

Attachment 4
Site Plan Control
The TDL Group Corp. – Tim Hortons Restaurant
5250 Walker Road
Site Plan Control Amending Agreement

THE CORPORATION OF THE TOWN OF TECUMSEH

SITE PLAN CONTROL AMENDING AGREEMENT

THIS AGREEMENT made in triplicate this _____ day of _____, 2021

B E T W E E N :

THE CORPORATION OF THE TOWN OF TECUMSEH,
hereinafter called the “Town”

Of the First Part,

- and –

THE TDL GROUP CORP.
hereinafter called the “Owner”

Of the Second Part.

WHEREAS:

- 1) The Owner owns and has developed that certain parcel or tract of lands and premises, situate, lying and being in the Town of Tecumseh, and being more particularly described in Schedule “A” attached;
- 2) A site plan control agreement (the “Original Site Plan Control Agreement” “Original Agreement”) between the Owner, Raymond Simrak and The Town has been entered into, an execution copy of which was registered in the Land Registry Office for the Land Titles Division of Essex (No. 12) as instrument No. CE90936 on September 10, 2003 respecting said development;
- 3) The Original Agreement was further amended by a Site Plan Control Amending Agreement, an execution copy of which was registered in the Land Registry Office for the Land Titles Division of Essex (No. 12) as instrument no. CE30790 on August 7, 2012 respecting said development;
- 4) The Town has enacted by-laws designating the subject lands as a site plan control area in pursuance of the Planning Act of Ontario and as a condition to the approval of the plans and drawings referred to in subsection 41(4) of the Planning Act, required that this agreement be entered into by virtue of subsection 41(7)(c) of the Planning Act;
- 5) The Original Agreement is hereby amended as set out herein, all of which is hereinafter referred to as “the Site Plan Agreement” and the amendment affects all of the lands described in Schedule “A” hereto, which lands are herein called the “subject lands”;
- 6) The Owner has amended the site plan and drawings for the subject lands, and the Town has approved the amendments, together with certain amendments to the text of the Original Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises, other good and valuable consideration, and the sum of Five dollars (\$5.00) now paid by the Owner to the Town (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

- 1) The Site Plan attached as Schedule “B” to the Original Site Plan Control Agreement, is hereby deleted and repealed, and is hereby replaced, the original replacement of which has been signed by the parties and is on file with the town hereinafter “the Site Plan”.

- 2) The Servicing Plan attached as Schedule "C" to the Original Site Plan Control Agreement, is hereby deleted and repealed, and is hereby replaced, the original of which replacement has been signed by the parties and is on file with the town, hereinafter "Site Service Drawing"
- 3) The parties agree that paragraph 14.5 of the Original Site Plan Control Agreement be and is hereby amended by deleting the words "Section 326 of the Municipal Act, R.S.O. 1990" and replacing them with the words "Section 446 of the Municipal Act, 2001 S.O. 2001".
- 4) The Owner shall, at its own expense, develop the Lands with the amenities, facilities, works, services and in accordance with each and every of the obligations described and set out in this agreement, the Original Agreement, and in accordance with the Site Plan (all of which are hereinafter collectively called the "Services").

5) SECURITY

- 5.1 The Owner agrees to provide contemporaneously with the execution hereof, a cash security deposit or irrevocable letter of credit (in form satisfactory to the Town) in the amount of \$10,000.00 to ensure that all of its obligations herein contained are completed to the satisfaction of the Town. The cash security deposit shall be returned to the Owner on completion to the satisfaction of the Town, and final inspection of the obligations of the Owner hereunder. It is acknowledged by the Owner that the original security amount placed pursuant to paragraph 7.1 of the Original Agreement has been returned to the Owner.
- 5.2 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 4.1 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.
- 5.3 The Owner acknowledges that it is the Owner's sole responsibility to ensure it has rights of access over abutting lands, as may be necessary, for the construction and/or maintenance of the structures placed on the Owner's lands and that neither execution of this Agreement or issuance of a Building Permit under the Building Code Act does not afford the Owner a right of access over abutting lands.

6) CONDITIONS

6.1 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 4.1;
- b) Construction lien deposit pursuant to Paragraph 4.2;

6.2 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 Town may at its option elect to terminate this Agreement:

- a) Workers' Compensation Board Clearance Certificate issued if required;
- b) Proof of Insurance is provided pursuant to Paragraph 6.4 if required;
- c) Due registration against the title of the land of this Agreement;
- d) Postponement to this Agreement by all encumbrances;
- e) Receipt of the opinion of the Owner's lawyer confirming 5.2(c) and 5.2(d) if required by the Town;

- 7) The Owners agree to fulfil all of the covenants set out herein to the satisfaction of the Municipality within ONE (1) year of the date of execution of this Agreement.
- 8) The Owner shall reimburse the Municipality for all the Municipality costs with respect to the development, including without limiting the generality of the foregoing, the fees and disbursements of its Engineer, and Solicitor. The Municipality shall deliver invoices to the owner in a timely fashion payment for which shall be due immediately.
- 9) 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.
- 10) 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 427 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 role 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.
- 11) Pursuant to Section 41(10) of the said Planning Act, R.S.O. 1990, c.P.13 and amendments thereto, this Agreement shall 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 Owners, who shall be jointly and severally liable for the Owners' covenants and obligations outlined herein, 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.
- 12) The Owners hereby consent 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 Owners' expense. Where any schedule is required to be deleted from the version of the Agreement registered on title, it may be noted as being on file at the Town's offices without affecting the validity of such schedule or its incorporation as part of this Agreement.
- 13) The owners agree to obtain a postponement of any mortgages or other encumbrances which may affect the Lands.
- 14) The parties otherwise agree that in all other respects, each and every of the provisions, terms, conditions and covenants contained in the Original Agreement, be and they are hereby ratified and confirmed, to be fully enforced in accordance with their provisions.
- 15) In the event of conflict between this amending agreement and the Site Plan Agreement, the terms of this Agreement shall govern.

16) This agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

IN WITNESS WHEREOF, the said parties hereunto affixed their signatures and corporate seals, attested to by the hands of their proper officers duly authorized in that behalf.

| | | |
|------------------------------|---|---|
| Signed, sealed and delivered |) | THE CORPORATION OF THE |
| |) | TOWN OF TECUMSEH |
| in the presence of: |) | |
| |) | |
| |) | Per:_____ |
| |) | Name: Gary McNamara |
| |) | Title: Mayor |
| |) | c/s |
| |) | Per:_____ |
| |) | Name: Laura Moy |
| |) | Title: Clerk |
| |) | |
| |) | THE TDL GROUP CORP. |
| |) | |
| |) | Per:_____ |
| |) | Name: Matthew Smith |
| |) | Title: Authorized Signing Officer |
| |) | c/s |
| |) | I have authority to bind the Corporation. |

Schedule “A”

Pt. N ½ Lot 304 Con. NTR Sandwich East designated as Parts 3, 4 and 5 Plan 12R-27898; subject to an easement over Parts 4 and 5 Plan 12R-27898 as in LT342903; Town of Tecumseh

Being all of PIN: 70622-0326

Schedule "B"

Site Plan



