

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 17, 2017

CASE NO(S): PL160870

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Silvercreek Commercial Builders Inc.
Subject:	Request to amend the Official Plan - Failure of Town of Halton Hills to adopt the requested amendment
Existing Designation:	Downtown Core Sub-Area
Proposed Designated:	Site Specific (To be determined)
Purpose:	To permit the development of an 11-storey, 125 unit condominium building with retail/commercial uses at street level on lands partially occupied by the McGibbon Hotel.
Property Address/Description:	69-79 Main Street South, 94-98 Mill Street
Municipality:	Town of Halton Hills
Approval Authority File No.:	D09OPA15.003
OMB Case No.:	PL160870
OMB File No.:	PL160870
OMB Case Name:	Silvercreek Commercial Builders Inc. v. Halton Hills (Town)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Silvercreek Commercial Builders Inc.
Subject:	Application to amend Zoning By-law No. 2010-0050, - Refusal or neglect of Town of Halton Hills to make a decision
Existing Zoning:	DC1
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit the development of an 11-storey, 125 unit condominium building with retail/commercial uses at street level on lands partially occupied by the McGibbon Hotel.

Property Address/Description:	69-79 Main Street South, 94-98 Mill Street
Municipality:	Town of Halton Hills
Municipality File No.:	D14ZBA15.010
OMB Case No.:	PL160870
OMB File No.:	PL160871

Heard: February 24, 2017 in Halton Hills, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Silvercreek Commercial Builders Inc.	H. Arnold*
Town of Halton Hills and Region of Halton	J. Wilker*

Participants

Pat Farley	Self-represented
James Waldbusser	Self-represented

DECISION DELIVERED BY HUGH S. WILKINS AND ORDER OF THE BOARD

INTRODUCTION

[1] On October 29, 2015, Silvercreek Commercial Builders Inc. (the “Appellant”) applied for amendments to the Town of Halton Hills (the “Town”) Official Plan and Zoning By-law No. 2010-0050 to permit the development of a residential condominium building with retail/commercial uses at properties located at 69-79 Main Street South and 94-98 Mill Street in Georgetown (the “subject property”). The Appellant’s proposed Official Plan amendment was to redesignate the subject property from “Downtown Core Sub-Area” to a site-specific designation and its proposed Zoning By-law amendment was to rezone the subject property from “Downtown Commercial One (DC1) to a site-specific zoning.”

[2] On August 16, 2016, the Appellant appealed under s. 34(11) and 41(12) of the *Planning Act* (“Act”) the failure of the Town to make decisions on the proposed Official Plan and Zoning By-law amendments within the statutory timeframes.

[3] Board-assisted mediation was held on September 28, 2016 and, on December 9, 2016, the Board held a pre-hearing conference (“PHC”). At the PHC, the Board granted participant status to Randy Kerman, Kathleen Dills, James Waldbusser, Pat Farley and Brian Herner.

[4] A second PHC was scheduled for February 24, 2017. On February 22, 2017, the Board received a request from the Town asking, on consent, that the Board convert the PHC to a settlement hearing. At the commencement of the PHC, the Board granted this request.

[5] The Appellant and the Town have entered into Minutes of Settlement, dated February 16, 2017 (Exhibit 2), under which the Town agrees to authorize under s. 37(1) of the Act increases in the height of the proposed development not otherwise permitted under the applicable zoning. This authorization is in return for, among other things:

- the conservation and replication of the facades of the existing buildings located at 71-79 Main Street South, 98 Mill Street and 69 Main Street South and the restoration and reinstallation of the historic hotel sign of the former McGibbon Hotel situated on the subject property. This work is to be set out in a heritage reconstruction and restoration plan for development, which is to be completed to the satisfaction of the Town prior to the issuance of any demolition permit for the existing buildings;
- a cash contribution of \$500,000 to the Town to (i) allow for the enhancement and preservation of heritage conservation initiatives to increase the historic connection to Downtown Georgetown and/or (ii) for the provision of additional public facilities and improvements within and adjacent to Downtown Georgetown to increase the vitality of the Downtown area. The Town agrees to consult with

the Appellant and other stakeholders to obtain input on potential projects to which the cash contribution may be expended prior to making a final decision on its allocation and expenditure; and

- the provision of a minimum of 20 parking spaces at the subject property that are available for public use.

These requirements are set out in a s. 37 Agreement (dated February 16, 2017) attached as Schedule 1 to the Minutes of Settlement (Exhibit 2).

[6] Attached as Schedule B to the s. 37 Agreement is a draft zoning by-law amendment proposed by the parties to the s. 37 Agreement, amending Zoning By-law No. 2010-0050 by rezoning the subject property from a Downtown Commercial One (DC1) Zone to a Holding Downtown Commercial One (DC1) Exception Zone. It includes exception provisions setting out the maximum number of apartment dwelling units, maximum height, parking, and other requirements. It also includes holding provisions requiring the execution of the s. 37 Agreement, payment of the \$500,000 contribution, approval of a site plan application, approval of the heritage reconstruction and restoration plan, and other requirements, before the proposed development may proceed.

[7] At the settlement hearing, the Board heard evidence from Glenn Wellings, a planner retained by the Appellant. The Board qualified Mr. Wellings to provide opinion evidence as a land use planner. He testified in support of the Minutes of Settlement.

[8] Mr. Wellings described the location of the subject property. He said it is on the site of the historic former McGibbon Hotel at the intersection of Main Street South and Mill Street in Downtown Georgetown. Mr. Wellings stated that the Appellant's original proposal was for an 11-storey, 125-unit, terraced residential condominium building with ground floor commercial uses. He described public consultations and the process that was undertaken in reaching the settlement, including the outcomes of the Board-

assisted mediation and described the proposed modifications to the development proposal set out in the settlement documents. He said the proposed height of the development was reduced from eleven to ten storeys and he described the new above-noted provisions that were incorporated in the s. 37 Agreement. He said the number of units, terracing and commercial use aspects of the proposed development remain as originally proposed.

[9] Mr. Wellings testified that s. G.4.3 of the Town's Official Plan permits the Town to authorize increases in height of development, provided that significant public benefits are provided by the applicant. He stated that through the s. 37 Agreement, the Appellant will be providing significant public benefits that would not have been otherwise realized, including the provision of needed community facilities and/or the conservation, enhancement and restoration of significant built heritage features through the Appellant's cash contribution. He said the s. 37 Agreement satisfies the criteria set out in s. G.4.3. of the Official Plan by serving a clear and measurable public interest through the granting of the height bonus.

[10] As the Town has agreed to use its powers under s. G.4.3. of the Official Plan, the parties agreed that the site specific Official Plan amendment is no longer necessary and they jointly requested that the Board dismiss the Appellant's appeal of the Official Plan amendment application.

[11] Mr. Wellings opined that the proposed development, as set out in the Minutes of Settlement and its attachments, will provide for appropriate redevelopment on the subject property. He said the settlement is consistent with the Provincial Policy Statement, 2014 ("PPS") and conforms to the Growth Plan for the Greater Golden Horseshoe, 2006 ("Growth Plan"). He said the Minutes of Settlement and its attachments also conform to the Region of Halton's Official Plan and the Town's Official Plan, stating that the settlement and Zoning By-law amendment will introduce intensification in an appropriate location, while incorporating a mix of uses, improving the streetscape of Downtown Georgetown, respecting façade height requirements, and revitalizing and enhancing the Town's cultural heritage resources.

[12] Mr. Wellings stated that the Town Council has approved the Minutes of Settlement with the proposed Zoning By-law amendment and that the Region of Halton is satisfied with the settlement.

[13] The parties requested that the Board approve the Minutes of Settlement and Zoning By-law amendments in principle but withhold its final order regarding the Zoning By-law amendments until the parties have executed the s. 37 Agreement and attended to some housekeeping matters, including the registering of the s. 37 Agreement against title.

[14] The Participants made presentations in support of the proposed settlement. Ms. Farley briefly described some of the history of the existing buildings on the subject property and the importance of conserving the existing streetscape. She stated that she is impressed by the detail of the settlement and stated that her major concerns are addressed by it. Mr. Waldbusser testified that he was pleased with the settlement. He outlined concerns regarding the height of the proposed development, but said the focus in the settlement on heritage considerations is an excellent compromise.

[15] Having considered Mr. Wellings' uncontradicted evidence, and having regard for the Minutes of Settlement as approved by the Town's Council, the Board finds that the proposed amendments to Zoning By-law No. 2010-0050, as set out in the attachments to the Minutes of Settlement, are consistent with the PPS and conform to the policies of the Growth Plan, the Region of Halton's Official Plan, and the Town's Official Plan.

[16] The Board allows the Zoning By-law amendment appeal and approves the Minutes of Settlement and Zoning By-law amendments in principle, but withholds its final order until the parties execute and file with the Board the final s. 37 Agreement.

[17] The Official Plan Amendment appeal is dismissed, on consent.

INTERIM ORDER

[18] The Board orders that:

1. the Zoning By-law Amendment appeal is allowed and the Minutes of Settlement and Zoning By-law amendments (together attached to this Decision as Attachment 1) are approved in principle;
2. the Official Plan Amendment appeal is dismissed;
3. the Board's order is withheld until the parties execute and file with the Board the final s. 37 Agreement.

"Hugh S. Wilkins"

HUGH S. WILKINS
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

Exhibit: EX 2.
PL160870
File #: PL160871

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

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DP

**MINUTES OF SETTLEMENT
BETWEEN SILVERCREEK COMMERCIAL BUILDERS INC.
AND THE TOWN OF HALTON HILLS**

WHEREAS Silvercreek Commercial Builders Inc. ("Silvercreek") and the Town of Halton Hills (the "Town") have executed a section 37 Agreement ("the Agreement") attached as SCHEDULE ONE to these Minutes of Settlement and which has as part of the Agreement, Schedule "A" being the Legal Description of the Subject Lands and Schedule "B" being the settlement Amending By-law;

AND WHEREAS Silvercreek is authorized to enter into these Minutes of Settlement and bind itself and the Owners of certain lands and premises situated in the Town of Halton Hills, in the Regional Municipality of Halton, municipally known as 69-79 Main Street South and 94-98 Mill Street (Georgetown) (the "Subject Lands"), and more particularly described in Schedule "A" of the Agreement and on which there are located buildings existing on the date of this Agreement (called the "Existing Building(s)");

AND WHEREAS Silvercreek has applied for an amendment to the Town's Official Plan and Zoning By-law with respect of the Subject Lands. The purpose of the proposed amendments are to obtain planning permissions to redevelop the former McGibbon Hotel and other adjacent buildings in Downtown Georgetown into a mixed use commercial residential condominium complex with the commercial component be located at grade (the "Development");

AND WHEREAS Silvercreek has appealed its applications for amendments to the Town's Official Plan and Zoning By-law to the Ontario Municipal Board (the "Board") for hearing and determination (OMB Case No. 160780);

AND WHEREAS Silvercreek and the Town are Parties to the Board hearing and are desirous of setting out certain understandings and agreements that they have agreed will be incorporated into the settlement Amending By-law, and whereas the Parties are entering into these Minutes of Settlement to resolve and settle the Board hearing;

AND WHEREAS as part of the Board proceedings, the Town and Silvercreek engaged in mediation before the Board. As a result, Silvercreek has requested the Town to use its powers under s. 37(1) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (the "*Planning Act*"), whereby Town Council may, in a by-law passed under s. 34 of the *Planning Act*, authorize increases in the height and density of development not otherwise permitted by the applicable zoning, in return for the provision of such facilities, services and matters as the Town may desire and specify in such by-law, which are to be provided by Silvercreek;

AND WHEREAS Town Council has agreed to use its powers under s. 37 of the *Planning Act* pursuant to the requirements of the *Planning Act* and the in force and effect Official Plan and so request that the Board approve a settlement Amending By-law including the use of those powers;

NOW THEREFORE, in consideration of the mutual covenants herein and other good and valuable consideration and the sum of TWO dollars mutually exchanged between the Parties, the



sufficiency and receipt of which consideration is acknowledged by the Parties, the Parties agree as follows:

1. The recitals are true.
2. Parties shall jointly request that the Board dismiss Silvercreek's appeal of the Official Plan Amendment application.
3. The Parties have agreed to the Agreement as executed by the Parties, together with 2467766 Ontario Inc., and attached to these Minutes of Settlement as SCHEDULE ONE hereto.
4. The Parties have agreed to the settlement Amending By-law, included as Schedule "B" of the Agreement, and including Schedule 4 of the settlement Amending By-law being the Section 37 provisions.
5. It is understood and acknowledged by the Parties that the Town has specifically agreed to settle this hearing at the Board on the specific and express understanding that this settlement is conditional and contingent on the acceptance by the Board of the principles and obligations as set out in the Agreement. Should those principles and obligations not be accepted by the Board at the hearing, then it is agreed that this settlement, including the Agreement is null and void.
6. Silvercreek shall seek approval from the Board of the settlement Amending By-law, and Silvercreek shall call evidence in support of said By-law. The Town shall support such approval.
7. Silvercreek agrees that it has an obligation to pay to the Town cash-in-lieu for parkland pursuant to section 42(3) of the *Planning Act*.
8. Silvercreek agrees to pay all municipal and public authorities fees, levies and development charges as may be required by law for the development.
9. Silvercreek acknowledges that it shall be necessary for Silvercreek to upgrade and/or pay for upgrades of utilities at its cost, including satisfying any of the requirements of Halton Hills Hydro.
10. Silvercreek acknowledges that it requires an easement from the Town to secure legal access to its proposed loading space for the Development. Silvercreek further acknowledges that this easement matter is required to be dealt with separately, in accordance with the principle of no net loss of public parking supply and shall be dealt with as may be required by the *Municipal Act* and the requisite by-laws thereunder and as part of the Site Plan Application and its review for approval. Silvercreek specifically agrees and acknowledges that Town Council has not fettered its discretion in dealing with this easement whatsoever by entering into these Minutes of Settlement.



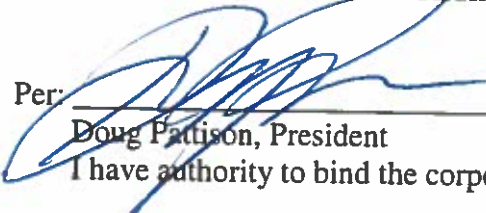
11. The Parties agree that no party shall seek costs against any other party for the proceedings at the Ontario Municipal Board for conduct inclusive to the settlement hearing.
12. Silvercreek agrees that all further filings, including perfecting the Site Plan Application and including its Condominium Application shall be consistent with and in train with the Agreement including Schedules thereto.
13. These Minutes of Settlement and the Agreement are conditional upon approval by the Council of the Corporation of the Town of Halton Hills on or before February 24, 2017, of these Minutes of Settlement and the Agreement. Should such approval not be given, it is agreed that these Minutes of Settlement, the Agreement and the Schedules thereto are null and void *ab initio* and do not bind any of the Parties to these Minutes of Settlement or the Agreement whatsoever.
14. Should these Minutes of Settlement and the Agreement not be approved as required under the aforementioned clause, the Parties agree that the terms and obligations of these Minutes of Settlement including the Agreement and including the Schedules to said Agreement shall not be referenced in the subsequent Ontario Municipal Board hearing.
15. This Agreement shall enure to the benefit of, and be binding upon the Parties and their respective successors and assigns. Further Silvercreek has represented and warranted that it has authority to settle these matters including binding 2467766 Ontario Inc. with respect to the settlement proceedings at the Board, and upon which representation and warranty the Town relies.
16. The Parties hereto agree to execute such further documents and cause the doing of such acts and cause the execution of such further documents that are within their power as any party may reasonably request be done or executed, in order to give full effect to the provisions of this Agreement.
17. These Minutes of Settlement may be executed in multiple counterparts, each of which shall be deemed to be an original, and all of which shall constitute one Minutes of Settlement. The Parties further agree that each party shall countersign copies of the document in order that each party has an original Minutes of Settlement executed by all the Parties, and same shall be provided on a timely basis.

[REMAINDER OF PAGE DELIBERATELY LEFT BLANK]




Signed, Sealed and Delivered at Halton Hills, this 16th of February, 2017.

SILVERCREEK COMMERCIAL BUILDERS INC.

Per:  _____ c/s
Doug Pattison, President
I have authority to bind the corporation.

CORPORATION OF THE TOWN OF HALTON HILLS

Per:  _____
By its solicitors, Thomson, Rogers



SCHEDULE ONE
(Section 37 Agreement)

DP

SECTION 37 AGREEMENT

THIS AGREEMENT made this 16th day of February, 2017.

BETWEEN:

SILVERCREEK COMMERCIAL BUILDERS INC.

(hereinafter called "Silvercreek")

PARTY OF THE FIRST PART

-and-

2467766 ONTARIO INC.

PARTY OF THE SECOND PART

- and -

THE CORPORATION OF THE TOWN OF HALTON HILLS

(hereinafter called the "Town")

PARTY OF THE THIRD PART

WHEREAS:

1. 2467766 Ontario Inc. is the registered owner of certain lands and premises situated in the Town of Halton Hills, in the Regional Municipality of Halton, municipally known as 71-79 Main Street South and 98 Mill Street (the former McGibbon Hotel) together with 69 Main Street South. Further, 2467766 Ontario Inc. has a beneficial interest in 96 Mill Street and has authority to enter into this agreement with respect to 96 Mill Street. The lands described above (the "Subject Lands"), are more particularly described in Schedule "A" attached to this Agreement and on which there are located buildings existing on the date of this Agreement (called the "Existing Building(s)");
2. Silvercreek is the developer of the Subject Lands and has applied for amendments to the Town's Official Plan and Zoning By-law in respect of the Subject Lands, such proposed amendments in order to redevelop the former McGibbon Hotel and other adjacent buildings in Downtown Georgetown into a mixed use commercial residential condominium complex with the commercial component be located at grade (the "Development");



3. Silvercreek and 2467766 Ontario Inc. are referenced collectively as the "Owners" in this Agreement. The Owners expressly represent and warrant that they have the requisite authority to enter into this Agreement and bind the Subject Lands, and the Owners acknowledge that the Town is relying on said representation and warranty;
4. Silvercreek has appealed its applications for amendments to the Town's Official Plan and Zoning By-law to the Ontario Municipal Board ("the Board") for hearing and determination (OMB Case No. 160780).
5. As part of the Board proceedings, the Town and Silvercreek engaged in mediation before the Board. As a result, the Owners have requested the Town to use its powers under s. 37(1) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (the "*Planning Act*"), whereby Town Council may, in a by-law passed under s. 34 of the *Planning Act*, authorize increases in the density of development not otherwise permitted by the applicable zoning, in return for the provision of such facilities, services and matters as the Town may desire and specify in such by-law, which are to be provided by the Owners;
6. Town Council has agreed to use its powers under s. 37 of the *Planning Act* and to so request the Board to approve the Amending By-law with the section 37 provisions attached as Schedule "B" to this Agreement;
7. Section 37(2) of the *Planning Act* provides that a by-law under s. 37(1) may not be enacted unless the municipality has an Official Plan that contains provisions relating to the authorization of increases in height and density of development;
8. The Town's Official Plan contains such provisions. Section G. 4.3 of the Town's Official Plan is entitled *Height and Bonusing Provisions*. Section G. 4.3.1 sets out *Bonusing Triggers* and section G. 4.3.2 contains the *Criteria*. As the Town has agreed to utilize its powers under the approved and in force Official Plan, the Parties agree that the site specific Official Plan Amendment is no longer necessary and, on consent, the Parties agree that the Official Plan Amendment application may be dismissed by the Board;
9. Section 37(3) of the *Planning Act* provides that where an owner of land elects to provide facilities, services and matters in return for an increase in the density or height of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services and matters, such as this agreement;
10. The Owners have elected to provide and/or pay for those facilities, services and matters described in return for the increase in the density and height of Development for the Subject Lands, as set out in the Amending By-law;
11. The Town has required the provision of certain facilities, services and matters, being façade conservation and replication and providing a cash contribution towards various facilities, services and matters, in return for certain increases in the density and height of Development;



12. The Owners have requested that the Town require it to enter into this Agreement;
13. The Town has agreed to require the Owners to enter into this Agreement;
14. One of the purposes of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended (the "*Ontario Heritage Act*") is to support, encourage and facilitate the conservation, protection and preservation of the heritage of Ontario;
15. Subsection 37(3) of the *Ontario Heritage Act* provides that such covenants and easements entered into by Town when registered in the proper Land Registry Office against the real property affected by them, shall run with the real property and may, whether positive or negative in nature, be enforced by the Town or its assignee against the Owners or any subsequent owner of the real property, even where the Town owns no other land which would be accommodated or benefited by such covenants and easements;
16. The Subject Lands currently contain heritage listed buildings. The Owners and the Town agree that the parts of the Buildings which are relevant to the "Reasons for Identification" set out in Schedule "C" to this Agreement are the façades of the former McGibbon Hotel located at 71-79 Main Street South and 98 Mill Street and the façade of the 69 Main Street South (called the "Façades") and that the interest of the Town under this Agreement is the conservation of the Façades and that nothing in this Agreement authorizes that the Façades shall stand alone rather than forming part of a building;
17. The façades of these buildings and the preservation and/or replication of this existing streetscape is of critical importance in defining the character of Downtown Georgetown. As such, the Owners and the Town desire to conserve the present historical, architectural, contextual, aesthetic, scenic and heritage characteristics and conditions of the façades of the Buildings on the Subject Lands as set out in the "Reasons for Identification" set out in Schedule "C" to this Agreement and as may be depicted in Schedule "D" attached to this Agreement;
18. Furthermore, the Owners have agreed to contribute \$500,000.00 to the Town to: i) allow for the enhancement and preservation of heritage conservation initiatives to increase the historic connection to Downtown Georgetown and/or ii) for the provision of additional public facilities and improvements within and adjacent to Downtown to increase the vitality of Downtown Georgetown;
19. To this end, the Owners and the Town agree to enter into this Agreement;

IN CONSIDERATION of the sum of TWO DOLLARS (\$2.00) of lawful money of Canada now paid by each of the Parties to the other, the receipt and sufficiency of which is hereby expressly acknowledged, and for other valuable consideration, and in further consideration of the mutual covenants and restrictions set out in this Agreement, the Owners and the Town agree to abide by the following covenants and restrictions which shall run with the Subject Lands forever.



1. RECITALS, DEFINITIONS AND SCHEDULES

1.1 The Parties agree that the recitals are true;

1.2 For the purposes of this Agreement, the term:

- (a) **“Amending By-law”** means the proposed Zoning By-law Amendment substantially in the form and having the content attached to this Agreement as **Schedule “B”**;
- (b) **“Building Permit”** means a permit to construct a building pursuant to s. 8 of the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended or re-enacted from time to time (the *“Building Code Act”*);
- (c) **“Chief Building Official”** means the Town’s Chief Building Official;
- (d) **“Date of Final Approval of the Amending By-law”** is the date when Schedule **“B”** is in full force and effect as set out in clause 11.2 of this Agreement;
- (e) **“Demolition Permit”** means a permit to demolish Existing Building(s) on the Subject Lands issued pursuant to s. 8 of the *Building Code Act*;
- (f) **“Heritage Reconstruction and Restoration Plan”** means the report and plan(s) that establish the methods and procedures by which the Owners shall ensure the protection of the heritage elements as set out in Schedules **“C”** and **“D”** of this Agreement;
- (g) **“New Bricks”** means modern era bricks that have been matched for colour, size and appearance to the Original Bricks;
- (h) **“Original Brick”** means the bricks recovered from the demolition of the former McGibbon Hotel located at 71-79 Main Street South and 98 Mill Street on the Subject Lands;
- (i) **“Parties”** means Silvercreek, as defined, 2467766 Ontario Inc. and the Town, collectively;
- (j) **“Substantial Completion”** means substantial performance as defined in the *Construction Lien Act, R.S.O. c. C.30*, as amended;
- (k) **“Town Council”** means the elected Council of the Town of Halton Hills;

1.3 For the purposes of this Agreement, words contained in this Agreement shall, unless otherwise defined, have the same meaning as such words have in the proposed Amending By-law attached as Schedule **“B”**.



1.4 Attached and forming part of this Agreement are the following Schedules:

- A. Legal description of the Subject Lands;
- B. Amending By-law;
- C. Reasons for Identification; and,
- D. Façade Identification

2. HERITAGE RECONSTRUCTION AND RESTORATION

2.1 The Owners agree, at their expense, to prepare and submit a Heritage Reconstruction and Restoration Plan for the Development to be completed to the satisfaction of the Town Administration prior to the issuance of any Demolition Permit. The purpose of the Heritage Reconstruction and Restoration Plan is to deliver Schedule "C". The Heritage Reconstruction and Restoration Plan for the Development shall be reviewed by the Town's peer reviewers, at the Owners' expense and the input of the Town's peer reviewers shall be incorporated into the Heritage Reconstruction and Restoration Plan. The Heritage Reconstruction and Restoration Plan shall have at a minimum in its terms of reference the following components:

- (a) Outline of a program to clean and photograph the Façades;
- (b) Outline of a program to conduct a thorough condition survey and catalogue of drawings of the areas and elements to be salvaged for reuse. Such program shall be prepared as a set of CAD elevation drawings, plan drawings and details, fully dimensioned with the level of detail required for reinstallation. The CAD drawings shall include a logical numbering sequence for reference during removal and reconstruction;
- (c) Outline a testing program to sample the Original Bricks for reuse;
- (d) Provision of a design based on the reuse of the Original Bricks for the frontage façade of the Main Street South McGibbon Hotel. The design shall be based on a two wythe brick design. In the alternative, the design may be based on retaining the existing façade in situ and restoring that façade. In all circumstances, said design shall be to the satisfaction of the Town peer reviewers, including its retained heritage architect and engineer peer review consultants, and also to the satisfaction of the Town's Chief Building Official;
- (e) Detailed work plan including:
 - (i) Description and location of elements to be salvaged;



- (ii) Identify all hazards;
 - (iii) Equipment to be used;
 - (iv) Procedure for salvage and storage;
 - (v) Method of labelling;
 - (vi) Identify risks that may lead to damage of the elements and the Owners' specific plan to mitigate those risks;
 - (vii) The plan will be used as a tool to verify the contractors' understanding of the scope
- (f) Detailed conservation plan, including drawings, specifications and contractor/tradesperson qualification requirements;
 - (g) Detailed methodology setting out a program during demolition for the retention of the Original Bricks and the separation of the Original Bricks into reuse, potential reuse, and discard piles;
 - (h) Methodology for the testing of a sampling of the bricks in reuse and potential reuse piles and an analysis of the sampling results;
 - (i) Details on the sourcing of the replica bricks for that part of McGibbon Hotel façade along Mill Street (unless the Original Bricks are being used for its construction as well);
 - (j) Construction program to deliver the frontage façade of the Main Street South portion of the McGibbon Hotel through the reuse of the Original Bricks; the replicated façade of the Mill St. portion of the McGibbon Hotel façade; and the replicated façade of 69 Main Street South through the reuse of original limestone bricks wherever feasible, the construction of all of which requires the salvaging and incorporation of other original building elements such as the stone window sills, metal tieback plates and the restored and revitalized McGibbon Hotel sign and the use of similar mortar lines and colour;
 - (k) A detailed construction timeline to the satisfaction of the Town;
 - (l) Identification of securities necessary to ensure the delivery of the approved Heritage Reconstruction and Restoration Plan; and
 - (m) Such further and other items as may be required by Town peer reviewers.

2.2 The reuse of the Original Bricks to reconstruct the upper two floors of the Main Street South frontage of the McGibbon Hotel façade (or in the alternative, the retention of those

two upper floors in situ with a restoration), is a critical and fundamental part of the Town's determination that it is appropriate to utilize its section 37 powers under the *Planning Act* and as authorized in the Town's Official Plan. Without the delivery of this façade, the Town would not have agreed to utilizing its section 37 powers. Therefore, the Owners shall post security with the Town, as required, to ensure the reuse of the Original Bricks in the reconstruction or the in situ retention of the Main Street South frontage of the McGibbon Hotel façade, together with security to fulfill the other components of the approved Heritage Reconstruction and Restoration Plan. Should the Town issue a Demolition Permit, and the Main Street South frontage of the McGibbon Hotel façade for any reason not be reconstructed using the Original Bricks, or retained in situ, or should the Owners fail to comply with any other component of the Heritage Reconstruction and Restoration Plan including the requisite timelines, clause 3.8 shall be applicable.

- 2.3 For clarity, no Demolition Permit application shall be made without the prior written consent of the Town, nor shall any work be carried out on the Development without the prior written consent of the Town, which shall not occur until after the Heritage Reconstruction and Restoration Plan has been approved by the Town and to be approved as part of the site plan process as described in clause 2.6 of this Agreement. The Town shall be at liberty to rely on this clause should there be any proceedings arising out of any refusal to grant any Demolition Permit.
- 2.4 The Owners shall not, except as set forth in this Agreement, without the prior written approval of the Town undertake or permit any demolition, construction, alteration, remodelling or any other thing or act which would materially affect the features, appearance or construction of the Façades as set out in Schedule "C" and as may be depicted in the copies of the photographs, drawings and other documents attached to this Agreement and incorporated as Schedule "D".
- 2.5 Subsequent to demolition of the Existing Buildings in accordance with the Demolition Permit and upon receiving the requisite Building Permits from the Town, the Owners shall reconstruct the Façades as part of the Development on the Subject Lands as follows as set out in Reasons for Identification attached as Schedule "C" to this Agreement and in accordance with the approved Heritage Reconstruction and Restoration Plan.
- 2.6 The Owners agree that the Heritage Reconstruction and Restoration Plan shall be part of site plan approval and the consequent site plan agreement registered against title and running with the Subject Lands.
- 2.7 The Owners agree that all demolition, construction, alteration, reconstruction and restoration as described in this clause and as itemized within the Heritage Reconstruction and Restoration Plan during the completion of the Development shall be subject to review and sign-off by the Town's peer reviewers, at the Owners' expense.
- 2.8 The Owners agree that time is of the essence in the completion of the Development under the construction schedule that shall be included in the Heritage Reconstruction and Restoration Plan.



3. REASONS FOR IDENTIFICATION

- 3.1 The Parties agree that for the purposes of this Agreement, those statements (called the "Reasons for Identification") attached as Schedule "C" to this Agreement set out the reasons why the Façades listed have been identified by the Town as having historic and architectural significance.
- 3.2 The Parties agree that the photographs contained in Schedule "D" attached to this Agreement, the originals or facsimiles of which are filed in, and may be examined at, the archives of the Town, wherever they may be from time to time located, generally depict certain significant features of the appearance or the construction of the Façades. The approved Heritage Reconstruction and Restoration Plan, together with Schedules "C" and "D" shall be referred to in determining the duties of the Owners under this Agreement.
- 3.3 The Owners shall not, except as set forth in this Agreement, without the prior written approval of the Town undertake or permit any demolition, construction, alteration, remodelling or any other thing or act which would materially affect the features of the appearance or construction of the Façades as set out in the Reasons for Identification as set out in Schedule "C" and as may be depicted in the copies of the photographs, drawings and other documents attached to this Agreement and incorporated as Schedule "D" and in the original or facsimiles thereof which are filed in, and may be examined at, the archives of the Town, wherever they may be located from time to time. If the approval of the Town is given, the Owners, in undertaking or permitting the construction, alteration, remodelling or other thing or act so approved of, shall use materials approved by the Town in the Heritage Reconstruction and Restoration Plan.
- 3.4 The Owners shall at all times during the currency of this Agreement keep the Existing Buildings and the Façades insured against normal perils that are coverable by fire and extended coverage insurance in an amount equal to the replacement cost of the Existing Buildings, including the Façades. Silvercreek shall deposit with the Town Treasurer, within ten (10) clear business days of the execution of this Agreement, a certified copy of the insurance policy referred to above with limits and from a company that is acceptable to the Town Treasurer. Thereafter, evidence satisfactory to the Town of the renewal of insurance shall be delivered to the Town at least ten (10) clear business days before the termination of the insurance. The Town shall be named as an insured party in the insurance policy. If the Owners fails to insure the Existing Buildings and the Façades, or if any such insurance on the Existing Buildings and the Façades is cancelled, the Town may effect such insurance as the Town deems necessary and any sum paid in so doing shall forthwith be paid by the Owners to the Town, or if not, shall be a debt due and owing to the Town and collected in the same manner as property taxes. All proceeds receivable by the Owners under any fire and extended coverage insurance policy or policies on the Existing Buildings and Façades shall, on the written demand and in accordance with the requirements of the Town, be applied to replacement, rebuilding, restoration or repair of the Façades in accordance with the Town's interest under this Agreement to the fullest extent possible having regard to the Reasons for Identification as set out in Schedule "C", the particular nature of the Façades and the cost of such work.



- 3.5 The Owners shall at all times maintain the Existing Buildings, including the Façades, in as good and as sound a state of repair as a prudent owner would do, so that no deterioration in the Façades' condition and appearance shall take place, including, without limiting the generality of the foregoing, taking all reasonable measures to secure and protect the Existing Buildings from vandalism, fire and damage from inclement weather.
- 3.6 The Owners shall not erect or permit the erection on the Subject Lands or on the Existing Buildings of any signs, awnings, telecommunications receiving or sending equipment or other objects of a similar nature without the prior written approval of the Town. Such approval may, in the sole discretion of the Town and for any reason which the Town considers necessary, be refused, provided that with respect to signage to identify the occupant(s) of the Existing Buildings from time to time, the approval of the municipality shall not be unreasonably withheld, having regard to the use of the Existing Buildings, the Reasons for Identification as set out in Schedule "C" and the photographs contained in Schedule "D" attached to this Agreement.
- 3.7 The Owners shall not commit or permit any acts of waste on the Subject Lands. In respect to the Subject Lands, the Owners shall not, except with the prior approval of the Town:
- (a) erect or remove or cause or permit the erection or removal of any building, sign, fence or other structure of any type whatsoever;
 - (b) allow the dumping of soil, rubbish, ashes, garbage, waste or other unsightly, hazardous or offensive materials of any type or description on the Subject Lands;
 - (c) except for the maintenance of existing improvements, allow any changes in the general appearance or topography of the Subject Lands, including and without limiting the generality of the foregoing, the construction of drainage ditches, transmission towers and lines and other similar undertakings, as well as the excavation, dredging or removal of loam, gravel, soil, rock, sand or other materials;
 - (d) allow the planting of trees, shrubs or other vegetation which would have the effect of:
 - (i) reducing the aesthetic value of the Existing Buildings or the Subject Lands; or
 - (ii) causing any damage to the Existing Buildings;
 - (e) allow any activities, actions or uses detrimental or adverse to water conservation, erosion control and soil conservation; and



- (f) allow the removal, destruction or cutting of trees, shrubs or vegetation except as may be necessary for:
 - (i) the prevention or treatment of disease; or
 - (ii) other good arboricultural practices

3.8 If the Town, in its sole discretion, is of the opinion that the Owners have not complied with the approved Heritage Reconstruction and Restoration Plan or clause 2.2 being the reuse of the Original Bricks for the reconstruction, or any other term of this Agreement including meeting the requisite timelines, the Town may cause a Notice in writing to be sent by registered mail or delivered personally to the Owners in accordance specifying the default and requiring that such default be remedied forthwith. In the event that no action is taken by the Owners, to the satisfaction of the Town, to remedy such default within ten (10) clear business days after the service or mailing of such Notice (or within such greater period as may otherwise expressly be permitted in the Notice) or in the event of emergency, in addition to any other remedies hereunder, the Town has and is hereby given the right of entry by the Owners to the Subject Lands and may do and perform any and all actions, matters and things that may be required to remedy the default(s) as aforesaid, and in pursuance thereof, may hire labour, equipment and purchase such materials as the Town may consider necessary. All expenses incurred by the Town pursuant to this clause shall be paid by the Owners to the Town within ten (10) days from the date of an account therefore being rendered by the Town. Should the Owners fail to make payment within this time period, then the Town may utilize the posted security to pay said amount. The cost of all remedial work done by the Town pursuant to this clause shall be calculated by the Town whose determination of such cost is final; shall include a management fee and a liquidated damages payment equal to fifty percent (50%) of the cost of labour, materials and equipment to perform such work, payable to the Town as a consequence of such default; and shall include such further sums for special damages as may be determined by the Town.

3.9 Notwithstanding the provisions of clause 3.3, it is understood and agreed that the Owners may undertake such temporary measures in respect of the Existing Buildings as are:

- (a) in keeping with the intentions of this Agreement;
- (b) consistent with the conservation of the Existing Buildings, and
- (c) reasonably necessary to deal with an emergency which puts the security or integrity of the Existing Buildings or occupants of the Existing Buildings at risk of damage or injury, provided that the Owners comply with the *Building Code Act*.

3.10 The Owners expressly reserves for themselves, their representatives, heirs, successors and assigns the right to continue the use of the Subject Lands for all purposes not inconsistent with this Agreement.



- 3.11 The Town or its representatives shall be permitted at all reasonable times to enter upon and inspect the Subject Lands and the Existing Buildings upon prior written notice to the Owners of at least 48 hours.
- 3.12 Notice of these covenants and restrictions shall be inserted by the Owners in any subsequent deed or other legal instrument by which they divest themselves either of the fee simple title to or of their possessory interest in the Subject Lands or the Existing Buildings.
- 3.13 The Owners shall immediately notify the Town in the event that it divests itself of the fee simple title to or of its possessory interest in the Subject Lands or the Existing Buildings.
- 3.14 The Owners shall grant a heritage restrictive covenant or easement in favour of the Town securing the restored and reconstructed façades as detailed in the approved Heritage Reconstruction and Restoration Plan and the Reasons for Identification as set out in Schedule "C" once so reconstructed and restored so as to secure the existence of those reconstructed and restored façades in perpetuity. Said documentation shall be registered on title to the satisfaction of the solicitors for the Town.

4. PUBLIC PARKING SUPPLY

- 4.1 The Owners shall provide a minimum of 20 parking spaces within a separated part of the parking garage for the Development that are available for public use. These parking spaces shall be supplied in perpetuity and shall be available to the public at no charge for the first two hours of use. The Owners shall have the option to implement pay parking for use of these parking spaces beyond two hours. The parking spaces shall be identified within and shall be part of the site plan approval and consequent site plan agreement registered against title and running with the land.

5. CONTRIBUTION

- 5.1 Prior to the lifting of the Holding (H23) provision being part of the zoning of the Subject Lands as set out in Schedule "B", the Owners shall have made a cash contribution to the Town in the amount of \$500,000.00 to be allocated and expended by the Town to i) the enhancement and preservation of heritage conservation initiatives to increase the historic connection to Downtown Georgetown and/or ii) for the provision of additional public facilities and improvements within and adjacent to Downtown Georgetown to increase the vitality of Downtown Georgetown (the "Contribution").
- 5.2 Prior to Town Council making a final decision on allocation and expenditure of the Contribution, the Town agrees to consult with the Owners together with other stakeholders to obtain input on the potential projects to which the Contribution may be expended. The Owners acknowledge and agree that the final decision on allocation and



expenditure of the Cash Contribution rests with Town Council and nothing in this Agreement shall be interpreted to fetter that discretion.

6. OFFICIAL PLAN AMENDMENT AND AMENDING BY-LAW

- 6.1 The Parties jointly agree that the Official Plan Amendment is not necessary given the exercise of the section 37 powers under the existing approved Town Official Plan and therefore the Parties jointly agree that they shall request the Board to dismiss the Official Plan Amendment appeal. The Owners hereby consents to the Amending By-law attached to this Agreement as Schedule "B" and the Parties jointly agree that they shall request the Board to approve the Amending By-law.
- 6.2 The Owners further covenant and agree that any building or structure to be erected on the site shall be located within the building envelope in accordance with Amending By-law.

7. INTENTION OF PARTIES

- 7.1 Notwithstanding any other provision of this Agreement, the Parties agree with each other than none of the provisions of this Agreement (including a provision stating the Parties' intention) is intended to operate, nor shall have the effect of operating in any way to fetter either the Town Council which authorized execution of this Agreement or any of its successors in the exercise of any of Town Council's discretionary powers.
- 7.2 Where this Agreement requires actions or documents to be approved by a Party or Parties, the Parties acknowledge and agree that such approval shall not be unreasonably withheld.

8. DEVELOPMENT CHARGES, CASH-IN-LIEU, UTILITY WORKS, AND EASEMENT FOR LOADING SPACE

- 8.1 The Parties acknowledge and agree that none of the facilities, works, services, matters or funds to be provided by the Owners to the Town under the terms of this Agreement shall constitute development charges or a development charges credit pursuant to any by-law enacted by the Town pursuant to the *Development Charges Act, 1997, S.O. 1997, c. 27*, as amended (the "*Development Charges Act*"), or any successor legislation. The Owners further acknowledge that they will be required to make all applicable development charges payments in accordance with the provisions of any by-law enacted by municipalities and/or public authorities pursuant to the *Development Charges Act* or any successor legislation.
- 8.2 The Owners acknowledge that none of the facilities, works, services, matters or funds to be provided by the Owners to the Town under the terms of this Agreement shall constitute and/or are characterized as contribution to cash-in-lieu for parkland. The



Owners further acknowledge that they will be required to pay cash-in-lieu for parkland in accordance with section 42(3) of the *Planning Act*.

- 8.3 The Owners acknowledge that none of the facilities, works, services, matters or funds to be provided by the Owners to the Town under the terms of this Agreement shall be used or satisfy any of the required utility upgrades that the Development may have to fund.
- 8.4 The Owners acknowledge and agree that they require an easement from the Town to secure a legal access to its proposed loading space for the Development. The Owners acknowledge that none of the facilities, works, services, matters or funds to be provided by the Owners to the Town under the terms of this Agreement address that matter. The Owners further acknowledge and agree that they shall make application to Town Council for the granting of this necessary easement and such application shall be required to demonstrate that there is no net loss of existing public parking spaces on such Town owed lands. To this end, clause 7.1 specifically applies.
- 8.5 The Owners acknowledge and agree that the restoration and reinstallation of the McGibbon Hotel sign is a critical component of the Heritage Reconstruction and Restoration Plan. The Owners acknowledge that the reinstallation of such sign shall encroach onto public lands, and the Owners shall enter into such agreements regarding such encroachment as the Town deems necessary, which may include an encroachment agreement, sign agreement or provisions in the Site Plan Agreement as the case may be.

9. JURISDICTION TO ENTER INTO THIS AGREEMENT

- 9.1 This Agreement is entered into pursuant to s. 37(3) of the *Planning Act*. The Parties acknowledge and agree that each is satisfied as to the jurisdiction of the other to enter into this Agreement. The Parties therefore agree that they will not challenge the jurisdiction of the other Party(ies) to enter into this Agreement, nor will they challenge the legality of any provision in this Agreement.

10. COMPLETION AND UNWINDING

- 10.1 Subject to clauses 3, 10.2 and 10.3 of this Agreement, this Agreement shall be effective, enure to the benefit of and be binding upon the Parties to this Agreement and their respective heirs, executors, administrators, successors and assigns on and after the Date of Final Approval of the Amending By-law.
- 10.2 The "Date of Final Approval of Amending By-law" for the purposes of this Agreement shall be 31 days beyond the date of the issuance of the Board Decision/Order approving the Amending By-law, being Schedule "B" to this Agreement, in substantially the same form and content as set out in said Schedule including the section 37 provisions so that it is in full force and effect; save and except unless there has been a section 43 request for rehearing to the Board and/or a motion for leave to appeal to the Court and/or an



application for Judicial Review to the Court, in which case the "Date of Final Approval of the Amending By-law" shall be the date when any section 43 request for rehearing has been disposed of in favour of Schedule "B" and/or any such appeals, referrals or applications to the Court having been finally determined in favour of the Amending By-law as set out in Schedule "B" in substantially the same form and content as set out in said Schedule including the section 37 provisions in said Amending By-law.

- 10.3 The unwinding of this Agreement shall occur should the final disposition of the Amending By-law as set out in clause 10.2 constitute a rejection of the Amending By-law, being Schedule "B", so that it is not approved in substantially the same form and content as set out in said Schedule, including the section 37 provisions in said Amending By-law. In such circumstances, the Agreement shall be and is deemed to be null and void ab initio. In these circumstances, the Parties shall release each other from any claims or demands for damages or reimbursement of sums from any party. In the event that the Agreement becomes null and void ab initio pursuant to the forgoing wording in this clause, the Parties agree that they shall jointly request the Board to rescind its approvals, without any award of costs to any party, and that this request to the Board, and that this Agreement, and any documents or evidence relying on the section 37 provisions for the approval, shall not be referenced or given in the subsequent Board hearing. This request and the prohibition on section 37 documentation and evidence only survive the Agreement being null and void ab initio.
- 10.4 Should clause 10.3 become effective, the Town shall give Notice of Termination of the Agreement to the Owners in writing within seven (7) days of clause 10.3 becoming effective and the date of the delivery of such Notice of Termination shall be deemed to be the "Unwinding Date".
- 10.5 On or after the occurrence of the Unwinding Date, the Owners, at their own expense, may expunge registration of this Agreement by appropriate means according to the requirements of the land registry system pertaining to the Subject Lands and the Town shall cooperate with all requests of the Owners, acting reasonably, in such respect, including the execution of releases and quit claims in suitable form for registration.
- 10.6 Within seven (7) days of the Unwinding Date, the solicitors for the party shall make the joint request of the Board as set out in clause 10.3, and shall act in accordance with clause 12.1 of this Agreement.

11. ENUREMENT

- 11.1 The Parties agree that this Agreement will enure to the benefit of and be binding upon the Parties and their respective successors and assigns.
- 11.2 The Owners agrees that the covenants, easements, restrictions, rights, duties, provisions, conditions and obligations in this Agreement, as they apply to the Owners, shall run with the Subject Lands and shall enure to the benefit of and be binding upon the Owners and



their heirs, executors, administrators, successors and assigns, including any successor Condominium Corporation.

12. FURTHER ASSURANCES

- 12.1 The Parties covenant and agree that at all times and from time to time hereafter, upon every reasonable written request to do so, they shall make, execute, deliver or cause to be made, done, executed and delivered, all such further acts so as to effectively implement and carry out the true intent and meaning of this Agreement.

13. NOTICES

- 13.1 Any notices required or desired to be given to any of the Parties in connection with this Agreement or arising therefrom shall be in writing and shall be personally delivered or sent by facsimile transmission, email or other means of instantaneous transmission in regular commercial usage at such time, verified by a transmission report as follows:

To the Owners at: Doug Pattison
Silvercreek Commercial Builders Inc.
66 Mill Street
Georgetown, Ontario
L7G 3H7

Phone: (905) 877-7194
Fax: (905) 877-1020
Email: doug@silvercreekcommercial.com

To the Town at: Suzanne Jones
Clerk
Town of Halton Hills
1 Halton Hills Drive
Halton Hills, Ontario
L7G 5G2

Phone: (905) 873-2601 (ext. 2231)
Fax: (905) 873-2347
Email: suzannej@haltonhills.ca

- 13.2 The Parties agree to immediately notify each other, in writing, of any changes of address, facsimile number or email address.



14. GOVERNING LAW

- 14.1 This Agreement shall be construed and enforced in accordance with and the rights of the Parties shall be governed by the laws of the Province of Ontario and the Dominion of Canada applicable thereto and the Parties submit to the jurisdiction of the Courts of the Province of Ontario.

15. TIME OF THE ESSENCE

- 15.1 Time is of the essence in this Agreement.

16. REGISTRATION

- 16.1 The Owners hereby consent to the registration of this Agreement, or a notice of it, as a first charge against the title to the lands in Schedule "A"; provided, however, that in the event that this Agreement is terminated pursuant to the provisions of clause 10.3 and 10.5, then the Town shall forthwith execute all requisite documents or assurances in order to discharge and delete the registration of this Agreement from the title to the lands comprising the Subject Lands. The Owners also consent to the registration of the heritage restrictive covenant or easement as set out in clause 3.14.
- 16.2 The Owners hereby agree to procure and provide to the Town any postponement agreements which the solicitors for the Town consider necessary to ensure that this Agreement shall have priority over any other interest, other than the fee simple interest, in the Subject Lands.
- 16.3 The Owners shall provide to the Town immediately following registration hereof, a legal opinion in a form satisfactory to the Town Solicitor.

17. INTERPRETATION

- 17.1 The headings in the body of this Agreement have been inserted for convenience of reference only and do not form part of the Agreement.
- 17.2 This Agreement shall be construed by substituting the plural for the singular and vice versa, as may be required by the context.
- 17.3 Reference to an official of the Town in this Agreement is deemed to include a reference to the official of the Town who performs the duties of the referenced official from time to time.



- 17.4 Whenever the provisions of this Agreement require an approval or consent of any official of the Town, the approval or consent may alternatively be given by Town Council or such other official as Town Council may direct or is otherwise empowered to act.
- 17.5 Reference to a statute in this Agreement is deemed to include a reference to the statute as amended or replaced from time to time.
- 17.6 It is acknowledged and agreed by the parties that this Agreement shall be interpreted without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

18. FAILURE IS NOT WAIVER

- 18.1 The failure of the Town at any time to require performance by the Owners of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall any such failure be taken or held to be a waiver of the performance of the same or any other obligation hereunder at any later time.

19. FORCE MAJEURE

- 19.1 If the Owners or the Town is *bona fide* delayed in or prevented from performing any obligation arising under this Agreement by reason of strike or other labour disturbances, civil disturbance, acts of public enemy, war, riots, sabotage, crime, lightning, earthquake, fire, hurricane, tornado, flood, explosion or other act of God, and are not caused by its default and not avoidable by exercise of reasonable effort or foresight, then performance of such obligation is excused for so long as such cause exists, and the party so delayed is entitled, without being in breach of this Agreement, to carry out such obligation within the appropriate time period after the cessation of such cause.
- 19.2 Nothing in clause 20.1 shall operate to excuse the Owners from prompt payment of all sums required to be paid to the Town pursuant to the terms of this Agreement and prompt submission of any Letter of Credit required to be provided to the Town pursuant to the provisions of this or any related Agreement.

20. ENFORCEMENT

- 20.1 The Owners agree that the facilities, works and matters required by this Agreement shall be provided and maintained by the Owners at its sole risk and expense and to the satisfaction of the Town. In addition, the Owners agree that upon failure by it to do any act that is required by this Agreement, the Town may, in addition to any other remedy under this Agreement, enter upon the Subject Lands if necessary and do the said act at the Owner's expense and collect the cost in the same manner as property taxes as provided for in s. 446 of the *Municipal Act*.

20.2 The Owners agree that wherever the provisions of this Agreement permit the Town to refuse to issue a Building Permit such provisions shall apply equally to the Chief Building Official.

[REMAINDER OF PAGE DELIBERATELY LEFT BLANK]



IN WITNESS WHEREOF the Parties have executed this Agreement by Affixing their corporate seals, attested to by the signature of their duly authorized signing officers.

SILVERCREEK COMMERCIAL BUILDERS INC.

Per: _____ c/s

Name: Doug Pattison

Title: President

I am authorized to bind the Corporation

2467766 ONTARIO INC.

Per: _____ c/s

Name: Greg Marchant

Title: Director

I am authorized to bind the Corporation

**THE CORPORATION OF THE
TOWN OF HALTON HILLS**

Per: _____

Name: Rick Bonnette c/s

Title: Mayor

Per: _____

Name: Suzanne Jones

Title: Clerk

We are authorized to bind the Corporation



SCHEDULE "A"
Legal Description of the Subject Lands

Firstly, 71-79 Main Street South and 98 Mill Street (the former McGibbon Hotel), Halton Hills (Georgetown) Ontario and as more particularly legally described in Land Registry Office No. 20 (Halton) in PIN No. 25042-0034 (LT) as follows:

PT LOT 18, CON 9 ESQ, PT LOTS 1,2,3, PL 37 E OF MAIN ST OR NW MILL ST, PTS 1,2,3, 7, 8, 20R4220; SUBJECT TO AN EASEMENT OVER PT. 1, PL 20R20126 IN FAVOUR OF PT LT 1 PL 37 E OF MAIN ST. OR NW MILL ST. AS IN 731988, HR1312251; TOGETHER WITH AN EASEMENT OVER PTS 2-5 20R20126 AS IN HR1312252; TOWN OF HALTON HILLS

Secondly, 69 Main Street South, Halton Hills (Georgetown) Ontario and as more particularly legally described in Land Registry Office No. 20 (Halton), PIN No. 25042-0033 (LT) as follows:

PT LOTS 1, 2,3 PL 37 E OF MAIN ST OR NW MILL ST; AS IN 542657; SUBJECT TO AN EASEMENT OVER PTS 2-5 20R20126 IN FAVOUR OF PT LT 1, PL 37 E. MAIN ST, AS IN 731988 AS IN HR1312252; TOWN OF HALTON HILLS

Thirdly, 96 Mill Street (sometimes referred to as 94 Mill Street), Halton Hills (Georgetown) Ontario and as more particularly legally described in Land Registry Office No. 20 (Halton), PIN No. 25042-0035 (LT)

PT LT 3, PL 37, E OF MAIN ST OR NW MILL ST, AS IN 305780; T/W & S/T 305780; TOWN OF HALTON HILLS



Schedule "B"

ZONING BY-LAW AMENDMENT

BY-LAW NO. 2017- _____

A By-law to Amend Zoning By-law 2010-0050, as amended, for the lands described as Part Lots 1, 2 & 3, Registered Plan 37, Part of Lot 18, Concession 9, Town of Halton Hills, Regional Municipality of Halton

WHEREAS Council is empowered to enact this By-law by virtue of the provisions of Sections 34 and 37 of the Planning Act, R.S.O.1990, as amended;

AND WHEREAS the Minutes of Settlement in OMB Case No. PL 160780 have been filed with the Ontario Municipal Board;

AND WHEREAS Council has recommended that Zoning By-law 2010-0050 be amended as hereinafter set out;

AND WHEREAS said recommendation conforms to the Official Plan for the Town of Halton Hills;

AND WHEREAS the Official Plan for the Town of Halton Hills contains provisions relating to the authorization of increases in height and density of development;

NOW, THEREFORE, THE COUNCIL OF THE CORPORATION OF THE TOWN OF HALTON HILLS ENACTS AS FOLLOWS:

1. That Schedule "A4" of Zoning By-law 2010-0050, as amended, is hereby further amended by rezoning the lands described as Part of Lots 1, 2 & 3, Registered Plan 37 and Part of Lot 18, Concession 9, Town of Halton Hills, Regional Municipality of Halton, municipally known as 69-79 Main Street South and 94-98 Mill Street (Georgetown), as shown on Schedule "1" attached to and forming part of this By-law;

From a Downtown Commercial One (DC1) Zone;

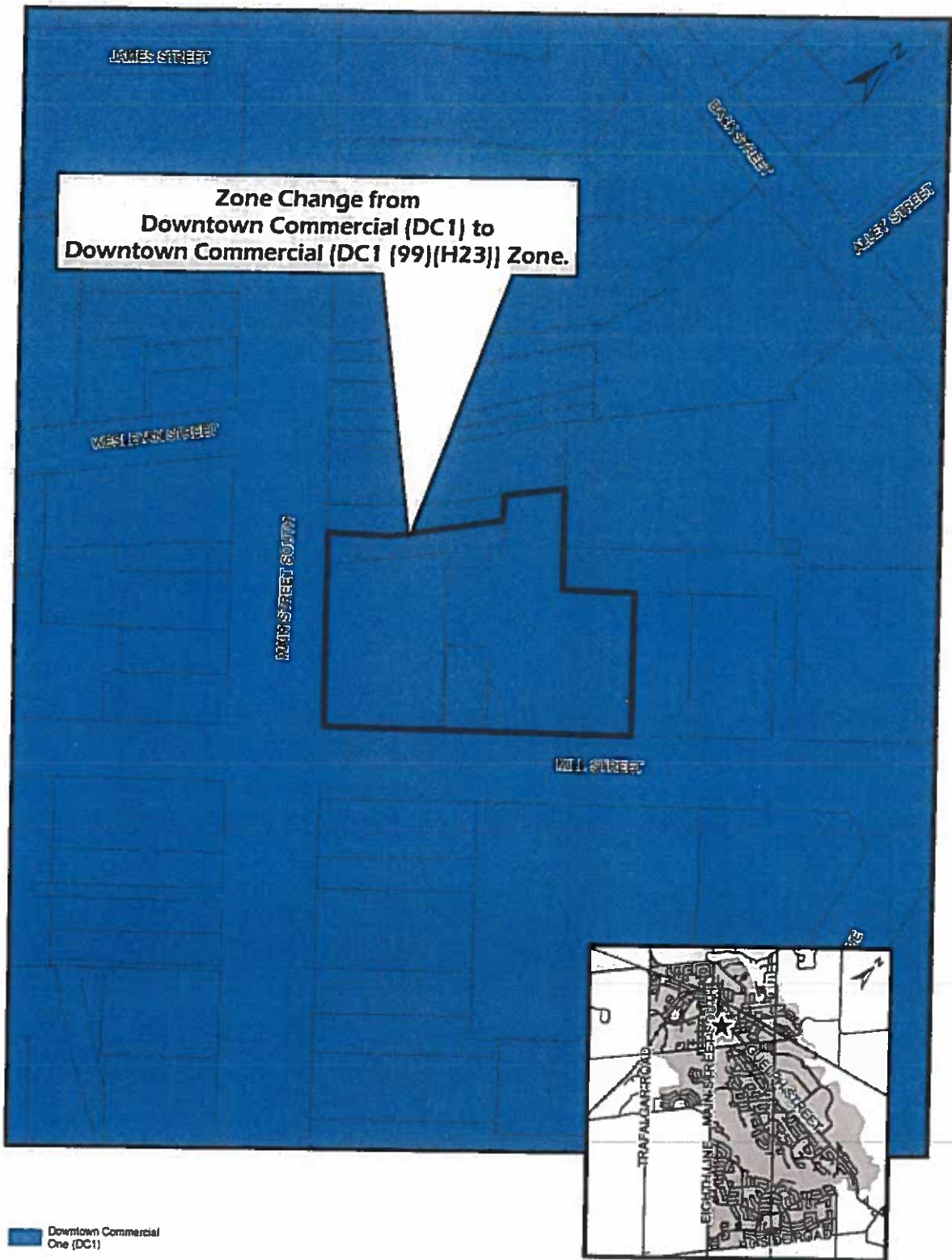
To a Holding Downtown Commercial One (DC1) Exception Zone.

2. That Table 13.1: Exceptions of Zoning By-law 2010-0050 is hereby amended by adding the Exception Provision contained in Schedule "2" and the Height and Density Bonusing requirements contained in Schedule "4" attached to and forming part of this By-law.
3. That Part 14 Holding Provision and Table 14.1: Holding Zones of Zoning 2010-0050 is hereby amended by adding the Holding Provision contained in Schedule "5" attached to and forming part of this By-law.

BY-LAW approved by Ontario Municipal Board Order/Decision issued on [Month][Day][Year].



SCHEDULE 1 to By-law 2017-_____



Source:
Toronto City of 2011, Property Catch Data. Provided by Toronto
Aerial Services 2011. Provided through the Office of Public

SCHEDULE 2 to By-law 2017-_____

13.1 EXCEPTIONS

1	2	3	4	5	6	7
Exception Number	Zone	Municipal Address	Additional Permitted Uses	Only Permitted Uses	Uses Prohibited	Special Provisions
99	DC1	69-79 Main Street South and 94-98 Mill Street (Georgetown), (Part Lots 1, 2 & 3, Registered Plan 37, Part of Lot 18, Concession 9)	Apartment Dwelling Units			<p>(i) Maximum number of Apartment Dwelling Units – 125;</p> <p>(ii) Maximum height – as shown on Schedule 3 to this By-law. No portion of the building or structure, excluding parapets, guard rails, railing and dividers, trellises, eaves, screens, stairs, roof drainage, window washing equipment, lightning rods, garbage chute overruns, make up air unit to a maximum height of 3.5 metres, roof drains, plumbing vents, electrical panel with enclosure, architectural features and/or landscaping elements of a green roof is to have a height greater than the height in metres specified by the number following the H symbol as shown on Schedule 3;</p> <p>(iii) For the purposes of this zone “Storey” means the portion of a building between the surface of a floor and the floor, ceiling or roof immediately above. Any loft or mezzanine space on the tenth</p>

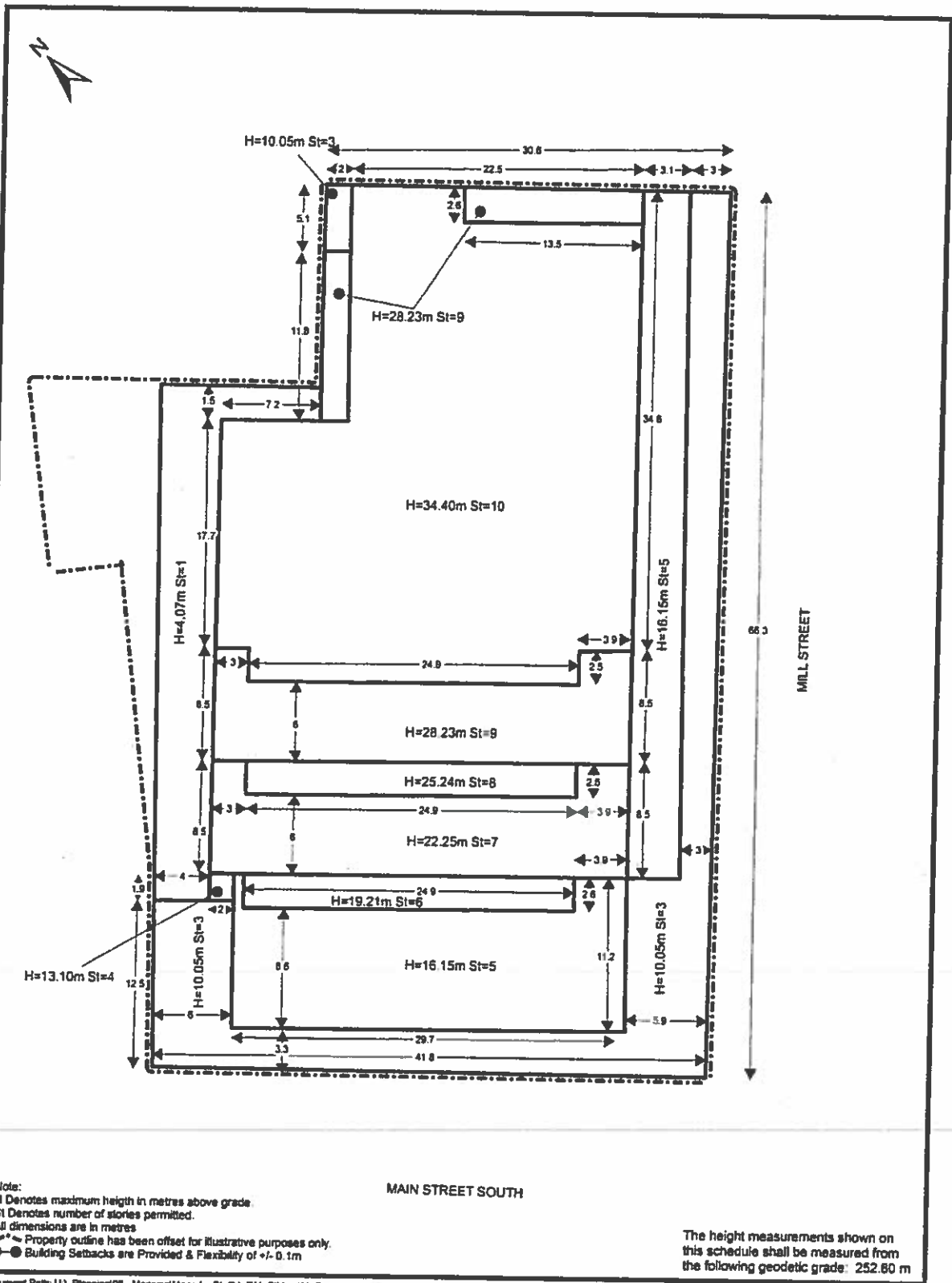
						<p>storey shall not be considered as a separate storey;</p> <p>(iv) Main Street South is defined as the front yard;</p> <p>(v) Minimum required front yard – as shown on Schedule 3 to this By-law;</p> <p>(vi) Minimum required rear yard – as shown on Schedule 3 to this By-law;</p> <p>(vii) Minimum required interior side yard – as shown on Schedule 3 to this By-law;</p> <p>(viii) Minimum required exterior side yard – as shown on Schedule 3 to this By-law;</p> <p>(ix) The portions of the building or structure above ground must be located within the areas delineated by heavy lines as shown on Schedule 3 of this By-law except that cornices, light fixtures, ornamental elements, parapets, art and landscape features, eaves, window sills, planters, ventilation and exhaust shafts, guardrails, balustrades, railings, stairs, stair enclosures, doors, wheelchair ramps, fences, screens, site servicing features, awnings and canopies, window washing equipment and underground garage ramps and associated</p>
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						<p>structures may extend beyond;</p> <p>(x) Minimum required number of loading spaces – 1 loading space;</p> <p>(xi) Minimum width of an aisle providing access to a parking space within a parking area – 6.0 metres;</p> <p>(xii) Minimum required number of parking spaces for residents – 1.5 spaces per dwelling unit, 28 of which can be <i>Tandem Parking Spaces</i> and 18 can be <i>Compact Parking Spaces</i>;</p> <p>(xiii) Minimum required number of parking spaces for visitors – 0.25 parking spaces per dwelling unit, 2 of which can be <i>Compact Parking Spaces</i>;</p> <p>(xiv) Minimum required number of parking spaces for retail/commercial – 20 parking spaces in addition to any on-site resident or visitor parking requirements. The 20 retail/commercial parking spaces shall be provided as <i>Public Parking Spaces</i>;</p> <p>(xv) For the purposes of this Zone "<i>Tandem Parking Space</i>" means a parking space that is obstructed and only accessed by passing through another parking space;</p>
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						<p>(xvi) For the purposes of this Zone "<i>Compact Parking Space</i>" means a parking space that has a width of not less than 2.5 metres and a length of not less than 5.5 metres;</p> <p>(xvii) For the purposes of this Zone "<i>Public Parking Space</i>" means a parking space made available to the general public free of charge for a minimum 2-hour period;</p> <p>(xviii) Height and Density Bonus Requirements as per Schedule 4 to this By-law.</p>
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SCHEDULE 3 to By-law 2017-_____



SCHEDULE 4 to By-law 2017-_____

Height and Density Bonusing Requirements

The following requirements shall be implemented through an agreement under Section 37 of the *Planning Act*:

- (i) Prior to the issuance of a demolition permit for the McGibbon Hotel (71-79 Main Street South and 98 Mill Street), the Owner shall submit a Heritage Reconstruction and Restoration Plan for the McGibbon Hotel, to the satisfaction of Town Administration and have said Plan approved.
- (ii) The facades of the existing McGibbon Hotel (71-79 Main Street South and 98 Mill Street) are to be reconstructed in accordance with the approved Heritage Reconstruction and Restoration Plan on Main Street South and replicated on Mill Street as follows:
 - the upper two floors of the facade on Main Street will be reconstructed in a two brick wythe using original brick retained during demolition, or in the alternative the upper two floors of the facade will be retained in situ and restored;
 - the façade along Mill Street may use the same original brick retained during demolition or new brick that is matched for colour, size and appearance;
 - using original materials and elements retained during demolition such as stone window sills, metal tieback plates and the restoration, reuse and reinstallation of the McGibbon Hotel sign;
 - both facades will replicate all of the details and ornamentation of the existing McGibbon Hotel; and,
 - the intent of these provisions shall be implemented through a condition of the Holding Provision of this By-law, the section 37 Agreement and/or through the Site Plan Control approval process.
- (iii) The facade of the upper floor of the existing building at 69 Main Street South to be replicated to the extent reasonably practicable in accordance with the approved Heritage Reconstruction and Restoration Plan on Main Street as follows:
 - where feasible, using original materials and elements retained during demolition such as stone window sills, limestone bricks, metal tieback plates, together with such new materials that are matched for colour, size and appearance where the use of original materials is not feasible;
 - where feasible, the façade will replicate all of the details and ornamentation of the upper floor of the existing building; and



- the intent of these provisions shall be implemented through a condition of the Holding Provision of this By-law, the section 37 Agreement and/or through the Site Plan Control approval process.
- (iv) The Owner shall make a cash contribution of \$500,000 payable prior to the lifting of the Holding (H23) provision as referenced in SCHEDULE 5 of this Bylaw which contribution shall be allocated by and expended by the Town to a) the enhancement and preservation of heritage conservation initiatives within the Town to increase the historic connection to Downtown Georgetown and/or to b) the provision of additional public facilities and improvements within and adjacent to Downtown Georgetown to increase the vitality of Downtown Georgetown. Allocation and expenditure of the contribution shall not occur prior to consultation with the Owner and other stakeholders to obtain input on the potential projects to which the contribution may be expended.



SCHEDULE 5 to By-law 2017-_____

14.1 HOLDING ZONES

	Zone Designation	Property/Legal Description	Conditions for Removal	Date Enacted
H23	DC1(99)	69-79 Main Street South and 94-98 Mill Street (Georgetown), (Part Lots 1, 2 & 3, Registered Plan 37, Part of Lot 18, Concession 9)	<p>The Holding (H23) provision may be lifted upon:</p> <ul style="list-style-type: none"> i) Execution of agreement under Section 37 of the <i>Planning Act</i> providing for the public benefits referenced in SCHEDULE 4 of this Bylaw; ii) Payment of the \$500,000 contribution as set out in SCHEDULE 4 of this Bylaw and in the agreement under Section 37 of the <i>Planning Act</i>; iii) Approval of a Site Plan application and execution of a Site Plan Agreement in accordance with Section 41 of the <i>Planning Act</i>, for any future development; iv) Approval by Town Administration of a Heritage Reconstruction and Restoration Plan, prior to the issuance of any Demolition Permit(s); v) The Owner satisfies the Region of Halton's Protocol for Review Contaminated and Potential Contaminated sites, by submitting a Ministry of the Environment and Climate Change acknowledged Record of Site Condition in accordance with Ontario Regulation 153/04, or the Owner provides documentation prepared by a Qualified Professional that demonstrates that the lands are or will be suitable for the intended use, both of which shall be to the Region of Halton's satisfaction; vi) The Town of Halton Hills and the Region of Halton being satisfied that the subject site has received the necessary servicing allocation (SDE). A Water Usage and Sanitary Discharge Report shall be submitted to the Region of Halton for review; vii) Arrangements for the securing of an easement over the Back Street parking lot, to the satisfaction of Town Administration; viii) Arrangements for the relocation of existing utilities located on the subject lands, to the satisfaction of Town Administration; and ix) Approval by Town Administration of a Construction Management Plan. 	

SCHEDULE "C"
Reasons For Identification

71-79 Main Street South and 98 Mill Street (McGibbon Hotel)

The property at the north-east corner of Main Street South and Mill Street is occupied by the three-storey McGibbon Hotel. The McGibbon Hotel was built in 1892 and is a listed building on the Town's Heritage Register as it represents a good example of a 19th century Victorian Hotel and is considered important in defining or supporting the character of Downtown Georgetown.

As a cornerstone of Downtown Georgetown for over 100 years, the McGibbon Hotel is an important part of the Town's history and, through the Development, its iconic façades will be preserved and remain a reminder of where we came from as the Town and so its residents can build on that history every day.

Silvercreek intends to demolish and reconstruct the façades of the McGibbon Hotel in accordance with the to be approved Heritage and Reconstruction Plan ("the Plan"). The Plan shall facilitate the reconstruction of the Main Street South and Mill Street façades so that these façades are incorporated into the west corner of a three storey podium element for the Development. In accordance with the Plan, the brickwork for the upper two floors of the Main Street South façade (second and third storeys) shall be constructed from the reuse of the Original Bricks. Alternatively, the Plan may retain the existing Main Street South façade in situ (second and third storeys only) and restore the in situ façade. In accordance with the Plan, the retail at grade level of the Main Street South façade shall replicate an example of 19th century/early 20th century retail frontage. The Mill Street façade shall either be constructed from the reuse of Original Bricks or through the use of New Bricks matched with the same colour and size so as to match the Original Bricks so that the façade replicates the existing façade. The Plan shall also result in the salvaging and incorporation of other original building elements such as the stone window sills, metal tieback plates and the McGibbon Hotel sign and the use of similar mortar lines and colour so as to result in heritage reconstruction and restoration of these façades.

69 Main Street South

The property fronts on to Main Street South and is occupied by a two-storey mixed-use building formerly occupied by Great Expectations salon & spa on the ground floor. The building was constructed in 1890 and is listed on the Town's Heritage register as it is associated with past businesses that were considered important to the Town's main street (the Herald, Bank of Hamilton, Bell Telephone Co.). The building also represents a good example of a 19th century commercial building and helps support the character of the Downtown Georgetown streetscape.


In accordance with the to be approved Heritage Reconstruction and Restoration Plan and the recommendation found at section 5.0(1)(a) of the CHIA Report Addendum, dated May 18, 2016, prepared by ASI, the façade of the upper floor of the existing building at 69 Main Street South shall be replicated to the extent reasonably practicable on Main Street South, wherever feasible using original materials and elements retained during demolition, including stone window sills,



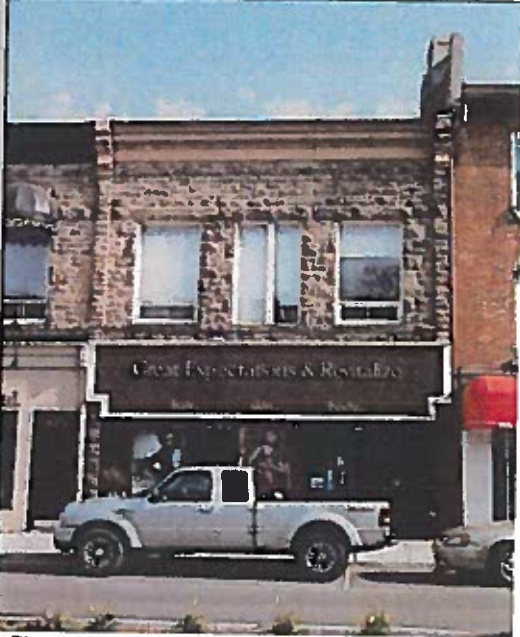
limestone bricks, metal tieback plates, and, where original materials cannot be used, new materials that are matched for colour, size and appearance. Acknowledging architectural and engineering limitations, the upper floors shall replicate, wherever feasible the details and ornamentation of the upper floor of the existing building. In accordance with the to be approved Heritage Reconstruction and Restoration Plan, the retail at grade level of the Main Street South façade shall replicate an example of 19th century/early 20th century retail frontage.



SCHEDULE "D"
Façade Identification

Property Name	McGibbon Hotel Exchange Hotel Clark's Hotel
Street Address	79 Main Street South
Rural Lot and Concession	Part Lot 1,2 and 3, Concession 9W1/2
Assessment Roll Number	05200 0000
GIS Information	43.627845 -80.038986
Community	Georgetown
Municipality	Halton Hills
Regional Municipality	Halton
Construction Date	1892
Building Type	Hotel
Cultural Heritage Value (brief description – 3 to 4 points about the design or physical value, historical or associative value and contextual value – see part B)	<ul style="list-style-type: none"> • Associated with Thomas Clark and the McGibbon family, past owners of the hotel • Location on a prominent corner lot and part of the downtown Georgetown streetscape • Good example of a 19th century Victorian hotel • Served as a hotel since its construction
Photo	 <p>Photo: October 20, 2009</p>
Report Prepared By	Heritage Resources Centre
Date of Report	October 22, 2009
Sources (e.g. Halton Hills Rural Heritage Inventory)	<ul style="list-style-type: none"> • Heritage Halton Hills Urban Inventory, Georgetown



Property Name	Bank of Hamilton
Street Address	69 Main Street South
Rural Lot and Concession	Part Lot 1,2 and 3, Concession 9W1/2
Assessment Roll Number	05400-0000
GIS Information	43.628057 -80.039261
Community	Georgetown
Municipality	Halton Hills
Regional Municipality	Halton
Construction Date	1890
Building Type	Commercial/Residential
Cultural Heritage Value (brief description – 3 to 4 points about the design or physical value, historical or associative value and contextual value – see part B)	<ul style="list-style-type: none"> • The building is associated with housing many important businesses on the main street, including the Herald, Bank of Hamilton and Bell Telephone Co. • Part of the downtown Georgetown streetscape • Good example of a 19th century commercial building
Photo	 <p>Photo: October 20, 2009</p>
Report Prepared By	Heritage Resources Centre
Date of Report	October 22, 2009
Sources (e.g. Halton Hills Rural Heritage inventory)	<ul style="list-style-type: none"> • Heritage Halton Hills Urban Inventory, Georgetown

