

SITE PLAN AGREEMENT

THIS AGREEMENT made (in triplicate) this 12th day of June 2017.

BETWEEN:

THE CORPORATION OF THE TOWN OF KINGSVILLE,

hereinafter called the “Corporation”,

OF THE FIRST PART

-and-

JM HYDROPONICS LTD.,

hereinafter called the “Owner”,

OF THE SECOND PART

WHEREAS the Owner is the registered owner of land described as Concession 1 ED Part of Lot 12, Part 5, RP 12R 8532 & Part 4 & 5, RP 12R 20397 and further known as 2008 & 2044 Seacliff Drive (County Rd. 20), in the Town of Kingsville in the County of Essex, Province of Ontario (the “subject lands”);

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 the existing Site Plan Agreement approved May 24, 2011 is replaced in its entirety with this agreement dated June 12, 2017;

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” approved and on file in the office of the Clerk of the Corporation. 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: Corporation Solicitor
2021 Division Road North
Kingsville, Ontario N9Y 2Y9

(c) **Name & Address of Owner**

JM Hydroponics Ltd.
2008 Seacliff Drive (County Rd. 20)
Kingsville, ON
N9Y 2N5

(d) Approval Date – June 12, 2017

SCHEDULES ATTACHED:

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

SCHEDULE ‘A-2017’ - Site Plan (Prepared by: N.J. Peralta Engineering Ltd. and Dated March 13, 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

3. (a) **Lot Grading Plan** - The Owner further agrees to submit to the satisfaction of the Corporation’s Chief Building Official, Ministry of Transportation (MTO), where applicable and Essex Region Conservation Authority (ERCA) in regulated areas throughout, a lot grading plan designed and executed under the seal of an engineer licenced under the *Professional Engineers Act* R.S.O. 1990, c. P.28, as amended (“Engineer”) for the subject lands for the Corporation’s consideration 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 a land surveyor licensed under the *Surveyors Act* R.S.O. 1990, c. S.29, as amended, 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, MTO, where applicable and ERCA in regulated areas throughout, the Owner shall submit a new lot grading plan under the seal of an Engineer and to the satisfaction of the said Chief Building Official, MTO and ERCA or re-grade the lands to the elevations indicated on the original lot grading plan.

SIGNS

4. a) **Signs** - Compliance with Approved Drawings - The Owner further agrees to submit a signage plan to the Corporation’s Manager of Development Services for their 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 lighting details and landscaping features associated with any signage.
- b) **Traffic Signage** - Prior to construction, the Owner agrees to provide on-site traffic and parking 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”.

DIRT AND DEBRIS

5. **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

6. **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 and/or Ministry of Transportation.

DRIVEWAY APPROACHES AND PARKING AREAS

7. (a) **Driveways** - The Owner further agrees to improve the existing driveway approach in such manner, widths and location as approved by the Corporation and as detailed on Schedule "A-2017". If there are changes to the existing shared access to the property an access permit will be required for a new access from the County and the portion of the access that is within the County right-of-way shall be improved with a hard surface and designed in accordance with the applicable County access design standards.

(b) **Surfacing** – The Owner further agrees that any portion of the internal driveway aisles and parking areas as shown on Schedule "A-2017" shall be gravel and a dust suppressant applied to ensure dust control.

PERMITS

8. **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 or adjacent to the public highway.

LIGHTING

9. **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.
10. **Interior Lighting** – The Owner further agrees to use of modern technologies on the interior of all buildings to reduce light pollution and minimize the impact on the night sky to divert lighting from adjacent roadways and properties.

PARKING

11. **Parking** - The Owner further agrees to provide adequate on-site parking for the proposed buildings in accordance with the Corporation's Zoning By-law, as amended, and as shown Schedule "A-2017".

GARBAGE, WASTE AND CENTRAL STORAGE FACILITIES

12. (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

13. (a) **Landscaping**- The Owner further agrees to provide for landscaping as designed and depicted on the Site Plan as approved by the Manager of Planning & Development Services for the Corporation.

(b) **Installation and Maintenance** - The Owner further agrees to install and maintain all landscaping features in accordance with the approved Site Plan and in a manner satisfactory to the Manager of Planning & Development Services.

(c) **Undeveloped Lands** - In the event that the subject lands are to be developed in phases the Owner further agrees to grade and seed or crop, to the satisfaction of the Manager of Planning & Development Services, all vacant lands that are not developed within one (1) year of the issuance of the construction permit for the initial phase of the development.

STORM WATER MANAGEMENT

14. (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 for an internal storm water management system to service the subject lands. Such drawings shall be satisfactory to the Corporation’s Director of Municipal Services and Ministry of Transportation, if applicable.

(b) **Construction and Maintenance** - Upon approval of the drawings by the Corporation’s Director of Municipal Services, Chief Building Official, Ministry of Transportation, if applicable, and 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 prior to the issuance of a building permit. Under no circumstance will a building permit be issued for construction until such time as the approved storm water management system has been constructed and is fully functional or a temporary approved storm water management system has been implemented, both to the satisfaction of the Town.

(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 will require an amendment to the site plan.

(d) **Implementation of Environmental Impact Assessment Recommendations** – The Owner further agrees to comply with the recommendations of the Environmental Impact

Assessment prepared by Biologic Incorporated, dated March 24, 2011 and as shown on the Storm Water Management Report and Drawings prepared by N. J. Peralta Engineering Ltd. Project No. E—09-030, including:

- i) The outlet pipe is dropped to the invert of the drain and sufficient erosion control including rip rap extending from the north bank to the south bank of the drain.
- ii) Silt fencing should be installed at the limit of grading for both the west edge of the SWM pond and the outlet to the drain. The silt fence would also serve as construction barrier and should be marked with this dual purpose. The disturbed areas should be re-seeded to prevent soil erosion. The silt fence should not be removed until re-vegetation has sufficiently established to provide erosion protection.
- iii) Silt fencing should be installed at the south side of the legal parcel along the north side of the drain, and along any overland flow swale.
- iv) The disturbed areas should be re-seeded to prevent soil erosion.
- v) Any work near or in stream will require a Letter of Intent (LOI). The LOI will seek a no net loss of direct or indirect fish habitat. The LOI is required before any work in stream is started. Fisheries Act approval may be required.
- vi) The detailed design of the SWM pond outlet should include a sediment and erosion control plan.

15. **Stormwater Management (abutting lands)** - That the Owner agrees to insure that storm water run-off is properly managed along the edge of the storm water management pond where it abuts any existing rural residential lots and that storm water flows on those abutting lots are not negatively impacted.

EXISTING WATERCOURSES AND NATURAL LAND DRAINAGE

16. **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.

DEVELOPMENT CHARGES

17. **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

18. **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

19. (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 \$10,000 (CAD) to guarantee the due performance of the Owner's obligations under this Agreement, within the time period specified in

paragraph 19 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

20. **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 at the sole discretion of the Corporation, but under no circumstances will interest be paid on any refund.

CONVEYANCES AND CONTRIBUTIONS

21. (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, Bell Canada or Union Gas in, through, over and under the subject lands for drainage purposes, sewers, hydro, gas, utilities, water mains 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

22. In addition to the standard site plan agreement requirements the Owner also agrees to:
- (a) **Worker Housing** – It is acknowledged that there an existing dwelling(s) located on the subject property, should the Owner undertake conversion of the dwelling(s) for worker housing the Owner further agrees to comply with the following:
- i) The Owner by way of this agreement undertakes and agree to obtain a change of use permit for the existing dwelling(s) to be converted to a bunkhouse type structure, including a septic analysis;
 - ii) The Owner further agrees to undertake all necessary works to comply with the Building Code Regulations required for the existing structure to be used for the purpose of accommodating workers.

- b) **Fire Plan** – provide a fire plan to the Kingsville Fire Department.
 - c) **Construction Site Maintenance and Debris** – provide appropriate on-site construction waste management for the storage and disposal of construction waste and that at no time is waste allowed to accumulate on the site beyond a reasonable level.
23. **Enforcement and Remedies** – The Owner agrees:
- (a) 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.
24. **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.
25. **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.
26. **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 Manager of Planning & Development Services 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.
27. **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.
28. **Registration** - The Owner hereby consents to the registration of this Agreement on the title of the subject lands at the Owner’s expense.

29. **Officials** – The Director of Municipal Services, the Chief Building Official, the Corporation Solicitor, the Manager of Municipal Services and the Manager of Planning & Development 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

JM HYDROPONICS Ltd.

WITNESS

JOHAN MARTENS
WE HAVE AUTHORITY TO BIND THE
CORPORATION

**THE CORPORATION OF THE TOWN OF
KINGSVILLE**

MAYOR NELSON SANTOS

CLERK JENNIFER ASTROLOGO

