

To: **COUNCIL**

Meeting Date: **November 9, 2021**

Subject: **SouthPoint Draft Plan of Subdivision – Model Home Agreement**

Submitted By: **Lisa Prime, Chief Planner**

Prepared By: **J. Matthew Blevins, MCIP, RPP, Acting Manager of Development Planning**

Report No.: **21-308(CD)**

File No.: **C1101**

Recommendations

THAT report 21-308 (CD) – SouthPoint Draft Plan of Subdivision – Model Home Agreement – be received for information;

AND THAT the Chief Planner be authorized to execute a Model Home Agreement attached as Appendix “A” to this report, relating to construction of up to 16 model homes in the Southpoint subdivision, subject to the satisfaction of the City Solicitor.

Executive Summary

Purpose

- This report requests authority to enter into a model home agreement relating to an approved Plan of Subdivision.

Key Findings

- The City approved the draft plan of subdivision for these lands in 2019 to permit the construction of up to 350 residential units with a mix of single detached dwellings, townhouses, and apartment units.
- The property owner (2599745 Ontario Inc) requested permission to construct a block of model homes (townhouses) on each block for a total of 16 townhouses, or 5 per block for two blocks and 6 on the third block.
- The proposed model home agreement sets out the requirements and liabilities between the parties involved in order to allow the construction of the model

homes in compliance with the Building Code Act, namely that the property owner is clear that the construction is only for sales purposes and not for occupancy and all fire safety and security costs are the owners' responsibility.

Financial Implications

- All costs related to the proposed agreement will be borne by the developer as there are no financial implications for the City

Background

The developer received draft approval from the Region of Waterloo, for a plan of subdivision to facilitate the construction of up to 350 residential units with a mix of single detached homes, townhouses and apartment units. The developer (2599745 Ontario Inc.) has requested permission to construct 16 townhouse units as model homes while they work towards registration of the plan.

Analysis

Strategic Alignment

PROSPERITY: To support and encourage the growth of a highly competitive local economy where there is opportunity for everyone to contribute and succeed.

Goal #1 - Community Wellbeing

Objective 7.3 Provide innovative leadership in the management of city assets to help plan, fund and maintain city assets in a sustainable way.

The developer has requested permission to construct 16 townhouse units as model homes. The model homes will be sold after registration and as such, it is better to construct model homes rather than a sales trailer or other temporary type of structure for the promotion of the homes in the subdivision.

Comments

The Chief Planner has been delegated authority to enter into agreements flowing from site plan applications in order to ensure efficient and orderly development and avoid unnecessary delay in the planning approval process. The majority of model home agreements are approved as part of the site plan approval process.

In this case, however, the owner has requested permission to enter into a model home agreement to construct model homes for a development that has been granted draft plan approval but in advance of final subdivision approval. Engineering and planning staff have reviewed the request and are satisfied that there are no servicing concerns and that the owner is responsible for ensuring that the homes are not occupied until

such time and services are available and occupancy permits issued. It is the owner's responsibility to ensure the necessary fire safety precautions are taken and to ensure that the servicing to the site is completed.

Staff will review future draft plan of subdivision approval reports to Council and look to include for Council's consideration that delegated authority be granted to the Chief Planner to enter into agreements, subject to the satisfaction of the City Solicitor.

Existing Policy/By-Law

The City of Cambridge Official Plan does not have specific policies to permit or prohibit model homes in plans of subdivision. Therefore, staff considers it necessary to enter into a model home agreement with the developer to allow for this type of construction to take place. The agreement sets out the parameters for the permitted uses of the model homes and prohibits occupancy until after final registration of the plan.

Financial Impact

All costs related to the proposed agreement will be borne by the developer and there is no financial impact to the City.

Public Input

N/A

Internal/External Consultation

This report was prepared in consultation with Legal Services and Development Engineering staff.

Conclusion

Approval of the Model Home Agreement will allow the owner to construct model homes on the subdivision lands, with the necessary requirements that the homes not be occupied until servicing is in place. The responsibility for ensuring the necessary safety precautions are taken and that future servicing is implemented is with the owner.

Signature

Division Approval



Reviewed by the CFO

Reviewed by Legal Services

Name: Lisa Prime
Title: Chief Planner

Departmental Approval



Name: Hardy Bromberg
Title: Deputy City Manager, Community Development

City Manager Approval



Name: David Calder
Title: City Manager

Attachments

Appendix 1 - Draft Model Home Agreement

MODEL HOME AGREEMENT

THIS AGREEMENT made on the _____ day of _____, 2021.

BETWEEN:

2599745 ONTARIO INC.

**the “Owner”
of the FIRST PART**

-and-

THE CORPORATION OF CITY OF CAMBRIDGE

**the “City”
of the SECOND PART**

-and-

MERIDIAN CREDIT UNION LIMITED

**the “Mortgagee”
of the THIRD PART**

WHEREAS the Owner owns those lands within the geographic limits of the City of Cambridge described in Schedule ‘A’ (the “Lands”), and has received approval for a draft plan of subdivision on the Lands;

AND WHEREAS the Owner proposes to construct a maximum of sixteen (16) model homes [1 Block of townhomes on Block 4 (total of 6 units), 2 Blocks of townhomes on Block 5 (total of 10 units) on the draft approved plan of subdivision 30T-13103] prior to final approval of the plan of subdivision;

AND WHEREAS the City requires this Agreement to be entered into to permit the issuance of building permits for the model homes pursuant to the provisions of Section 8(3) of the *Building Code Act*, 1992.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the Owner and the City hereto covenant and agree each with the other as follows:

1. The parties warrant that the above recitals are true and the same are hereby incorporated into this Agreement by reference.
2. The City is a Municipal corporation governed by Mayor and Council and operated by Administration, who is hereby authorized to administer this Agreement in its entirety, including, but not limited to, decisions with respect to the operation and termination of the Agreement, in accordance with its provisions.
3. The Owner is a corporation resident in Ontario and incorporated under the laws of the Province of Ontario
4. The Owner hereby agrees:
 - a. to assume all risks, howsoever caused, as a result of commencing construction of the model homes prior to:
 - i. approval of final engineering drawings for the plan of subdivision by the Chief Planner, Community Development Department, or his/her designate;

- ii. execution of a subdivision agreement;
 - iii. registration of the plan of subdivision of the Lands; and
 - iv. obtaining any approvals of Provincial authorities which are applicable to the issuance of a building permit under the *Building Code Act*, 1992;
- b. that all model homes will be constructed solely for the purpose of public viewing and promotion, and that no part of the buildings shall be occupied for residential purposes, until such time as all municipal services have been installed and the plan of subdivision is registered;
 - c. that the model homes shall be constructed in accordance with all plans approved by the Municipality's Chief Building Official and Director of Engineering and any other conditions forming part of the conditional building permit issued for the model homes;
 - d. that sixteen (16) is the maximum number of model homes that may be constructed on the Lands;
 - e. to provide and maintain at all times from the time construction first commences unobstructed access to the model homes for fire department vehicles, with Building Code compliant Fire route access maintained;
 - f. that the model homes are "dry" buildings and no water services will be available to the lands for firefighting purposes and therefore the owner will not hold the City responsible for any fire damage to the model homes;
 - g. that portable fire extinguishers are installed and properly maintained in all model homes;
 - h. that the model homes are continually monitored by a detection/monitoring company;
 - i. to ensure that no construction material or debris associated with construction of the model homes will be stored or allowed to accumulate on any public road;
 - j. that the owner agrees it is their responsibility to meet the zoning regulations for the model homes and for obtaining any minor variances, should the model homes not meet the zoning regulations, following final approval of the plan of subdivision; and,
 - k. that all insurance and securities be in place for all sixteen (16) model homes prior to the issuance of any building permits.
5. The Parties Acknowledge and Direct that this Agreement be electronically registered on the title to the lands described in Schedule "A" and the Owner hereby charges the land with the performance of the Agreement.
 6. The Owner covenants and agrees to pay the legal fee of \$1619.00 for the preparation, registration of the Agreement and any release of the Agreement against title to the Lands.
 7. The Mortgagee consents to the registration thereof and acknowledges the priority of the provisions of this Agreement over any rights that the Mortgagee may have by virtue of its mortgage of the said lands or any part thereof.

8. Upon registration of the plan of subdivision and the subdivision agreement on title to the Lands and provided the Owner has complied with all of its obligations under the subdivision agreement and this agreement, the City agrees to forthwith execute and register a release of this agreement from title to that portion of the Lands within the plan of subdivision for which no conditional building permit for a model home has been issued. In respect of those lands within the plan of subdivision, the City agrees to execute and register a release of this agreement upon a final building permit for those lands being issued.
9. The Owner shall both during and after the term of this Agreement, shall at all times, and at its own cost, expense and risk, defend, indemnify and hold harmless the City, its elected officials, officers, employees, volunteers, agents, contractors, and all respective heirs, administrators, executors, successors and assigns from any and all losses, damages (including, but not limited to, incidental, indirect, special and consequential damages, or any loss of use, property damage, fire loss, revenue or profit by any person, organization or entity), fines, penalties and surcharges, liabilities (including, but not limited to, any and all liability for damage to property and injury to persons, including death), judgments, claims, demands, causes of action, contracts, suits, actions or other proceedings of any kind (including, but not limited to proceedings of a criminal, administrative or quasi criminal nature) and expenses (including, but not limited to, legal fees on a substantial indemnity basis), which the indemnified person or persons may suffer or incur, howsoever caused, arising out of or in consequence of or directly or indirectly attributable to the activities contemplated by this Agreement and/or required to be performed by the Owner, its agents, employees and sub-contractors on behalf of the City, whether such losses, damages, fines, penalties and surcharges, liabilities, judgments, claims, demands, causes of action, contracts, suits, actions or other proceedings of any kind and expenses as defined above are due or claimed to be due to the negligence, breach of contract, and/or breach of law of the Owner, its agents, employees or sub-contractors, or the City, its agents or employees.
10. The Owner shall insure its undertaking, business and equipment under the following coverage so as to protect and indemnify and save harmless the City:
 - a. **General Liability Insurance:** The Owner shall maintain liability insurance acceptable to the City throughout the term of this Agreement. Coverage shall consist of a comprehensive policy of public liability and property damage insurance in an amount of not less than \$5,000,000 per occurrence. **Such insurance shall name The Corporation of the City of Cambridge as an additional insured** thereunder and shall be endorsed to include a Cross-Liability Endorsement with a Severability of Interests Clause, Premises and Operations Liability, Blanket Contractual Liability, Products / Completed Operations Liability, Personal Injury Liability, Tenant's Legal Liability if required and Non-Owned Automobile Liability. The policy SIR/deductible shall not exceed \$100,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per occurrence limit.
 - b. **Automobile Liability Insurance:** The Owner shall maintain automobile liability insurance on all Owned and Leased Automobiles to a limit of \$2,000,000 throughout the term of this Agreement.
 - c. **Provisions:** All Insurers must be licensed in Ontario. The Owner shall forward a Certificate of Insurance evidencing this insurance with the executed Agreement. The Certificate shall state that coverage will not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail to the City.

It is also understood and agreed that in the event of a claim any deductible or self-insured retention under this policy of insurance shall be the sole responsibility of the Owner and that this coverage shall preclude subrogation claims against the City and any other person insured under the policy and be primary insurance as respects the City. Any insurance or self-insurance maintained by the City shall be considered excess of the Owner's insurance and

shall not contribute with it. The minimum amount of insurance required herein shall not modify, waive or otherwise alter the Owner's obligation to fully indemnify the City under this Agreement.

- d. **Third Party Claims Process:** The City's Claims process for Third Party claims is to refer the claimant, including lien claimants, directly to the Owner and to leave the resolution of the claim with the Contractor. This applies regardless of whether or not it is an insured loss.

The City reserves the right to modify the insurance requirements as deemed suitable.

11. If any notice is required to be given with respect to this Agreement such notice shall be mailed, delivered or sent by facsimile transmission to:

Owner

379 Queen Street South
Kitchener, ON N2G 1W6

City

Chief Planner, Community Development Department
The Corporation of the City of Cambridge
50 Dickson Street
P.O. Box 669
Cambridge, ON N1R 5W8
Tel: (519) 623-1340
Fax: (519) 740-7729

12. The Owner understands that the City is a Municipal corporation that operates openly and freely and is subject to Freedom of Information legislation. As such, the City may be required to disclose the contents of this agreement and cannot guarantee its confidentiality.
13. The Owner agrees that the terms and conditions of this agreement are confidential and shall not be disclosed to third parties, without prior written consent of the City. This term shall survive the termination of this agreement by a period of five (5) years.
14. The waiver of any provision hereof or the failure of any party hereto to enforce any right hereunder shall apply to that provision or right only and shall not be deemed to effect the validity of the remainder hereof.
15. No departure from or waiver of the terms of this Agreement shall be deemed to authorize any prior or subsequent departure or waiver and The City shall not be obligated to continue any departure or waiver or to permit any subsequent departure or waiver.
16. This Agreement shall be constructed with all changes in number and gender as may be required by the context.
17. All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants.
18. Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference.
19. The Parties agree that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in the Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall

remain valid and not terminate thereby.

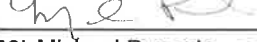
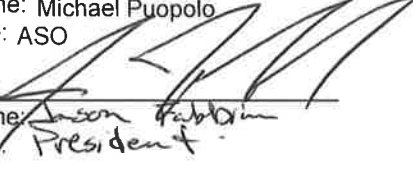
- 20.** The provisions of this Agreement pertaining to indemnity and limitation shall survive the termination or expiration of this Agreement for any reason whatsoever, including expiry at the end of the term, in addition to any other provision which survives by operation of law or which expressly or by implication remains in full force and effect on and after the termination or expiration of this Agreement.
- 21.** The Owner and the City agree that the Owner, his/her servants, agents and employees shall under no circumstances be deemed agents or representatives of the City and except as the City may specifically authorize in writing, shall have no right to enter into any contracts or commitments in the name of or on behalf of the City or to bind the City in any respect whatsoever.
- 22.** The Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Should a dispute arise between the parties, both parties expressly agree that any proceeding (including, but not limited to, litigation, arbitration and/or mediation) shall be initiated and completed with the Waterloo Region judicial district.
- 23.** This Agreement embodies the entire agreement between the parties with regard to the provision of deliverables and additional deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the deliverables and additional deliverables, unless they are incorporated by reference in the agreement, existing between the parties at the date of execution of the agreement.
- 24.** This Agreement shall not be assignable by the Owner without the prior written consent of the City, in its sole discretion.
- 25.** This Agreement, executed in counterpart, shall enure to the benefit of, and be binding upon, the heirs, executors, administrators, successors and permitted assigns of the parties hereto.
- 26.** This Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and assigns.
- 27.** The Parties agree this Agreement may be executed in any number of counterparts and delivered by electronic transmission and such execution and delivery shall constitute and be deemed to be one original.

[One] Signature Page Follows

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their respective corporate seals, attested to by the hands of their proper authorized officers.


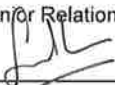
SIGNED, SEALED & DELIVERED

2599745 ONTARIO INC.

Per 
Name: Michael Puopolo
Title: ASO
Per 
Name: Jason Fabian
Title: President

We/I have authority to bind the Corporation

MERIDIAN CREDIT UNION LIMITED

Per 
Name: Umair Saleem
Title: Senior Relationship Manager
Per 
Name: Sunil Kanwar
Title: Senior Manager, Commercial Credit

We/I have authority to bind the Corporation

THE CORPORATION OF THE CITY OF CAMBRIDGE

KATHRYN MCGARRY, Mayor

DANIELLE MANTON, Clerk

We have the authority to bind the Corporation.

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their respective corporate seals, attested to by the hands of their proper authorized officers.

SIGNED, SEALED & DELIVERED

2599745 ONTARIO INC.

Per _____
Name:
Title:

Per _____
Name:
Title:

We/I have authority to bind the Corporation

MERIDIAN CREDIT UNION LIMITED

Per _____
Name:
Title:

Per _____
Name:
Title:

We/I have authority to bind the Corporation

THE CORPORATION OF THE CITY OF CAMBRIDGE

KATHRYN MCGARRY, Mayor

DANIELLE MANTON, Clerk

We have the authority to bind the Corporation.

Schedule "A"

FIRSTLY: PART LOT 3, CONCESSION 10 NORTH DUMFRIES, PART 2, PLAN 58R21127; SUBJECT TO AN EASEMENT AS IN 1331728; CITY OF CAMBRIDGE 03845-1079 (LT)

SECONDLY: PART LOT 3, CONCESSION 9, PART LOT 3 AND 4 CONCESSION 10 AND PART ROAD ALLOWANCE BETWEEN CONCESSIONS 9 AND 10 CLOSED BY WS573834 NORTH DUMFRIES, PART 1 PLAN 58R21127; CITY OF CAMBRIDGE 03845-1080 (LT)