

THE CORPORATION OF THE MUNICIPALITY OF BROCKTON

BY-LAW # 2012-21

BEING A BY-LAW TO ADOPT A STANDARD SITE PLAN AGREEMENT TO BE USED FOR DEVELOPMENTS WITHIN THE LIMITS OF THE FORMER TOWN OF WALKERTON.

WHEREAS the Council of the Corporation of the Municipality of Brockton has enacted a Site Plan Control By-Law, being By-law #85-52, pursuant to the provisions of Section 40 of the Planning Act, 1983, as amended.

AND WHEREAS the Corporation has been approached by individuals wishing to undertake various developments upon property located within the former Town of Walkerton.

AND WHEREAS subsection 7 of the said Section 41 of the Planning Act authorizes the Corporation to require the owner of the subject lands to enter into an agreement with the Corporation formalizing the nature, scope and details of the development on said subject lands.

AND WHEREAS the Council of the Corporation of the Municipality of Brockton is in favour of making use of the Site Plan Control provisions contained within Section 41, subsection (7) of the Planning Act RSO 1990, as amended, for these new developments.

NOW THEREFORE the Council of the Corporation of the Municipality of Brockton **ENACTS AS FOLLOWS:**

1. Definitions:

For purposes of this by-law and the requirements of any Site Plan Agreements approved hereunder;

“Building or Structure” shall **include** any addition, building or structure in the former Town of Walkerton.

“Development” means the construction, erection or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of substantially increasing the size or usability thereof, or the laying out and establishment of a commercial parking lot or of sites for the location of three or more trailers as defined in clause (a) of subsection 164(4) of the Municipal Act, 2001 as the case may be or of sites for the location of three or more mobile homes as defined in subsection 465(1) of this Act or of sites for the construction, erection or location of three or more land lease community homes as defined in subsection 46(1) of this Act.

2. That the Standard Site Plan Agreement be attached hereto as Schedule “A” and shall form an integral part of this by-law.
3. That the owner of any development as defined in this by-law be required to enter into a Site Plan Agreement with the Corporation and this agreement shall be in the form of Schedule “A” as attached to this by-law.
4. That the Mayor and Clerk be and are hereby authorized to sign and execute this by-law and any other documentation associated therewith.

THAT THIS BY LAW BE ENACTED, SIGNED AND SEALED THIS 13TH DAY OF FEBRUARY, 2012.

MAYOR – David Inglis

CLERK – Debra Roth

SEAL.

Municipality of Brockton
Site Plan Agreement
(Outside of the East Ridge Business Park)

This Agreement made this day of , 20xx and referred to as the
"Site Plan Agreement"

BETWEEN:

hereinafter referred to as the "Owner"

-and-

The Corporation of the Municipality of Brockton
hereinafter referred to as the "Corporation"

-and-

hereinafter referred to as the "Mortgagee"

WHEREAS the Owner represents and warrants that he is or will be the 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 Corporation has enacted a Site Plan Control By-Law pursuant to the provision of Section 41, of the Planning Act RSO, 1990, as amended and the Corporation requires that all Owners of new structures including Garden Suites or additions to existing structures to be erected within the Municipality of Brockton, save and except single family residential and agricultural structures, be required to enter into a Site Plan Agreement with the Corporation that shall specify the details of the development;

AND WHEREAS the Owner wishes to undertake a development on the said 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 authorizes the Corporation to require the Owner of the subject lands to enter into an Agreement with the Corporation;

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 Corporation 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 of lawful money of Canada now paid by the Owner to the Corporation, the receipt whereof is hereby acknowledged, the Owner covenants and agrees with the Corporation as follows:

1. INTRODUCTION

- 1.1. The Owner agrees to enter into a Site Plan Agreement with the Corporation, for the development of all buildings and structures located on the subject lands.
- 1.2. The Owner agrees to allow the Corporation **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 Corporation, 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 Corporation under this Agreement.

2. SITE DEVELOPMENT

- 2.1 The Owner agrees to undertake development on the subject lands, at his sole expense, in conformity with the Approved Site Plan as detailed in Schedule "B" attached hereto.
- 2.2 If the Owner fails to obtain a building permit within one (1) year of signing this Agreement then the Agreement is automatically terminated and the approval granted to the site plans is rescinded.
- 2.3 If the Owner has taken out a building permit but has not completed construction within two (2) years of the date of the permit, this Agreement is automatically terminated and the approval granted to the site plans is rescinded.
- 2.4 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 Corporation.
- 2.5 The signing of any Agreement of Purchase and Sale of the subject lands or the transfer of ownership of the subject lands or the shares of the Owner prior to the completion of a Final Inspection will result in the cancellation of the Site Development Agreement save and except of the Performance Deposit which the Owner agrees to forfeit immediately to the Corporation.

3. LANDSCAPING

- 3.1 The Owner shall, at his own expense, install landscaping as indicated on the Approved Site Plan, within one (1) year of completion of the buildings.
- 3.2 The Owner agrees to erect all fences that are illustrated on the Approved Site Plan within one (1) year of the completion of the buildings.

4. OUTSIDE STORAGE

- 4.1 The Owner agrees that any outside storage is located within prescribed areas and screened from public view 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.

5. REFUSE STORAGE

- 5.1 The Owner agrees to provide a central refuse storage collection area and this area shall be either within a building or screened from public view in a location as shown on the Approved Site Plan.

6. LOADING, PARKING AND DRIVEWAYS

- 6.1 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 Corporation's fire fighting equipment.
- 6.2 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 and shall be surfaced with asphalt or cement and all parking stalls shall be visually identified by line painting.
- 6.3 The Owner agrees that any areas to be used for parking of motor vehicles shall be in compliance with the parking requirements as contained in the Corporation's current Comprehensive Zoning By-Law.
- 6.4 The Owner shall be required to provide disabled parking as per any Corporation By-Law in place relating thereto and any requirements as applies to the Highway Traffic Act.

7. SEWERS

- 7.1 The Owner shall connect any required storm and sanitary sewers services, as shown on the Approved Site Plan, to the municipal sewers. Said connections to be **at the expense of the Owner**, subject to the required fees.

- 7.2 If sanitary or storm sewer mains do not exist in the area of the development or are not easily accessible, then the Owner will be required to cover the cost of extending existing sewer mains to the subject lands **at the Owner's expense**. This aforementioned work must be completed prior to a building permit being issued by the Corporation for any development on the subject lands. The Owner will pay the Corporation annual sewer rates.
- 7.3 Disposal of waste water shall be in compliance with the requirements of the Ministry of the Environment and the Corporation's current Sewer Use By-Law existing at the time.

8. WATER

- 8.1 If water mains do not exist in the area of the development or are not easily accessible, then the Owner will be required to cover the cost of extending existing water mains to the subject lands **at the Owner's expense**. This aforementioned work must be completed prior to a building permit being issued by the Corporation for any development on the subject lands. The Owner agrees to be responsible for water rates.
- 8.2 The Owner shall **at their expense** connect to the existing watermain. The location of this connection shall be as shown on the Approved Site Plan, said connection to be **at the expense of the Owner**, subject to any required fees.
- 8.3 The parties hereto acknowledge that it is not the present intention of the Corporation to turn off the water at the watermain with respect to any existing private water service connections not utilized by the Owner; **PROVIDED** however that the Corporation reserves the right at any time to turn off the water **at the cost of the Owner**. In the meantime, the Owner for and on behalf of themselves and their heirs, executors, administrators, and assigns and their respective servants, workmen and agents, covenant and agree with the Corporation that they will not cause any damage directly or indirectly to any such unused watermain private service connections, including valve boxes and existing fire hydrants located on the subject lands of the Owner and in the event of any damage so caused by them or any of them, the **Owner shall bear the cost** of any repairs and/or replacements required by reason of such damage.

9. HYDRO

- 9.1 The Owner shall contact Westario Power Holdings Inc. for purposes of finalizing any arrangement with regard to hydro services for the subject lands. The Owner shall be responsible for providing verification, in writing, to the Corporation from Westario Power Holdings Inc. that it has arranged for adequate and appropriate hydro services **at the Owner's expense** for the subject lands. The issuance of a building permit for the development shall be conditional upon this aforementioned verification.

10. DRAINAGE

- 10.1 The Owner agrees that surface and roof drainage systems shall be designed and constructed to the satisfaction of the Corporation 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.
- 10.2 If required by the Corporation, the Owner agrees to submit a Storm Water Management Plan, prepared by a professional engineer, with the Site Plan, illustrating how stormwater will be detained on the site and discharged to the municipal drainage system at a rate no higher than the pre-development flows.

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 a glare on adjacent roadways and properties. All parking lot lighting shall also comply with the Corporation's Dark Sky resolution.

13. MUNICIPAL EASEMENTS

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

- a) **(description of any necessary easements.)**
- b) Such other easements as may reasonably requested by the Corporation for future municipal purposes, provided that the Corporation will pay the cost of surveying and preparing any easement agreements so requested.

14. MAINTENANCE

14.1 The Owner shall:

- a) Complete the works and other facilities required on the Approved Site Plan and this Agreement at its expense and to the satisfaction of the Corporation;
- b) Maintain those works and facilities located on the subject lands to the satisfaction of the Corporation at the sole risk and expense of the Owner; and
- c) At all times in the future, remove snow and ice from access ramps and driveways, parking areas, loading areas and walkways located on the subject lands.

14.2 Without limiting the generality of paragraph 14.1 (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.

14.3 With respect to paragraph 14.1 (c), the Corporation acknowledges that it is impossible for the Owner to completely remove all snow and ice. The intention of paragraph 14.1 (c) is to protect people and property and to give easy access to and from the subject lands. The Owner is required to remove such snow and ice, do such salting and sanding, and do such other reasonable winter maintenance as is required from time to time to give such protection and access.

15. SITE PLAN INSPECTION AND OCCUPANCY

15.1 The owner agrees that prior to occupancy of the building, he/she 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. The municipality may permit occupancy if it is satisfied that the owner demonstrates their intention to complete and repair any deficiencies identified in the Site Plan Inspection report. All deficiencies shall be remedied prior to the refund of the Performance Deposit. Deficiencies shall be considered to be a breach of this agreement.

16. INDEMNITY

16.1 The Owner will at all times indemnify and save harmless the Corporation of and from all losses, costs and damages which the Corporation 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 at the expense of the Owner and such indemnity shall constitute a first 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.

16.2 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 Corporation with respect to the failure of any such person to perform or fully perform any obligation under this Agreement, or the failure of the Corporation 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 Corporation, and shall be maintained to the satisfaction of the Corporation at the sole risk and expense of the

Owner, and in default thereof and without limiting other remedies to the Corporation the provisions of Section 446 the Municipal Act 2001, as amended, shall apply.

- 16.3 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 Corporation may direct that such matter or thing shall be done at the expense of the Owner, and the Corporation may recover at the expense incurred in doing it by action, the Owner hereby authorizes the Corporation to enter upon the said subject lands and do such matter or things.

17. SEVERABILITY

- 17.1 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.

18. PERFORMANCE DEPOSIT

- 18.1 Prior to obtaining a Building Permit, the Owner agrees to provide the Corporation with a Performance Deposit in the amount of \$_____. 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.
- 18.2 The Performance Deposit shall be determined by the Corporation 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.
- 18.3 The Performance Deposit shall be refunded to the Owner without interest upon satisfaction of the Final Site Plan Inspection. Upon non-completion within the time period set out in this Agreement, the Owner herein irrevocably agrees the security shall be forfeited absolutely to the Corporation as liquidated damages and not as penalty.

19. ADDITIONAL PERMITS

- 19.1 The Owner acknowledges that the Corporation 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 Corporation, the County of Bruce or any other agency, including any provincially appointed regulatory body or Ministry, before the proposed development can proceed.

20. TERMINATION OF AGREEMENT

- 20.1 If this Agreement is automatically terminated, the Corporation is deemed to have withdrawn its consent to the proposed development and A Stop Work Order may be issued until the Owner has entered into a further Site Plan Agreement. No liability or other duty required of the Corporation under this Agreement shall be imposed on the Corporation should this Agreement be terminated. The Corporation is under no obligation to return any money paid under this Agreement.
- 20.2 Notwithstanding anything contained herein to the contrary, and subject to approval by the Corporation, 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.

21. ESTOPPEL

- 21.1 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 Corporation 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.

22. MORTGAGEE'S COVENANTS

22.1 The Mortgagee hereby postpones its interest as Mortgagee under a mortgage registered on the _____ day of _____, _____ as Number _____ to the terms of this Agreement.

22.2 The Mortgagee shall not be required, in its capacity as mortgagee:

- a) To install any works and services that have not been installed by the Owner;
- b) To complete the installation of any works and services that the Owner has started to install, but not completed, or
- c) To correct any deficiencies in works and services improperly installed by the Owner.

23. NOTICES

23.1 Any notices required or permitted to be given under this Agreement shall be in writing and may be served either personally 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 Corporation of the Municipality of Brockton
c/o Clerk
100 Scott Street
P.O. Box 68
WALKERTON, Ontario
NOG 2V0

The Owner

23.2 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 second day following the day upon which it was received by one of Her Majesty's post offices or 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. Either party may, by notice to the other, designate another address in Canada to which notices mailed or delivered more than ten (10) days thereafter shall be addressed.

24. AGREEMENT RUNS WITH LAND

24.1 This Agreement shall inure to the benefit of the Corporation, 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.

25. MUNICIPAL EXPENSES

25.1 The Owner shall pay to the Corporation the costs for all outside technical, professional and legal advice that the Corporation has incurred in order to approve the development covered by this agreement. These expenses do not include internal administrative or technical services rendered by full time municipal staff.

25.2 The Owner agrees to pay to the Corporation by cash or Certified Cheque, a contribution for the Corporation's municipal administrative services in the sum of \$1.00 per square metre (9.3 cents per square foot) 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, once future development begins.

The total contribution for this development, based on _____square metres will be \$_____and shall be payable on execution of this Agreement and before the issuance of a building permit

26. GENDER AND NUMBER

26.1 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.

Signed, Sealed and Delivered) **Owner**
In the Presence)
) Per: _____

Seal or Witness) Per: _____

Date: _____

The Corporation of the Municipality of Brockton

Per: _____
David Inglis – Mayor

Per: _____
Debra Roth – Clerk

We have authority to bind the Corporation

Mortgage

Date: Per: _____