

**Attachment 4**  
**Site Plan Control Amending Agreement**  
**Fairlane Towne Centre Inc.**  
**Draft Amending Agreement**

**AMENDING AGREEMENT**

**THIS AGREEMENT** made in triplicate this \_\_\_\_ day of \_\_\_\_, 2018.

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

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

Of the First Part,

- and -

**FAIRLANE TOWNE CENTRE INC.**  
hereinafter called the “Owner”

Of the Second Part.

**WHEREAS:**

- (a) Owner is the registered owner of certain lands situate within the Town of Tecumseh, said lands being more particularly described in Schedule “A” annexed hereto (the “Lands”);
- (b) Owner, 479243 Ontario Ltd. and Deborah St. Louis were the registered owners of the Lands when they entered into a development agreement with the Corporation (the “Original Agreement”), pertaining to the Lands;
- (c) the Agreement was registered in the Land Registry Office for the Registry Division of Essex (No. 12) on the 15<sup>th</sup> day of February, 1999, as Instrument Number 1453194;
- (d) the Agreement was amended by Amending Agreement dated the 13<sup>th</sup> day of July, 1999, and registered in the said Land Registry Office on the 24<sup>th</sup> day of August, 1999, as Instrument Number 1470878 (the “First Amending Agreement”);
- (e) the Agreement was amended by Amending Agreement dated the 24<sup>th</sup> day of October, 2000, and registered in the said Land Registry Office on the 8<sup>th</sup> day of December, 2000, as Instrument Number 1505049 (the “Second Amending Agreement”);
- (f) the Agreement was amended by Amending Agreement dated the 9<sup>th</sup> day of December, 2002, and registered in the said Land Registry Office on the 20<sup>th</sup> day of December, 2002, as Instrument Number LT386642 (the “Third Amending Agreement”);
- (g) Owner is now the sole owner of the Lands, having acquired the Lands from the prior owners, and having agreed to be bound by the Agreement and all amendments thereto; and
- (h) Owner and the Corporation desire to further amend the Original Agreement as set out herein, all of which Original Agreement, subsequent amending agreements and this amending agreement are collectively hereinafter referred to as “the Agreement” and the amendment affects all of the Lands.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the premises contained herein and other good and valuable consideration, (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

1. Paragraph 4 of the Original Agreement is amended by adding an additional subparagraph as follows:

- (d) *The Town will not require the design or installation of services on, in or through Parts 2 and 3 on Plan 12R-25167 until such time as the Town, at the Town's sole discretion requires that parts Parts 2 and 3 on Plan 12R-25167 is required for municipal purposes in accordance with Schedule H. Upon notification of the Town to the Owner that the services are to be constructed on Parts 2 and 3 on Plan 12R-25167, the Owner shall proceed forthwith to have the required services , including but not limited to the roadway, sanitary, storm, hydro, street lighting and water, designed and installed to the Town's satisfaction using the Town's then current standards and requirements.*

*Should the owner fail to proceed with the aforementioned design and installation of services within six (6) months of the date of notice, the Town may at the Town's sole discretion proceed to the design and installation of the services at the expense of the Owner.*

2. Effective as of the date of this amending agreement, Schedule A of the Agreement is amended to further add and include:

- a) *PT Lot 5, Plan 395 Designated as PT 1 12R9926, save & except PTS 1,3,4, 12R21488; Town of Tecumseh, County of Essex; (PIN 75244-0504)*  
b) *PT Lot 153 Concession 2 Designated as PTS 2,3 and 5-10 inclusive on 12R25167, Town of Tecumseh, County of Essex (being part of PIN 75244-0483)*

3. Figure A-1 of the Agreement is hereby deleted and replaced with Schedule "B" attached hereto;

4. Schedule "B" – STORM DRAINAGE is amended by adding the following paragraph at the end:

*"The Owner acknowledges that the Cyr Drain has been enclosed and runs through the parking areas serving Buildings J and K, as identified in Figure A-1". The Owner shall be responsible for the replacement of any site improvements, including but not limited to parking areas and landscaping, that have been constructed on the Owner's land in accordance with Figure "A-1", should any maintenance and/or reconstruction of the Cyr Drain be undertaken by the Town."*

5. Any reference in any prior amending agreement referring to the Special Works schedule as Schedule "H" shall be corrected so as to refer Schedule "M".

6. Schedule H of the Agreement is hereby amended to so as to require the following in addition to any other requirement outlined therein:

- a) *The Owner shall, on demand, convey to the Town free and clear of any encumbrance Parts 2 and 3 on Plan 12R-25167 for use as a municipal roadway (being an extension of Westlake Drive). The Town shall not be obliged to accept any such conveyance until such time as the Town at the Town's sole discretion requires Parts 2 and 3 on Plan 12R-25167 for municipal purposes. Immediately subsequent to the conveyance of the lands required to be conveyed, the Owner shall prepare a release and the Town shall execute said release of all easements registered over Parts 10, 11, 12 and 13 on Plan 12R-21488 at the sole expense of the Owner. (see paragraph 4.d of agreement for servicing requirements)*  
b) *The Owner shall, prior to the issuance of any further building permit obtain and cause to be registered on title a surrender of all easements registered over Part 7 on Plan 12R-25167 including without limitation:*  
i) *SE30576 registered on October 23, 1945 in favour of The Bell Telephone Company of Canada and Notice of Claim registered as R941907 on July 9, 1985;*

7. Intentionally deleted.

8. 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 the Agreement and its applicable schedules.

9. The Owner shall comply with the requirements for delivery of performance and maintenance security set out in Schedule “C” attached hereto.

10. The Owner shall reimburse the Town for all the Town costs with respect to the development, including without limiting the generality of the foregoing, the fees and disbursements of its Engineer, and Solicitor and any planning or administrative costs. The Town shall deliver invoices to the owner in a timely fashion payment for which shall be due immediately.

11. In the event of any default by the Owner in the performance of any of the terms and conditions of this Agreement, the Town at its discretion shall, in addition to other remedies available to the Town, 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 Town'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 Town.

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.

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, as previously amended be and they are hereby ratified and confirmed, to be fully enforced in accordance with their provisions.

15. In the event of conflict/inconsistency between this amending agreement and the Original Agreement, the First Amending Agreement, the Second Amending Agreement, and/or the Third Amending Agreement, the terms of this amending agreement shall prevail and 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	)	<b>THE CORPORATION OF THE</b>
	)	<b>TOWN OF TECUMSEH</b>
in the presence of:	)	
	)	Per:_____
	)	Name: Gary McNamara
	)	Title: Mayor
	)	c/s
	)	Per:_____
	)	Name: Laura Moy
	)	Title: Clerk
	)	
	)	FAIRLANE TOWNE CENTRE Inc.
	)	
	)	Per:_____
	)	Name:
	)	Title: President
	)	c/s
	)	I have authority to bind the Corporation.

## Schedule A

Firstly, BLK Z PL 1287 Sandwich East (Amended by SE23184); PT LT 5 PL 395 Sandwich East PT 1 12R7425; Except R1124979; S/T R902509; Tecumseh (PIN 75244-0297);

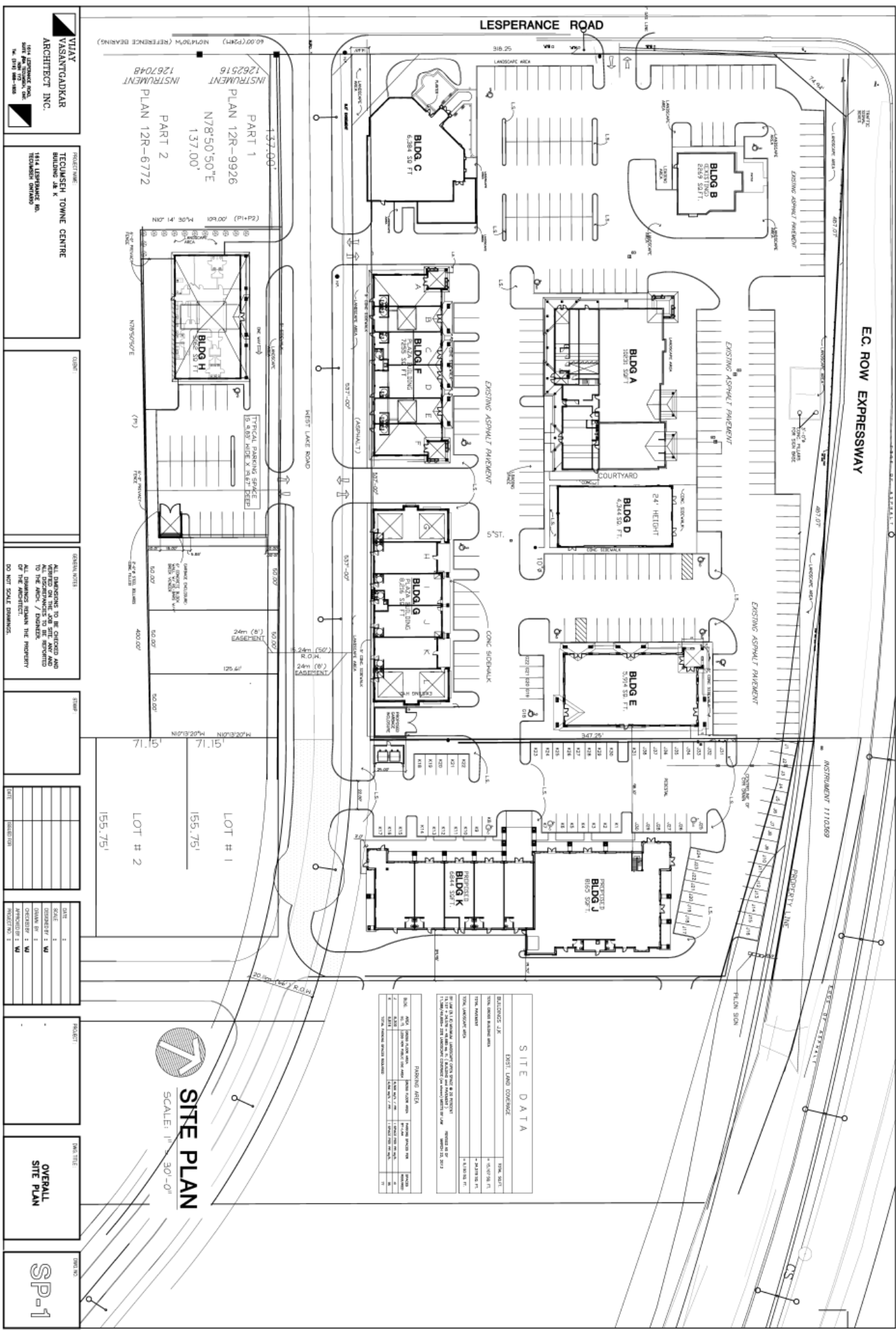
Secondly, PT LT 5 PL 395 Sandwich East As in R1302980; Tecumseh (PIN 75244-0298);

Thirdly, PT Lot 5, Plan 395 Designated as PT 1 12R9926, save & except PTS 1,3,4, 12R21488; Town of Tecumseh; (PIN 75244-0504)

Fourthly, PT Lot 5 , Plan 395 Designated as PTS 2, 15 & 16 on 12R16455; PTS 7 &9 on 12R21488; and PT Lot 153 Concession 2 Designated as PTS 2,3 and 5-10 inclusive on 12R25167 (being part of PIN 75244-0483)

All being in the Town of Tecumseh, County of Essex, and Province of Ontario

## SITE PLAN



## **SCHEDULE "C"**

### ***SECURITY, MAINTENANCE AND ASSUMPTION***

#### **1.1 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 Owners shall, upon execution of this Agreement, forthwith deposit with the Town security in an amount which is equal to \$ 10,000.00 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 Engineer and approved by the Town). For greater certainty, the amount of said security shall be subject to approval by the Town's Clerk and Solicitor.

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 Town's Clerk and Solicitor. (not a Letter of Guarantee or Bond)

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

#### **1.2 RELEASE OF SECURITY**

The Town 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 Town's sole discretion.

#### **1.3 INDEMNITY AND INSURANCE**

The Owner shall indemnify and save harmless the Town, the Corporation of the County of Essex, Essex Power Corporation and Hydro One 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.

While any of the facilities and works herein have not been assumed by the Town, the Owner shall maintain in full force and effect a policy of personal liability and property damage insurance in form and amount satisfactory to the Town's solicitor wherein the Owner, the Town, the Corporation of the County of Essex, the Essex Power Corporation and Hydro One shall be insured as principals against such liability to a minimum of TWO MILLION (\$2,000,000.00) DOLLARS per occurrence. The Owner shall provide the Town with a certified copy of such policy prior to the commencement of construction of any of the facilities and works referred to herein and provide certified copies of any renewals where the term of such policy expires prior to the assumption of the Municipal Services by the Town.