
Certificate of Property Use - DRAFT

Issued under the authority of the Environmental Protection Act, R.S.O. 1990, c. E.19, sections 168.6 (CPU) and 197 (Order)

Certificate of property use number: 3061-C7NLFZ
Risk assessment number: 1505-B9TSDQ

Owner:

Woodhouse Investments Inc.

(Registered Owner)

207 Madison Avenue South, Unit 2
Kitchener, ON, N2G 3M7

Property:

50 Borden Avenue South, Kitchener

(Property)

With a Legal Description of:

**PT PARKLT 25 PL 404 KITCHENER; PT LT 171 STREETS & LANES
KITCHENER PT 1, 58R-2633, SAVE & EXCEPT PTS 2 & 3 ON WR769305 & PT 7 & 8 ON
WR838571; PTS 1 & 2 ON WR859435 & PT 1 ON 58R-18475; S/T 250238, 338603E; SUBJECT TO
AN EASEMENT IN GROSS OVER PT PARK LOT 25 PL 404 BEING PT 3 ON 58R-18049 AS IN
WR902342; CITY OF KITCHENER.**

Being All of PIN: 22506-0267 (LT)

The conditions of this Certificate of Property Use (CPU) address the Risk Management Measures in the Risk Assessment as described in Part 1: Interpretation below. In the event of a conflict between the CPU and the Risk Assessment, the conditions of the CPU take precedence.

Summary:

Refer to Part 1 of the CPU, Interpretation, for the meaning of all the defined capitalized terms that apply to the CPU.

Risk Management Measures (RMMs) that are required to be implemented are found in Part 4 of the CPU, Director Requirements. Key RMMs specified in Part 4 include, but are not limited to:

- Installing, inspecting and maintaining hard cap and fill cap barriers on the Property as per Sections 4.2(a) and 4.2(e) of this CPU;

- Prohibiting the construction of any new Building (s) on the Property unless the new Building(s) is constructed as specified in Section 4.2 (f) of this CPU;
- Implementing a Performance Monitoring Program for any new Building (s) constructed on the Property as specified in Section 4.2 (g), 4.2 (h) and 4.2 (i) of this CPU;
- Implementing a Groundwater Control Management Plan for any new Building as specified in Section 4.2 (j) of this CPU;
- Implementing a soil and groundwater management plan during any intrusive activities undertaken on the Property potentially in contact with COCs in soil and groundwater that have been identified in the RA at concentrations that exceed the Applicable Site Condition standards as per Section 4.2 (k) of this CPU;
- Implementing a health and safety plan during any intrusive activities undertaken on the Property potentially in contact with COCs in soil and groundwater that have been identified in the RA at concentrations that exceed the applicable site condition standards as specified in Section 4.2 (l) of this CPU;
- Prohibiting the use of groundwater in on or under the Property as per Section 4.3 of this CPU;
- Prohibiting the planting of fruit and vegetables for consumption on the Property or portions of the Property, other than those planted in above ground containers such that they are isolated from the subsurface conditions as per Section 4.4 of this CPU; and,
- Registering a certificate on the Property title in accordance with Section 197 of the Environmental Protection Act and that before dealing with the Property in any way, a copy of the CPU is to be given to any person who will acquire an interest in the Property as per Section 4.7, 4.8 and 4.9 of this CPU.

Part 1: Interpretation

In the CPU the following terms shall have the meanings described below:

“Adverse Effect” has the same meaning as in the Act; namely,

- (a) impairment of the quality of the natural environment for any use that can be made of it,
- (b) injury or damage to property or to plant or animal life,
- (c) harm or material discomfort to any person,
- (d) an adverse effect on the health of any person,
- (e) impairment of the safety of any person,
- (f) rendering any property or plant or animal life unfit for human use,
- (g) loss of enjoyment of normal use of property, and
- (h) interference with the normal conduct of business;

“Act” means the *Environmental Protection Act*, R.S.O. 1990, c. E. 19;

“Applicable Site Condition Standards” and “ASCS” means soil and groundwater that meets the soil or groundwater criteria identified in **Table 6 Generic Site Condition Standards for shallow soils is a Potable Ground Water Condition (coarse textured soils) (residential/institutional and parkland use)** of the Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the Act published by the Ministry and dated April 15, 2011;

“Building (s)” means an enclosed structure (s) occupying an area greater than ten square metres consisting of a wall or walls, roof and floor;

“Building Area” means the horizontal area of a Building at Grade within the outside surface of the exterior wall or walls.

“Building Code” means Ontario Regulation 332/12 (Building Code) as amended to January 1, 2015, made under the *Building Code Act, 1992*, S.O. 1992, c. 23.

“Contaminant” has the same meaning as in the Act; namely any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them, resulting directly or indirectly from human activities that may cause an Adverse Effect;

“Contaminant of Concern” and “COC” has the meaning as set out in Section 3.2 of the CPU;

“Competent Person” has the same meaning as set out in the *Occupational Health and Safety Act* R.S.O. 1990, c.O.1;

“CPU” means this Certificate of Property Use Number No. **3061-C7NLFZ** as may be amended from time to time;

"Director" means the undersigned Director or any other person appointed as a Director for the purpose of issuing a certificate of property use;

“EBR” means the *Environmental Bill of Rights, 1993*, S.O. 1993, c.28;

“Grade” has the same meaning as in the Building Code.

“Licensed Professional Engineer” means a person who holds a license, limited license or temporary license under the *Professional Engineers Act*, R.R.O. 1990, c.P.28;

"Ministry" means the ministry of the government of Ontario responsible for the administration of the Act, currently named the Ministry of the Environment, Conservation and Parks;

“O. Reg. 153/04” means Ontario Regulation 153/04 (Record of Site Condition – Part XV.1 of the Act), made under the Act;

“Owner” and “Registered Owner” means **Woodhouse Investments Inc.**, the current registered owner of the Property, and any subsequent Property Owner(s);

"OWRA" means the *Ontario Water Resources Act*, R.S.O. 1990, c.O.40;

“Property” means the property that is the subject of the CPU and described in the “Property” section on page 1 above, and illustrated in Figure 1 of Schedule A which is attached to and forms part of this CPU;

“Property Specific Standards” and “PSS” means the property specific standards established for the Contaminants of Concern set out in the Risk Assessment and in Section 3.2 of the CPU;

"Provincial Officer" means a person who is designated as a provincial officer for the purposes of the Act;

“Qualified Person” means a person who meets the qualifications prescribed in O. Reg. 153/04;

"Risk Assessment" and “RA” means the Risk Assessment No. **1505-B9TSDQ** accepted by the Director on **AUGUST 25, 2021** and set out in the following final documents:

- **Risk Assessment for 50 Borden Avenue South, Kitchener, Ontario. Prepared by MTE Consultants Inc. and Chung & Vander Doelen Engineering Ltd. for Woodhouse Group Inc. dated February 14, 2020;**
- **Revised Risk Assessment 50 Borden Avenue South, Kitchener, Ontario. Prepared by MTE Consultants Inc. and Chung & Vander Doelen Engineering Ltd. for Woodhouse Group Inc. dated November 19, 2020;**
- **Second Revised Risk Assessment 50 Borden Avenue South, Kitchener, Ontario. Prepared by MTE Consultants Inc. and Chung & Vander Doelen Engineering Ltd. for Woodhouse Group Inc. dated April 22, 2021; and,**

- **Email RE: 44165-100: Risk Assessment 50 Borden Ave. S (Ministry Reference No. 1505- B9TSDQ). From Joel Nichols, MTE Consultants Inc., received by TASDB by on August 23, 2021, with the following document attached:**
 - *ESA Summary - 50 Borden Ave. S – 2020*

“Risk Management Measures” and “RMMs” means the risk management measures specific to the Property described in the Risk Assessment and/or Part 4 of the CPU;

“Risk Management Plan” and “RMP” means the risk management plan detailed in Appendix L of the consolidated RA dated November 19, 2020; and,

“Tribunal” has the same meaning as in the Act; namely, the Ontario Land Tribunal.

Part 2: Legal Authority

- 2.1 Section 19 of the Act states that a certificate of property use is binding on the executor, administrator, administrator with the will annexed, guardian of property or attorney for property of the person to whom it was directed, and on any other successor or assignee of the person to whom it was directed.
- 2.2 Subsection 132(1.1) of the Act states that the Director may include in a certificate of property use a requirement that the person to whom the certificate is issued provide financial assurance to the Crown in right of Ontario for any one or more of,
 - a. the performance of any action specified in the certificate of property use;
 - b. the provision of alternate water supplies to replace those that the Director has reasonable and probable grounds to believe are or are likely to be contaminated or otherwise interfered with by a contaminant on, in or under the property to which the certificate of property use relates; and
 - c. measures appropriate to prevent Adverse Effects in respect of the property to which the certificate of property use relates.
- 2.3 Subsection 168.6 (1) of the Act states that if the Director accepts a risk assessment relating to a property, he or she may, when giving notice under clause 168.5 (1)(a), issue a certificate of property use to the owner of the property, requiring the owner to do any of the following things:
 1. Take any action specified in the certificate that, in the Director’s opinion, is necessary to prevent, eliminate or ameliorate any Adverse Effect on the property, including installing any equipment, monitoring any contaminant or recording or reporting information for that purpose.
 2. Refrain from using the property for any use specified in the certificate or from constructing any Building specified in the certificate on the property.
- 2.4 Subsection 168.6(2) of the Act states that a certificate of property use shall not require an owner of the property to take any action that would have the effect of reducing the concentration of a contaminant on, in or under the property to a level below the level that is required to meet the standards specified for the contaminant in the risk assessment.
- 2.5 Subsection 168.6(3) of the Act states that the Director may, on his or her own initiative or on application by the owner of the property in respect of which a certificate has been issued under subsection 168.6(1),
 - a. alter any terms and conditions in the certificate or impose new terms and conditions; or
 - b. revoke the certificate.
- 2.6 Subsection 168.6(4) of the Act states that if a certificate of property use contains a provision requiring the owner of the property to refrain from using the property for a specified use or from constructing a specified Building on the property,
 - a. the owner of the property shall ensure that a copy of the provision is given to every occupant of the property;

- b. the provision applies, with necessary modifications, to every occupant of the property who receives a copy of the provision; and
 - c. the owner of the property shall ensure that every occupant of the property complies with the provision.
- 2.7 Subsection 197(1) of the Act states that a person who has authority under the Act to make an order or decision affecting real property also has authority to make an order requiring any person with an interest in the property, before dealing with the property in any way, to give a copy of the order or decision affecting the property to every person who will acquire an interest in the property as a result of the dealing.
- 2.8 Subsection 197(2) of the Act states that a certificate setting out a requirement imposed under subsection 197(1) may be registered in the proper land registry office on the title of the real property to which the requirement relates, if the certificate is in a form approved by the Minister, is signed or authorized by a person who has authority to make orders imposing requirements under subsection 197(1) and is accompanied by a registrable description of the property.
- 2.9 Subsection 197(3) of the Act states that a requirement, imposed under subsection 197(1) that is set out in a certificate registered under subsection 197(2) is, from the time of registration, deemed to be directed to each person who subsequently acquires an interest in the real property.
- 2.10 Subsection 197(4) of the Act states that a dealing with real property by a person who is subject to a requirement imposed under subsection 197(1) or 197(3) is voidable at the instance of a person who was not given the copy of the order or decision in accordance with the requirement.

Part 3: Background

- 3.1 The Risk Assessment (RA) was undertaken for the Property to establish the risks that the Contaminants identified in the RA may pose to future users and to identify appropriate Risk Management Measures (RMMs) to be implemented to ensure that the Property is suitable for the intended use: **commercial, residential and institutional use** as defined in O. Reg. 153/04.
- 3.2 The Contaminants on, in, or under the Property that are present either above **Table 6: Generic Site Condition Standards for Shallow Soils in a Potable Ground Water Condition (coarse textured soils)** for Use under Part XV.1 of the Act published by the Ministry and dated April 15, 2011 or for which there are no such standards, are set out in the RA (Contaminants of Concern). The Property Specific Standards for these Contaminants of Concern are set out in **Table 1A and Table 1B of Schedule 'A'** which is attached to and forms part of the CPU.
- 3.3 I am of the opinion, for the reasons set out in the RA that the RMMs described therein and outlined in Part 4 of the CPU are necessary to prevent, eliminate or ameliorate an Adverse Effect on the Property that has been identified in the RA.
- 3.4 The RA indicates the presence of Contaminants of Concern in soil and groundwater which requires on-going restriction of land use and pathway elimination. As such, it is necessary to restrict the use of the Property and impose Building restrictions and implement RMMs as set out in the RA and in Part 4 of the CPU.
- 3.5 I believe for the reasons set out in the RA that it is also advisable to require the disclosure of this CPU and the registration of notice of the CPU on title to the Property as set out in section 197 order requirements in Section 4.7, Section 4.8 and Section 4.9 of this CPU.

Part 4: Director Requirements

Pursuant to the authority vested in me under subsection 168.6(1) of the Act, I hereby require the Owner to do or cause to be done the following:

Risk Management Measures

- 4.1 Implement, and thereafter maintain or cause to be maintained, the Risk Management Measures.
- 4.2 Without restricting the generality of the foregoing in Section 4.1, carry out or cause to be carried out the following key elements of the RMMs:

Hard cap and fill cap barriers:

- a) Hard cap and or fill cap barriers are required to be installed over the entire Property so as to prevent exposure to the Contaminants of Concern (COCs) identified on the Property and shall be maintained for as long as the COCs are present on the Property at concentrations that exceed the Applicable Site Condition Standards (ASCS). The hard cap and fill cap barriers shall be installed in accordance with Section 7.2.5, Figure L1 of the RMP.

Hard cap barrier and the fill cap barriers shall consist of the following, at minimum:

- i. The hard cap barrier (s) shall consist of: Granular 'A' or equivalent material overlain by a cover of asphalt, concrete (including Building foundation/floor slab, driveways and sidewalks etc.), pavers or stone with a combined minimum thickness of 225 millimeters (mm); and
 - ii. The fill cap barrier (s) shall consist of a minimum 1.0 m thick layer of soil that meets the ASCS immediately above the impacted soil or a minimum 0.5 m thick layer of soil that meets the ASCA and a minimum of 0.5 m of non-soil surface treatment such as concrete, stone, aggregate or similar material for a combined minimum thickness of 1.0 m.
- b) Within 90 days of completion of the installation of any new hard cap and or fill cap barriers on the Property or portion of the Property, the Owner shall submit to the Director written confirmation signed by a qualified Licensed Professional Engineer that the barriers have been installed in accordance with the requirements of Section 7.2.5, Figure L1 of the RMP and Section 4.2(a)(i) and or 4.2(a)(ii) of this CPU along with final design specifications/drawings and or as built drawings.
- c) Within 90 days of completion of the installation of any new hard cap and or fill cap barriers on the Property or portion(s) of the Property, the Owner shall submit to the Director a site plan that clearly identifies the final location of each of the different barriers.
- d) In relation to Section 4.2(a) of this CPU, areas of the Property that are ***not in use or not under development***, hard cap and fill cap barriers are not required as long as exposure to the COCs at concentrations that exceed the ASCS Concentrations (as determined by a Qualified Person) is prevented by a fence barrier that restricts access to those areas of the Property and a dust control plan is implemented as may be necessary.
- e) An inspection and maintenance program shall be implemented to ensure the continuing integrity of the hard cap and fill cap barriers as long as the COCs are present on the Property at concentrations that exceed the ASCS. The inspection program shall include semi-annual (spring and fall) inspections of the barrier's integrity in accordance with the inspection and maintenance program as detailed in Section 7.2.5 of the RMP. Any barrier deficiencies shall be repaired within a reasonable period of time in accordance with Section 7.2.5 of the RMP. If cracks, breeches or any loss of integrity in the barriers cannot be repaired or addressed in a timely manner, contingency measures in accordance with Section 7.4.5 of the RMP shall be implemented to ensure that no exposure to the COCs that have been observed on the Property at concentrations that exceed the ASCS occurs. For the restoration of any damaged portions of the barriers, restoration shall meet the original design specifications, at minimum, as detailed in Section 7.2.5, Figure L1 of the RMP along with Section 4.2(a)(i), and 4.2 (a)(ii) of this CPU. For significant breeches that are identified to potentially expose the COCs that are present on the Property at concentrations that exceed the ASCS the Owner shall submit to the Director written confirmation prepared and signed by a qualified Licensed Professional Engineer, in consultation with a Qualified

Person, that the barriers have been repaired in accordance with the applicable requirements of this CPU. The written confirmation shall also include a description of any contingency measures put in place and shall be submitted to the Director within 30 days of the completion of any barrier repairs and/or restorations. The Owner shall keep records of the inspections and maintenance and make them available for review by the Ministry upon request.

New Enclosed Building (s) (Building):

- f) Refrain from constructing any **new Building(s)** on, in or under the Property or portion of the Property unless the Building (s) includes an at or below Grade storage garage, as detailed in Section 7.2.6 of the RMP. The at or below Grade storage garage, as defined by the Building Code, shall meet the following requirements:
- i. The storage garage is constructed with at or below Grade of the Building;
 - ii. The storage garage area covers the entire Building Area at Grade;
 - iii. The storage garage complies with all applicable requirements of the Building Code, such as provisions governing:
 - a. design of a mechanical ventilation system as set out in Division B, Article 6.2.2.3. (Ventilation of Storage and Repair Garages) of the Building Code;
 - b. interconnection of air duct systems as set out in Division B, Sentence (2) of Article 6.2.3.9. (Interconnection of Systems) of the Building Code;
 - c. air leakage as set out in Division B, Section 5.4. (Air Leakage) of the Building Code; and,
 - iv. The mechanical ventilation system for the storage garage is designed to provide a continuous supply of outdoor air at a rate of not less than 3.9 litres per second for each square metre of floor area or be activated on an as-needed basis by carbon monoxide or nitrogen dioxide monitoring devices as required by the Building Code.

Performance Monitoring – Storage Garage (Parking Garage):

- g) Once the final design of the new Building is completed as specified in Section 4.2 (f) of this CPU, the Owner shall submit to the Director, for review and approval, a performance monitoring program. The performance monitoring program shall be prepared by a qualified Licensed Professional Engineer in consultation with an appropriately Qualified Person, that consists of indoor air monitoring as detailed in Section 7.4.6 of the RMP. Specifically, the performance monitoring program shall include the following key components:
- i. Be overseen by a qualified Licensed Professional Engineer.
 - ii. The collection of indoor air sampled from an appropriate number of representative locations, including QA/QC samples, that is adequate for the size and configuration of any new Building(s) as determined appropriate by the qualified Licensed Professional Engineer at the following frequency:
 1. Prior to first occupancy;
 2. Semi-annually (summer and winter) for the first year;
 3. Annually (winter) thereafter for a minimum two years and until written approval to discontinue the performance monitoring program by the Director is received by the Owner.
 - iii. The indoor air shall be sent to an accredited laboratory and analyzed for the Target Analytes listed in **Schedule 'A': Table 1C: Target Parking Garage Air Concentrations (Table 1C)** which is attached to and forms part of this CPU.
 - iv. An annual report documenting the performance monitoring program shall be prepared by a qualified Licensed Professional Engineer and submitted to the Director on or before **March 31st** following each year of monitoring for a minimum of two years and until written approval to discontinue the program is received by the Owner from the Director. The annual report shall include, but not be limited to:

1. Laboratory results and laboratory certificates of analysis;
 2. Field logs, leak testing and documentation of QA/QC;
 3. Discussion and interpretation of the results in comparison to the respective Target Analytes as listed in **Table 1C** respectively; and,
 4. Conclusions and recommendations with respect to the need for additional and or continued monitoring as may be warranted.
- h) Upon completion of the construction of the new Building as specified in Section 4.2 (f) of this CPU, and prior to first occupancy, the Owner shall implement the performance monitoring program, that has been approved in writing by the Director, as required by Section 4.2 (g) of this CPU and detailed in Section 7.4.6 of the RMP for a minimum of two years and until the Owner receives written approval from the Director to discontinue the program. Any changes to the performance monitoring program that has been approved by the Director, as required by Section 4.2 (g) of this CPU, (i.e. sampling frequency, locations, methodology etc.) must be requested in writing by an appropriately qualified Licensed Professional Engineer and these changes shall only be implemented upon the Owner receiving written approval from the Director.
- i) In the event that the performance monitoring program detailed in Section 4.2 (g) of this CPU identifies one or more of the Target Analytes at concentrations above the Target Parking Garage Air Concentrations as specified in **Table 1C**, the Owner shall implement the contingency measures detailed in Section 7.4.6 of the RMP, and as follows:
- i. Written notice shall be submitted to the Director by the Owner within 7 calendar days of the Owner's receipt of the laboratory analysis. This written notice shall include the indoor air sampling results, the laboratory certificates of analysis and the anticipated timeline for the implementation of the confirmatory sampling program along with any additional work as may be deemed necessary by a qualified Licensed Professional Engineer. Confirmatory sampling shall occur within 21 calendar days from the date of the Owner's receipt of the laboratory analysis and be completed by a qualified Licensed Professional Engineer.
 - ii. In the event that the indoor air sampling program verifies the exceedances of one or more of the Target Analytes concentrations above the Target Parking Garage Concentrations specified in **Table 1C** and where the concentrations of the observed Target Analytes are determined by the qualified Licensed Professional Engineer to be a result of soil vapour intrusion, the Owner shall:
 1. Submit written notice to the Director within 7 calendar days of the Owner's receipt of the laboratory analysis. This written notice shall include the indoor air results, the laboratory certificates of analysis and the details of, and the anticipated timeline to implement contingency measures consistent with Section 7.4.6 of the RMP. The implementation of contingency measures, along with the implementation of a confirmatory sampling program shall occur within 14 calendar days of the Owner's submission of the written notice of the exceedance to the Director;
 2. Within 30 calendar days of the implementation of the contingency measures, the Owner shall submit to the Director a report prepared by a qualified Licensed Professional Engineer documenting the implementation of contingency measures, results of the implementation of the confirmatory indoor air sampling program along with the details and timelines for the implementation of a performance indoor air monitoring program as necessary. The report shall include, but not be limited to:
 - a) Laboratory results and laboratory certificates of analysis;
 - b) Field logs, leak testing (as necessary) and documentation of QA/QC;
 - c) Discussion and interpretation of the results in comparison to the respective Target Parking Garage Air Concentrations as listed in **Table 1C**; and,
 - d) Conclusions and recommendations with respect to the performance of the Building's vapour mitigation system along with the need for additional work and/or continued monitoring as may be deemed warranted.

Groundwater Control and Management:

- j) In the event that any new Building (s) is constructed on the Property where the Building's foundation is constructed at or below the groundwater table, in accordance with the Building Code, a Groundwater Control

and Management Plan shall be developed by a qualified Licensed Professional Engineer and implemented by the Owner in accordance with Section 7.2.6 of the RA along with Section 4.2 (l) of this CPU. The Groundwater Control and Management Plan shall include record keeping and the Owner shall ensure that a copy of the Groundwater Control and Management Plan, any amendments and records kept thereunder shall be made available for review by the Ministry upon request.

Soil and Groundwater Management Plan:

- k) The property specific soil and groundwater management Plan (Plan) shall be developed for the Property and implemented during all intrusive activities potentially in contact with or exposing COCs in soil or groundwater on the Property as detailed in 7.2.1 of the RMP. A copy of the Plan shall be maintained on the Property for the duration of all planned intrusive activities. Any short-term intrusive activities required for the purposes of emergency repairs (i.e. for repairs to underground utilities etc.) will not require the submission of the Plan prior to undertaking the short-term emergency repairs. For planned intrusive activities, this Plan shall be submitted to the Director by the Owner at least 14 calendar days prior to any such intrusive activities being undertaken and shall be consistent with the measures specified in Section 7.2.1 of the RMP. The Plan shall include, but not be limited to, the following key components as deemed necessary by a Qualified Person:
- (i) oversight by a Qualified Person;
 - (ii) include dust control measures and prevention of soils tracking by vehicles and personnel from the Property;
 - (iii) management of excavated soils including cleaning equipment, placement of materials for stockpiling on designated areas lined and covered with polyethylene sheeting, bermed and fenced to prevent access, runoff control to minimize contact and provisions for discharge to sanitary sewers or other approved treatment;
 - (iv) storm water management measures to control the potential transport of COCs off-site during on-site construction/redevelopment activities. This shall include, but to not be limited to, silt fences and filter socks on catch-basins and utility covers as necessary;
 - (v) characterization of excavated soils to determine if the excavated soils exceed the Property Specific Standards listed in Table 1A of Schedule "A" attached to this CPU (Table 1A) and/or the ASCS for parameters other than those identified in Table 1A and require off-site disposal in accordance with the provisions of Ontario Regulation 347, as amended, made under the Act;
 - (vi) characterization and management of groundwater as a result of dewatering activities. This shall include the management of and proper characterization of groundwater prior to and during any dewatering activities to ensure proper disposal of the groundwater in accordance with all applicable acts, regulations, permits and approvals;
 - (vii) record keeping. Record keeping is to include, but not to be limited to, dates and duration of work, weather and site conditions, location and depth of excavation activities/dewatering activities, dust control measures, stockpile management and drainage, all soil and groundwater characterization results obtained as part of the soil and groundwater management plan, names of the Qualified Persons, contractors, haulers and receiving sites for any excavated excess soils, and

groundwater, as a result of dewatering activities, removed from the property and any complaints received relating to site activities; and,

- (viii) copy of the Plan and any amendments and the records kept thereunder shall be made available for review by the Ministry upon request.

Health and Safety Plan:

- l) A property specific health and safety plan (plan) shall be developed for the Property implemented during all planned intrusive activities undertaken potentially in contact with COCs in soil and groundwater that have been identified in the RA at concentrations that exceed the ASCS as detailed in 7.2.2 of the RMP. A copy of the plan shall be maintained on the Property for the duration of all intrusive activities. The Owner shall ensure that the plan takes into account the presence of the COCs and is implemented prior to any intrusive activities being undertaken on the Property or portion (s) of the Property in order to protect workers from exposure to the COCs. The plan shall be prepared in accordance with applicable Ministry of Labour health and safety regulations, along with all potential risks identified in the RA and include, but not limited to, occupational hygiene requirements, personal protective equipment, contingency plans and contact information. Prior to initiation of any Project (on the Property or portion (s) of the Property), the local Ministry of Labour office shall be notified, where so prescribed under the OHS Act, of the proposed activities and that COCs have been identified in soils and or groundwater on the Property. The plan shall be overseen by a Competent Person to review the provisions of the plan with respect to the proposed site work and conduct daily inspections. The Owner shall retain a copy of the plan to be available for review by the Ministry upon request.

Prohibition of potable groundwater wells:

- 4.3 The Owner shall,
 - i. refrain from using the groundwater in, on or under the Property as a source of water;
 - ii. except as may be required for continued use as a groundwater monitoring well, properly abandon any wells on the Property, according to R.R.O. 1990, Regulation 903 (Wells), made under the OWRA; and,
 - iii. except as maybe required for use as a groundwater monitoring well, refrain from constructing any new wells on the Property.

Prohibition of planting of fruit and vegetables for consumption:

- 4.4 The Owner shall refrain from planting fruit and vegetables for consumption on the Property unless planted in above ground containers such that the plants are isolated from the subsurface conditions. The planting of fruit and vegetables for consumption on the Property is prohibited for as long as the COCs in soil and groundwater remain present.

Site Changes

- 4.5 In the event of a change in the physical site conditions or receptor characteristics at the Property that may affect the RMMs and/or any underlying basis for the RMMs, forthwith notify the Director of such changes and the steps taken, to implement, maintain and operate any further RMMs as are necessary to prevent, eliminate or ameliorate any Adverse Effect that will result from the presence on, in or under the Property or the discharge of any Contaminant of Concern into the natural environment from the Property. An amendment to the CPU will be issued to address the changes set out in the notice received and any further changes that the Director considers necessary in the circumstances.

Reports

4.6 The Owner shall retain a copy of any reports required under the CPU, the Risk Assessment and any reports referred to in the Risk Assessment (until otherwise notified by the Director) and within ten (10) days of the Director or a Provincial Officer making a request for a report, provide a copy to the Director or Provincial Officer.

Property Requirement

4.7 For the reasons set out in the CPU and pursuant to the authority vested in me under subsection 197(1) of the Act, I hereby order you and any other person with an interest in the Property, before dealing with the Property in any way, to give a copy of the CPU, including any amendments thereto, to every person who will acquire an interest in the Property, as a result of the dealing.

Certificate of Requirement

4.8 Within fifteen (15) calendar days from the date of receipt of a certificate of requirement, issued under subsection 197(2) of the Act, completed as outlined in Schedule 'B', register the certificate of requirement on title to the Property in the appropriate land registry office.

4.9 Within five (5) calendar days after registering of the certificate of requirement, provide to the Director a copy of the registered certificate and of the parcel register (s) for the Property confirming that the certificate of requirement has been registered on title to the Property.

Owner Change

4.10 While the CPU is in effect, forthwith report in writing to the Director any changes of ownership, of the Property, except that while the Property is registered under the *Condominium Act, 1998*, S.O. 1998, c.19, no notice shall be given of changes in the ownership of individual condominium units or any related common elements on the Property.

Financial Assurance

4.11 The Director has not included in the CPU a requirement that the Owner provide financial assurance to the Crown in right of Ontario.

Part 5: General

5.1 The requirements of the CPU are severable. If any requirement of the CPU or the application of any requirement to any circumstance is held invalid, such finding does not invalidate or render unenforceable the requirement in other circumstances nor does it invalidate or render unenforceable the other requirements of the CPU.

5.2 An application under sub section 168.6(3) of the Act to,
a) alter any terms and conditions in the CPU or impose new terms and conditions; or
b) revoke the CPU;
shall be made in writing to the Director, with reasons for the request.

5.3 The Director may amend the CPU under subsections 132(2) or (3) of the Act to change a requirement as to financial assurance, including that the financial assurance may be increased or provided, reduced or released in stages. The total financial assurance required may be reduced from time to time or released by an order issued by the Director under section 134 of the Act upon request and submission of such supporting documentation as required by the Director.

- 5.4 Subsection 186(3) of the Act provides that failure to comply with a requirement of the CPU constitutes an offence.
- 5.5 The requirements of the CPU are minimum requirements only and do not relieve you from,
- a) complying with any other applicable order, statute, regulation, municipal, provincial or federal law; or
 - b) obtaining any approvals or consents not specified in the CPU.
- 5.6 Notwithstanding the issuance of the CPU, further requirements may be imposed in accordance with legislation as circumstances require.
- 5.7 In the event that any person is, in the opinion of the Director, rendered unable to comply with any requirements in the CPU because of,
- a) natural phenomena of an inevitable or irresistible nature, or insurrections,
 - b) strikes, lockouts or other labour disturbances,
 - c) inability to obtain materials or equipment for reasons beyond your control, or
 - d) any other cause whether similar to or different from the foregoing beyond your control,
- the requirements shall be adjusted in a manner defined by the Director. To obtain such an adjustment, the Director must be notified immediately of any of the above occurrences, providing details that demonstrate that no practical alternatives are feasible in order to meet the requirements in question.
- 5.8 Failure to comply with a requirement of the CPU by the date specified does not relieve the Owner(s) from compliance with the requirement. The obligation to complete the requirement shall continue each day thereafter.
- 5.9 In the event that the Owner complies with provisions of Sections 4.8 and 4.9 of the CPU regarding the registration of the certificate of requirement on title to the Property, and then creates a condominium corporation by the registration of a declaration and description with respect to the Property pursuant to the *Condominium Act, 1998*, S.O. 1998, c.19, and then transfers ownership of the Property to various condominium unit owners, the ongoing obligations of the Owner under this CPU may be carried out and satisfied by the condominium corporation by and on behalf of the new Owners of the Property.

Part 6: Information regarding a Hearing before the Ontario Land Tribunal

With respect to those provisions relating to my authority in issuing a certificate of property use under section 168.6 and an order under section 197 of the Act:

- 6.1 Pursuant to section 139 of the Act, you may require a hearing before the Ontario Land Tribunal (the “Tribunal”), if within fifteen (15) days after service on you of a copy of the CPU, you serve written notice upon the Director and the Tribunal.
- 6.2 Pursuant to section 142 of the Act, the notice requiring the hearing must include a statement of the portions of the CPU and the grounds on which you intend to rely at the hearing. Except by leave of the Tribunal, you are not entitled to appeal a portion of the CPU, or to rely on a ground, that is not stated in the notice requiring the hearing.
- 6.3 Service of a notice requiring a hearing must be carried out in a manner set out in section 182 of the Act and Ontario Regulation 227/07: Service of Documents, made under the Act. The contact information for the Director and the Tribunal is the following:

Registrar

Ontario Land Tribunal

655 Bay Street, Suite 1500
Toronto, ON, M5G 1E5
Email: OLT.Registrar@ontario.ca

and

Jeff Burdon P.Eng., Director

Ministry of the Environment, Conservation and Parks
1 Stone Rd. West, 4th Floor
Guelph, ON
N1G 4Y2

Fax: 519-826-4286
Email: jeff.burdon@ontario.ca

The contact information of the Ontario Land Tribunal and further information regarding its appeal requirements can be obtained directly from the Tribunal at: Tel: (416) 212-6349 or Toll Free 1 (866) 448-2248 or www.olt.gov.on.ca.

Further information regarding service can be obtained from e-Laws at www.ontario.ca/laws. Please note where service is made by mail, it is deemed to be made on the fifth day after the date of mailing and choosing service by mail does not extend any timelines.

- 6.4 Unless stayed by the Tribunal under section 143 of the Act, the CPU is effective from the date of issue.
- 6.5 If you commence an appeal before the Tribunal, under section 47 of the *Environmental Bill of Rights, 1993* (the “EBR”), you must give notice to the public in the Environmental Registry of Ontario. The notice must include a brief description of the CPU (sufficient to identify it) and a brief description of the grounds of appeal.

The notice must be delivered to the Minister of the Environment, Conservation and Parks who will place it on the Environmental Registry of Ontario. The notice must be delivered to the Minister of the Ministry of the Environment, Conservation and Parks, College Park 5th Flr, 777 Bay St, Toronto, ON M7A 2J3 by the earlier of:

- (a) two (2) days after the day on which the appeal before the Tribunal was commenced; and
 - (b) fifteen (15) days after service on you of a copy of the CPU.
- 6.6 Pursuant to subsection 47(7) of the EBR, the Tribunal may permit any person to participate in the appeal, as a party or otherwise, in order to provide fair and adequate representation of the private and public interests, including governmental interests, involved in the appeal.
- 6.7 Pursuant to section 38 of the EBR, any person resident in Ontario with an interest in the CPU may seek leave to appeal the CPU. Pursuant to section 40 of the EBR, the application for leave to appeal must be made to the Tribunal by the earlier of:
- (a) fifteen (15) days after the day on which notice of the decision to issue the CPU is given in the Environmental Registry of Ontario; and
 - (b) if you appeal, fifteen (15) days after the day on which your notice of appeal is given in the Environmental Registry of Ontario.

6.8 The procedures and other information provided in this Part 6 are intended as a guide. The legislation should be consultant for additional details and accurate reference. Further information can be obtained from e-

Laws at www.ontario.ca/laws

Issued at Guelph this XXXX day of XXXXX, 2022.

DRAFT

Jeff Burdon,
Director, section 168.6 of the Act

Schedule 'A': Table 1A - Property Specific Standards (PSS) - Soil

<i>Soil Contaminant of Concern (COC)</i>	<i>PSS (µg/g)</i>
Antimony	19
Arsenic	142
Barium	8400
Cadmium	13.6
Chromium	1248
Copper	1596
Lead	1656
Molybdenum	22.1
Nickel	216
Selenium	40.3
Silver	28.0
Thallium	3.16
Zinc	2208
Acenaphthene	29.4
Acenaphthylene	1.31
Anthracene	59.8
Benzo(a)anthracene	55.1
Benzo(a)pyrene	37.3
Benzo(b)fluoranthene	49.1
Benzo(g,h,i)perylene	16
Benzo(k)fluoranthene	17.2
Chrysene	39.4
Dibenz(a,h)anthracene	5.6
Fluoranthene	136
Indeno(1,2,3-cd)pyrene	17.3
1+2-Methylnaphthalene	25.1
Naphthalene	27.0
Phenanthrene	185
Pyrene	100
Petroleum Hydrocarbon Fraction (PHC F) 2	449
PHC F3	27360
PHC F4	22800
Trichloroethylene	0.11

Schedule 'A': Table 1B - Property Specific Standards (PSS) - Groundwater

<i>Groundwater Contaminant of Concern (COC)</i>	<i>PSS (µg/L)</i>
Antimony	12
Arsenic	70.2
Barium	264000
Cadmium	4.55
Cobalt	12
Uranium	30.4
Vanadium	60
Acenaphthene	5.81
Benzo(a)pyrene	0.15
Benzo(b)fluoranthene	0.275
Chrysene	0.176
Fluoranthene	0.832
1+2-Methylapththalene	4.73
Naphthalene	22.3
Phenanthrene	3.52
PHC F3	2508
Benzene	2.60
Cis-1,2-Dichloroethylene	4.58
Tetrachloroethylene	2.39
Trichloroethylene	0.97
Vinyl Chloride	1.7

Schedule 'A': Table 1C: Target Parking |Garage Air Concentrations

<i>Target Analyte</i>	<i>Target Parking Garage Air Concentration (µg/m³)</i>
Tetrachloroethylene	13.8
Trichloroethylene	2.0
Vinyl Chloride	0.406

SCHEDULE 'B'

CERTIFICATE OF REQUIREMENT

s.197(2)

Environmental Protection Act, R.S.O. 1990, c. E.19.

This is to certify that pursuant to Section 4.7 of Certificate of Property Use number **3061-C7NLFZ** issued by **Jeff Burdon P.Eng.**, Director of the Ministry of Environment, Conservation and Parks under subsections 168.6(1) and 197(1) of the *Environmental Protection Act*, dated <<<<INSERT DATE>>>>, being a Certificate of Property Use and order under section 197(1) of the *Environmental Protection Act* relating to the property municipally known as **50 Borden Avenue South, Kitchener, being all of PIN 22506-0267 (LT) (the "Property")** with respect to a Risk Assessment and Risk Management Measures and other preventive measure requirements,

Woodhouse Investments Inc.

and any other persons having an interest in the Property, are required before dealing with the Property in any way, to give a copy of the Certificate of Property Use, including any amendments thereto, to every person who will acquire an interest in the Property.

Under subsection 197(3) of the *Environmental Protection Act*, the requirement applies to each person who, subsequent to the registration of this certificate, acquires an interest in the Property.