

## Certificate of Property Use

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 3107-CTXR32  
Risk Assessment number: 7663-CFMS42

**Registered Owner:** **77 James Hamilton Incorporated**  
44 Peter Street, St. Clements, Ontario, N0B 2M0

**Beneficial Owner(s):** **Hamilton (77 James Street) Limited Partnership** by its general partner,  
Harlo (77 James Street) GP Inc.  
c/o Jeffrey Kimel  
2 St. Clair Ave. E., Ste. 1204 Toronto, ON. M4T 2T5

**Harlo 77 James GP/LP** by its general partner  
Harlo Holdings GP Inc.  
c/o Jeffrey Kimel  
2 St. Clair Ave. E., Ste. 1204 Toronto, ON. M4T 2T5

**In8 Developments Inc.**  
c/o Darryl Firsten  
620 Davenport Road., Waterloo, ON. N2V 2C2

**Malt Holdings Limited**  
c/o Mayer Michalowicz  
406 North Service Rd. E., Ste. 300, Oakville, ON. L6H 5R2

**Site:** 77 James Street North  
Hamilton, ON  
L8R 2K3

with a legal description described below and as further shown in Schedule C:

PT LTS 5 & 6, BLK 5 PL 39 & YORK BLVD. (SOUTH BRANCH0 FORMERLY MERRICK STREET CLOSED BY BY-LAW NO. 87-72, REG'D AS CD403889) PL 39 & LTS 1 & 2 & PT LT 4 (IN BLK BOUNDED BY JAMES, YORK, MACNAB & MERRICK STS) PL 39 & PT OF THE UNNUMBERED LT PL 50 A.K.A. PT OF THE SEVEN ACRE TRACT A.A. MILLER'S SURVEY BEING PT 1 62R17210; PCL 4-2, SEC W-39 DESIGNATED AS PT 6 62R2801, PCL 4-3, SEC W-39 DESIGNATED AS PTS 5 & 7 62R2801, PCL 4-4, SEC

W-39 DESIGNATED AS PTS 3 & 4 62R2801, PCL 4-5, SEC W-39 DESIGNATED AS PTS 1 & 2 62R2801; PCLS 4-2, 4-3, 4-4, 4-5, SEC W-39; CITY OF HAMILTON

**Being all of PIN: 17587-0017 (LT)**

This Certificate of Property Use and section 197 Order set out the requirements regarding the above-noted Property and Risk Assessment number carried out in relation to the Property which was assigned the number noted above and is described in more detail in Part 1 below.

**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 soil cap barriers on the Property as per Section 4.2 (a) and 4.2 (e) of this CPU;
- Prohibiting the construction of any Building (s) on the Property unless the new Building (s) is constructed as specified in Section 4.2 (f) 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(s) 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(t) of this CPU;
- Prohibiting the planting of fruit and vegetables for consumption as specified in Section 4.2 (u) of this CPU;
- 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 4.5, 4.6 and 4.7 of this CPU.

## Part 1: Interpretation

1.1 In this CPU, the following terms 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 3: Full Depth Generic Site Condition Standards in a Non-Potable Ground Water Condition (coarse textured soils)** of the *Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the Environmental Protection Act* published by the Ministry and dated April 15, 2011;

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

“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.

“Capping Soil” means soil that meets the ASCS for soil;

“Certificate of Property Use” or “CPU” means this certificate of property use bearing the number **3107-CTXR32** issued for the Property by the Director under section 168.6 of the Act, as it may be amended from time to time.

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

“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;

“Director” means a person in the Ministry appointed as a director for the purpose of issuing a certificate of property use under section 168.6 of the Act.

“Garden Soil” means soil that meets the soil criteria identified in **Table 1: Full Depth Background Site Condition Standards** 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;

“Licenced Professional Engineer” means a person who means a person who has obtained the appropriate education and training and has demonstrated experience and expertise in the areas related to the work required to be carried out in this CPU and holds a licence, limited licence or temporary licence under the *Professional Engineers Act*, R.S.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.

“OHSA” means the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1;

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

“Owner” means the owner(s) of the Property, described in the “Owner” section on page 1 above, and any subsequent registered or beneficial owner of the Property.

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

“Property” means the property that is the subject of the Risk Assessment and is described in the property “Site” section on page 1 above.

“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” has the same meaning as in the Act, namely, a person who is designated by the Minister as a provincial officer for the purposes of the Act and the regulations.

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

“Risk Assessment” and “MGRA” means the modified generic risk assessment number **7663-CFMS42** submitted with respect to the Property and accepted by a Director under section 168.5 of the Act on **August 4, 2023** and set out in the following documents:

- **“Pre-Submission Form for 77 James Street North, Hamilton, Ontario”, report prepared by MTE Consultants Inc. and Chung & Vander Doelen Engineering Ltd., dated June 22, 2022**
- **“77 James Street North, Hamilton, Ontario Risk Assessment”, report prepared by MTE Consultants Inc. and Chung & Vander Doelen Engineering Ltd., dated December 6, 2022**
- **“77 James Street North, Hamilton, Ontario Revised Risk Assessment”, report prepared by MTE Consultants Inc. and Chung & Vander Doelen Engineering Ltd., dated May 17, 2023**
- **“FW: 39396-201: Revised RA” email from Joel Nichols, MTE Consultants Inc., received by TASDB on July 7, 2023, with the following documents:**
  - ***39396-201\_2022\_22\_06\_Pre-Submission Form for 77 James St N, Hamilton, ON.pdf***
  - ***39396-201\_2022-12-06\_Risk Assessment Report\_77 James St N, Hamilton\_FINAL.pdf***
  - ***39396-201\_2023\_05\_17\_Revised RA\_77 James St N, Hamilton, ON\_FINAL.pdf***
  - ***39396-201\_2023-07-07\_Revised RA Report\_77 James St N, Hamilton\_FINAL.pdf***

"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 Section 7.0 and Appendix J: Engineered Risk Management Measures Report of the Risk Assessment;

1.2 This Certificate of Property Use assigned the number noted above revokes and replaces Certificate of Property Use No. 3204-C6NLWN as it includes new risk management measures herein that have been requested by the Owner.

## 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 a risk assessment relating to a property has been accepted under clause 168.5(1)(a), the Director may 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 and that, in the Director's opinion, is necessary to prevent, eliminate or ameliorate any adverse effect that has been identified in the risk assessment, 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 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 of property use 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 property to refrain from using the property for a specified use or from constructing a specified building on the property,
- c. the owner of the property shall ensure that a copy of the provision is given to every occupant of the property; and
  - d. the provision applies, with necessary modifications, to every occupant of the property who receives a copy of the provision; and
  - e. 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 on behalf of the Owner to assess the human health risks and ecological risks associated with the presence or discharge of Contaminants of Concern on, in or under the Property and to identify appropriate Risk Management Measures to be implemented to ensure that the Property is suitable for the intended use: **Commercial, Residential, Parkland and/or Institutional**, as defined in O. Reg. 153/04.
- 3.2 The contaminants on, in or under the Property that are present above **Table 3: Full Depth Generic Site Condition Standards in a Non-Potable Ground Water Condition** of the **Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the Environmental Protection Act** published by the Ministry and dated April 15, 2011 for **coarse textured soils** are set out in the Risk Assessment and in Schedule A (Contaminants of Concern). The Property Specific Standards for these Contaminants of Concern are also set out in Table 1 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 Risk Assessment that the Risk Management Measures described therein and 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 Risk Assessment.
- 3.4 I am of the opinion, for the reasons set out in the Risk Assessment, that Contaminants of Concern require on-going pathway elimination and it is necessary to restrict the use of the Property and/or the construction of Buildings and/or the notice provisions as outlined in Part 5 of this CPU.
- 3.5 I am of the opinion, that the requirements set out in Part 6 of this CPU are necessary to supplement the Risk Management Measures described in the Risk Assessment and in Part 4 of the CPU.
- 3.6 I believe for the reasons set out in the Risk Assessment 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 the order requirements in Part 7 of this CPU.

## Part 4: Director Requirements

I hereby require the Owner to do or cause to be done the following under the authority of paragraph 168.6(1)1 of the Act:



## **Risk Management Measures**

- 4.1 Implement, and thereafter maintain or cause to be maintained, the following 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 Risk Management Measures

### **Hard Cap and Soil Cap Barriers:**

- a) Hard cap and soil cap barriers are required to be installed over the entire Property and are required to be inspected and maintained so as to prevent exposure to the COCs on the Property for as long as the COCs are present at concentrations that exceed the ASCS. The hard cap barriers and soil cap barriers shall be installed in accordance with Section 7.2.3 of the Risk Management Plan (RMP).

The hard cap barrier shall consist of the following, at minimum:

- i. The hard cap barrier(s) shall consist of at least 150 mm of Ontario Provincial Standard Specification (OPSS) Granular 'A' or equivalent material overlain by a minimum of 75 mm cover of hot mix asphaltic concrete or concrete or that has a total combined minimum thickness of 225 millimeters (mm); and,
  - ii. The soil cap barrier(s) shall consist of a minimum of 1.0 m thick cover immediately above the impacted soil that may consist of at least 0.5 m of Capping Soil and up to 0.5 m of non-soil surface treatment such as asphalt or concrete and aggregate.
- b) Within 90 days of completion of the installation of any hard cap barrier(s) or soil cap barrier(s) on the Property, and upon issuance of this CPU, 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 7.2.3 of the RMP and Section 4.2(a) 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 hard cap barrier(s) on 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 barriers or soil cap barriers are not required as long as exposure to the COCs at concentrations that exceed the ASCS is prevented by a fence barrier that restricts access to those areas of the Property and a dust control plan is implemented.

- e) An inspection and maintenance program shall be implemented to ensure the continuing integrity of the installed hard cap barrier(s) and or soil cap barrier(s), 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 7.2.3 of the RMP. Any barrier deficiencies shall be repaired within a reasonable period of time in accordance with Section 7.2.3 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 shall be implemented to ensure no exposure to the COCs that have been observed on the Property. The restoration of any damaged portions of the hard cap barrier(s) shall meet the design specifications, at minimum, as detailed in Section 4.2 (a) of this CPU. The Owner shall submit to the Director written confirmation prepared and signed by a qualified Licensed Professional Engineer 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.

**Enclosed Building(s):**

- f) Refrain from constructing any **new Building(s)** on, in or under the Property unless the Building (s) includes a storage garage or a vapour mitigation system, as detailed in Section 7.2.5 of the RMP, along with Section 4.2 (g) of this CPU.
- g) The construction of any **new Building(s)** on the Property that includes a storage garage, as defined in the Building Code, shall meet the following requirements:
- i. The storage garage is constructed with at least one level at or below ground surface;
  - ii. The storage garage area covers the entire building area at ground surface;
  - 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 intermittent supply of outdoor air at a rate of not less than 3.9 litres per second for each square metre of floor area; and,

- h) Within 90 calendar days of the completion of the construction of Building(s) as specified in Section 4.2 (g) of this CPU and prior to first occupancy, the Owner shall submit to the Director as-built drawings and detailed design specifications of the vapour mitigation system, including any verification and QA/QC reports, prepared by the qualified Licensed Professional Engineer along with a statement from the qualified Licensed Professional Engineer that the storage garage and or vapour mitigation system has been installed in accordance with the original design specifications and that it has been designed to meet the requirements and objectives specified in Section 4.2 (g) of this CPU.
- i) The vapour mitigation system detailed in Section 7.2.5 of the Final RMP and 4.2 (g) of this CPU shall be operated, monitored and maintained by the Owner for as long as the COCs are present on the Property. As detailed in Section 7.2.5 of the RMP, the qualified Licensed Professional Engineer that designed the vapour mitigation system shall prepare an operation, monitoring, and maintenance program, including a contingency plan, that is to be implemented by the Owner, prior to first occupancy, and shall be made available by the Owner to the Ministry upon request.
- j) An inspection, monitoring and maintenance program shall be implemented to ensure the continued integrity of the building floor slab and vapour mitigation system for as long as the COCs are present on the Property. The inspection program shall include, at minimum, semi-annual inspections of the integrity of the building floor slab(s) and monitoring of the vapour mitigation system in accordance with the monitoring and maintenance program specified in Section 4.2 (i) of this CPU. Any major cracks, breaches or loss of integrity observed in the building floor slab or any observed deficiencies or necessary maintenance requirements with the vapour mitigation system shall be repaired forthwith to the original design specification, at minimum. Repairs or maintenance shall be made by an appropriately qualified contractor, under the supervision of a qualified Licensed Professional Engineer as necessary. If repairs to the building floor slab or the vapour mitigation system cannot be completed in a timely manner, the Owner shall ensure that the contingency measures prepared by a qualified Professional Engineer, as specified in Section 4.2 (i) of this CPU, are implemented. All repairs are to be inspected by an appropriately qualified Licensed Professional Engineer and signed documentation shall be provided to the Owner that states that the repairs meet the original design specifications, at minimum. The Owner shall submit to the Director the written confirmation, prepared and signed by a qualified Licensed Professional Engineer, that the vapour mitigation system has been repaired to meet the original design specifications, at minimum. The written confirmation shall also include a description of any contingency measures that were put in place and shall be submitted to the Director within 30 days of the completion of any repairs to the vapour mitigation system. The Owner shall keep records of the inspections, monitoring and maintenance program, along with

documentation of all repairs that were required to be undertaken and these records shall be made available by the Owner to the Ministry for review upon request.

- k) The Owner shall ensure that all individuals/contractors intending to undertake work which could potentially come into contact with the vapour mitigation system as specified in Section 7.2.5 of the RMP along with Section 4.2 (g) of this CPU are made aware of the presence of the vapour mitigation system and the need to take appropriate precautions to ensure the integrity of the vapour mitigation system at all times. If the vapour mitigation system is damaged at any time, the Owner shall ensure that it is repaired forthwith by a qualified contractor, under the supervision of a qualified Licensed Professional Engineer as necessary, to the original design specifications, at minimum. If repairs to the vapour mitigation system cannot be completed in a timely manner, the Owner shall ensure that the contingency measures prepared by a qualified Professional Engineer are implemented. All repairs to the vapour mitigation system are to be inspected by a qualified Licensed Professional Engineer and signed documentation shall be provided to the Owner that states that the repairs meet the original design specifications, at minimum. The Owner shall submit to the Director the written confirmation, prepared and signed by a qualified Licensed Professional Engineer, that the vapour mitigation system has been repaired to meet the original design specifications, at minimum. The written confirmation shall also include a description of any contingency measures that were put in place and shall be submitted to the Director within 30 calendar days of the completion of any repairs to the vapour mitigation system. The Owner shall maintain records of all activities and repairs in relation to the vapour mitigation system and these records shall be made available by the Owner to the Ministry for review upon request.

**Performance Monitoring – Storage Garage and Residential Indoor Air:**

- l) Once the final design of the Building (s) that are constructed with a storage garage is completed as specified in Section 4.2 (g) 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 7.2.5 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 samples from an appropriate number of representative locations within the lowest level of the storage garage and lowest level of residential use, including QA/QC samples, that is adequate for the size and configuration of the storage garage as determined appropriate by the qualified Licensed Professional Engineer at the following frequency:

1. Two (2) indoor air sampling events prior to first occupancy;
  2. Semi-annually (summer and winter) 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 samples shall be sent to an accredited laboratory and analyzed for the Target Analytes listed in Schedule A: Table 2: Target Air Concentrations (Storage Garage and Residential Indoor Air) (**Table 2**), 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:
- Laboratory results and laboratory certificates of analysis;
1. Field logs and documentation of QA/QC;
  2. Discussion and interpretation of the results in comparison to the respective Target Parking Garage Air Concentrations and Target Residential Indoor Air Concentrations listed in Table 2; and,
  3. Conclusions and recommendations with respect to the need for additional and or continued monitoring as may be warranted.
- m) Upon completion of the installation of the vapour mitigation system as specified in Section 4.2 (g) 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 (l) of this CPU and detailed in Section 7.2.5 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 (l) 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.
- n) In the event that the performance monitoring program detailed in Section 4.2 (l) of this CPU identifies one or more of the Target Analytes at concentrations above the Target Parking Garage Air Concentrations or Target Residential Indoor Air Concentrations specified in **Table 2** the Owner shall implement the contingency measures detailed in Section 7.2.5 of the RMP, and as follows:
- i. Written notice shall be submitted to the Director by the Owner within 14 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 30 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 or Target Residential Indoor Air Concentrations specified in **Table 2** 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 14 calendar days of the Owner's receipt of the laboratory analysis. This written notice shall include indoor air results, the laboratory certificates of analysis and the details of, and the anticipated timeline to implement contingency measures consistent with Section 7.2.5 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 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, and documentation of QA/QC;
  - c) Discussion and interpretation of the results in comparison to the respective Target Parking Garage and Residential Indoor Air Concentrations as listed in **Table 2**; and,
  - d) Conclusions and recommendations with respect to the performance of the Building's storage garage ventilation system along with the need for additional work and/or continued monitoring as may be deemed warranted.

**Soil and Groundwater Management Plan:**

- s) 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 Section 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 excess soils to determine if the excavated excess soils exceed the Property Specific Standards listed in Table 1 of Schedule "A" attached to this CPU (Table 1) and/or the Applicable Site Condition Standards for parameters other than those identified in Table 1 and require off-site disposal in accordance with the provisions of Ontario Regulation 347 made under the Act;
- vi. characterization and management of groundwater as a result of dewatering activities. Where dewatering is required, dewatering activities will be conducted in a manner that will not involve discharges to the natural environment (directly or indirectly via a storm sewer). Excess water obtained as a result of dewatering, shall be temporarily stored on the Property prior to off Property disposal at an approved waste water treatment facility as per Ontario Regulation 347, made under the Act, or treated and discharged to the sanitary sewer through a sanitary sewer use agreement. Alternatively, excess groundwater may be removed directly by an appropriately licensed waste management system (i.e. via pump truck);
- vii. include 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:**

- t) A property specific health and safety plan (plan) shall be developed for the Property and implemented during all planned intrusive activities undertaken potentially in contact with COCs in soil and groundwater that have been identified in the RA as detailed in Section 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 OHSA, 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 Planting of Fruit and Vegetables for Consumption:**

- u) The Owner shall refrain from planting fruit and vegetables for consumption on the Property unless planted in above ground containers such that they plants are isolated from the subsurface conditions, in raised beds on ground surface with a minimum of a 1.0 m thick layer of Garden Soil and/or in roof top gardens. The planting of fruit and vegetables for consumption on the Property is prohibited unless otherwise specified for as long and the COCs in soil remain present.

**Site Changes**

- 4.3 In the event of a change in the physical site conditions or receptor characteristics at the Property that may affect the Risk Management Measures and/or any underlying basis for the Risk Management Measures, forthwith notify the Director of such



changes and the steps taken, to implement, maintain and operate any further Risk Management Measures 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

- 4.4 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

- 4.5 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

- 4.6 Within fifteen (15) 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' which is attached to and forms part of this CPU, register the certificate of requirement on title to the Property in the appropriate land registry office.
- 4.7 Within five (5) days after registering 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 registration has been completed.

#### Owner Change

- 4.8 While the CPU is in effect, forthwith report in writing to the Director any changes of ownership, of the
- 4.9 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

- 4.10 Prior to occupancy and prior to the implementation of the performance monitoring program as required by Section 4.2 (l) of this CPU, the Owner shall submit to the Director, a detailed written cost estimate, prepared by a Qualified Person, to complete the approved performance monitoring program as required by Section 4.2 (l) for a period of two years.
- 4.11 Within 15 days of the Owner's receipt of written approval from the Director of the acceptance of the cost estimate amount specified in Section 4.10 of this CPU, the Owner shall provide financial assurance to the Crown in the right of Ontario in the same amount that was approved by the Director. The financial assurance shall be in the form of a certified cheque payable to the Ontario Minister of Finance or an irrevocable letter of credit issued by a Canadian Chartered Bank as outlined in the Ministry's *Financial Assurance Guideline* F-15. This amount is to cover the costs associated with the performance monitoring program as detailed in Section 7.2.5 of the RMP and as required by Section 4.2 (l) of this CPU.
- 4.12 The amount of financial assurance required in Section 4.11 of this CPU shall be reviewed every **two years**, for as long as the performance monitoring program is required, by a Qualified Person, for the Owner, and an updated cost estimate shall be included in the annual monitoring report as required by Section 4.2 (l) of this CPU.

## **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 4.6 and 4.7 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.
- 5.10 Where there is more than one Owner each person is jointly and severally liable to comply with any requirements of the CPU unless otherwise indicated.

## Part 6: 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](mailto:OLT.Registrar@ontario.ca)

and

Director  
Ministry of the Environment, Conservation and Parks  
119 King Street West, 9<sup>th</sup> Floor  
Hamilton, Ontario  
L8P 4Y7  
Fax: (905) 521-7806  
Email: [stephen.burt@ontario.ca](mailto:stephen.burt@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](http://www.olt.gov.on.ca).

[Further information regarding service can be obtained from e-Laws at www.ontario.ca/laws. Please note that where service is made by mail, it is deemed to be](http://www.ontario.ca/laws)

[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 for the 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 Item 6 are intended as a guide. The legislation should be consulted for additional details and accurate reference. Further information can be obtained from e-Laws at [www.ontario.ca/laws](http://www.ontario.ca/laws).

Issued at Hamilton on this 19<sup>th</sup> day of December 2023

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to be 'S. Burt'.

Stephen Burt

Director, section 168.6 of the Act

## Schedule A

**Table 1 - Contaminants of Concern and Property Specific Standards**

Media	Contaminants of Concern (COC)	Units	Property Specific Standards
Soil	Cadmium	µg/g	1.66
	Lead		241
	Zinc		971
	Benzo[a]pyrene		0.380
	Fluoranthene		1.172
Ground Water	Dichloroethylene, 1,2-cis-	µg/L	4.15
	Tetrachloroethylene		85
	Trichloroethylene		7.88
	Vinyl Chloride		10.48

**Table 2 - Target Air Concentrations (Storage Garage and Residential Indoor Air)**

Contaminants of Concern (COC)	Target Parking Garage Air Concentrations (µg/m <sup>3</sup> )	Target Residential Indoor Air Concentrations (µg/m <sup>3</sup> )
Tetrachloroethylene	13.8	4.28
Trichloroethylene	2*	0.271
Vinyl Chloride	0.406	0.126

**Notes:**

\* Risk Driver is short-term (non-cancer) exposure. Refer to MGRA User Guide for rationale behind Target Parking Garage Air Concentration for Trichloroethylene.

## 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 Item 4.5 of Certificate of Property Use number **3107-CTXR32** issued by **Stephen Burt**, Director of the Ministry of the Environment, Conservation and Parks, under sections 168.6 and 197 of the *Environmental Protection Act*, **December 19, 2023**, being a Certificate of Property Use and order under subsection 197(1) of the *Environmental Protection Act* relating to the property municipally known as **77 James Street North, Hamilton**, being all of Property Identifier Number **17587-0017 (LT)** (the "Property") with respect to a Risk Assessment and certain Risk Management Measures and other preventive measure requirements on the Property

#### **77 James Hamilton Incorporated**

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.



