Provide the City with a maintenance manual after Final Performance which includes the following:-
 - as-built drawings (landscape architect is responsible to obtain one full size set and one reduction to 11"x17" from the contractor)
 - park manual including statistics and maintenance items:
 - Legal description (also include this item on tender set)
 - Park location (also include this item on tender set)
 - Total area (also include this item on tender set)
 - CSA certification of as-built playground(s) (may be obtained from the contractor or the playground supplier or installer). An independent playground inspector is not required with the exception of the rubberized surfacing where the landscape architect is responsible to obtain testing results for rubberized surfacing where it is being used.
 - ESA safety certificate for electrical works (may be obtained from the contractor or electrical sub-consultant)
 - Number of coniferous & deciduous trees, shrubs, and groundcovers.
 - Recommended maintenance schedule of park including watering schedule, turf cutting schedule, etc.
 - Linear length of pathways
 - Identifying all park facilities (soccer fields and their sizes, tennis court and their sizes, water play facilities, Junior and/or Senior Playgrounds etc)
 - Start and targeted end of warranty period
 - End of Warranty and Certification of works by Landscape Architect certifying that the works have been completed in general conformance to the landscape plans and specifications, and that all deficiencies and warranty obligations

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have been completed. The certificates shall be affixed with the full member's OALA seal signed and dated.

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