

Section 41 Development Agreement  
June 2005

AGREEMENT made this        day of        , A.D. 200

B E T W E E N:

(Insert Registered Owners of Lands)

Note: Owner is responsible for providing City's Legal Department with latest, proper registered Owner(s) name.

hereinafter called the OWNER,

- and -

**EXAMPLE ONLY** of the FIRST PART,

THE CORPORATION OF THE CITY OF KITCHENER,

hereinafter called the CITY

- and -

of the SECOND PART,

(MORTGAGEE IF APPLICABLE)

Note: Owner is responsible for providing City's Legal Department with names of all mortgagees having registered interest on the lands.

hereinafter called the PARTY

of the THIRD PART.

WHEREAS the Owner represents that it is the owner of the lands described in Schedule "A" to this Agreement subject to a mortgage in favour of the Party(ies) of the Third Part. Note: Owner is responsible for providing City's Legal Department with proper registrable description of the subject lands.

AND WHEREAS the City passed By-law Number 86-137 on the 14th day of July, 1986, pursuant to the provisions of Section 40. of The Planning Act, S.O. 1983 (now Section 41. of the Planning Act, R.S.O. 1990 c. P13) and has designated all the lands within the boundaries of the City of Kitchener as a Site Plan Control Area.

AND WHEREAS pursuant to the provisions of said Section 41, the Owner has been required to enter into this agreement.

1. The Owner agrees to fulfil each of the general conditions which follow:

#### **SITE PLAN**

- (a) to develop and maintain the site in compliance with the site plan, dated \_\_\_\_\_ attached hereto as Schedule "B" and hereinafter referred to as the "Site Plan". Minor changes to the Site Plan and to the provisions of this Agreement, acceptable to the City's Manager of Development Review, may be permitted without an amendment to this Agreement. Such changes shall be permitted only upon written approval from the said Manager.

#### **SITE PLAN AND UNDERGROUND PARKING PLAN**

- (b) to develop and maintain the site in compliance with the Site Plan, attached hereto as Schedule B and related Schedules B(1) and B(2) attached hereto, each of which is dated \_\_\_\_\_ and hereinafter collectively referred to as the "Site Plan". The related Schedules B(1) and B(2) attached hereto are subject to the terms and conditions of Schedule B. Minor changes to the Site Plan and to the provisions of this Agreement, acceptable to the City's Manager of Development Review, may be permitted without an amendment to this Agreement. Such changes shall be permitted only upon written approval from the said Manager.

#### **GROUND COVER TO PREVENT SOIL EROSION**

- (c) where the construction or demolition of a building, or buildings, or site development works are, in the opinion of the City's Chief Building Official or the City's Manager of Development Review, substantially suspended or discontinued for more than six months, the Owner shall forthwith provide suitable ground cover to prevent soil erosion by wind, rain and snow for the protection of adjoining lands to the satisfaction of the City's Chief Building Official or the City's Manager of Development Review.

#### **GARBAGE COLLECTION**

- (d) the Owner acknowledges that garbage collection for the proposed development shall be in accordance with the applicable Municipal By-law.

#### **AGREEMENT RELEASE**

- (e) that the City may give a Release of this Agreement as it applies to the lands or portions thereof except for this clause and any of the conditions related to site works which are required by Section 5 to be maintained for the life of the proposed development.

#### **APPROVAL LIMITATIONS**

- (f) In the event that Site Plan Approval for the proposed development has not been issued by six months from the date of Site Plan Approval in Principle, revisions, additional conditions or changes to the approved site plan may be required by the City's Manager of Development Review, in said Manager's sole discretion as a result of new City policies or changes to zoning by-law or standard City conditions.

## 2. Maintenance During Construction,

During construction the Owner agrees:

- (a) To take all necessary steps to prevent the raising of dust and the erosion of soil from the Lands onto adjacent lands or onto abutting City, Regional and Provincial roads during construction of the Development. To eliminate dust, the Owner may be required to apply dust suppressants, cover stock piles with tarps or apply ground cover to the areas that have been stripped and left undeveloped. Should such an incident(s) occur, the Owner will take all necessary steps forthwith to correct said problems upon the direction of the Director of Engineering;
- (b) To conduct, at a minimum and more frequently as conditions dictate, scraping of the roadway on a weekly basis and daily sweeping of the roadway using methods approved by the City. Should the Owner fail to conduct scraping and sweeping of the roadway to keep it clean and free of excessive dirt, mud, dust, grit and other materials, the City may, without notice to the Owner, take the necessary action to clean up the roadway at the Owner's cost and the Owner agrees to forthwith pay the same upon demand to the City. If the Owner does not pay the City immediately upon written demand for such payment, it is agreed that performance securities with the City may be drawn upon by the City to satisfy the required payment, and the Owner shall replace or increase said monies or securities to its original value within fifteen (15) business days of receiving notice of such draw or draws;
- (c) To be fully liable for all costs and any damages incurred as a result of the raising of dust or the erosion, spillage or tracking of soil or other debris from the Lands onto adjacent lands and municipal highways, and will indemnify the City and the Region against any claim made as a result of such problems;
- (d) To regularly inspect the property for discarded waste material or items that may accumulate on lands. The Owner shall collect and dispose of said waste forthwith in an appropriate manner to the satisfaction of the Director of Engineering, all to prevent unsightly conditions;
- (e) To install and maintain erosion and sediment control and tree protection devices in accordance with the approved plans in Schedule C to this agreement including those that incorporate measures to prevent the discharge of silt to waterways, open channels or City and Regional storm sewers and highways. The Owner shall provide and regularly inspect and maintain these measures to ensure their continued effectiveness throughout the construction period and until such time as hard surfacing or vegetative cover has stabilized the Lands or area under development. The Owner shall provide inspection reports to the Director of Engineering and the Manager of Development Review upon request and the Owner shall immediately repair any deficiencies identified in the inspection reports or required by the Director of Engineering or the Manager of Development Review, in their sole discretion;

- (f) Manage any impacts to any neighbouring properties resulting from construction of the Works to the satisfaction of the Director of Engineering in their sole discretion. The Owner acknowledges and agrees that they are solely responsible for such impacts notwithstanding any approval of the City. The Owner shall fully indemnify and save harmless the City from any liability resulting from such impacts;
  - (g) Maintain, at all times, encumbered sight lines and travel routes to and from the Lands based on the approved plans and drawings; and
  - (h) install and maintain tree preservation fencing on the Lands for the duration of construction.
3. **Prior to occupancy**, of the proposed development the Owner agrees to fulfill each of the conditions which follow:

#### **DRIVEWAY CLOSURE**

- (a) to complete the closure of all redundant driveways to the (*City's, Regional Municipality of Waterloo's, Ministry of Transportation's*) standards

#### **DRIVEWAY INSTALLATION**

- (b) to install, at the Owner's cost and to the (*City's, Regional Municipality of Waterloo's, Ministry of Transportation's*) standards, new driveway ramps at grade with the (*existing, proposed or future*) sidewalk.

#### **RELOCATION OF MUNICIPAL STREET UTILITIES**

- (c) to make arrangements, financial or otherwise, for the relocation of any existing City owned street furniture, transit shelters, signs, hydrants, utility poles, wires or lines, street trees and shrubs as required due to the location of buildings, structures, walkways, boulevards, driveways, curbing or parking, to the satisfaction of the appropriate City Department.

#### **EMERGENCY/FIRE ROUTES**

- (d) that any required "Emergency/Fire Routes" and associated signage shall be installed at the owners cost and to the satisfaction of the City's Chief Fire Official.

#### **TRAFFIC CONTROL SIGNS**

- (e) to install, at the Owner's cost, all required traffic signs, including directional, visitor parking and barrier-free parking signs, to the satisfaction of the City's Director of Transportation Services.

#### **MULTIPLE UNIT IDENTIFICATION SIGN**

- (f) to erect the multiple unit identification sign in accordance with the approved concept plan.

## **FIRE HYDRANT**

- (g) to install at the Owner's cost, any fire hydrant required by the Ontario Building Code as directed by the City's Chief Building Official.

## **BUILDING DESIGN**

- (h) to implement the conceptual building design in accordance with the approved building elevation drawings to the satisfaction of the City's Manager of Development Review.

## **PARKING STRUCTURE IN WHITE**

- (i) to finish the walls and the ceiling of the parking structure in white, as indicated on the attached Site Plan Schedule "B (1)".

- 4. Within six months of occupancy, or as soon as weather conditions permit, of the proposed development, the Owner agrees to fulfil each of the conditions which follow:

## **GRADING AND DRAINAGE COMPLETION**

- (a) to complete the site grading and drainage scheme in accordance with the Grading and Drainage Control Plan that was satisfactory to the City.

## **STORMWATER MANAGEMENT IMPLEMENTATION**

- (b) to complete any stormwater management scheme and all related drainage control facilities in accordance with the Plan accepted by the City's Director of Engineering Services.

## **TREE MANAGEMENT**

- (c) to complete the tree management requirements for the lands in accordance with the approved Tree Preservation/Enhancement Plan.

## **LANDSCAPE COMPLETION**

- (d) to complete the landscaping in accordance with the approved Landscape Plan.

## **INTERIOR GARBAGE STORAGE/OUTDOOR GARBAGE CONTAINER INSTALLATION**

- (e) to install or demarcate on-site any vaults, central storage and collection areas, or other facilities for the storage of garbage and recyclable material, including those which may be internal to a proposed or existing building or to locate and construct the supporting concrete pad (*and roofed enclosure if required*) for any outdoor garbage and recyclable material containers in accordance with the approved Landscape Plan.

## **FENCING/VISUAL BARRIERS INSTALLATION**

- (f) to install all fencing and visual barriers as indicated on the Site Plan in accordance with the approved Landscape Plan and so as not to obstruct the visibility of vehicular or pedestrian traffic.

## **STREETSCAPE**

- (g) to complete, at the Owner's cost, the landscaping on all adjacent public property in accordance with the approved Landscape Plan.

## **CURB INSTALLATION**

- (h) to install 0.15 metre raised curbing in the locations shown on the Site Plan.

## **SITE LIGHTING INSTALLATION**

- (i) to implement the approved Site Lighting Plan.

## **PAVING**

- (j) to pave all areas intended to facilitate on-site vehicular movement, parking and loading, as shown on the Site Plan, with hot-mixed asphalt or equivalent and to demarcate the parking on said pavement.

## **LETTER OF CREDIT REDUCTIONS/RELEASE**

- (k) **(I)** for the purpose of this Agreement "Site Development Works" to be done by the Owner shall include:

- (a) ***On Site works:***

- Stormwater management facilities and rough grading; plant material; landscape paving essential to the functioning of the site, landscape structures including but not limited to fencing, screen walls, retaining walls, roofed enclosures for garbage and recyclable materials, planters; fine grading; sodding and seeding; lighting; curbing; concrete sidewalks; paving for vehicular traffic and parking and demarcation of parking on pavement; and

- (b) ***Off Site works:***

- Closure of redundant driveways; fine grading and sodding or other approved landscaping within the boulevard. Additional required off-site works may be done by the City at the Owner's cost, as specified in this Agreement.

- (II)** to submit to the City's Director of Engineering Services (for stormwater management, site grading) and the City's Manager of Development Review (for all other site development works) Site Development Works Certification Forms prepared by the appropriate Consultants certifying that the site development works required under this Agreement have been completed in accordance with the respective plans prepared by such consultant and accepted by the City. The Letter of Credit posted by the Owner will not be reduced until such time as 50% of the value of the site development works have been completed in conformity with the approved design and a Site Development Works Certification Form submitted by the Owner and found acceptable by the City's Director of Engineering Services for all stormwater management and/or grading works, including landscaping integral to such works, required under this Agreement. Upon receipt of all other Site Development Works Certification Forms required under this Agreement and same being submitted by the Owner and found acceptable by the City's Manager of Development Review, further reductions for other site development works completed in conformity with the approved design, in amounts in accordance with the cost estimate, may be permitted by the City according to the Performance Securities Policy.

- (i) despite the foregoing, the City may, at its sole option, permit the Owner to provide security for the completion of the site development works required in this Agreement in accordance with the City's Performance Securities Policy in effect on the date that the Owner has completed all other requirements for issuance of the first building permit for development of the lands in accordance with this Agreement.
- (ii) the Letter of Credit shall be kept in force until the completion of the required site development works in conformity with the approved design and the requirements of this Agreement. If the Letter of Credit is about to expire without renewal thereof and the works have not been completed in conformity with their approved designs, the City may draw all of the funds so secured and hold them as security to guarantee completion unless the City Solicitor is provided with a renewal of the Letter of Credit forthwith.
- (iii) in the event that the Owner fails to complete, to the satisfaction of the City's Manager of Development Review, the required site development works in conformity with its approved design and the other requirements of this Agreement within the time required by this Agreement, then it is agreed by the Owner that the City, its employees, agents or contractors may, at the City's sole option and in addition to any other remedies that the City may have, enter on the lands and so complete the required site development works to the extent of monies received under the Letter of Credit. The cost of completion of such works shall be deducted from the monies obtained from the Letter of Credit. In the event that there is a surplus, the City shall pay it forthwith to the Owner. In the event that there are required site development works remaining to be completed, the City may by by-law exercise its authority under the Municipal Act to have such works completed and to recover the expense as permitted by law.
- (iv) other forms of security may be substituted for Letters of Credit, at the request of the Owner, provided that approval is obtained from the City Treasurer and the City Solicitor.

**(III) ONTARIO WATER RESOURCES ACT CERTIFICATE OF APPROVAL**

With regard to works required in accordance with Section 53 of the Ontario Water Resources Act, the Owner agrees:

- (i) to obtain an Environmental Certificate of Approval for storm sewage works for the (*on-site oil grit separator / on-site stormwater management pond*) in accordance with Section 53 of the Ontario Water Resources Act;
- (ii) to install said works in accordance with City approved plans to the satisfaction of the City's Director of Engineering Services;
- (iii) to provide proof to the City's Director of Engineering Services that the Environmental Certificate of Approval has been granted by the Ministry of the Environment, Conservation and Parks.
- (iv) to submit to the City's Director of Engineering Services, site development works certification forms prepared by the appropriate consultant certifying that the site development works required under this section have been completed in accordance with the respective plans prepared by such consultant and accepted by the City;
- (v) that the City shall not provide a partial release of the letter of credit held at 100% of the cost of said works;

- (vi) in the event that the Environmental Certificate of Approval has not been granted by the time of Final Inspection for all other site development works, the City shall be entitled to utilize the letter of credit to secure approval and/or install the said works in this subsection in accordance with such approval, and to the satisfaction of the City's Director of Engineering Services;
- (vii) indemnify the City and hold the City harmless in the event that, as part of the Environmental Certificate of Approval process, the Ministry of Environment, Conservation and Parks requires adjustments to any portion of this project, including but not limited to structures, footings, foundations, layout and servicing; and,
- (viii) indemnify the City with respect to any costs arising from required adjustments in the site plan due to obtaining the Environmental Certificate of Approval and any causes of actions arising from the lack of installation of any works that are the subject of any Environmental Certificate of Approval.

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN (CPTED)**

- (l) to implement and/or install all CPTED measures in accordance with the approved CPTED report to the satisfaction of the City's Manager of Development Review.

### **INSPECTION AND CERTIFICATION**

- (m) The Owner's Engineer will be required to inspect and certify, at the Owner's sole cost, to the City's Director of Engineering Services that all internal and external services, grading and stormwater management requirements have been constructed in accordance with the approved Engineering drawings and reports, prior to the reduction of the Letter of Credit held for the site development works. The Letter(s) of Certification shall be in a format acceptable to the City's Director of Engineering Services. The City's Director of Engineering Services may, upon pre-qualification of such, accept the use of other qualified professionals for certain components of the design, inspection and certification process.

The Owner's Landscape Architect and the Owner's Lighting Consultant will be required to inspect and certify, at the Owner's sole cost, to the City's Manager of Development Review that all planting, surfacing details, fencing, visual barriers, site lighting and other site facilities shown on the landscape and lighting plans have been constructed in accordance with the approved landscape and lighting plans prior to the reduction of the Letter of Credit held for Site Development Works. The Letter(s) of Certification shall be in a format acceptable to the City's Manager of Development Review. The City's Manager of Development Review may, upon pre-qualification of such, accept the use of other qualified professionals for certain components of the design, inspection and certification process.

The Owner's CPTED Consultant to inspect and certify, at the Owner's sole cost, that all CPTED measures related to access control, surveillance, territorial reinforcement and maintenance have been implemented in accordance with the approved CPTED report prior to the reduction of the Letter of Credit held for Site Development Works. The Letter(s) of Certification shall be in a format acceptable to the City's Manager of Development Review.



5. **For the life** of the proposed development, the Owner agrees to fulfil each of the conditions which follow and further agrees that the City shall not release this Section or any of the conditions related to site works required to be maintained for the life of the proposed development:

#### **STORMWATER MANAGEMENT MAINTENANCE**

- (a) to maintain any required stormwater management scheme, in accordance with the scheme that was satisfactory to the City's Director of Engineering Services for the life of the proposed development. To ensure such maintenance the Owner agrees:
- (i) to inspect all parts of the stormwater system at least once annually and remove all debris and sediment therefrom.
  - (ii) to make all repairs and replacements necessary to assure proper operation of the stormwater system.
  - (iii) to ensure that no alterations are made to the stormwater management ponds, outlet controls and their appurtenances unless prior written consent is obtained from the City's Director of Engineering Services.
  - (iv) to ensure that no alterations are made to the approved grading and drainage system that was satisfactory to the City, unless prior written consent is obtained from the City's Director of Engineering Services.
  - (v) that no material used to surface any parking or loading area shall be changed or additional areas paved, unless prior written consent is obtained from both the City's Director of Engineering Services and the City's Manager of Development Review.

#### **GRADING AND DRAINAGE MAINTENANCE**

- (b) to maintain the grading and drainage scheme in a state acceptable to the City's Director of Engineering Services.

#### **LANDSCAPE MAINTENANCE**

- (c) to maintain the approved landscaping in a state acceptable to the City's Manager of Development Review.

#### **SITE LIGHTING MAINTENANCE**

- (d) to maintain the approved outdoor lighting in a state acceptable to the City's Manager of Development Review.

#### **EMERGENCY/FIRE ROUTE AND TRAFFIC CONTROL SIGN MAINTENANCE**

- (e) to maintain all required emergency, fire route and traffic signs, including directional, visitor and barrier free parking, and multiple unit identification signs, to the satisfaction of the City's Chief Fire Official and City's Director of Transportation Services.

## **GRAVEL AREA MAINTENANCE**

- (f) to maintain all gravel areas shown on the site plan in a condition free of dust to the satisfaction of the City's Manager of Development Review.

## **TREE MAINTENANCE**

- (g) to maintain the existing treed area(s) in accordance with the approved Tree Preservation/Enhancement Plan. Any future cutting of trees which have been identified for preservation on the approved Landscape Plan will require either a further plan or study, as determined and approved by the City's Manager of Development Review. Such study shall detail the impact of tree removals on the trees to remain.

## **INTERNAL GARBAGE STORAGE MAINTENANCE**

- (h) to maintain all approved garbage and recycling methods as approved by the City's Manager of Development Review.

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN (CPTED)**

- (i) to maintain the CPTED measures in accordance with the approved CPTED report and maintenance schedule in a state acceptable to the City's Manager of Development Review.

## **SNOW STORAGE**

- (j) The Owner acknowledges that snow storage will be stored on site as the identified location(s) on the site plan and/or grading plan. Where snow storage is not identified on the site plan and/or grading plan or in situations when accumulated snow exceeds the capacity of the identified location(s), the owner agrees that due to limited site area, accumulated snow that cannot be managed on site will be hauled off site to a suitable location by the owner's site maintenance contractor.

## **BUILDING ELEVATIONS**

- (k) to maintain the building design in accordance with the approved building drawings in Schedule 'C' to the satisfaction of the City's Manager of Development Review.

## **PAVING**

- (l) to maintain all paved areas intended to facilitate on-site vehicular movement, parking and loading, as shown on the Site Plan, with hot-mixed asphalt or equivalent and to demarcate the parking on said pavement.

The Owner agrees that all the facilities and matters required by this Agreement shall be provided and maintained at his sole risk and expense and to the satisfaction of the City and that in default thereof the City may perform such requirements at the expense of the Owner and such expense may be recovered by the City in like manner as municipal taxes.

The Party(ies) of the Third Part join herein to consent hereto and to bind their interest in the lands hereto.

This Agreement shall ensure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the Party of the First Part has hereunto (set his hand and seal) (caused to be affixed its corporate seal under the hands of its duly authorized officers in that behalf) and the Party of the Second Part has hereunto affixed its corporate seal under the hands of its Mayor and Clerk and the Party of the Third Part has hereunto (set his hand and seal) (caused to be affixed its corporate seal under the hands of its duly authorized officers in that behalf).

SIGNED, SEALED & DELIVERED )  
in the presence of ) \_\_\_\_\_  
)  
) \_\_\_\_\_  
)  
) THE CORPORATION OF THE CITY OF KITCHENER  
)  
) \_\_\_\_\_ Mayor  
)  
) \_\_\_\_\_ Clerk  
)  
) \_\_\_\_\_  
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) \_\_\_\_\_  
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