

THIS AGREEMENT made the (1) DATE day of (2) MONTH), 2012

B E T W E E N

THE CORPORATION OF THE CITY OF WELLAND  
hereinafter called "the City"

OF THE FIRST PART

AND

(3) OWNER/COMPANY  
hereinafter called "the Owner"

OF THE SECOND PART

WHEREAS the Owner represents that it owns the lands and premises known municipally as (5) ADDRESS, more particularly described in Schedule "A" attached hereto, hereinafter referred to as "the lands";

AND WHEREAS City of Welland By-law 9973, as amended, authorizes the City to enter into one or more Agreements to control the development or redevelopment of all lands in the City;

AND WHEREAS by City of Welland By-law 10385 Council's powers and authority to approve Site Plan Control Agreements was delegated to the General Manager, Integrated Services;

AND WHEREAS the City is of the opinion that the proposed development would not be proper and in the public interest unless assurances are given by the Owner that the construction and installations referred to in this Agreement will be done in the manner set forth in this Agreement;

NOW THEREFORE in consideration of the mutual covenants and agreements and conditions hereinafter contained and in consideration of the sum of Two Dollars (\$2.00) payment of which is hereby acknowledged, the Parties hereto covenant and agree as follows;

**GENERAL CONDITIONS**

1. The Owner agrees to perform any and all construction and installation on the lands, at its expense, in accordance with the terms and conditions contained herein and as shown on Schedule D1  
(7) SCHEDULE D2 IF REQUIRED  
(8) SCHEDULE D3 IF REQUIRED  
attached hereto and forming part of this Agreement to the reasonable satisfaction of the City, provided always that minor changes may be made by the Owner with the consent of the General Manager, Integrated Services.
2. The Owner agrees that the City may require all plans to be drawn and/or stamped by a registered professional architect or by a registered professional engineer and all surveys performed by an Ontario Land Surveyor.
3. Subject to Section 1, the Owner agrees that should any construction or installation on the lands not conform to this Agreement, then the Owner shall submit revised plans detailing the changes and provide written reasons for the non-conformity. The City may approve the changes or may require compliance with the approved plans.

4. (1) The Owner agrees that any refuse container that is to be located on the lands shall be located and screened in an area specifically for this purpose, as shown on said Schedule "D" to the reasonable satisfaction of the City;

(2) The Owner agrees to provide private refuse/garbage pick-up on the lands.

5. The Owner agrees that the satisfying of any requirements of this Agreement by the Owner or any employee of the City shall not in any way constitute acceptance of this Agreement by the City, until this Agreement has been executed by the General Manager, Integrated Services on behalf of the City of Welland as authorized by By-law 10385.

6. The Owner shall indemnify and save harmless the City, its servants, agents and employees from and against all claims, demands, loss, costs, damages, actions, suits or other proceedings by whomsoever, made, brought, or prosecuted in any manner based upon, occasioned by or attributed to any negligence of the Owner or any persons for whose negligence the Owner is in law responsible in the carrying out of the provisions of this Agreement.

7. The Owner agrees that all municipal taxes in arrears shall be paid in full prior to the issuance of any building permit required pursuant to the terms of this Agreement.

8. Notwithstanding any of the provisions of this Agreement, the Owner, its heirs, successors and assigns, shall be subject to all City by-laws, as amended, in force at the time of the issuance of a building permit required pursuant to the terms of the Agreement or at the time of the execution of this Agreement; whichever is applicable.

#### **ENGINEERING WORKS**

9. (1) The Owner agrees to construct, at its expense, storm sewer lines and an overall storm drainage system, sanitary sewer lines and watermains and service connections, if required, to the reasonable satisfaction of the City;

(2) The Owner and City agree that all work within the road allowance must be done by City employees or by contractors approved (employed) by the City;

(3) The Owner agrees that all applications for services shall be made to the Engineering Department at City Hall, and a prepayment of the costs shall be made in accordance with the current service cost schedule prior to the issuance of a building permit;

(4) The Owner agrees that all works undertaken within any Regional Road Allowance must be authorized by the Regional Municipality of Niagara by the issuance of a permit;

(5) That the Owner shall keep the streets abutting the Owner's lands free of dirt and debris resulting from or in any way attributable to the construction of any services required by this Agreement, or the construction of any buildings thereon, to the satisfaction of the City. If, upon notice, the Owner fails to remove such dirt and debris within any road allowance adjacent to the development, then the City may remove any dirt or other debris at the cost of the Owner and, failing payment thereof by the Owner, the City may draw upon the Owner's Irrevocable Standby Letter of Credit to pay such costs;

(6) That the Owner shall be responsible for the repair of damage to City-owned lands or facilities to the satisfaction of the City Engineer. Should the Owner not repair such damage to City-owned lands or facilities within three (3) days of being so advised by the City Engineer, the City may repair or cause to be repaired, the said damage by its own forces or by others and the Owner shall be solely responsible for all costs related thereto. Failure by the Owner to pay the City pursuant to this paragraph may result in the City drawing upon the Owner's Irrevocable Standby Letter of Credit to pay for such repairs;

(7) The City reserves unto itself the right to inspect the final grading of the lands and the Owner agrees to pay the cost of such inspection by the City, on demand, and such cost shall be calculated on the following basis:

- (i) the wage rate, plus labour burden, paid by the City to the employee(s) on such inspection;
- (ii) the City rental rate for vehicles and equipment in effect at the time; and
- (iii) miscellaneous out-of-pocket expenses.

#### **FINANCIAL REQUIREMENTS**

10. (1) That upon execution of this Agreement, the Owner shall provide an Irrevocable Standby Letter of Credit, satisfactory to the City Treasurer, certified cheque or cash, in favour of the City, in the value of (9) LETTER-OF-CREDIT (AMOUNT IN DOLLARS) Dollars (\$(10) LETTER-OF-CREDIT - DOLLAR AMOUNT), representing 50% of the estimated value of all landscaping, drainage facilities, fencing, paving, sanitary sewers, storm sewers, water services and curbing proposed to be installed on the Owner's lands or off-site by/on behalf of the Owner;

(2) Upon the execution of this Agreement, the Owner shall provide to the City any required cash prepayments by certified cheque or cash;

(3) Such deposit may be used to pay for the cost of any work performed by the City in the event of the failure of the Owner to comply with any terms of this Agreement;

(4) Prior to any reduction of the Letter of Credit or cash deposit, the City shall require a certificate in the form of Schedule "C" to this Agreement, from the Project Architect or the Engineer, as applicable, and the Owner stating that the works with respect to the proposed reduction in the Letter of Credit have been completed in accordance with Schedule "B" and "D" to this Agreement. Once 50% of the total works have been completed and upon receipt of this certified statement, the City may progressively release the irrevocable standby Letter of Credit or cash deposit. No reduction in the Letter of Credit or cash deposit shall be released until such time that 50% of the total amount of works have been completed.

(5) Such deposit, less any amounts expended to enforce compliance with this Agreement and any amounts refunded or reduced as the work required by this Agreement progresses, shall be returned to the Owner, without interest, when all the terms and provisions of this Agreement, except those relating to maintenance, have been fulfilled to the reasonable satisfaction of the City;

(6) The City may, from time to time, demand an increase in the sum of the deposit in accordance with increases in the cost of performing the works required herein to be completed;

(7) The release of the deposit by the City does not release the Owner from its obligation to maintain all on site works pursuant to this Agreement;

(8) The conditions, facilities, and matters as described herein and as shown on Schedule "D" shall be provided and maintained by the Owner at his sole risk and expense and to the reasonable satisfaction of the City, and that in default thereof the provisions of Section 446 of The Municipal Act, 2001, as amended, shall apply.

**TIMING**

11. (1) That if a building permit has not been issued within twelve (12) months of the date of the registration of this Agreement, then this Agreement will become null and void, and a new application must be submitted and approved by the City prior to any building permit being issued;

(2) The terms of this Agreement shall be carried out within eighteen (18) months from the registration of this Agreement, except those terms relating to maintenance, which shall continue from the date of the final completion of the works required herein to the satisfaction of the City;

(3) In the event of the failure by the Owner, in the opinion of the City Engineer or his agent, exercising reasonable engineering practices to carry out any provisions of this Agreement, then the City, its servants or agents, may notify the Owners or their agent in writing of the nature of the failure;

(4) If such default or failure is not remedied within 15 days of such notice, then the City shall have full authority, power and right to enter upon the said lands, to employ such workmen, and to use such equipment and machinery as is deemed required to complete and perform the work necessary to remedy the failure or default. In case of emergency or public safety, such work may be done without prior notice, but the Owner shall be notified forthwith thereafter;

(5) The cost of such work shall be calculated by the City Engineer or authorized agent whose decision shall be final. The cost of such work shall be at the expense of the Owner and may be recovered from the deposits paid to the City pursuant to this Agreement;

(6) Such work performed by the City is not an assumption of liability by the City in connection therewith nor a release of the Owner from its obligations under this Agreement;

(7) The Owner grants to the City its servants, agents and assigns permission to enter upon the said lands for the purpose of inspection of any work referred to in this Agreement and for the purpose of the completion of any works in accordance with this clause and this Agreement;

(8) The Owner will at all times indemnify and save harmless the City, its servants, agents and employees from all loss, costs, damages and injuries which the City may suffer or be put to for or by reason of the construction, maintenance or existence of any work done by the Owner, its contractors, servants or agents on the land described in said Schedule "A" annexed hereto or which the City may suffer or be put to for or by reason of the completion by the City of any of the required works in

accordance with this clause and this Agreement;

(9) In the event of the failure by the Owner to carry out any provisions of this Agreement within the time set out above, the City may terminate this Agreement.

**MAINTENANCE**

12. Notwithstanding any of the provisions of this Agreement, the Owner, its successors and assigns, shall regularly maintain all of the works, facilities, plantings and construction, including the removal of snow from access ramps and driveways, parking and loading areas and walkways provided for in this Agreement to the reasonable satisfaction of the City after the said works, facilities, plantings and construction have been completed in accordance with the time provisions set out in this Agreement. The Owner agrees that such maintenance may include, if necessary, the replacement of the works, facilities, plantings or construction referred to herein.

**REGISTRATION**

13. The Owner shall 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 City to enter into this Agreement and to enforce each and every term, covenant and condition herein contained and this Agreement may be pleaded as an estoppel against the Owner in any such proceeding.

14. The Owner covenants for itself, its successors and assigns and any subsequent owners from time to time of the said lands and the burden of the covenants contained in this Agreement shall be deemed to be negative and shall run with and be binding upon the lands described in said Schedule "A" to and for the City, its successors and assigns.

15. The Owner agrees and consents to the registration of this Agreement against the said lands described in said Schedule "A" attached hereto.

16. The Owner agrees that where the City so requires, it shall, upon the sale or transfer by it of the lands or any part or parts thereof, require any subsequent purchaser or transferee thereof, as a condition of such sale or transfer, to execute an agreement satisfactory in form to the City Solicitor, agreeing to assume this Agreement and be bound by and to fulfill the terms, conditions, and covenants herein set forth and containing a like covenant to this effect. The said Assumption Agreement shall be executed by the City, the said Owner and any such subsequent purchaser or transferee and mortgagee.

**SPECIAL CONDITIONS**

17. (11) SPECIAL CONDITIONS

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their corporate seals duly attested to by the proper officers in that behalf and their hands and seals.

SIGNED, SEALED AND DELIVERED	)	THE CORPORATION OF THE CITY OF WELLAND
	)	
in the presence of	)	
	)	
	)	_____
	)	BILL FENWICK
	)	GENERAL MANAGER, INTEGRATED SERVICES
	)	
	)	I HAVE THE AUTHORITY TO BIND THE
	)	CORPORATION
	)	
	)	(12) OWNER/COMPANY
	)	
	)	_____
	)	(13) NAME AND TITLE
	)	
	)	_____
	)	(14) NAME AND TITLE IF REQUIRED
	)	
	)	
	)	

DRAFT

SCHEDULE "A"

LEGAL DESCRIPTION OF LANDS

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the City of Welland in the Regional Municipality of Niagara and being composed of (18) LEGAL DESCRIPTION OF LANDS.

DRAFT

ITEM	DESCRIPTION	AMOUNT
A.	SANITARY SEWER	
A.	TOTAL SANITARY SEWER	<u>\$0.00</u>
B.	STORM SEWER	
B.	TOTAL STORM SEWER	<u>\$0.00</u>
C.	WATERMAIN	
C.	TOTAL WATERMAIN	<u>\$0.00</u>
D.	SECONDARY SERVICES	
D.	TOTAL SECONDARY SERVICES	<u>\$0.00</u>
E.	OFF-SITE	
E.	TOTAL OFF-SITE	<u>\$0.00</u>
<b>ON-SITE</b>		
A.	Sanitary Sewer	\$0.00
B.	Storm Sewers	\$0.00
C.	Watermain	<u>\$0.00</u>
<b>TOTAL UNDERGROUND SERVICES: A, B &amp; C</b>		\$0.00
D.	Secondary Services (asphalt parking lot)	\$0.00
E.	Off-Site	<u>\$0.00</u>
<b>TOTAL UNDERGROUND, SECONDARY SERVICES AND OFF-SITE</b>		\$0.00
<b>ENGINEERING FEE AND CONTINGENCY (10%)</b>		<u>\$0.00</u>
<b>SUB-TOTAL</b>		\$0.00
<b>H.S.T. (13%)</b>		<u>\$0.00</u>
<b>SUB-TOTAL</b>		\$0.00
<b>50% OF TOTAL SITE WORKS</b>		\$0.00
<b>TOTAL LETTER-OF-CREDIT</b>		<u>\$0.00</u>



SCHEDULE "C"  
OF

AGREEMENT BETWEEN (23) AGREEMENT BETWEEN - NAME AND THE CORPORATION OF THE CITY OF WELLAND DATED THE (24) DATE DAY OF (25) MONTH , A.D. 2012 FOR LANDS KNOWN MUNICIPALLY AS (26) MUNICIPAL ADDRESS , WELLAND

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This is to certify that the following works, totalling \$ \_\_\_\_\_, in accordance with Schedules "B" and "D" of the above Agreement, have been completed in accordance with said Agreement.

(list works - as itemized in Schedule "B")

- NOTE: (1) Attach separate sheet listing works if additional space is required.  
 (2) Any deviations/changes/modifications of the listed itemized works in Schedule "B" must be noted.  
 (3) The sum to be shown above is based upon the total sum of the works completed as listed in the "amount" column in Schedule "B".

ITEM FROM SCHEDULE "B"	DESCRIPTION (WORKS) FROM SCHEDULE "B"	ESTIMATED AMOUNT FROM SCHEDULE "B" (\$)
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Dated at the \_\_\_\_\_ of \_\_\_\_\_ this day of \_\_\_\_\_ A.D. 20\_\_\_\_

I/WE \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_ in the Regional Municipality of \_\_\_\_\_ solemnly declare that all of the statements contained herein are true and I/WE make the solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

Declared before me at the _____	)	
	)	Professional Engineer (if applicable)
of _____	)	
	)	
in the Regional Municipality of _____	)	Architect (if applicable)
this _____ day of _____	)	
	)	
A.D. 20____	)	
	)	Owner (if no Architect/Engineer)
_____	)	
A Commissioner etc.	)	