

MINUTES OF SETTLEMENT dated May 2, 2018.

BETWEEN:

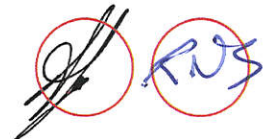
CORPORATION OF THE TOWN OF NEWMARKET
(the "Town")

and

MAIN STREET CLOCK INC.
(**"MSCI"**)

WHEREAS:

- A. On October 14, 2003, the Town and 1508164 Ontario Inc., the former owner of 184, 186, 188, 190, 192 and 194 Main Street South, entered into a Land Exchange Agreement (the "**Land Exchange Agreement**"), which agreement was not registered on title and is the subject of a legal dispute between the parties;
- B. MSCI purchased the property municipally known as (i) 178 and 180 Main Street South on March 1, 2011 (the "**Clock Tower**"), and (ii) the properties municipally known as 184, 186, 188, 190, 192 and 194 Main Street South on September 9, 2013 (the "**Main Street Buildings**", and collectively with the Clock Tower, the "**MSCI Lands**");
- C. In September 2013, MSCI submitted an application for zoning by-law amendment to the Town to amend the existing Historic Downtown Urban Centre Zone on the MSCI lands to permit a six storey mixed use development;
- D. The Town passed By-law 2013-51 (the "**Heritage District By-law**") to implement the Heritage Conservation District for Lower Main Street South on October 21, 2013. The Heritage District By-law is in force on all lands except the MSCI Lands which are subject to an appeal bearing OMB File No. MM130083 in OMB Case File No. MM130083 (the "**Heritage Appeal**");
- E. The Town received a re-submission of the MSCI application for zoning by-law amendment on February 2, 2016 (the "**2016 Re-Submission**"). The re-submission contemplated a seven storey mixed use building and included revised drawings and updated studies;
- F. The Town formally denied MSCI's application for zoning by-law amendment on December 5, 2016;



- G. MSCI appealed the Town's decision to the Ontario Municipal Board (as it then was) bearing OMB File No. PL170048 in OMB Case File MM130083 (the "**Zoning Appeal**");
- H. By Notice of Application dated June 14, 2017 and bearing Court File No. CV-17-131451-00, the Town brought an application to the Ontario Superior Court of Justice seeking a declaration that the Land Exchange Agreement is binding on MSCI as 1508164 Ontario Inc.'s successor in title (the "**Court Application**");
- I. MSCI opposed the relief in the Court Application;
- J. By order of the Ontario Municipal Board, the Heritage Appeal and the Zoning Appeal (collectively, the "**OMB Appeals**") were consolidated on May 11, 2017, with both scheduled to be heard in a three week hearing commencing on August 7, 2018;
- K. The Town and MSCI entered into discussions to resolve their differences and settle both the Court Application and the OMB appeals;
- L. MSCI has agreed not to pursue the proposed development that was presented in the 2016 Re-Submission or the revised development concept "Plan B" that was presented at the OMB Pre-Hearing Conference held on May 3, 2017;
- M. MSCI will instead redevelop the MSCI Lands within the existing Official Plan land use permissions and zoning for the properties and the redevelopment shall be contained entirely within the existing building envelopes and structure, with the exception of the following, all at MSCI's sole option and discretion (i) the construction of a 10-stall parking lot as described in Section 26, (ii) the potential construction of passageway links between the buildings on the MSCI Lands as described in Section 27, and (iii) the potential construction of covered garages at the rear of the MSCI Lands as described in Section 28 (the "**New Development Concept**");

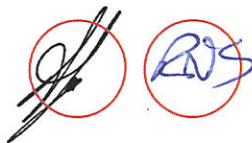
NOW THEREFORE in consideration of the mutual promises and covenants contained in these Minutes of Settlement, the receipt and sufficiency of which is acknowledged, the parties agree:

1. That the above recitals are true and correct in substance and in fact, and form part of these Minutes of Settlement.
2. All of the commitments in these Minutes of Settlement apply only **with respect to the New Development Concept**.

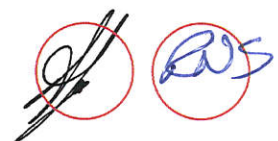
3. It is understood and agreed by the parties that these Minutes of Settlement do not restrict any future redevelopment proposed by MSCI based upon allowable zoning provisions and the requirement that any future development proposal follow standard review and approval procedures, including Official Plan and heritage district requirements as may be in place from time to time.
4. Except as provided herein, each party will pay its own legal costs, incurred in relation to the Court Application, the OMB Appeals, and related to all other matters contemplated by these Minutes of Settlement.

TERMS OF SETTLEMENT WITH RESPECT TO THE COURT APPLICATION

5. Forthwith upon the parties signing these Minutes of Settlement, the Town shall adjourn the Court Application on consent sine die on 7 days' notice. Upon completion of the land exchange set out in Section 7, the Town shall, at its sole expense, obtain a consent Order dismissing the Court Application on a without costs basis.
6. Upon the execution of these Minutes of Settlement by the parties, the Town will retain and cover the cost of the services of a professional surveyor to prepare a reference plan to legally describe the areas shown on Schedule A to these Minutes of Settlement. MSCI's written approval of the finalized draft reference plan is required.
7. The Town and MSCI will complete the land exchange set out in the Land Exchange Agreement on or before July 30, 2018. Specifically,
 - a) MSCI will transfer the parcel of land titled "Part 1" on Schedule A to the Town for nominal value (\$2.00);
 - b) The Town will transfer the parcel of land titled "Part 3" on Schedule A to MSCI for nominal value (\$2.00), but will retain an easement over all of Part 3 in favour of Part 4 (for maintenance purposes); and
 - c) MSCI will retain ownership of the parcel of land titled "Part 2" on Schedule A, but will grant an easement to the Town over all of Part 2 for access to Part 4 (for maintenance purposes) on Schedule A.
8. MSCI hereby grants the Town permission to enter onto the MSCI Lands that are to be transferred to the Town. This permission to enter shall stay in place until the transfer of lands described above is completed.



9. If MSCI enters into negotiations to sell all or part of the MSCI Lands prior to the completion of the land transactions described in this section, "*Terms of Settlement With Respect To The Court Application*", MSCI shall notify the potential purchaser of the MSCI commitments set out in this section, and the Town shall be permitted to register notice of same on title to the MSCI Lands prior to the completion of any sale.
10. In addition to the above, the Town will also honour the following terms from the Land Exchange Agreement:
- a) The Town will make every effort to expedite consideration of applications for permits and/or approvals; and
 - b) The Town will provide access to the Newmarket Downtown Development Committee (the "**NDDC**") incentive program up to a cap of \$100,000 to the extent that the New Development Concept qualifies and meets program criteria. The Town will assure that there are funds available for MSCI's applications. Further information is provided in the Section 31, "*CIP Incentive Program, Development Charges and Fees*".
11. The Town will grant MSCI a new permanent easement to access the rear of the buildings located at 178-194 Main Street over the area generally shown as E3, E7 and E8 outlined on Schedule A for the purpose of ingress and egress. MSCI agrees that if in the future the Town seeks to redevelop or modify the E8 area, MSCI shall release or modify its permanent easement as required, and this condition shall be registered on title. MSCI's obligation to modify or release its easement over E8 is conditional on the Town providing MSCI with another, mutually agreeable, means of access to replace E8. The Town will, at its sole expense, prepare the legal document to describe this easement and will register such easement, at its sole expense, on title to the Town lands.
12. MSCI will disclaim any interest in and the Town shall arrange to delete such interests from title to the two existing easements and rights of way shown as E1, E2, E5 and E6 on Schedule A (the "**MSCI Easements**"). At the same time that the Town deletes the MSCI Easements, it will provide a new permanent easement over the lands shown as E5 and E6 on Schedule A to complete the easement connection between the easement over E3 and E7. In recognition of the fact that the Town permitted the MSCI Easements to be impeded, the Town shall be responsible for the cost of the legal work required in order to complete these requirements.
13. MSCI waives all claims it currently has or at any time in the past or the future may have had or may have against the Town, Newmarket-Tay Power Distribution Ltd. ("**Newmarket-Tay Power**") and MSCI's neighbours arising from those parties



currently, in the past or in the future blocking or interfering with the MSCI Easements in any way.

14. MSCI will be permitted non-exclusive access for garbage disposal, at no cost to MSCI, to the Town owned garbage enclosure that is currently within the MSCI Easements located behind 196 Main Street South for the period of time that the Town provides garbage service to the area at no cost.
15. In the event that the Clock Tower is developed for residential uses, then in addition to the land transfer and easements set out above, the Town hereby grants MSCI a 5 year option to purchase the parcel of land-locked land presently housing transformers and switch gear for \$10.00, which land is shown as Part 4 on Schedule A. This option will be registered on title to the MSCI Lands and the Town lands shown in Part 4. This option will commence on the date of the signing of the Site Plan Agreement attached as Schedule C. This option is also conditional on MSCI confirming, at the time of any proposed relocation, a satisfactory location that is feasible for the relocation of the transformers and switch gear and acceptable to the Town and to Newmarket-Tay Power, and that satisfactory arrangements are made for completion of this work to the satisfaction of the Town and Newmarket-Tay Power. Forthwith after the parties signing these Minutes of Settlement the Town will prepare the requisite legal option document and will register same on title to its lands, all at its sole expense. Should MSCI exercise its option to purchase the above-noted Part 4 lands described above then:
 - a) MSCI will pay all land transfer costs, legal fees and relocation costs to move the transformers, switch gear, and other Town and Newmarket-Tay Power equipment from Part 4 on Schedule A to a new location pre-approved by Newmarket-Tay Power and the Town. The relocation costs shall include but not be limited to (i) the cost to relocate hydro wiring located on lands other than Part 4 which wiring is connected to the transformers located on Part 4, and (ii) the cost associated with the disruption to any affected party arising from relocation; and
 - b) The Town will release the easements in its favour over Part 2 and Part 3 shown on Schedule A, since those easements will no longer be required if the Town / Newmarket-Tay Power does not have to access Part 4 for its transformer equipment. MSCI will pay all land transfer costs and legal fees associated with the release of these easements.



TERMS OF SETTLEMENT WITH RESPECT TO THE OMB APPEALS

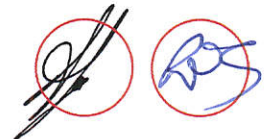
16. Forthwith upon these Minutes of Settlement being signed by the parties, both parties will jointly request that the Local Planning Appeal Tribunal adjourn, sine die, the current hearing scheduled to commence on Tuesday, August 7, 2018. Upon completion of the requirements set out in Section 21 below, MSCI's OMB Appeals shall be withdrawn in accordance with the terms of Section 21. Neither party will seek costs against the other in respect of this withdrawal and in recognition of the considerable public benefit achieved through this settlement, both parties will oppose any requests for costs sought by anyone else.
17. Under no circumstances shall MSCI sell the MSCI Lands in advance of completion of the items set out in Section 21 and the withdrawal of the OMB Appeals.
18. The New Development Concept shall be reflected in a Site Plan Agreement which shall be registered on title to the MSCI Lands. The Site Plan Agreement is attached to these Minutes of Settlement as Schedule C.

Use

19. Attached to these Minutes of Settlement as Schedule B is the extract from the applicable Zoning By-law which refers to the permissible uses applicable to the MSCI Lands. Notwithstanding anything to the contrary in these Minutes of Settlement, MSCI reserves its right to make whatever use of the MSCI Lands as may be permitted from time-to-time by the applicable zoning. By way of example, the New Development Concept in the Clock Tower may include residential, retail and/or office uses. In the Main Street Buildings, the uses at grade may be retail and/or office and may be residential uses above grade (as is presently the case) or may include office uses above grade.
20. MSCI shall undertake best efforts to provide a coffee shop or similar use on the ground floor level of the Main Street Buildings fronting Main Street.

Conditions Precedent to the Withdrawal of the OMB Appeals

21. Upon execution of these Minutes of Settlement MSCI's legal counsel, KAGAN SHASTRI LLP, shall deliver to the Town a signed letter withdrawing MSCI's OMB Appeals and requesting an order from the OMB that confirms that the MSCI Lands are now subject to the Heritage District By-law. This letter will be held in escrow by the Town's Solicitor and will not be filed with the Local Planning Appeal Tribunal unless and until the matters listed below in this Section 21 are fully satisfied. Should the Town Solicitor prefer that the letter be updated with a current date, at the time it



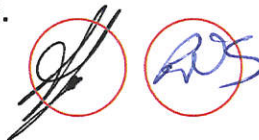
is sent to the Local Planning Appeal Tribunal, then KAGAN SHASTRI LLP shall send the Town such updated letter. It is the intention of the parties that the matters that are listed below shall be completed on or before July 30, 2018, and that the parties will mutually work on an expedited basis to achieve completion:

- a. Section 6 (Town to pay for surveyor to prepare a reference plan to legally describe the areas shown in Schedule A);
- b. Section 7 (Completion of the land exchange set out in the Land Exchange Agreement);
- c. Section 5 (Dismissal of the Court Application);
- d. The Town will provide MSCI with a letter from the Town Treasurer confirming that a reserve for the funding described in Section 31 has been created for MSCI's exclusive use. This reserve shall be available for MSCI's exclusive use for five years from the date the letter is issued.
- e. Section 11 (Town to provide a permanent easement to access the rear of the buildings on the MSCI Lands). Should any historic title issues be discovered which will delay the provision of the permanent easement, the Town will provide to MSCI a license for access to the same area and this license shall temporarily satisfy the requirements of this Section 21 until such time as the permanent easement can be registered;
- f. Section 15 (Town granting MSCI an option to take title to Part 4 on Schedule A); and
- g. Section 14 (To be satisfied by the Town providing MSCI with a key for its non-exclusive use of the garbage enclosure).

22. MSCI shall respond expeditiously where MSCI's review and/or cooperation is required in order to complete the matters listed in Section 21 above, and in any event shall respond within seven calendar days.

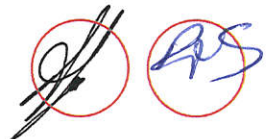
Press Release

23. The Town will prepare a Town press release regarding the settlement of the disputes between the parties, which will be reviewed by MSCI for its input prior to release by the Town on May 4, 2018.



Construction

24. MSCI shall make best commercial efforts to expedite construction and in any event will commence no later than December 15, 2019. MSCI shall complete construction on the Main Street Buildings within 18 months from the commencement of construction and MSCI shall complete construction on the Clock Tower within 24 months from the commencement of construction.
25. After submission by MSCI, the Town will expedite its consideration of all applications for permits and/or approvals, inclusive of building and demolition permits.
26. In the event that MSCI chooses to convert the upper levels of the Main Street Buildings to office uses, the Town hereby grants MSCI any required permission to demolish the single-storey additions at the rear of the Main Street Buildings in order to create, ten (10) new private parking spaces (7 parking spaces, plus 3 tandem parking spaces = 10 parking spaces). A demolition permit is required for the demolition, which will be provided to MSCI on an expedited basis upon receipt by the Town of the requisite material and the completion of the regular process. MSCI shall also ensure that the remaining buildings are left in a reasonable tidy condition by MSCI to a standard commensurate with the adjacent buildings.
27. The parties hereby agree that MSCI can, at its sole discretion, create passageways between the buildings, which may vary in length to connect the buildings and may be as much as ten (10') feet wide. These passageways will be contained primarily within the existing MSCI Lands building envelopes and are estimated to add only 100 square feet of floor area to the buildings. A building permit is required prior to any such construction, which the Town will issue upon receipt of proper documentation and completion of the standard review and approval process.
28. If the Clock Tower is used for residential uses, then to ensure availability of parking for the residential occupants, MSCI may build zero lot line garages and/or car ports (the "**Garage Structures**") on the parking spots located within Parts 2 and 3 on Schedule A. The Town shall release the easements over all of Part 2 and 3 granted in Section 7(b) and (c) in order to facilitate the building of these Garage Structures, subject to MSCI's agrees that:
- i. The construction and design of the Garage Structures shall include input from MSCI's architect and shall be sympathetic to the surroundings;
 - ii. A building permit is required prior to constructing the Garage Structures, which the Town will issue on an expedited basis upon



receipt of proper documentation, and completion of the approval process; and

- iii. If MSCI does not exercise its option to purchase the Town owned land located at Part 4 on Schedule A (the option is set out in Section 15) then MSCI will ensure that Part 4 does not become land-locked by the Garage Structures by granting the Town an appropriate easement to access Part 4 via easement E4 on Schedule A. The E4 easement is for illustration purposes only and may require adjustment based on access requirements of the Town and / or Newmarket-Tay Power.

Consultation on Main Street South Building Heritage Facades

29. The Town's heritage expert and the MSCI heritage expert will work together to prepare a mutually agreeable recommendation on the Main Street Building facades for consideration by the Town. Approval of the heritage facades for the MSCI Lands will follow the regular process required by legislation with the intention that the Town accept the expert recommendations. Each party shall pay for its own heritage consultant.

30. The Town will work within its authority to assist MSCI and its neighbours with façade improvements, including, in particular, property standards issues.

CIP Incentive Program, Development Charges and Fees

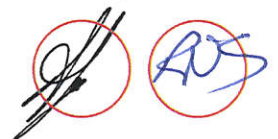
31. Provided that the projects qualify, and provided that the process is followed, MSCI will have access to and may apply at any time to the CIP incentive program up to a cap of \$100,000. The Town will support MSCI's application to the NDDC and will ensure that sufficient funds are available, for the programs set out below:

a) Façade Improvement and Restoration Program:

184 Main Street	50% of costs up to the program maximum of \$15,000 (i.e. Façade Improvements must total \$30,000 or more)
188 Main Street	Same as above-i.e., maximum \$15,000
194 Main Street	Same as above-i.e., maximum \$15,000
180 Main Street	Same as above-i.e., maximum \$15,000

b) Interior Renovation and Improvement Program:

184 Main Street	50% of costs up to the program maximum of \$15,000 (i.e. Interior Improvements must total \$30,000 or more)
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188 Main Street	Same as above-i.e., maximum \$15,000
194 Main Street	Same as above-i.e., maximum \$15,000
180 Main Street	Same as above-i.e., maximum \$15,000

32. In consideration of the terms and covenants contained herein, the Town waives any requirement of MSCl to pay building permit fees or any other Town fees that may otherwise have been payable for the construction of the New Development Concept. The Town is also agreeable to waive and not require payment to it by MSCl for the Town portion of any Development Charges that may be payable for the New Development Concept. This waiver does not include the portion of any applicable Development Charges payable to the Regional Municipality of York and/or school board.

33. In the event that MSCl chooses to pursue residential uses for any of the MSCl Lands, then the Town hereby agrees that such uses and units are hereby deemed to have met any affordable housing requirement.

Servicing Allocation

34. The Town hereby confirms for the New Development Concept that either (a) no servicing allocation is required, or (b) the Town will grant such servicing allocation forthwith upon MSCl's request and submission of the required documentation, for:

- a) Main Street Buildings, if used for non-residential use;
- b) Main Street Buildings, if used for residential units above non-residential uses; and
- c) Clock Tower, if used for residential or non-residential uses, or any combination of the two.

35. Attached as Schedule D is a letter from the Town to MSCl describing the Town's current understanding with respect to present and projected challenging servicing allocation circumstances, which servicing allocation is subject to project delivery by The Regional Municipality of York and the Province of Ontario's approval of the Environmental Assessments.

Parking

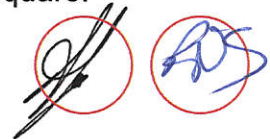
36. Regarding parking under the New Development Concept, the parties hereby agree as follows:

- a. If MSCl uses the above-grade levels of Main Street Buildings for office uses, MSCl shall provide 7 of the 10 new private parking spaces referenced in

Section 26 on MSCI's private property immediately behind the Main Street Buildings, in the area where the current single-storey additions are located, by demolishing those single-story additions as provided earlier.

- b. No additional parking (over that which is currently provided) shall be required if grade level of the Main Street Buildings is used for retail or office purposes, nor if the above-grade levels of the Main Street Buildings are used for residential purposes.
- c. Should the Clock Tower be used for residential uses, then the number of residential units shall not exceed the parking provided, at a ratio of 1.2 parking spaces per unit, on the MSCI Lands. This ratio was part of the parking justification report that was peer reviewed at the time of the 2016 Re-Submission and was found to be appropriate.
- d. Should the Clock Tower be used for office use, MSCI's required parking will be fully satisfied by the existing approximately 19 spaces in the west lot, plus the payment of cash in -lieu of parking. The cash in lieu of parking will be fully satisfied by (a) the re-conveyance to the Town of Part 3 on Schedule A, (b) the conveyance to the Town of Part 2 on Schedule A, and (c) the release of the option to purchase Part 4 on Schedule A. The Town and MSCI hereby agree that the lands to be conveyed, and the release of the option to purchase have an equal to or greater value than the required cash-in-lieu payment. MSCI will be responsible for all expenses and land transfer fees associated with these conveyances and the release of the option to purchase, including legal fees. The parties hereby agree that these elements will fully comply with the zoning by-law's parking requirement.

37. MSCI shall undertake best efforts to encourage tenant overflow parking to be directed to the municipal parking east of Main Street and the tennis courts area. The Town may impose a 2 hour parking limit on parking within Market Square.



NEXT STEPS

38.MSCI and the Town agree that the chart below forms part of these Minutes of Settlement and the “Required Steps” set out are binding obligations which shall be completed by the party listed as the “Responsible Party” prior to the deadlines set out in the column entitled “Timing”.

	A	B	C
	REQUIRED STEP	RESPONSIBLE PARTY	TIMING
(1)	Execution of the Minutes of Settlement	MSCI and the Town	On or before May 2, 2018
(2)	Execution of the Site Plan Agreement	MSCI and the Town	On or before May 2, 2018
(3)	Press release confirming that settlement has been reached and litigation is to be withdrawn	The Town will prepare press release with input from MSCI	On or before May 4, 2018
(4)	Posting of signed Minutes of Settlement to the Town website on the Clock Tower OMB Appeals	Town	On or before May 4, 2018
(5)	Registration of the Site Plan Agreement on Title	The Town	On or before May 4, 2018
(6)	Adjourn sine die on 7 days' notice the Court Application on consent and without costs	Town will prepare documents; MSCI will provide consent.	On or before May 4, 2018
(7)	Notify the other party to the OMB Appeals (Heart of Newmarket Citizens' Group)	Town	On or before May 4, 2018
(8)	Letter to OMB requesting adjournment sine die of the OMB Appeals	Town and MSCI	On or before May 4, 2018

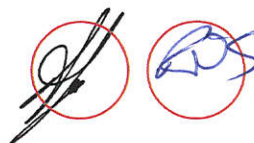
(9)	Retain a land surveyor to prepare a reference plan to legally describe the land parcels described on Schedule A	Town	On or before May 11, 2018
(10)	Work with land surveyor to prepare and finalize reference plan	Town and MSCI	May and June 2018
(11)	Complete the land transactions described in Section 21	Town and MSCI	On or before July 30, 2018
(12)	Dismiss the Court Application on consent and without costs	Town will prepare documents; MSCI will provide consent.	Immediately following completion of the land transactions described in Section 7, and in any event, on or before July 30, 2018
(13)	Withdrawal of the OMB Appeals and request for an order from the OMB that confirms the withdrawal of the Heritage Appeal and that the Heritage District By-law now includes the MSCI Lands	MSCI	On or before July 30, 2018 subject to full compliance with section 21 of these Minutes of Settlement.

TIME IS OF THE ESSENCE

39. The parties agree that time shall be of the essence with respect to the commitments made in these Minutes of Settlement. That said, should a party require more time to meet a deadline, as long as best efforts have been made to meet the original deadline, then the parties will mutually agree to any reasonable extension as is required.

GENERAL

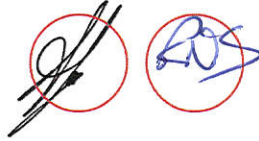
40. These Minutes of Settlement, together with all schedules, and all other documents to be prepared and executed pursuant to these Minutes of Settlement constitute the entire agreement between the parties and supersede all prior negotiations and understandings.
41. These Minutes of Settlement shall be governed and shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in Ontario.
42. If any term or provision of these Minutes of Settlement is invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect any other term or provision of these Minutes of Settlement.
43. The parties agree to act reasonably and in good faith in respect of all dealings between the parties pursuant to these Minutes of Settlement.
44. Except as otherwise provided for in compliance with all laws, nothing in these Minutes of Settlement shall be deemed to have the intent or effect of fettering the legislative discretion of Town Council or any committee or local board of the Town in a manner contrary to law.
45. These Minutes of Settlement are binding upon and shall enure to the benefit of the parties and their respective successors and permitted assigns and transferees.
46. Any amendment to these Minutes of Settlement or waiver of any provision of these Minutes of Settlement must be in writing and signed by both parties.
47. These Minutes of Settlement may be executed in counterparts, which together shall constitute a complete set of these Minutes of Settlement. Executed counterparts may be delivered by email and shall be considered originals for all purposes. Once executed by both parties, these Minutes of Settlement shall be of full force and effect.
48. The parties consent to release the Minutes of Settlement to the public after execution.
49. The following Schedules form part of these Minutes of Settlement:
 - a. Schedule A – Drawing of Town and MSCI lands
 - b. Schedule B – Zoning By-law extract



c. Schedule C –Site Plan Agreement

d. Schedule D – Town letter re Servicing Allocation

[Signature Page Follows]

Two handwritten signatures in red ink, each enclosed in a red circle. The signature on the left is a stylized, cursive 'J' with a horizontal line through it. The signature on the right is a stylized 'RS'.

These Minutes of Settlement are effective on the date first written above.

Authorized by Office of the
CAO Closed Session Staff
Report 2018-04 presented
to Committee of the Whole
on March 19, 2018, and
adopted by Council on
March 26, 2018, together
with additional direction
provided on April 30, 2018

Agreement reviewed by
Legal Services: *fn*

CORPORATION OF THE TOWN OF NEWMARKET

Per:



Robert N. Shelton
Chief Administrative Officer

MAIN STREET CLOCK INC.

Per:

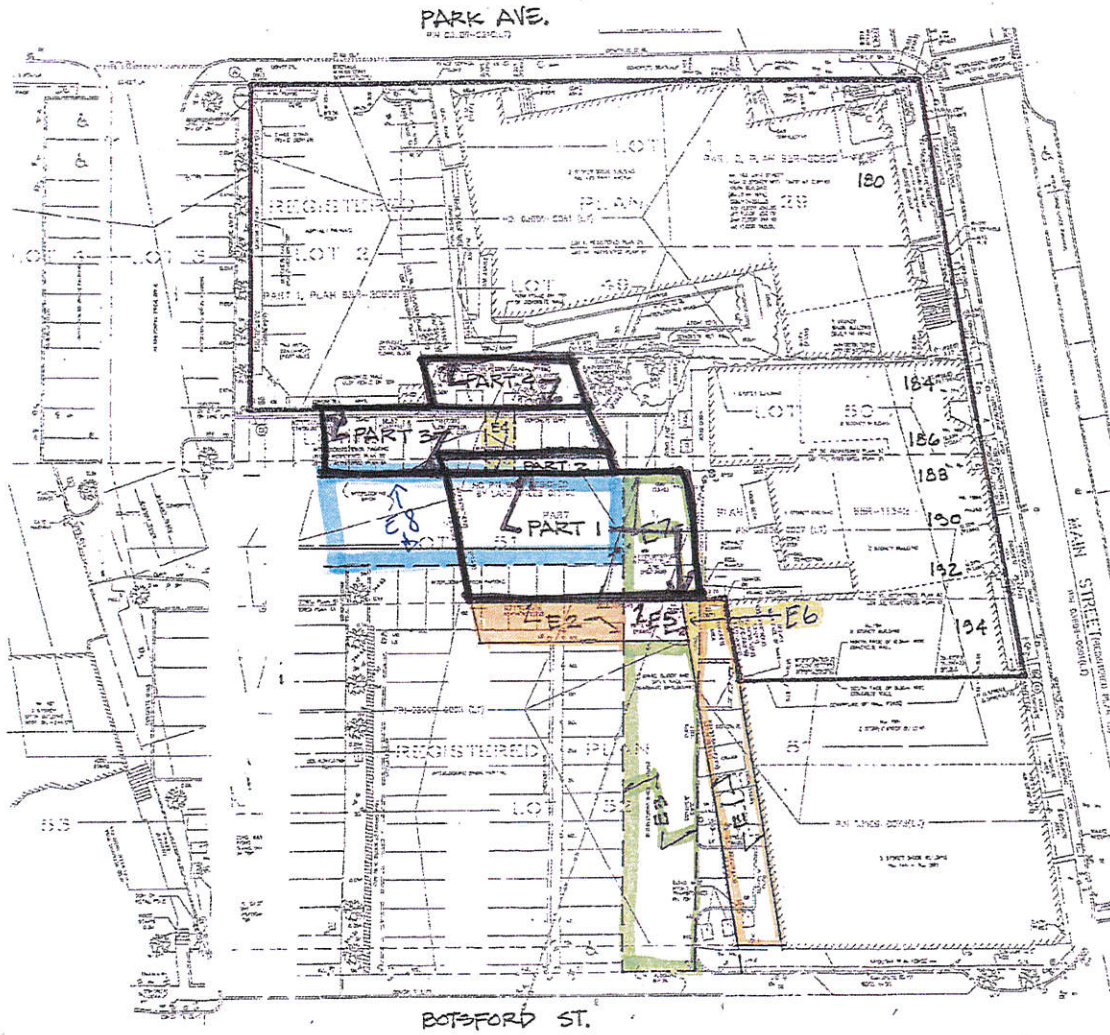


Name: Robert Forrest
Title: Secretary

SCHEDULE A

DRAWING OF TOWN AND MSCI LANDS

Schedule A (final) - May 2018



04/12/18 R



SCHEDULE B

ZONING BY-LAW EXTRACT

6.4 URBAN CENTRE ZONES

No person shall use any land or erect, alter or use any *building* or *structure* in any Urban Centre Zone except in accordance with Sections 6.4.1 and 6.4.2 of this By-Law.

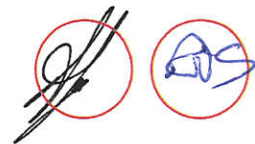
6.4.1 Permitted Uses in the Urban Centre Zones

The following table establishes the *uses* permitted in the Historic Downtown, Regional and Provincial Urban Centre Zones:

Permitted Use	Urban Centre Zones			
	Provincial Urban Centre Zone	Regional Urban Centre Zone	Historic Downtown Urban Centre Zone	Downtown Urban Centre Zone
Non-Residential Uses	(UC-P)	(UC-R)	(UC-D1)	(UC-D2)
Art gallery	*	*	*	*
Banquet facility	*	*	*	*
Community Centre	*	*	*	*
Commercial Athletic Centre	*	*	*	*
Commercial School	*	*	*	*
Convenience Store	*	*	*	*
Day Nursery	*	*	*	*
Domestic Animal Care Facility	*	*	*	*
Drive-Thru Facility	*	*	*	*
Dry Cleaning Depot	*	*	*	*
Dry Cleaning Establishment	*	*	*	*
Emergency Service Facility	*	*	*	*
Financial Institution	*	*	*	*
Funeral Home	*	*	*	*
Garden Centre (*1)	*	*	*	*
Hotel	*	*	*	*
Institutional Day Centre	*	*	*	*
Laundromat	*	*	*	*
Library	*	*	*	*
Long Term Care Facility	*	*	*	*
Medical Clinic	*	*	*	*
Medical and Dental Laboratories	*	*	*	*
Medical Office	*	*	*	*
Motor Vehicle Rental Establishment	*	*	*	*
Motor Vehicle Sales Establishment (*1)	*	*	*	*
Motor Vehicle Service Shop (*1)	*	*	*	*
Motor Vehicle Service Station (*1)	*	*	*	*

Section 6.4.1 continued on next page....

(*1) Only *uses* in existence as of the date of adoption of this By-Law shall be permitted. Expansions to such *uses* are permitted subject to conformity with the *zone* standards. *By-law 2011-25*



Section 6.4.1 continued...

Permitted Use	Urban Centre Zones			
	Provincial Urban Centre Zone (UC-P)	Regional Urban Centre Zone (UC-R)	Historic Downtown Urban Centre Zone (UC-D1)	Downtown Urban Centre Zone (UC-D2)
Non-Residential Uses				
Motor Vehicle Washing	*	*		
Establishment, Automated (*1)		*		
Museum	*	*	*	*
Office	*	*		*
Parking Garage		*	* (*2)	*
Parking Lot	*	*	*	*
Passenger Transportation Terminal	*	*	*	*
Personal Service Shop	*	*	*	*
Place of Entertainment	*	*	*	*
Place of Worship	*	*	*	*
Private Club	*	*	*	*
Restaurant	*	*	*	*
Retail Store	*	*	*	*
Retail Warehouse Store (*1)		*		*
School, Elementary	*	*	*	*
School, Secondary	*	*	*	*
Service or Repair Shop	*	*	*	*
Studio	*	*	*	*
Veterinary Clinic	*	*	*	*
Residential Uses				
Apartment Building	*	*	*	*
Dwelling Unit (*3)	*	*	*	*
Group Home (*4)			*	*
Live Work Unit			*	*
Stacked Townhouse			*	*

(*1) Only uses in existence as of the date of adoption of this By-Law shall be permitted. Expansions to such uses are permitted subject to conformity with the zone standards. *By-law 2011-25*

(*2) Notwithstanding, a parking garage shall not be permitted to front on Main Street between Millard Avenue and Water Street.

(*3) A dwelling unit may only be permitted above a ground level commercial use.

(*4) Group homes shall not be permitted where residential property is subject to flooding under the Regional Storm conditions as defined by the Lake Simcoe Region Conservation Authority.

The minimum separation distances for the location of a group home shall be as follows:

- i) 300 metres from any other group home; and,
- ii) 400 metres from a Special Needs Facility.

SCHEDULE C
SITE PLAN AGREEMENT

THIS AGREEMENT dated May 2, 2018.

B E T W E E N:

MAIN STREET CLOCK INC.

the "Owner"

-and-

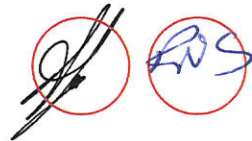
CORPORATION OF THE TOWN OF NEWMARKET

the "Town"

WHEREAS the Owner warrants that it is the registered owner of those lands and premises in the Town of Newmarket, in the Regional Municipality of York, as more particularly described in Schedule "A" attached hereto and forming part of this Agreement and hereinafter referred to as the 'Subject Lands' municipally known as 180 Main Street South and 184 to 194 Main Street South inclusive;

AND WHEREAS for the purposes of clarity the building located on the Subject Lands at 180 Main Street South shall be referred to as the "Clock Tower" and the buildings located on the Subject Lands at 184 to 194 Main Street South inclusive shall be referred to as the "Main Street Buildings":

AND WHEREAS the Owner intends to develop the Subject Lands in the future for office and/or residential purposes, and possibly also for retail;



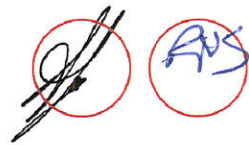
AND WHEREAS the Owner proposes to develop the Subject Lands within the existing Official Plan land use permissions and zoning by-law regulations, and the development shall be contained entirely within the existing building envelopes and structure, with the exception of the following, all at MSCI's sole option and discretion, (i) a 10 stall parking lot, (ii) the potential construction of passageway links between the buildings on the Subject Lands, and (iii) the potential construction of covered garages at the rear of the Subject Lands, each as described in the minutes of settlement executed between the parties on the same date as this site plan agreement (the "**New Development Concept**").

AND WHEREAS the Council of the Town has enacted by-laws designating the whole of the Municipality of the Town of Newmarket as a Site Plan Control Area;

AND WHEREAS in accordance with the minutes of settlement (the "**Minutes of Settlement**") executed between the parties on the same date as this site plan agreement (this "**Agreement**"), it is desirable to enter into this Agreement (pursuant to section 41 of the Planning Act, R.S.O. 1990, c.P.13, as amended), for the Subject Lands to facilitate the New Development Concept on the Subject Lands;

AND WHEREAS Section 41(10) of the *Planning Act* permits this Agreement to be registered on title to the Subject Lands;

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained, the Parties hereto agree each with the other as follows:



1. That the recitals herein contained are true and correct. The parties agree that this Agreement applies only to the New Development Concept as contemplated in the Minutes of Settlement.

2. In advance of any construction or commencement of work, the Owner covenants and agrees to provide to the Town, plans, drawings or specifications, such as but not limited to, the following: Site Plan, Landscape Plan, Building Elevations Plan, Site Servicing Plan, Site Grading Plan, Stormwater Management Report, Geotechnical Report, Construction Management Report/Plan, and/or Composite Utility Plan. These plans shall become schedules to this Agreement.

3. The Owner covenants and agrees, to, amongst other matters:

- a) Retain any necessary Consulting Professional Engineers and/or Architects skilled to prepare the necessary plans, drawings or specifications for the New Development Concept and to design, supervise, layout, inspect and certify the works and services intended as part of the New Development Concept;
- b) As set out in Section 6, provide the Town with a security deposit guaranteeing the satisfactory performance of all contemplated works set out in subsequent plans and permit applications.

4. The Owner warrants that it will obtain and/or provide all permanent and temporary easements, and enter into any appropriate agreements required to support the designs



set out in the drawings referred to in Section 2 herein and all design drawings to be submitted to, and filed with, the Town.

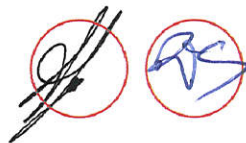
FEES PAYABLE

5. In accordance with the Minutes of Settlement, the Town waives any requirement of the Owner to pay building permit fees or any other Town fees that may otherwise have been payable for the construction of the New Development Concept. The Town is also agreeable to waive and not require payment to it by MSCl for the Town portion of any Development Charges that may be payable for the New Development Concept. This waiver does not include the portion of any applicable Development Charges payable to the Regional Municipality of York and/or school board.

SECURITY DEPOSIT

6. The Owner shall provide the Town with a minimum Security Deposit of \$10,000.00, to be returned at the completion of all construction referenced in this Agreement.

7. Upon written application by the Owner and upon verification of the fulfillment of all obligations within this Agreement by the Owner's Professional Engineer or Architect and subject to inspection and confirmation by the Town, the Town will release the above mentioned security deposit.



GENERAL

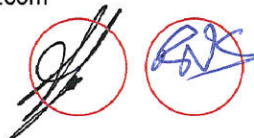
8. The Owner acknowledges that any approvals by the Town or its officials does not relieve the Owner from obtaining those approvals required by any other governmental authority.

9. If the Owner shall, in the reasonable opinion of the Town, be in default of its covenants contained herein, including any covenant relating to the payment of fees, and such default shall continue for a period of thirty (30) consecutive days, or such longer period as may be reasonably required in the circumstances to cure such default, after written notice by the Town to the Owner specifying with reasonable particularity the nature of such default and requiring same to be remedied, the Town may enter upon the site and/or take any and all steps to remedy such default, and the cost thereof to the Town shall be payable by the Owner to the Town and may be collected by the Town in like manner as municipal taxes as provided for in Section 446 of the *Municipal Act, 2001* or successor provision, or from the security deposit referred to in Section 6.

10. If any notice is required to be given by the Town to the Owner with respect to this Agreement, such notice shall be mailed, emailed or delivered to:

Main Street Clock Inc.
Attention: Bob Forrest
590 Alden Road, Suite 211
MARKHAM ON L3R 8N2

Telephone: 905-752-6776
Email: bobfor@bobfor.com



or such other address as the Owner has notified the Town Clerk in writing, and any such notice mailed, delivered or emailed shall be deemed good and sufficient notice under the terms of this Agreement.

11. The Parties hereto agree that in the event that there is any dispute as to the interpretation of the Agreement herein or any attached schedules, such dispute shall be referred to the Council of the Town of Newmarket and the decision of such Council shall be final and binding.

12. This Agreement, with the Schedules thereto, may be registered upon the title to the Subject Lands. The terms, covenants, conditions, and undertakings herein contained on the part of the Owner shall run with the lands and shall be binding upon it, its successors, or assigns as owners from time to time. The Owner hereby appoints its successors or assigns as its attorney and agent with full authority to enter into any Agreement with the Town to amend this Agreement in any way that is mutually agreeable.

13. The Owner covenants and agrees no transfer of ownership of the Subject Lands will occur prior to this Agreement first being registered on title.

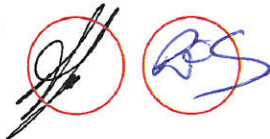
14. The Owner acknowledges that the Town, in addition to any other remedy it may have at law, shall also be entitled to enforce this Agreement in accordance with s 446 of the *Municipal Act, 2001* or successor provision.



15. The Owner acknowledges that the failure of the Town at any time to require performance by the Owner of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Town of the performance of the same or any other obligation hereunder be taken or be held to be a waiver of the performance of the same or any other obligation hereunder at any later time. The Town shall specifically retain its rights at law to enforce this Agreement.

16. The parties covenant and agree with each other not to call into question or challenge, directly or indirectly, in any proceeding or action in court, or before any administrative tribunal, the party's right to enter into and enforce this Agreement. The law of contract applies to this Agreement and the parties are entitled to all remedies arising from it, notwithstanding any provision in s 41 of the *Planning Act* interpreted to the contrary. The parties agree that adequate consideration has flowed from each party to the other and that they are not severable. The provision may be pleaded by either party in any action or proceeding as an estoppel of any denial of such right.

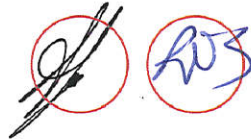
17. The Municipal Solicitor or his/her designate or agent is hereby authorized and directed to sign, deliver and/or register electronically on behalf of the Town the documents(s) in the form attached hereto including all other necessary documents required for land registration purposes. The Town and its designates are aware of the effect of the registration of the documents(s) and reproduction of electronic documents and we understand that we are parties to and bound by the terms and provisions of these electronic document(s) to the same extent as if we had signed these document(s).



18. The Owner covenants and agrees, at its own expense, to obtain and register such documentation from its mortgagees or encumbrances as may be deemed necessary by the Town to postpone and subordinate their interest in the Subject Lands to the interest of the Town to the extent that this Agreement shall take effect and have priority as if it had been executed and registered prior to the execution and registration of the document or documents giving to the mortgagee and/or encumbrancers their interest in the Subject Lands.

19. This Agreement shall enure to the benefit of, and be binding upon, the parties hereto, their successors, administrators, trustees and assigns.

[signature page follows]

Two handwritten signatures in blue ink are shown. The signature on the left is a stylized, cursive mark, possibly initials, enclosed within a red circle. The signature on the right is more legible, appearing to be 'RWS', also enclosed within a red circle.


This agreement is effective on the date first written above.

MAIN STREET CLOCK INC.

Per: 

Name: Robert Forrest
Title: Secretary

Authorized by Office of the
CAO Closed Session Staff
Report 2018-04 presented
to Committee of the Whole
on March 19, 2018, and
adopted by Council on
March 26, 2018, together
with additional direction
provided on April 30, 2018

Agreement reviewed by
Legal Services: 

CORPORATION OF THE TOWN OF NEWMARKET

Per: 

Robert N. Shelton
Chief Administrative Officer

SCHEDULE "A"

PIN: 03606-0081 (LT)

LT 1 PL 29 PT LT 2 PL 29 LT 49 PL 81 PT 1, 2 65R20609; TOWN OF NEWMARKET

PIN: 03606-0007 (LT)

PT LT 50 PL 81 NEWMARKET; PT LT 52 PL 81 NEWMARKET PT 1 65R11342; T/W
AS TO 1STLY DESCRIBED IN R119505; TOWN OF NEWMARKET



SCHEDULE D

TOWN LETTER RE: SERVICING ALLOCATION



Newmarket

ROBERT N. SHELTON
CHIEF ADMINISTRATIVE OFFICER

April 18, 2018

Main Street Clock Inc.
590 Alden Road
Suite 211
Markham, Ontario
L3R 8N2

Dear Mr. Forrest:

The allotment of servicing allocation to the Town of Newmarket and in fact to our immediate neighbours continues to be a challenge. The following sets out our process and challenges:

- Staff reviewed development needs and activities on an annual basis and make recommendations to Council. Council in turn grants allocation.
- Newmarket's current allocation is inadequate to meet the demand.
- Developments have therefore been assigned priority rankings to assist in guiding the granting of allocation by the Town.
- Newmarket's highest priority for Servicing Allocation is for intensification of the corridors, Davis Dr. and Yonge St. Mulock Dr. is also an emerging corridor to support a proposed new Go Train station.
- The Region assigned an additional allotment of servicing allocation of 1500 people subject to completion of the YDSS Force main through Newmarket being twinned.
- This project was to be complete by the end of 2019 but became entangled with the UYSS (Upper York Sewage System) project as the two projects were included in the EA permit application.
- This EA approval is still stalled as the Province works through First Nation concerns.
- As a result of considerable efforts from the Town and Region related to concerns over system security and public health and safety the Province has very recently agreed to separate out the Force main approval from the UYSS. This will now see the force main move forward with completion 1 to 2 years beyond the original completion date subject to design completion, tendering and construction.
- The Region continue to monitor the system and investigate potential interim measures to assist Newmarket and its neighbours.
- The completion date for the UYSS, which will relieve the pressure and constraints on Newmarket and its neighbours, has yet to be determined but certainly will not be before 2026/7, in all likelihood. The original schedule was 2024.

Office of the Chief Administrative Officer | Town of Newmarket | 395 Mulock Drive | P.O. Box 328 STN Main
Newmarket, ON | L3Y 4X7 | Phone: 905-953-5300 ext.2030 | Fax: 905-953-5133 | Email: cao@newmarket.ca



Mr. Bob Forrest
The Forrest Group
April 18, 2018
Page 2

- Town of Newmarket staff have reported to Council on at least an annual basis on the scarcity and constraints associated with servicing allocation. The most recent report is Report Number 2018-18 dated April 16, 2018 which is posted on line. Council at the recent Committee of the Whole Meeting has requested staff to review further refinement of the priority ranking system to reflect Strategic Priorities and other considerations.

Servicing allocation constraints for the Clock Tower redevelopment that you submitted to the Town (and which is presently before the OMB) would be removed and allocation available once the UYSS is in place. Servicing allocation may be available earlier once the force main twinning works are complete and functioning, but such allocation would have to be subject to consideration of all other development priorities and the reporting process.

Yours truly

R.N. Shelton
Chief Administrative Officer

:lr

