

Municipality of Brockton

Site Plan Agreement

This Agreement made this 14th day of December, 2021 and referred to as the
“Site Plan Agreement”

BETWEEN:

2275710 ONTARIO LIMITED
hereinafter referred to as the “Owner”

-and-

The Corporation of the Municipality of Brockton
hereinafter referred to as the “Municipality”

Whereas the Owner represents and warrants that he is or will be the registered owner of the lands described in Schedule “A” attached hereto (hereinafter called the “subject lands”) which are affected by this Agreement;

And Whereas in this Agreement “Owner” includes any subsequent Owner of the aforementioned subject lands;

And Whereas the Municipality has enacted a Site Plan Control By-Law pursuant to the provision of Section 41, of the Planning Act RSO. 1990, c.P.13 as amended (“Planning Act”);

And Whereas the Owner wishes to undertake a development on the subject lands in accordance with a Site Plan attached as Schedule “B” hereto, hereinafter called the “Approved Site Plan”;

And Whereas subsection (7) of the said Section 41 of the Act authorizes the Municipality to require the Owner of the subject lands to enter into an Agreement with the Municipality;

And Whereas the covenants in this Agreement are binding upon the Owner and when registered on title are binding upon all successor’s on title;

And Whereas the Municipality is of the opinion that it would not be proper or in the public interest to permit development of the subject lands unless assurances are given by the Owner that matters referred to in this Agreement are carried out in the manner hereinafter set forth;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants, agreements, and promises herein contained and the sum of ONE (\$1.00) DOLLAR of lawful money of Canada now paid by each of the parties hereto to the other (the receipt and sufficiency of which is hereby acknowledged) and other good and valuable consideration and the mutual agreements contained therein, the parties hereto covenant and agree as follows:

1. Introduction

- 1.1. The Owner agrees to enter into a Site Plan Agreement with the Municipality, for the development of all buildings and structures located on the subject lands located in the East Ridge Business Park.
- 1.2. The Owner agrees to allow the Municipality at the Owner’s expense to register or deposit this Agreement in the Registry Office for the County of Bruce against the subject lands.
- 1.3. Nothing in this Agreement shall relieve the Owner from complying with any other applicable Municipal requirements or by-laws.

- 1.4. The Owner hereby grants to the Municipality, its servants, agents and contractors, a license to enter the subject lands for the purposes of inspection of the works on the subject lands or for any purpose pursuant to the rights of the Municipality under this Agreement.

2. Schedules

The following Schedules are attached hereto and form part of this Agreement:

- 2.1. SCHEDULE "A" Being a description of the lands affected by this Agreement.
- 2.2. SCHEDULE "B" Being a solicitor's Certificate of Ownership of the subject lands.
- 2.3. SCHEDULE "C" Being a schedule of financial obligations of the Owner payable upon execution of this Agreement or as otherwise provided.
- 2.4. SCHEDULE "D" Being a schedule of letters of credit to be obtained and filed with the Municipality by the Owner, upon execution of this Agreement.
- 2.5. SCHEDULE "E" Being a schedule for the release/reduction of securities by the Municipality to the Owner.
- 2.6. SCHEDULE "F" Being references of the approved plans referred to in this Agreement.

3. Site Development

- 3.1. The Owner agrees to undertake development on the subject lands, at his sole expense, in conformity with the Approved Site Plan as referenced in Schedule "F" attached hereto.
- 3.2. At the sole discretion of the Municipality, if the Owner fails to obtain a building permit within one (1) year of signing this Agreement then the Agreement may be automatically terminated and the approval granted to the Approved Site Plan is rescinded.
- 3.3. At the sole discretion of the Municipality, if the Owner has taken out a building permit but has not completed construction within two years of the date of the permit, this Agreement may be automatically terminated and the approval granted to the Approved Site Plan is rescinded.
- 3.4. The Owner agrees to restore the municipal streets, to current standards, which have been disturbed or damaged during the course of construction, to the satisfaction of the Municipality.

4. Landscaping

- 4.1. The Owner shall, at their own expense, install landscaping as indicated on the Approved Site Plan.
- 4.2. The Owner agrees to erect all fences that are illustrated on the approved Site Plan prior to occupancy.

5. Outside Storage

- 5.1. The Owner agrees that any outside storage is located within prescribed areas as shown on the approved site plan. If and when outside storage is placed in locations beyond the approved locations, the Owner shall be considered to be in breach of this agreement and subject to penalties as prescribed in the Planning Act.

6. Refuse Storage

- 6.1. The Owner agrees to provide a central refuse storage collection area and this area shall be either within a building or in a location shown on the approved site plan.

7. Loading, Parking and Driveways

- 7.1. The Owner agrees that any internal driveways which are necessary for and designated as a fire route shall be designed so as to carry the weight of the Municipality's firefighting equipment.
- 7.2. The Owner agrees that the surface treatment of any and all loading, parking area and driveways shall be constructed as set out on the Approved Site Plan. Surface treatment shall be adequately maintained and treated to prevent the raising of dust or loose particles and shall include provisions for adequate drainage facilities.
- 7.3. The Owner agrees that parking spaces shall be provided on the subject lands as indicated on the Approved Site Plan.
- 7.4. The Owner shall be required to provide and maintain accessible parking as per any Municipality By-Law in place relating thereto and any requirements as applies to the Highway Traffic Act.

8. Water and Sewer Services

- 8.1. The Owner shall install and connect water and sanitary sewers services, as shown on the Approved Site Plan. Said connections to be at the expense of the Owner, subject to the required fees.

9. Drainage

- 9.1. The Owner agrees that surface and roof drainage systems shall be designed and constructed to the satisfaction of the Municipality and as shown on the Approved Site Plan. Water shall not be directed onto any adjoining properties without the express approval of the so affected property owner within a registered drainage easement.
- 9.2. The Owner agrees to submit a Lot Grading and Drainage Plan, prepared by a Professional Engineer, with the Approved Site Plan, illustrating how stormwater and surface water will be detained on the site and discharged to the municipal drainage system at a rate no higher than the pre-development flows. The Lot Grading and Drainage Plan shall be in conformity with the East Ridge Business Park Storm Water Management Plan as may be amended from time to time.
- 9.3. Further the Owner shall retain a Professional Engineer to provide general reviews confirming that all Work has been constructed in general conformity with the Approved Site Plan and in accordance with all applicable law.

10. Hydro Connections

- 10.1. The Owner agrees that the electrical service from the public street or other distribution point, to the building shall be underground and that there will be no overhead wires leading to the buildings.

11. Signs

- 11.1. The Owner shall indicate the location and size of any and all proposed signs on the approved Site Plan. It is recognized that the content of the sign may change as building occupancy changes.

12. Lighting

- 12.1. The Owner agrees that all lighting shall be constructed as shown on the Approved Site Plan and shall be oriented and its intensity so controlled to prevent glare on adjacent roadways and properties. All parking lot lighting shall also comply with the Municipality's Dark Sky resolution.

13. Permitted Use "Industrial Use, Light"

- 13.1. The permitted use as a "Industrial Use, Light" as defined within the current provisions of Municipality of Brockton Comprehensive Zoning By-Law 2013-26 as amended from time to time shall be permitted provided the industrial use shall be wholly enclosed within the building or structure except for parking and loading facilities and outside storage accessory to the permitted uses, and which in its operation not result in emission from the building of odours, smoke, gas, fumes, noise, cinder, vibrations, heat, glare or electrical interference.

14. Phasing

- 14.1. The Owner covenants and agrees to adhere to the Phasing Plan of the Approved Site Plan in constructing the proposed development and the approved structure(s) contemplated under this Agreement. The Owner acknowledges that each development phase shall be subject to the approval of the Chief Building Official prior to the issuance of any building permits for any phase.

15. Easements, Municipal or Otherwise

- 15.1. The Owner, shall at his/her own expense cause to be prepared, granted and registered the following easements:

(insert description of any necessary easements.)

Such other easements as may reasonably requested by the Municipality for future municipal purposes, provided that the Municipality will pay the cost of surveying and preparing any easement agreements so requested.

- 15.2. The Municipality and its Chief Building Official make no representations and warranties with respect to any existing easements affecting the subject property and their impact on the Approved Site Plan, this Agreement or any construction undertaken by the Owner. The Owner assumes all risks associated with same.

16. Maintenance

- 16.1. The Owner shall:

- a) Complete the works and other facilities required on the Approved Site Plan and this Agreement at their sole expense and to the satisfaction of the Municipality;
- b) Maintain those works and facilities located on the subject lands to the satisfaction of the Municipality at the sole risk and expense of the Owner; and
- c) At all times in the future, provide to an acceptable standard removal of snow and ice from access ramps and driveways, parking areas, loading areas and walkways for the protection of people and property and to afford safe access to the subject lands.

- 16.2. Without limiting the generality of paragraph 16.1 (b), the Owner shall:

- a) Maintain all hedges, trees, shrubs, and other ground cover in a healthy state;
- b) Keep any works and facilities shown on the plan with respect to landscaping in good repair; and

- c) Refrain from doing anything that will have a detrimental effect on adjoining properties.

17. Site Plan Inspection and Occupancy

- 17.1. The Owner agrees that prior to occupancy of any building on the subject land, the Owner shall request a Site Plan Inspection conducted by the municipality. An agent or employee of the municipality shall inspect the site and note any deficiency associated with the project that requires remedy prior to occupancy being granted. All deficiencies shall be remedied prior to the refund of the Performance Deposit. Deficiencies shall be considered to be a breach of this Agreement.
- 17.2. The Owner shall not occupy nor shall it allow anyone else to occupy any building or part thereof for which building permits have been issued until all works required under this Agreement are completed in accordance with the requirements of the Ontario Building Code, the applicable zoning by-law and any other municipal by-laws, and that the internal water distribution and sanitary sewer collection have been tested and approved and are operating in accordance with the conditions established by the Municipality.
- 17.3. In the event that a building or part thereof is occupied other than in accordance with the provisions of section 17.2 above, the Municipality shall be entitled to obtain an Order from a court of competent jurisdiction prohibiting the occupancy of any building or part thereof until such time as the terms of this Agreement have been fully complied with, and this Agreement shall constitute a full estoppel to any opposition brought by the Owner.

18. Professional Engineer

- 18.1. The Owner covenants and agrees to retain a Professional Engineer who holds a Certificate of Authorization for municipal engineering applications from the Association of Professional Engineers of Ontario to prepare the design of lot grading and drainage, site and external servicing plans, municipal service connection designs, and lot grading and drainage reports that are to be submitted to the Chief Building Officer for his/her approval.
- 18.2. The Owner's Professional Engineer will be required to inspect and certify to Chief Building Officer that all internal and external services, lot grading and drainage requirements have been constructed in accordance with the approved Engineering Drawings and reports, prior to the release of performance deposit held for engineering-related works. The certificate, or certificates, shall be in a format acceptable to the Chief Building Officer. The Chief Building Officer may, upon pre-qualification of such, accept the use of other qualified professionals for certain components of the design, inspection and certification process.

19. Release and Indemnification

- 19.1. The Owner agrees that the Municipality shall not be liable to compensate the Owner, occupant, or any other person having an interest in the Subject Land by reason of anything done by or on behalf of the Municipality under this Agreement.
- 19.2. The Owner hereby covenants and agrees to waive any right or entitlement it may have to any action, cause of action, losses, liens, damages, suits, judgments, orders, awards, claims or demands whatsoever against the Municipality, its Council, employees, workers, agents, contractors, and consultants, and further covenants and agrees to indemnify and save harmless the Municipality, its Council, employees, workers, agents, contractors, and consultants from and against all actions, causes of action, losses, liens, damages, suits, judgments, orders, awards, claims and demands whatsoever, whether the same shall be with or without merit, and from all costs to which the Municipality, its Council, employees, workers, contractors, and consultants, may be put in defending or settling any such action, causes of actions, suits, claims or demands, which may arise either directly or

indirectly by reason of, or as a consequence of, or in any way related to the Owner developing the Subject Land, including without limitation, the installation, maintenance, repair and/or operation of any facilities therein.

- 19.3. Without limiting that set out above, the Owner shall at all times indemnify and save harmless the Municipality of and from all losses, costs and damages which the Municipality may suffer or be put to, for or by reason of, or on account of, the construction, maintenance or existence of pavements, curbs, plantings, and other improvements upon the road allowances where the same are required by this Agreement to be provided by or at the expense of the Owner and such indemnity shall constitute a priority lien and charge upon the subject lands, and shall be added to the assessment roll as unpaid taxes and may be collected in a similar manner as unpaid Municipal taxes.
- 19.4. This Agreement and the provisions hereof do not give to the Owner or any person acquiring an interest in said lands (each hereinafter in this paragraph called "such persons") any rights against the Municipality with respect to the failure of any such person to perform or fully perform any obligation under this Agreement, or the failure of the Municipality to force any such person to perform or fully perform any such obligations under this Agreement or the negligence of any such person in the performance of the said obligation. All facilities and matters required by this Agreement shall be provided by the Owner to the satisfaction of and at no expense to the Municipality, and shall be maintained to the satisfaction of the Municipality at the sole risk and expense of the Owner, and in default thereof and without limiting other remedies to the Municipality the provisions of Section 446 of the Municipal Act 2001, as amended, shall apply.
- 19.5. If any matter or thing required to be done by this Agreement is not done in accordance with the provisions of this Agreement and such default continues, in addition to other remedies available to it, the Municipality may direct that such matter or thing shall be done at the expense of the Owner, and the Municipality may recover at the expense incurred in doing it by action, the Owner hereby authorizes the Municipality to enter upon the said subject lands and do such matter or things.

20. Severability

- 20.1. The clauses of this Agreement shall be deemed independent and the striking down or invalidity of any one or more of the clauses does not invalidate this Agreement or the remaining clauses.

21. Performance Deposit

- 21.1. Prior to obtaining a Building Permit, the Owner agrees to provide the Municipality with a Performance Deposit in the amount of \$3,650.00. The purpose of this security is to:
- a) Ensure that the Owner constructs the project in compliance with the Approved Site Plan;
 - b) Ensure the provision of all matters and facilities required pursuant to this Agreement;
 - c) Ensure other applicable municipal requirements shall be met within the prescribed period of time;
 - d) To be used to cover the costs of any damage to municipal property during the course of construction.
- 21.2. The Performance Deposit shall be determined by the Municipality based upon a formula of 1% of the value of the project's construction (including land). The minimum Performance Deposit shall be \$3,000 and the maximum Performance

Deposit shall be \$20,000. The Performance Deposit shall be in the form of cash, Certified Cheque, or by Irrevocable Letter of Credit.

- 21.3. The Performance Deposit shall be refunded to the Owner without interest upon as per Schedule "D" of this agreement.

22. Additional Permits

- 22.1. The Owner acknowledges that the Municipality by approving the Site Plans, and entering into this Agreement, does not relieve the Owner from the requirements of obtaining any permit or license that may be required by the Municipality, the County of Bruce or any other agency, including any provincially appointed regulatory body or Ministry, before the proposed development can proceed.

23. Termination of Agreement

- 23.1. If this Agreement is automatically terminated, the Municipality is deemed to have withdrawn its consent to the proposed development and a formal notice of termination stipulating all development is to cease may be issued until the Owner has entered into a further Site Plan Agreement. No liability or other duty required of the Municipality under this Agreement shall be imposed on the Municipality should this Agreement be terminated. The Municipality is under no obligation to return any money paid under this Agreement.
- 23.2. Notwithstanding anything contained herein to the contrary, and subject to approval by the Municipality, if the Owner is delayed in substantially completing the construction of any work or facility required by this Agreement by any act beyond the Owner's reasonable control, the time for completion shall be extended by a period of time equal to such delay.

24. Estoppel

- 24.1. The Owner further covenants and agrees that it will not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any administrative tribunal, the right of the Municipality to enter into this Agreement and to enforce each and every term, covenant and condition herein contained, and this paragraph may be pleaded as an estoppel against the Owner in any such proceeding.

25. Notices

- 25.1. Any notices required or permitted to be given under this Agreement shall be in writing and may be served either personally, by email or by mailing such notice by registered mail postage prepaid or if the postal service has been disrupted for any reason, by delivering such notice by a prepaid courier service as follows:

The Municipality of the Municipality of Brockton
c/o Clerk
100 Scott Street
P.O. Box 68
WALKERTON, Ontario
N0G 2V0

Aaron Fleischauer
216 Ridout St.
P.O. Box 610
Walkerton, ON
N0G 2V0
acf_14@hotmail.com

- 25.2. If any notice is mailed by registered mail, postage prepaid or sent by prepaid courier service as aforesaid, it shall be deemed to have been received by the party to whom it was mailed or sent on the fifth day following the day upon which it was received by one of Her Majesty's post offices or is sent by courier, on the second day after which it was delivered to the courier service unless the second day ends on a Saturday, Sunday or legal holiday, in which case those days are not included in computing the two day period.

26. Agreement Runs with Land

- 26.1. This Agreement shall inure to the benefit of the Municipality, its successors and assigns. The benefits and the burden of the covenants, agreements, conditions and undertakings herein contained shall run with the land and are binding upon the land and upon the Owner and its successors and assigns.

This Agreement is also binding upon the Mortgagee and its respective heirs, executors, administrators, successors and assigns.

27. Municipal Expenses

- 27.1. The Owner shall pay to the Municipality the costs for all outside technical, professional and legal advice that the Municipality has incurred in order to approve the development covered by this agreement. These expenses do not include technical services rendered by full time municipal staff. The Financial Obligations are outlined in Schedule "C" of this Agreement. Securities and Performance deposits are outlined in Schedule "D" of this Agreement.
- 27.2. The Owner agrees to pay to the Municipality by cash or Certified Cheque, a contribution for the Municipality's municipal administrative services in the sum of \$0.10 per square foot with a minimum fee of \$500.00 as per the Fee By-Law of the Municipality based upon the building's foot print for all commercial and industrial developments. This fee will only be charged on the proposed building(s). Staged development will be charged the necessary fees as per the Fee By-Law of the Municipality as amended, once future development begins.
- 27.3. The total contribution for this development, based on a 7211 square foot building will be \$721.10 and shall be payable on execution of this Agreement and before the issuance of a building permit.

28. Miscellaneous provisions

- 28.1. In this Agreement, words importing the singular number include the plural and vice versa and words importing the masculine gender include the feminine and neuter genders.
- 28.2. The terms of this Agreement may be amended, altered, substituted, deleted, replaced, or added to only if such modification is in writing, signed by both parties and expressly stated to be a modification of this Agreement.
- 28.3. Headings in this Agreement shall not to be considered part of this Agreement and are included solely for the convenience of reference. They are not intended to be full or accurate descriptions of the contents thereof.
- 28.4. Should any provisions 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 by reason of the rule of construction that a document is to be construed more strictly against the Party who itself or through its agent prepared the same, it being agreed that both Parties, directly or through their agents have participated in the preparation of this agreement.
- 28.5. This Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario.
- 28.6. The Owner acknowledges that the Owner has been advised to consult a lawyer before executing this Agreement. The Owner represents and warrants that the Owner has either obtained independent legal advice from the Owner's own lawyer with respect to the terms of this Agreement prior to execution or declined seeking such independent legal advice. The Owner represents and warrants that the Owner has read this Agreement and understands the terms and conditions and the Owner's rights and obligations under this Agreement and agrees to be bound by it.

This Section Intentionally Left Blank

Signed, Sealed and Delivered
In the Presence

Owner
2275710 ONTARIO LIMITED

Aaron Fleischauer
I have authority to bind the Corporation

The Municipality of the Municipality of Brockton

Dated: _____

Per: _____
Chris Peabody – Mayor

Dated: _____

Per: _____
Fiona Hamilton – Clerk

We have the authority to bind the Municipality.

Schedule “A” to Site Plan Agreement

Description of Lands

Being: PT LT 33 CON 1 NDR, BRANT, PTS 1, 2 & 3 3R9765; SUBJECT TO AN EASEMENT OVER PT 3 3R9765 IN FAVOUR OF PT LT 32 CON 1 NDR BRANT, PTS 1, 2, 3, 4, 5, 6, 7 & 8 3T9104 AS IN BR104453; MUNICIPALITY OF BROCKTON, PIN 33196-0477 (LT)

Schedule “B” to Site Plan Agreement
Solicitor’s Certificate of Ownership

I [Name of Solicitor]

a Solicitor of Ontario, do hereby certify that [Name of Owner(s)] is/are the sole Owners(s) in fee simple of all land described in Schedule “A” to the Site Plan Control Agreement herein referred to.

I further certify that there are no mortgages or other encumbrances upon said lands or any part thereof save and except the following:

[list of encumbrances]

I further certify that [Name of Owner(s)]

Is/are the sole Owner(s) in fee simple of all land to be conveyed to the Municipality pursuant to the said site Plan Control Agreement. All easements, licenses or rights-of-way to be conveyed to the Municipality will be so conveyed with the consent of all mortgages or other encumbrancers.

This certificate is given by me to the Municipality for the purpose of having the said Municipality act in reliance on it in entering into this Site Plan Control Agreement.

DATED at _____ this _____ day of _____ 201__.

TO: [name of Municipality]

Solicitor for the Owner(s)Being: [legal description]

Schedule “C” to Site Plan Agreement

List of Financial Obligations to the Owner(s)

1.	Site Plan Agreement Registration/Preparation - Invoiced for Actual Cost – (Refundable Deposit \$1,000.00)	
2.	Site Plan Agreement Preparation Fee -	\$114.00
3.	Site Plan Agreement Administration Fee -	<u>\$721.10</u>
	TOTAL	<u>\$835.10</u>

Schedule “D” to Site Plan Agreement

Security/Letter of Credit

SECURED WORKS		AMOUNT
1.	Performance Deposit	\$3650.00
2.	Site Plan Control Agreement Registration/Preparation Deposit	\$1000.00
TOTAL		\$4650.00

Schedule “E” to Site Plan Agreement

Release of Security

Application for Reduction of Securities

Prior to the release of any security held by the Municipality for the works, facilities and matters set out in this Agreement, the Owner must supply the Municipality with the following documentation:

- a) formal request for reduction/release;
- b) consultant's certificate confirming compliance with plans;
- c) as-constructed drawings;

Release of Securities

(a) Release of Performance Deposit

Upon the receipt by the Municipality of all the documents identified above works, and satisfaction to the Municipality that the work has been completed in conformity with the approved plans, the Municipality shall release the Performance Deposit.

(b) Release of Site Plan Control Agreement Registration/Preparation Deposit

Upon payment of the invoice for the cost incurred for the registration of the Site Plan Control Agreement in the Registry Office for the County of Bruce against the subject lands, the Municipality shall release the Site Plan Control Agreement/Preparation Deposit.

Schedule “F” to Site Plan Agreement

APPROVED PLANS

The following Plan forms part of this Site Plan Agreement and are on file at the Clerk's Office for the Municipality.

1. PROJECT No: GE021 SITE PLAN C200 dated 2021-12-09
2. PROJECT No: GE021 SITE GRADING, SERVICING AND EROSION & SEDIMENT CONTROL PLAN C300 dated 2021- C300 dated 2021-12-06
3. PROJECT No: GE021 GENERAL NOTES AND DETAILS C500 dated 2021-11-22

The Owner agrees to construct all buildings, structures, works, services and facilities required under this Agreement in accordance with the above referenced Plans.