

# **SITE PLAN CONTROL AGREEMENT**

Between:

**The Corporation of the Town of Tecumseh**

-and-

**Skyline Real Estate Holdings (II) Inc.**

**PREPARED BY:**

**WOLF HOOKER PROFESSIONAL CORPORATION**

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## **SITE PLAN CONTROL AGREEMENT**

***THIS AGREEMENT*** made in triplicate this 3<sup>rd</sup> day of March, 2021.

**B E T W E E N:**

***THE CORPORATION OF THE TOWN OF TECUMSEH,***  
hereinafter called the "**Municipality**"

**OF THE FIRST PART**

-and-

***SKYLINE REAL ESTATE HOLDINGS (II) INC.***  
hereinafter called the "**Owner**"

**OF THE SECOND PART**

**HEREINAFTER** collectively referred to as the "**Parties**"

### ***RECITALS***

**WHEREAS** the Owner owns certain lands situated within the corporate limits of the Municipality, said lands being more particularly described in Schedule "A" hereto (the "**Lands**");

**AND WHEREAS** the Municipality has enacted a by-law designating the Lands as a site plan control area, pursuant to Section 41(2) of The Planning Act, R.S.O 1990, c.P.13 and amendments thereto;

**AND WHEREAS** where site plan control is in effect, Section 41 of The Planning Act, R.S.O. 1990, c.P.13 and amendments thereto, states that the approval of plans by Municipal Council is required prior to development of the Lands, and that the Municipality may require the Owner to enter into an agreement with the Municipality respecting certain prescribed matters;

**AND WHEREAS** as a condition of agreeing to development, the Municipality has requested the Owner enter into a site plan agreement;

**AND WHEREAS** the Owner covenants and agrees to develop the Lands in accordance with this Agreement;

**AND WHEREAS** the proposed development of the Lands is in accordance with the Official Zoning Plan and Zoning By-Law of the Municipality as of the date of this Agreement;

**WITNESSETH** that in consideration of these presents, and other good and valuable consideration, the Parties hereto mutually covenant, promise and agree as follows:

### ***ARTICLE I*** ***MUNICIPALITY CONSULTANTS***

#### **1.1 MUNICIPALITY TO RETAIN**

In addition to persons in the employ of the Municipality, the Municipality shall retain the following professionals:

- (a) a consulting/professional civil engineer registered with the Professional Engineers of Ontario (the "**Municipality's Engineer**"), for the purpose of reviewing all plans,

- specifications, engineering documents, contracts, details, elevations and other relevant information as well as the occasional inspection of the construction, repair and maintenance of the services on the Lands; and
- (b) the Municipality's solicitor for the purpose of reviewing all necessary legal matters incidental to the development of the Lands, including, without limiting generality, the preparation of this Agreement together with all other documentation required by the Municipality to give effect to this Agreement and/or the development of the Lands;

## ***ARTICLE 2***

### ***THE OWNER AGREES***

#### **2.1 OWNER AGREES**

The Owner makes the following covenants, all of which shall be carried out at the Owner's expense:

##### **2.1.1 Owner to Provide**

The following facilities, works or matters shall be provided by the Owner to the satisfaction of and at no expense to the Municipality: all buildings, landscaping, fencing, parking, storage and access areas, lighting, walkways, garbage disposal facilities, grading and provision for storm, surface and waste water in accordance with the attached site plan set out in Schedule "B" (the "**Site Plan**") and "Schedule "C" (the "**Site Services Plan**") and in accordance with all the applicable provisions of the Municipality's By-Laws, subject to any changes as consented to in writing by the Municipality.

##### **2.1.2 Construction and Maintenance**

The Owner agrees that the development of the Lands shall be constructed and maintained in accordance with the Site Plan and Site Services Plan so long as this Agreement remains in force.

##### **2.1.3 The Development**

The Owner shall construct, install and provide the facilities and works required in and for the development at its own expense and in accordance with the Site Plan and other provisions of the Agreement.

##### **2.1.4 Plans**

###### **2.1.4.1 Criteria**

All plans, construction, installation, facilities and works shall be completed in accordance with:

- (a) sound engineering practice as established by the Professional Engineers Ontario;
- (b) the criteria laid down by governmental authorities having jurisdiction including, without limiting the generality of the foregoing, the Municipality, the Corporation of the County of Essex, the Essex Power Corporation or Ontario Hydro Corporation (whichever is the applicable hydro authority), the Ministry of the Environment, Conservation and Parks, the Ministry of Transportation and the Essex Region Conservation Authority (ERCA); and
- (c) such criteria as approved by Council of the Municipality.

###### **2.1.4.2 Preparation of Plans**

The Owner shall, at its own expense and prior to issuance of a building permit:

- (a) prepare the Site Plan delineating the Owner's plans for the development of the Lands, which Site Plan shall be subject to the approval of the Municipality. It is hereby acknowledged that the Site Plan and Site Services Plan required to fulfill this condition have been prepared by the Owner and approved by the Municipality, and are attached hereto as Schedule "B" and "C", respectively;
- (b) prepare and submit to the Municipality all plans for off-site and on-site services not

- detailed or fully described in the Site Plan, which plans shall also be subject to approval of the Municipality; and
- (c) provide to the Municipality all requisite copies of the Site Plan and the said plans for services as may be required by the Municipality.

#### 2.1.4.3 Site Grading Plan

The Owner further agrees, if required by the Municipality's Chief Building Official, and/or ERCA to submit to the satisfaction of the Chief Building Official and/or ERCA, a site grading plan covering the Lands for their approval prior to the issuance of any building permits. The parties acknowledge that, as of the date hereof, the site grading plan attached hereto as Schedule "H" (the "**Site Grading Plan**") has been approved by the Chief Building Official and/or ERCA. The Owner also agrees to have the approved elevation as per the Site Grading Plan verified by an Ontario Land Surveyor following completion of construction.

Where the finished grade of lot materially deviates from the Site Grading Plan, the Owner shall either submit a new site grading plan to the satisfaction of the Municipality's Chief Building Official and/or ERCA or regrade the Lands to the elevations indicated on the original Site Grading Plan. ERCA's assessment of materiality with respect to the deviation shall determine any issue raised in that regard.

#### 2.1.4.4 Drainage Plan

The Owner shall provide for grading and drainage of the Lands all in accordance with a Drainage Plan and the Engineering Data. Drainage facilities and requirements shall be constructed and installed contemporaneously with the construction of the development. The Owner shall supply, construct or install all facilities and works necessary to connect the Owner's drainage system to the Municipality's storm sewer system, and shall pay to the Municipality any connection charges associated therewith.

#### 2.1.4.5 Landscaping Plan

The Owner shall landscape the Lands all in accordance with the Landscaping Plan annexed hereto and marked Schedule "C". The Owner further agrees to maintain such landscaping for so long as the buildings exist on the Lands. Any topsoil excavated but not immediately required for landscaping or for grading purposes shall be contoured and bermed to the satisfaction of the Municipality.

#### 2.1.4.6 Reference Plan

The Owner, at the Owner's expense, shall engage a registered Ontario Land Surveyor to prepare, submit and register a Reference Plan, which must delineate the Lands. The Owner, at the Owner's expense, shall initially provide Two (2) copies and (1) diskette of the Plan. All files are to be projected to North American Datum (NAD 83) UTM Zone 17 Geographic Coordinate System. The Owner at the Owner's expense shall provide additional copies of the subdivision plan in the required format upon the request of the Municipality. Any additional Reference Plans required to describe any portion of the Lands for which an interest (in fee simple or otherwise) is to be conveyed by the Owner shall be prepared, registered and copies supplied to the Municipality in the manner indicated above and at the expense of the Owner.

#### 2.1.4.7 Elevation Plans

The owner shall construct the building in accordance with the elevation plans annexed hereto and marked Schedule "F". The owner further agrees to maintain the building for so long as it exists in accordance with said plans.

#### 2.1.5 Engineer

The Owner shall employ at its expense a consulting engineer to:

- (a) Design and submit drawings with respect to all services required (herein the "**Engineering Data**").
- (b) Visit the site as required by the Municipality and inspect all services, etc.
- (c) Submit to the Municipality (and all other authority having jurisdiction) "as-built" details and elevations related to any public road allowance on the Lands, as and if requested by the Municipality.

### 2.1.6 Services

#### 2.1.6.1 Stormwater Management

The Owner agrees that stormwater management measures shall be applicable to the development of the Lands, in a manner which is in accordance with the provisions of The Drainage Act, R.S.O. 1990, c.D.17 and amendments thereto, and to the satisfaction of the Municipality's Engineer.

#### 2.1.6.2 Sanitary Sewers

The Owner, at its own expense, shall supply, construct or install all sanitary sewer connections necessary to service the site all in accordance with the Engineering Data. No work shall be carried out until the Engineering Data has been approved by the Municipality.

#### 2.1.6.3 Water Services

The Owner, at its own expense, shall supply, construct or install all water connections necessary to supply water to the site all in accordance with the Engineering Data. No such work shall be carried out until the Engineering Data has been approved by the Municipality. Remote registry water meters shall be installed as specified by the Municipality. All costs of connecting water services to existing services shall be borne by the Owner.

#### 2.1.6.4 Electrical Services

All hydro services shall be underground. The Owner, at its expense, shall supply, construct or install all underground hydro services in the manner, location and design depicted in the Engineering Data but subject to the manner, design and specifications established from time to time by Ontario Hydro and the Essex Power Corporation for such services. All costs of connecting hydro services to existing services shall be borne by the Owner.

#### 2.1.6.5 Underground Telephone and Gas

The Owner shall ensure that all Bell Canada and Union Gas Company installations shall be underground.

#### 2.1.6.6 Notification and Permits

The owner hereby agrees to notify all local, Provincial or Federal authorities having jurisdiction as to its proposed development, and to obtain all necessary permits and/or approvals that may be required from any authority having jurisdiction with respect thereto.

#### 2.1.6.7 Co-ordination of Services

The Owner shall be responsible for coordinating the installation of all facilities and works including without limitation the services to be installed by Bell Canada and Union Gas Company. The Municipality will send to the Owner's consulting engineer all plans of installations received from time to time from Bell Canada and Union Gas Company.

### 2.1.7 Traffic Signs

The Owner shall provide, install and maintain suitable traffic direction and information signs to the satisfaction of the Municipality and, to the extent located within a public road allowance, also in accordance with The Highway Traffic Act of Ontario, R.S.O. 1990, c.H.8 and amendments thereto, and The Public Transportation and Highway Improvement Act, R.S.O. 1990, c.P.50 and amendments thereto. The Owner shall provide, install and maintain suitable traffic direction and information signs painted or otherwise marked on the surface of the parking area and driveway approaches, all to the satisfaction of the Municipality.

### 2.1.8 Entrances

The Owner hereby agrees to construct and install all entrances, driveways, and curbing to the satisfaction of the Municipality and the County of Essex Road Department if applicable; and further agrees that the same shall be barrier free. The Owner shall maintain all entrances and driveways on the Lands to the satisfaction of the Municipality and the County of Essex Road Department if applicable. Any driveway approaches which become redundant following the development of the Lands shall be closed and the area restored to the satisfaction of the Municipality.

#### 2.1.9 Repair

The Owner agrees that any Municipal property, including without limiting the generality of the foregoing, curbs, gutters, pavements, sidewalks, or landscaped areas on the public highway, and any property belonging to a third party, which are damaged during construction or otherwise, shall be restored by the Owner at its expense, and to the satisfaction of the Municipality. The Owner shall keep the Lands in a state of good repair (including the cutting of weeds) and upon written notice from the Municipality shall correct deficiencies in the state of repair within ten (10) days thereof.

#### 2.1.10 Dirt and Debris

The Owner further agrees to keep the public highways adjacent to the Lands free from dirt and debris caused by the construction of the Lands, and to provide reasonable dust control for the site and adjacent municipal streets during the course of construction.

#### 2.1.11 Address Sign

The municipal address of the building shall be provided in a prominent location on the site and shall be designed to be easily readable from the adjacent street(s).

#### 2.1.12 Environmental Laws

The Owner shall at all times in connection with the development and the implementation of this Agreement comply fully with all environmental laws applicable to the Lands.

#### 2.1.13 Noise By-Laws

The owner shall at all times ensure that the provisions of the noise by-law for the Municipality be strictly adhered to.

The Owner shall retain an expert in noise and vibration to undertake a study (herein the Railway Noise and Vibration Study) regarding the impacts of noise, vibration and related matters of proper planning (considering such factors as location or proposed amenities, design, and mitigation measures) arising by reason of the proximity of the Lands, proposed building and improvements to the adjacent railway. The expert shall be pre-approved by the Municipality and obtain agreement from the Municipality on the scope of the study in advance of commencing the study. Following completion and acceptance of the study, the Owner shall undertake compliance with the study and construction of the works required thereby in the locations depicted in the Site Plan and/or the study and otherwise in accordance with the Engineering Data.

#### 2.1.14 Local Improvements / Drainage Act

The Owner agrees to enter into Local Improvement petitions for any municipal services that are reasonably proposed by the Municipality to be constructed pursuant to:

- (a) the provisions of the Municipal Act S.O., 2001, c.25, including but not limited to Ontario Regulation 119/03, and/or
  - (b) the Drainage Act of Ontario R.S.O. 1990 c.D.17 and amendments thereto,
- which shall directly or indirectly benefit the Lands, subject to the Owner's and/or the Owner's agents and solicitors' review and comment on any requested Local Improvement petition.

#### 2.1.15 Parking, Driveways and Loading Areas

The Owner at its own expense shall provide parking driveways and loading areas in accordance with the Site Plan and/or the Site Services Plan. All such areas shall be paved with asphalt or concrete. All handicapped parking areas shall be identified with signage and logos to the satisfaction of the Municipality and identified as such using the then-current form available from the Office of the Clerk of the Municipality.

#### 2.1.16 Snow Removal



The Owner, and not the Municipality, shall be responsible for keeping the parking and access areas on the Lands as identified on the Site Plan free and clear of all snow and ice. No snow or ice from the Lands shall be deposited on any municipal streets.

#### 2.1.17 External Lighting

The Owner shall erect exterior lighting on the Lands as depicted in the Site Plan and/or the Site Services Plan and Photometrics Plan all in accordance with the Engineering Data. The Owner shall not erect any exterior lighting on the Lands, other than that provided for in the Engineering Data or depicted in the Site Plan, unless the consent therefor is first had and obtained from the Municipality. The Owner further agrees that all lighting of the Lands shall be oriented and its intensity so controlled as to prevent glare on adjacent roadways and residential properties.

Should the Municipality, in its sole discretion determine that the lighting of the Lands has an adverse impact on the adjacent roadways or residential properties, then the Owner shall take all necessary measures to correct the adverse impact to the satisfaction of the Municipality.

#### 2.1.18 Signs

The Owner shall not erect any signs on the Lands other than the following:

- (a) signs which are allowed by this Agreement, as shown on Schedule “B” and/or Schedule “C”;
- (b) signs erected in compliance with the Municipality’s Sign By-Laws; and/or
- (c) signs required to be erected under applicable laws or as ordered by a court having jurisdiction over the Lands.

#### 2.1.19 Refuse Collection

The Owner agrees to provide on-site facilities for refuse collection. Such facilities shall be screened from view in accordance with the requirements of the Municipality. The Owner, and not the Municipality, shall be responsible for the removal of any garbage, refuse or other wastes from the said waste storage facility located on the Lands.

## ***ARTICLE 3*** ***TIMING***

### **3.1 CONDITIONS**

#### 3.1.1 Conditions Precedent

It is a condition precedent to the coming into force of this Agreement that the Owner complete the following simultaneously with the execution of this Agreement:

- (a) Security for performance is posted pursuant to Paragraph 6.1; and
- (b) Construction lien deposit pursuant to Paragraph 6.3.

#### 3.1.2 Conditions Subsequent

It is a condition subsequent of this Agreement that the Owner complete the following as soon as is reasonably possible subsequent to the execution of this Agreement failing which, the Municipality may at its option elect to terminate this Agreement:

- (a) WSIB Clearance Certificate issued by the general contractor of the Owner, if required;
- (b) proof of Insurance as provided pursuant to Paragraph 6.4, if required;
- (c) registration against the title of the Lands of this Agreement; and
- (d) postponement to this Agreement by all financial encumbrances, if available where the financial encumbrancer is an institutional lender.

### **3.2 BUFFER AREA**

The Owner agrees to landscape all of the buffer and/or planting areas shown on the Site Plan and/or the Site Services Plan annexed hereto and marked Schedule "B" and "C" within two years of commencement of construction as determined by the Chief Building Official.

### **3.3 COMPLETION**

The Owner agrees to fulfil all of the covenants set out herein to the satisfaction of the Municipality within two years of the date of execution of this Agreement.

### **3.4 COORDINATION OF WORKS WITHIN MUNICIPAL LANDS**

Where the Site Plan or any other Schedule to this Agreement calls for or contemplates facilities and/or works (for example catch basins, roadway improvements, lighting, traffic control devices, municipal infrastructure, or landscaping) to be inspected, completed, performed, installed and/or relocated within the Lands (for example, a municipal road allowance, park or pumping station) or an interest in the Lands (for example an easement) held, owned or controlled by the Municipality, the Owner shall contact the Municipality in advance of commencing such matter so as to coordinate the timing of the completion of such matter with the Municipality and allow the Municipality's personnel, to the extent required by the Municipality, to be present for monitoring the completion of such matter.

## ***ARTICLE 4 PAYMENTS***

### **4.1 COSTS**

The Owner shall reimburse the Municipality for all the Municipality's costs with respect to the development, including without limiting the generality of the foregoing, the fees and disbursements of the Municipality's Engineer and its solicitor. The Municipality shall deliver invoices to the owner in a timely fashion and the Owner shall pay such invoice within 30 days of delivery.

### **4.2 DEVELOPMENT CHARGES**

The Owner agrees to pay development charges with respect to the development in accordance with the Municipality's Development Charges By-Law.

## ***ARTICLE 5 CONVEYANCES***

### **5.1 EASEMENTS**

The Owner shall convey or dedicate to the Municipality upon demand and without cost and free of financial encumbrance any easements provided for in the Engineering Data and Site Plan, in, through, over and under the Lands as required for drainage purposes, sewers, hydro, gas, watermains, telephones etc. (if any). If the Municipality determines that additional easements are required, the Owner shall also convey or dedicate such additional easements upon demand and without cost and free of financial encumbrance.

### **5.2 ROAD WIDENING**

The Owner shall convey or dedicate to the Municipality upon demand and without cost and free of financial encumbrance any area shown on the Site Plan dedicated for road widening (if any). If the Municipality determines that additional lands are required for road widening, the Owner shall also convey or dedicate such additional lands for road widening upon demand and without cost and free of financial encumbrance.

### **5.3 JOINT USE AND RECIPROCAL ACCESS**

For the purpose of this paragraph “**Parts 2 & 4 Owner**” refers to the owner from time to time of Parts 2 and 4 on Plan 12R28154 (the “**Parts 2 & 4 Lands**”) being SKYLINE REAL ESTATE HOLDINGS (III) INC. at the date of this Agreement and “**Part 3 Owner**” refers to the owner from time to time of Part 3 on Plan 12R28154 (the “**Part 3 Lands**”) being SKYLINE REAL ESTATE HOLDINGS INC. at the date of this Agreement.

The Owner has developed the Lands in a manner that contemplates an arrangement with the Parts 2 & 4 Owner and Part 3 Owner respecting the operation of the Lands, Parts 2 & 4 Lands and Part 3 Lands as an integrated development. The Municipality has approved the Site Plan and the parcel boundaries of these lands in reliance upon the existence of certain documents implementing shared use, maintenance, and access. Accordingly, the Owner agrees that it shall maintain in good standing, preserve the benefits of and otherwise comply with the obligations created pursuant to the following:

- (a) a Joint Use and Maintenance Agreement between the Owner, Parts 2 & 4 Owner and Part 3 Owner notice of which is registered on title as CE981616;
- (b) the burden of an easement over Part 1 on Plan 12R28154 in favour of Parts 2 and 4 on Plan 12R28154 as in CE944861;
- (c) the burden of an easement over Part 1 on Plan 12R28154 in favour of Part 3 on Plan 12R28154 as in CE944862;
- (d) the benefit of an easement over Parts 2 and 4 on Plan 12R28154 in CE944861; and
- (e) the benefit of an easement over Part 3 on Plan 12R28154 in CE944862.

## ***ARTICLE 6***

### ***SECURITY***

#### **6.1 PERFORMANCE**

The Owner agrees, so as to assure the performance by the Owner of each of the terms and conditions of this Agreement during the development of the Lands, that the Owner shall, upon execution of this Agreement, forthwith deposit with the Municipality security in an amount which is equal to \$ 20,000.00 plus an amount equal to the value of the road work, if any, to be completed within any municipal road allowance (as calculated by the Owner’s consulting engineer and approved by the Municipality). For greater certainty, the amount of said security shall be subject to approval by the Municipality's Clerk and Solicitor. The amount deposited shall be applied in satisfaction of the obligation to post security under site plan agreements made between the Municipality and each of the owners of the Parts 2 & 4 Lands and Part 3 Lands respectively. The said security shall be either by way of

- (a) cash, or
- (b) a Standby Letter of Credit pursuant to UCP500 only, issued by a chartered bank of Canada in form satisfactory to the Municipality's Clerk and Solicitor. (not a Letter of Guarantee or Bond)

Provided that in no event shall the Municipality be required to pay interest on this security.

#### **6.2 RELEASE OF SECURITY**

The Municipality agrees to return the said security to the Owner upon the completion and final approval of the works specified in this Agreement which approval is at the Municipality’s sole discretion.

#### **6.3 CONSTRUCTION LIENS**

In as much as the Owner is obligated at the Owner's entire expense and not at the expense of the Municipality, to make improvements to the municipal infrastructure, the Owner shall deposit with the Municipality, in order to satisfy the requirements of Section 17(4) of the Construction Lien Act, R.S.O. 1990, c.C.30 and amendments thereto, cash or a letter of credit in form satisfactory to the Municipality and its Solicitor and in an amount of the holdbacks (under Part IV of the Construction Lien Act, R.S.O. 1990, c.C.30 and amendments thereto) that would have been required were the improvements made at the expense of the Municipality. The Owner may, at its option, obtain a single letter of credit with respect to its

responsibilities pursuant to Paragraph 6.1 of this Article, provided that the Municipality and its solicitor is satisfied that the Municipality's security under each paragraph, if read separately, would not be compromised by the Letter of Credit proposed by the Owner.

Provided that in no event shall the Municipality be required to pay interest on this security.

#### **6.4 INDEMNITY AND INSURANCE**

The Owner shall indemnify and save harmless the Municipality from and against all actions, claims, loss, damage and liability connected with the development as contemplated herein arising directly or indirectly out of the negligence or unlawful performance or the non-performance of any obligation of the Owner or any contractors to the Owner under this Agreement, save and except any actions, claims, loss, damage or liability arising out of the negligence or wilful misconduct of the Municipality or its employees and agents.

While any of the facilities and works herein have not been approved by the Municipality, the Owner shall maintain in full force and effect a policy of personal liability and property damage insurance of at least \$5,000,000.00 in form satisfactory to the Municipality's solicitor, acting reasonably, wherein the Owner and the Municipality shall be insured as principals against such liability to the limits approved. The Owner shall provide the Municipality with a certified copy of such policy prior to the commencement of construction of any of the facilities and works referred to herein.

### ***ARTICLE 7 DEFAULT***

#### **7.1 STOP WORK**

In the event of any default by the Owner in the performance of any of the terms and conditions of this Agreement, the Municipality at its discretion shall, in addition to other remedies available to the Municipality, be entitled to refuse building permits with respect to the development and/or shall be entitled to refuse building and/or occupancy permits with respect to any buildings, and/or shall be entitled to issue stop work orders with respect to any matters in respect of which a building permit has been issued and/or may refuse to grant to the Owner any permissions, permits, certificates, approvals or authorities of any kind or nature which the Owner would have been entitled to receive had the Owner otherwise complied with the Municipality's requirements in this Agreement, and/or shall be entitled to refuse to issue releases, all of which may be done until such time as the default has been cured in a manner satisfactory to the Municipality.

#### **7.2 MUNICIPALITY MAY COMPLETE**

The owner acknowledges that this Agreement is entered into pursuant to section 41(11) of the Planning Act, R.S.O. 1990 c.P.13 and amendments thereto, and that a bylaw has been passed by the Municipality approving the entering into of this Agreement by the Municipality and incorporating the terms of this Agreement into that bylaw, and further that section 446 of The Municipal Act, S.O. 2001, c.25 and amendments thereto, applies to all requirements of this Agreement. If the Owner neglects to undertake any matter or thing required to be done by this Agreement and such default continues after SEVEN (7) days of the Owner being given written notice by the Municipality of such default, in addition to other remedies available to the Municipality, the Municipality may direct that such matter or thing shall be done at the expense of the Owner, and the Municipality may recover the costs incurred in doing it, by action or by adding such costs to the tax roll and collecting them in the same manner as taxes; the Owner hereby authorizes the Municipality (including, without limiting the generality of the foregoing, its employees, agents and servants) to enter upon the Lands to do any such matter or thing.

### ***ARTICLE 8 REGISTRATION AND CONSENTS***

## **8.1 REGISTRATION AND ENFORCEMENT**

Pursuant to Section 41(10) of the said Planning Act, R.S.O. 1990, c.P.13 and amendments thereto, this Agreement may be registered against the Lands to which it applies, as a first charge, at the Owner's expense, and the Municipality is entitled to enforce the provisions hereof against the Owner, and, subject to the provisions of The Registry Act, R.S.O. 1990, c.R.20 and amendments thereto, and the Land Titles Act, R.S.O. 1990, c.L.5 and amendments thereto, against any and all subsequent owners of the Lands.

## **8.2 CONSENT**

The Owner hereby consents to the registration of this Agreement on the title of the Lands, said registration (as well as the preparation of this Agreement) to be at the Owner's expense.

## **8.3 MORTGAGEES**

The Owner agrees to use commercially reasonable efforts to obtain a postponement of any mortgages or other financial encumbrances that may affect the Lands where such encumbrance involves an institutional lender and otherwise shall obtain a postponement.

# ***ARTICLE 9 MISCELLANEOUS***

## **9.1 COMMUNICATION**

Subject to the express provisions of this Agreement, all communications provided for or permitted hereunder shall be in writing, personally delivered to an officer of the addressee or sent by registered and receipted mail, charges prepaid, or by facsimile transmission or other means of recorded telecommunication, charges prepaid, to the applicable address set forth below or to such other address as either party hereto may from time to time designate to the other in such manner.

Communications sent to the Municipality shall be addressed to:  
917 Lesperance Road, Tecumseh, Ontario N8N 1W9

Communications sent to the Owner shall be addressed to:  
301-5 Douglas Street, Guelph, Ontario, N1H 2S8  
Attention: President

Any communication so personally delivered shall be deemed to have been validly and effectively given on the date of such delivery. Communications so sent by registered and receipted mail shall be deemed to have been validly and effectively given on the Business Day next following the day on which it is received, as evidenced by the postal receipt. Communications so sent by facsimile transmission or other means of recorded telecommunication shall be deemed to have been validly and effectively given on the Business Day next following the day on which it is sent. Any party may from time to time change his or its address for service on written notice to the others.

**“Business Day”** means any day, other than a Saturday, Sunday, a statutory holiday in the Province of Ontario, or any other day on which the principal chartered banks located in the Municipality are not open for business during normal banking hours

## **9.2 TIME OF ESSENCE**

Time shall be of the essence of this Agreement and of every part thereof.

## **9.3 WAIVER**

No waiver by any party of a breach of any of the covenants, conditions and provisions herein

contained shall be effective or binding upon such party unless the same shall be expressed in writing and any waiver so expressed shall not limit or affect such party's rights with respect to any other future breach.

#### **9.4 FURTHER ASSURANCES**

Each of the Parties covenants and agrees that they, or their heirs, executors, administrators and assigns will sign such further agreements, assurances, waivers and documents, attend such meetings, enact such by-laws or pass such resolutions and exercise such votes and influence, do and perform or cause to be done and performed such further and other acts and things as may be necessary or desirable from time to time in order to give full effect to this Agreement and every part thereof.

#### **9.5 HEADINGS**

The headings of the Articles of this Agreement are inserted for convenience only and do not constitute part of this Agreement.

#### **9.6 SUCCESSORS AND ASSIGNS**

The covenants hereunder shall run with the land and this Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

#### **9.7 GENDER**

All words and personal pronouns relating thereto shall be read and construed as the number and gender of the party or parties referred to in each case require and the verb shall be construed as agreeing with the required word and pronoun.

#### **9.8 SEVERABILITY**

If any covenant or provision contained herein is determined to be in whole or in part, invalid or unenforceable by reason of any rule of law or public policy, such invalidity or unenforceability shall not affect the validity or enforceability of any other covenant or provision contained herein and, in the case of partial invalidity or unenforceability of a covenant or provision, such partial invalidity or unenforceability shall not affect the validity or enforceability of the remainder of such covenant or provision, and such invalid or unenforceable covenant or provision or portion thereof, as the case may be, shall be severable from the remainder of this Agreement.

#### **9.9 ENTIRE AGREEMENT**

This Agreement expresses the final agreement among the parties hereto with respect to all matters herein and no representations, inducements, promises or agreements or otherwise among the parties not embodied herein shall be of any force and effect. This Agreement shall not be altered, amended or qualified except by a memorandum in writing, signed by all the parties hereto, and any alteration, amendment or qualification thereof shall be null and void and shall not be binding upon any such party unless made and recorded as aforesaid.

#### **9.10 EXECUTION IN COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and all of which together shall constitute one and the same instrument.

#### **9.11 JURISDICTION**

This Agreement and all other agreements, security and documents to be delivered in connection with this Agreement shall be governed by and construed in accordance with the applicable laws of the Province of Ontario and the laws of Canada applicable therein.

#### **9.12 ASSIGNMENT**

Subject to the terms of this Agreement, this Agreement is not assignable by the Owner prior to completion of the works without the consent of the Municipality.

#### **9.13 TRUE COPY**

All of the parties hereto acknowledge having received a true copy of this document.

#### **9.14 SCHEDULES**

Those Schedules marked as Schedules “B” through “G” have been signed by the parties and are on file with the Municipality. A reduced copy of those schedules are annexed hereto. A reduced copy of those schedules are annexed hereto which copy may be removed prior to registration on title should the Land Registry Office so determine or require.

#### **9.15 CONTRA PROFERENTEM RULE NOT APPLICABLE**

It is agreed and acknowledged that both parties, directly or through their agents, principals, representatives and/or solicitors, have participated in the preparation and/or negotiation of the provisions of this Agreement. Should any provision of this Agreement require judicial interpretation, mediation or arbitration, it is agreed that the court, mediator or arbitrator interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against one party or so as to disadvantage any party on the basis that such party and/or its solicitor or agent:

- (a) *Prepared this agreement or any part of it; or*
- (b) *Seeks to rely on this agreement or any part of it.*

#### **9.16 INDEPENDENT LEGAL ADVICE**

To the extent that the solicitors of Wolf Hooker Professional Corporation have been involved in the preparation of this Agreement, such solicitors act solely as solicitors for the Municipality and with regard to the interests of the Municipality and not for any other party to this Agreement. It is strongly recommended that all other parties to this Agreement obtain independent legal advice prior to signing this Agreement. Each such party acknowledges:

- (a) having obtained independent legal advice from his, her, or its’ own solicitor with respect to the terms of this Agreement prior to its execution or having otherwise been given a reasonable opportunity to obtain such advice and declined to so; and
- (b) that he *or* she *or* it understands the terms, and his *or* her *or* its rights and obligations, under this Agreement.

**SIGNATURE PAGE FOLLOWS**





## **SCHEDULE "A"**

### **THE LANDS**

#### **01567-1508 (LT)**

PART LOTS 147 AND 148, CONCESSION 2 SANDWICH EAST PART 1 ON PLAN 12R-28154; SUBJECT TO AN EASEMENT OVER PART 1 ON PLAN 12R-28154 IN FAVOUR OF PARTS 2 AND 4 ON PLAN 12R-28154 AS IN CE944861; SUBJECT TO AN EASEMENT OVER PART 1 ON PLAN 12R-28154 IN FAVOUR OF PART 3 ON PLAN 12R-28154 AS IN CE944862; TOGETHER WITH AN EASEMENT OVER PARTS 2 AND 4 ON PLAN 12R28154 AS IN CE944861; TOGETHER WITH AN EASEMENT OVER PART 3 ON PLAN 12R-28154 AS IN CE944862; TOWN OF TECUMSEH

## **SCHEDULE "B"**

### **SITE PLAN**

The final plans/drawings have been filed and indexed by the Municipality and can be provided upon written request to the Municipality.

## **SCHEDULE "C"**

### **SITE SERVICES PLAN**

The final plans/drawings have been filed and indexed by the Municipality and can be provided upon written request to the Municipality.

## **SCHEDULE "D"**

### **LANDSCAPING PLAN**

The final plans/drawings have been filed and indexed by the Municipality and can be provided upon written request to the Municipality.

## **SCHEDULE "E"**

### **INTERSECTION PLAN**

The final plans/drawings have been filed and indexed by the Municipality and can be provided upon written request to the Municipality.

## **SCHEDULE "F"**

### **ELEVATIONS PLAN**

The final plans/drawings have been filed and indexed by the Municipality and can be provided upon written request to the Municipality.

## **SCHEDULE "G"**

### **PHOTOMETRICS PLAN**

The final plans/drawings have been filed and indexed by the Municipality and can be provided upon written request to the Municipality.

## **SCHEDULE "H"**

### **SITE GRADING PLAN**

The final plans/drawings have been filed and indexed by the Municipality and can be provided upon written request to the Municipality.