

**SITE PLAN AGREEMENT
(1933892 Ontario Inc.)**

THIS AGREEMENT made (in triplicate) this 23rd day of May, 2017.

BETWEEN:

THE CORPORATION OF THE TOWN OF KINGSVILLE,

hereinafter called the “Corporation”,

OF THE FIRST PART

-and-

1933892 ONTARIO INC.

hereinafter called the “Owner”,

OF THE SECOND PART

AND WHEREAS the Owner has requested an amendment to the Site Plan Agreement which the Town has agreed to allow a revised site plan on land locally known as 6 Park Street and described as Part of Lot 1, Concession 1, Eastern Division Gosfield, now a portion of the Corporation of the Town of Kingsville, County of Essex.

AND WHEREAS the Corporation has enacted a by-law being a By-law to establish site plan control in the Town of Kingsville pursuant to the provisions of Section 41(2) of the Planning Act, R.S.O. 1990, c.P.13;

AND WHEREAS development of the subject lands is subject to site plan control as provided for in the By-law;

AND WHEREAS as a condition of the approval of a building permit for the said lands the Corporation and the Owner must enter into this Agreement;

GENERAL

1. (a) **Covenant** - The Owner covenants and agrees to build, provide and maintain for the life of the development at the Owner’s entire expense and to the Corporation’s entire satisfaction all landscaping, buildings, parking facilities, lot grading, garbage and central storage areas, storm water management systems, rate of flow monitoring, lighting and other related items in compliance with relevant legislation and in accordance with drawings attached hereto as Schedule “A-2017”. The Owner agrees that all development shall be in compliance with the relevant zoning provisions and in accordance with the Corporation’s Development Standards Manual, as amended from time to time.

(b) Name & Address of Corporation

The Corporation of the Town of Kingsville
Attention: Town Solicitor
2021 Division Road North
Kingsville, Ontario N9Y 2Y9

(c) Name & Address of the Owner

1933892 Ontario Inc.
c/o Loop Schauer Chapman & Associates LLP
50 Main Street East
Kingsville, ON
N9Y 1A2

(d) Approval Date – May 23, 2017

SCHEDULES ATTACHED:

2. Hereinafter referred to as Schedule “A-2017” and forming part of this agreement:

SCHEDULE ‘A-2017’ - Site Plan (Prepared by: Architectural Design Associates and Dated: February 16, 2017)

A large format plan, attached hereto as Schedule ‘A-2017’, are available in the Development Services Department for the Town of Kingsville, 2021 Division Rd. in the Town of Kingsville and are available for review during regular business hours.

LOT GRADING PLAN

1. (a) **Lot Grading Plan** - The Owner further agrees to submit to the satisfaction of the Corporation’s Chief Building Official and Essex Region Conservation Authority (ERCA) in regulated areas throughout, a lot grading plan covering the subject lands for their approval prior to the issuance of any building permits or construction permits for the subject lands. The Owner shall ensure that the site drainage shall not affect adjacent properties.
- (b) **Ontario Land Surveyor** - The Owner also agrees to have the approved elevation as per this lot grading plan verified by an Ontario Land Surveyor at the following stages of construction:
 - (a) Prior to the pouring of footings (top of forms elevation); and
 - (b) Following completion of construction.
- (c) **Deviation** - Where the finished grade of the subject lands deviates from the original lot grading plan presented to and accepted by the Corporation’s Chief Building Official, and ERCA in regulated areas throughout, the Owner shall submit a new lot grading plan to the satisfaction of the said Chief Building Official and ERCA or re-grade the lands to the elevations indicated on the original lot grading plan.

SIGNS

2. **Signs** - Compliance with Approved Drawings - The Owner further agrees to submit a signage plan to the Corporation’s Chief Building Official for his or her approval, prior to the issuance of a construction permit. Said signage plan shall include the design, size and location of all existing or proposed signs erected or located on or to be erected or located on the subject lands. In addition, this signage plan shall outline any landscaping features associated with any signage.

ON-SITE TRAFFIC SIGNAGE

3. (a) **Traffic Signage** - Prior to construction, the Owner agrees to provide on-site traffic signage and pavement markings to the satisfaction of the Corporation (and/or the County of Essex, where applicable) and as detailed on Schedule “A-2017”.
- (b) **Parking Garage Access Signage** – That the Owner agree to install and maintain signage at the entrance/exit of the parking garage to provide caution to existing vehicles of pedestrian traffic on the sidewalk and signage warning pedestrian traffic of existing vehicles from the parking garage.

DIRT AND DEBRIS

4. **Dirt and Debris** - The Owner further agrees to keep the public highways adjacent to the subject lands free from dirt and debris caused by the construction and ongoing operation on the subject lands. The Owner further agrees to, within twenty-four (24) hours of being notified and instructed by the Corporation and/or County of Essex to do so, clean-up the streets adjacent to the subject lands and/or take dust control measures at the Owner’s entire expense, failing which, the

Corporation and/or County of Essex may carry out or cause to have carried out the said work at the entire expense of the Owner.

REPAIR OF HIGHWAY

5. **Repair of Highway** - The Owner further agrees that any curbs, gutters, pavements, sidewalks or landscaped areas on the public highway which are damaged during the construction and maintenance period shall be restored by the Owner at the Owner's entire expense and to the satisfaction of the Corporation and/or County of Essex.

DRIVEWAY APPROACHES AND PARKING AREAS

6. (a) **Driveways** - The Owner further agrees to construct driveway approaches in such manner, widths and location as approved by the Corporation and as detailed on Schedule "A-2017". The portion of the entrance that is within the municipal right-of-way shall be hard surfaced at the time of construction. All sidewalk reconstruction shall be at the Owner's expense and to a standard acceptable to the Town.
- (b) **Surfacing** – The Owner further agrees that all driveway approaches and parking areas as shown on Schedule "A-2017" shall be hard surfaced.

PERMITS

7. **Permits** - The Owner further agrees to obtain the necessary access or other permit for any new driveway approaches, sewer taps, drain taps, or curb cuts from the Corporation and/or County of Essex, prior to the commencement of any construction on the public highway.

LIGHTING

8. **Lighting** – The Owner further agrees to provide all lighting of any parking area and/or building(s) located on the subject lands. Lights used for illumination shall be designed to full cut-off standards and shall be arranged as to divert the light away from adjacent roadways and properties and minimize impact on the night sky. All exterior lighting shown shall be designed to eliminate glare and reflection from the surfaces on which any lighting is mounted. The Owner further agrees that any future proposed changes to lighting of the subject lands shall require the approval of the Corporation and may require an amendment to this Agreement.

PARKING

9. (a) **Parking** - The Owner further agrees to provide adequate on-site parking for the proposed building in accordance with the Corporation's Zoning By-law, as amended, and as shown Schedule "A-2017".
- (b) **Visitor Parking** – The Owner agrees that a total of 13 of the required parking spaces shall be signed at visitor parking.

GARBAGE, WASTE AND CENTRAL STORAGE FACILITIES

10. (a) **General** – The Owner covenants and agrees that no waste as defined in the *Environmental Protection Act*, or any regulations passed thereunder, may be deposited or stored on the subject lands except as approved by the Corporation's Chief Building Official in accordance with the diagrams attached hereto as Schedule "A-2017" and forming part of this Agreement.
- (b) **Storage** – The Owner further covenants and agrees that no garbage, waste, substance, product, by-product or any other thing (hereinafter collectively called the "Waste") shall be stored outside anywhere on the subject lands, save and except for in accordance and compliance with and as shown on Schedule "A-2017".

(c) **Default and Remedy** – The Owner further agrees that any Waste deposited or stored:

- i. in an area other than those specific areas shown in Schedule “A-2017” for the storage of same;
- ii. without obtaining and providing to the Corporation a Certificate of Approval;
- iii. in contravention of any legislation; or
- iv. in contravention of this Site Plan Agreement;

shall be removed from the subject lands by the Owner at the entire expense of the Owner. The Owner further agrees that if the Owner fails to remove this Waste within 10 days of having received written notice from the Corporation to do so, the Owner agrees that the Corporation, its agents, servants, workmen or employees may enter upon the subject lands and remove the Waste; the cost of which shall be recovered by the Corporation out of the Performance Securities contemplated in this Agreement, and any additional costs incurred by the Corporation in excess of the said securities shall constitute a debt owing by the Owner to the Corporation and the Corporation may add such debt to the tax roll of the subject lands and collect and enforce them in the same manner as taxes.

LANDSCAPING

11. (a) **Landscaping Plan** - The Owner further agrees to submit a landscaping plan to the Corporation’s Chief Building Official for his or her approval, prior to the issuance of a construction permit.

(b) **Installation and Maintenance** - The Owner further agrees to install and maintain all landscaping features in accordance with the approved landscape plan and in a manner satisfactory to the Chief Building Official.

(c) **Undeveloped Lands** - In the event that the subject lands are to be developed in phases the Owner further agrees not to dump, store or otherwise stock pile fill and to grade and seed, to the satisfaction of the Chief Building Official, all vacant lands that are not developed within six (6) months of the issuance of the construction permit for the initial phase of the development.

STORM WATER MANAGEMENT

12. (a) **Consulting Engineer** - Prior to the issuance of a building permit, the Owner further agrees to retain a consulting engineer for the design and preparation of drawings satisfactory to the Corporation's Engineer and the Chief Building Official for an internal storm water management system to service the subject lands.
- (b) **Construction and Maintenance** - Upon approval of the drawings by the Corporation's Engineer and the Chief Building Official, the Owner further agrees to construct and maintain, at the Owner's entire expense, the storm water management system in accordance with the approved drawings and to the satisfaction of the Chief Building Official.
- (c) **Undeveloped Lands** - The Owner further agrees to maintain, grade and keep groomed any undeveloped portions of the subject lands and that any changes to the surface material, grade or use of undeveloped lands shall require a review of the approved Storm Water Management System and may require its amendment.
- (d) **Ministry of Environment Requirements** - The Owner further agrees to comply with the requirements of the Ministry of the Environment, in an effort to improve the quality of storm water runoff, and ensure that all catch basins shown on the approved drawings will be equipped with filter cloth inserts. The Owner shall provide the Corporation with notice of any proposed changes to conditions of the Certificate of Approval issued by the Ministry of Environment.
- (e) **Engineering Report in Development** - In any development, the Owner agrees not to construct the roof of any building or structure unless and until a storm water management system is installed and completed to the satisfaction of the Chief Building Official and the Chief Building Official has received a written report from a Professional Engineer confirming that the storm water management system complies with the plans and specifications on file with the Corporation (and as approved by the Chief Building Official). The Owner shall be responsible for the entire cost of the written report of the Professional Engineer.

EXISTING WATERCOURSES AND NATURAL LAND DRAINAGE

13. (a) **Existing Watercourses and Natural Land Drainage** - The Owner further agrees that no natural watercourse shall be blocked, abandoned or otherwise altered during the course of construction of the development unless approved by the Corporation and that no natural land drainage shall be cut off without adequate provision made for its interception to the satisfaction of the Corporation.
- (b) **ERCA** - The Owner further agrees to meet any drainage requirements that the Essex Region Conservation Authority may have with respect to development of the subject lands.

DEVELOPMENT CHARGES

14. **Development Charges** - The Owner agrees to pay to the Corporation on the issuance of a building permit, the appropriate development charge in accordance with the Corporation's Development Charges By-law, as amended.

POSTPONEMENT AND SUBORDINATION

15. **Postponement and Subordination** - The Owner covenants and agrees, at its entire expense, to obtain and register, from its mortgagees and/or encumbrancers, such documentation as may be deemed necessary by the Corporation to postpone and subordinate the interest of said mortgagees and/or encumbrancers in the subject lands to the interest of the Corporation to the extent that this Agreement shall take effect and have priority as if it had been executed and registered before the execution and registration of the document or documents giving to the mortgagees and/or encumbrancers their interest in the subject lands.

FINANCIAL SECURITY

16. (a) **Performance Security** - The Owner further agrees to deposit with the Corporation, to be held by the Corporation without interest, at the time a building permit is issued to it, a Performance Security in the form of a certified cheque, cash or an Irrevocable Letter of Credit which is automatically extended, or other security in form satisfactory to the Corporation's Solicitor, in the sum of \$30,000 to guarantee the due performance of the Owner's obligations under this Agreement, within the time period specified in paragraph 18 hereof. No Performance Security shall be released until the Owner has complied fully with its obligations with the provisions of this Agreement.

(b) **Deficiency** - The Owner acknowledges and agrees that should there be a deficiency in, or failure to carry out, any work, obligation or matter required by any provision of this Agreement, and the Owner fails to remedy same within 10 days of being given written notice with a direction to carry out such work or matter, the Corporation may draw on the security held and enter onto the property of the Owner and complete all outstanding works or matters, and pay all costs and expenses incurred thereby from the proceeds of any security held by it.

(c) **Shortfall** - The Owner further acknowledges and agrees that, notwithstanding any provision to the contrary in this Agreement specifying the return of security, in the event that the Corporation determines that any return of cash or certified funds held by it would create a shortfall with respect to securing the completion of any work or matter remaining to be carried out by the Owner pursuant to this Agreement, the Corporation will not be obliged to return the security held by it until such time as such work is satisfactorily completed or the Corporation has sufficient security to insure that such work will be completed.

COMMENCEMENT/COMPLETION OF WORK/TERMINATION OF AGREEMENT

17. **Commencement/Completion of Work/Termination of Agreement** - The Owner further covenants and agrees that the proposed development governed by this Agreement will be commenced within one (1) year from the date of the execution of this Agreement. The Owner further covenants and agrees that all works, buildings, parking, access areas, landscaping, systems and all other required facilities required by this Agreement shall be completed within two (2) years from the date on which the Corporation's Chief Building Official issues a building permit for the said development. If the Owner fails to meet either of the aforesaid deadlines, the Corporation may, at its sole option and on fourteen (14) days written notice to the Owner, declare this Agreement null and void and of no further force and effect. The refund of any monies paid by the Owner pursuant to this Agreement shall be in the sole discretion of the Corporation, but under no circumstances will interest be paid on any refund.

CONVEYANCES AND CONTRIBUTIONS

18. (a) **Conveyances and Contributions** - The Owner further agrees to gratuitously convey or dedicate, in fee simple and without encumbrance, to the Corporation any land, easement, right of way or otherwise as deemed required by the Corporation, Hydro One, ELK Energy Inc., Bell Canada or Union Gas in, through, over and under the subject lands for drainage purposes, sewers, hydro, gas, utilities, watermains and telephone.

(b) **Surveys and Land Descriptions** - In the event that the Owner is required to convey lands, easements, rights of way or otherwise pursuant to this Agreement, then the Owner shall obtain all surveys and land plans or descriptions for lands to be conveyed to the Corporation at the Owner's entire expense.

GENERAL PROVISIONS

19. In addition to the standard site plan agreement requirements the Owner also agrees to:

- i) **Lot Servicing** - That the Owner agrees to install the necessary service connections as required by the Town at the expense of the Owner and to the satisfaction of the Town.
- ii) **Construction Site Maintenance and Debris** – That the Owner agrees to provide temporary on-site garbage bin(s) for the storage and disposal of construction waste and that said bins are properly maintained and emptied on a regular basis so that no garbage or waste is allowed to accumulate outside of the bin at any time.
- iii) **Fire Department** - That the Owner agrees to provide a lock box and fire plan located to the satisfaction of the Town and at the Owner's expense;
- iv) **Standpipe(s)** – That the Owner agree to install and maintain, including signage and access to the satisfaction of the Town any required standpipe(s) in compliance with Ontario Building Code requirements.
- v) **Site Plan Agreement Costs** - The Owner agrees to pay to the Corporation any fees or other costs or expenses incurred by the Corporation for the negotiation and preparation of this Agreement and said payment shall be payable by the Owner to the Corporation upon demand.
- vi) **Sanitary** – The Owner agrees to install on-site sanitary effluent storage including any emergency backup power and monitoring equipment for any units in excess of 32 to the satisfaction of Municipal Services and that said effluent be released during off-peak hours timing of which is to be determined by Municipal Services.
- vii) **Sanitary Effluent Storage Decommissioning** – The Owner agrees that upon notification by the Town of increased sanitary sewer collection capacity availability to the subject property the owner my remove and decommission the storage system to the satisfaction of the Town.

20. (a) **Enforcement and Remedies** - All facilities and matters required by this Agreement shall be provided and maintained by the Owner at the Owner's sole risk and entire expense to the satisfaction of the Corporation and in default thereof the Owner acknowledges that the Corporation, in addition to any other remedy it may have at law, shall also be entitled to enforce this Agreement in accordance with Sections 444 to 446, inclusive, of the Municipal Act, S.O. 2001, c.25 as amended.

(b) If the Owner is in default of any matter, obligation or thing required to be done by this Agreement and such default continues for more than 10 days after the Corporation having given written notice to the Owner of same, then in addition to and without limiting other remedies available to it, the Corporation may direct that such matter or thing be done at the entire expense of the Owner and the Corporation may recover the expense incurred in doing it by adding the costs to the tax roll and collecting them in the same manner as property taxes. The Owner hereby authorizes the Corporation to enter upon the subject lands to do such matters or things.

(c) Any work done by the Corporation for or on behalf of the Owner or by reason of the Owner not having done the work in the first instance, shall be deemed to be done as agent for the Corporation and shall not, for any purpose whatsoever, be

deemed as an acceptance or assumption of any works, services or faults by the Corporation.

- 21. **Successors and Assigns** - This Agreement and everything contained herein shall enure to the benefit of and be binding upon the Parties hereto and their respective heirs, administrators, executors, successors and permitted assigns.
- 22. **Enforceability** - If any term, covenant or condition of this Agreement is, to any extent, declared invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 23. **Amendments** - This Agreement may be amended at any time with the written consent of the Corporation and the registered Owner of the subject lands at the time of such amendment. This Agreement may be amended to permit further additions by replacing the drawings attached in Schedule “A-2017” on file in the office of the Clerk, upon approval of the Corporation, without the need to alter this text or the registration of any additional material on title. Accordingly, it will be necessary for any new Owner to review drawings on file in the office of the Clerk of the Corporation to specifically determine that which is permitted at any given point in time. Financial securities may be required by the Corporation for any addition permitted by way of amendment to this Agreement.
- 24. **Extension of Time** – Time shall always be of the essence of this Agreement. Any time limit specified in this Agreement may be extended with the consent in writing of both the Owner and the Corporation, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit. Any extension granted by the Corporation will be conditional upon the recalculations of all outstanding monies owed to the Corporation by the Owner pursuant to this Agreement.
- 25. **Registration** - The Owner hereby consents to the registration of this Agreement on the title of the subject lands at the Owner’s expense.
- 26. **Officials** – The Engineer, the Chief Building Official, the Director of Environmental Services, the Fire Chief, the Town Solicitor, and the Manager of Municipal Services referred to herein are those of the Corporation.

IN WITNESS THEREOF the said parties hereto have duly executed the Site Plan Agreement on the date first written above.

SIGNED SEALED AND DELIVERED

WITNESS

1933892 Ontario Inc.

Dan Loop
I have the authority to bind the Corporation

THE CORPORATION OF THE TOWN OF KINGSVILLE

**MAYOR
NELSON SANTOS**

**CLERK
JENNIFER ASTROLOGO**

SCHEDULE “A-2017”



