

AMENDED SITE PLAN DEVELOPMENT AGREEMENT

THIS AMENDED AGREEMENT made this ____ day of January, 2023

BETWEEN:

KENORA DISTRICT SERVICES BOARD

(hereinafter called the “Owner”)

OF THE FIRST PART,

-and-

THE CORPORATION OF THE CITY OF DRYDEN

(hereinafter called the “Municipality”)

OF THE SECOND PART,

WHEREAS the Owner represents that it is the registered owner of the lands described in Schedule “A” annexed hereto, which lands are hereinafter referred to as the “Lands”;

AND WHEREAS the Owner has obtained approval from the Council of The Corporation of the City of Dryden; (The City). (The Municipality);

AND WHEREAS this amended agreement (hereinafter called the “Agreement”) has been entered into pursuant to Section 41 of the Planning Act, 1990;

AND WHEREAS sub-section 10 of Section 41 of the Planning Act, 1990, provides for the registration of Site Plan Development Agreements on the title of the Lands;

AND WHEREAS the execution of this amended agreement was authorized by By-Law Number 2023-____;

NOW THEREFORE THIS AMENDED AGREEMENT WITNESSETH that in consideration of the mutual covenants herein contained and other good and valuable consideration, the parties hereto hereby covenant and agree as follows:

1. Prohibition

The Owner hereby agrees that no development or re-development will proceed or take place on the Lands except as shown on plans, drawings and specifications approved by Council of the Municipality or the staff who have been delegated the authority to approved said plans (hereinafter referred to as the “Site Development Plans”), and without limiting the generality of the foregoing, development or re-development shall include the construction, erection or placing of one or more buildings or structures on the Lands 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 the construction, erection, installation or placement on the lands of any loading spaces, parking areas, garbage container areas, landscaping, alteration of the natural landscape, lighting, drainage facilities, access driveways or fencing.

2. Conditions

Unless otherwise approved by the Municipality pursuant to Paragraph 1 hereof, the Owner shall develop the Lands and any adjoining abutting municipal property being part of the road allowance but not part of the traveled roadway (hereinafter referred to as the “Boulevard”) in accordance with the Site Development Plans identified in Schedule “B” attached hereto and the conditions contained in Schedule “C” attached hereto.

3. Conformity with Site Development Plans and Conditions

The Owner further agrees that if any structures, buildings, facilities, services, works or landscaping improvements are constructed or altered on the Lands and Boulevard, they will be constructed in conformity with the Site Development Plans and conditions contained in Schedule “C” attached hereto. It is understood that construction has commenced as stipulated in the original agreement within one (1) year of the approval by the Council of the Municipality of the original Site Development Plans. It is further understood that the continued approval shall at the option of the Municipality become null and void if the Site Development Plans submitted to the Municipality for approval pursuant to the terms of this Amended Agreement and in accordance with the provisions of the Planning Act, 1990 are not fulfilled. In such event, the Owner hereby acknowledges that the Municipality may alter, amend or revoke any or all of the conditions of approval previously given and substitute new conditions of approval.

4. Completion and Security

The Owner agrees that he shall construct and provide the structures, buildings, facilities, service or works shown as approved by Council on the Amended Site Development Plans.

For the purposes of this Agreement, and as agreed to by both parties, no additional security will be collected, but the value of Security previously collected from the owner by the Municipality for the Site Plan Agreement regarding 51 Memorial Avenue (previously known as Colonization Avenue) shall be Security for any obligations of the Owner pursuant to the provisions of this Agreement as well, without any limitations whatsoever. The Value of

security received previously at \$225,000 shall be retained until both projects, 51 Memorial Avenue and 285 Arthur Street have both been completed as per the Agreements. The following additional provisions shall also apply:

- i) drawings on the cash deposit shall be permitted upon presentation of a letter from the Municipality to the Owner claiming default by the Owner under the terms of this Agreement, and such defaults shall not be limited to the actions of the Owner;
- ii) partial drawings shall be permitted;

Notwithstanding anything else herein contained, approval of the Amended Site Development Plans shall be deemed to have been given, and the Owner hereby agrees not to undertake any development or re-development or construction of any structures for which a building permit has been issued, unless required securities are in place and this Amended Agreement has been executed by the registered Owner and Encumbrancer of the Lands and has been registered on the title to the Lands.

5. Release of Security

Upon certification by the City that all conditions imposed by this Amended Agreement have been satisfied and provided the Owner is not in default with respect to any other provisions of this Agreement, the Owner shall be entitled to the release of the balance of the Security held by the Municipality at the time of such certification. The Municipality shall not be required to refund or account for any Security utilized by the Municipality as a result of any default by the Owner under the provisions of this Agreement.

6. Construction

The Owner shall undertake all construction activity on the Lands in such a manner so as not to unreasonably interfere with adjoining lands or traffic on adjacent streets. The Owner shall control all dust, mud and debris resulting from any construction activities and remove the same promptly from any municipal catch basin, manhole, sewer, ditch, culvert, roadway, boulevard or sidewalk. The Owner shall reimburse the Municipality for any damage to any municipal services, facilities or works resulting from the development or re-development of the Lands, howsoever caused and the determination of the Manager of Public Works with respect to whether or not said damage was caused by the Owner or with respect to the extent of the damage shall be final and binding on all parties.

7. Maintenance

The Owner shall maintain in good repair and in a safe and clean condition the Lands and Boulevard, vegetation, structures, buildings, facilities, services, works and landscaping on the Lands and Boulevards at his own expense and shall do all acts necessary to comply with and properly carry out and provide for the maintenance and use thereof, including the replacement or repair of broken, damaged or worn material or parts and the replacement of dead or deceased vegetation. The Owner shall further keep the Lands and Boulevard free and clear of all refuse, debris and obstructions. Without limiting the generality of the foregoing, and in addition to anything else contained herein, the Owner shall be bound by, do and perform those obligations more particularly set out in Schedule "C" attached hereto.

8. Connections to Municipal Services

All connections to the Municipality's storm sewers shall be made under the supervision of the Manager of Public Works, at the Owner's expense. All storm sewers constructed on or under the Lands shall be constructed to the satisfaction of the Manager of Public Works. Relocation of any municipal services, facilities or utilities (including any curbs, gutters, catch basins, poles, bus shelters, manholes, telephone boxes, drains or transformers, whether owned by the City of Dryden, the Municipality or any utility company, board or commission) shall be carried out at the Owner's expense.

9. Building or Demolition Permits

Notwithstanding the provisions of this Agreement, the Owner and the Encumbrancer hereby acknowledge that the Municipality is not obligated to issue any building permits or demolition permits or grant any other permits or consents with respect to any development or re-development on the Lands unless:

- i) all federal, provincial, and municipal statutes, regulations, by-laws, ordinances, orders and requirements have been complied with;
- ii) any other agreements with any other governmental body or agency are not in default; and
- iii) all property taxes with respect to the Lands have been paid in full.

In the event the development or re-development of the Lands herein contemplated requires any other municipal or other governmental approvals, including but not limiting the generality of the foregoing, a building permit, a consent for a severance or rezoning or a variance pursuant to the provisions of the Planning Act, 1990, (as amended), a permit for access, ingress or egress, approvals pursuant to the provisions of the Environmental Assessment Act,

(as amended) or the Environmental Protection Act (as amended), the approval of the Medical Officer of Health, the approval of the Conservation Authority having jurisdiction, or the approval of any other governmental body or agency, then in such event the Owner hereby agrees not to commence any work on the Lands or demolish or alter any structures on the Lands unless all such approvals, permits or rezoning have been obtained.

11. Landscaping

In the event the Site Development Plans and conditions set out in Schedule "C" attached do not provide sufficient detail with respect to landscaping requirements, the Owner shall install and maintain such landscaping improvements as may be required by the Municipality. All approved landscaping shall be maintained in a healthy and growing condition at all times.

12. Hydro

The Owner shall, at its sole cost, comply with the requirements of Hydro One and Dryden Public Works, where applicable, including bearing the cost of the relocation of existing hydro facilities if applicable.

13. Costs

The Owner shall pay to the Municipality, forthwith upon demand, all costs and expenses incurred by the Municipality, whether directly or indirectly, in connection with this Agreement and the approval of any Site Development Plans. Without limiting the generality of the foregoing, such costs and expenses shall include a charge for the processing of the Site Development Plans by the Municipality, and all legal, surveying and engineering costs and the costs of any consultants retained by the Municipality incurred in connection with this Agreement, the supervision of all of the works undertaken in connection therewith or in ensuring compliance with this Agreement and the registration thereof on title to the Lands.

14. Owner's Expense

The Owner acknowledges that where this Agreement obliges the Owner to perform any work or do anything it is to be done at the Owner's expense and not at the Municipality's expense.

15. Registration

The Owner and Encumbrancer hereby consent to the registration of this Amended Agreement on the title of the Lands.

16. Acknowledgement by Encumbrancer

The Encumbrancer hereby acknowledges that it is aware of all of the terms, covenants and conditions contained in this Agreement and agrees to be bound by such terms, covenants and conditions in the event that it should obtain control, possession or equitable ownership of the Lands.

17. Indemnification by Owner

The Owner shall indemnify and save harmless the Municipality against all actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly by reason of this Agreement or the Owner undertaking the development or re-development herein referred to.

18. Right of Entry

The Owner covenants and agrees with the Municipality to grant and hereby grants to the Municipality or its authorized representatives the right to enter upon the Lands or any part thereof in order to ascertain whether or not the provisions of this Agreement have been complied with in full.

19. Default

In the event of any default by the Owner pursuant to any of the terms of this Agreement, in addition to any other remedies available to the Municipality and without any limitation thereof, the Municipality may:

- i) draw on the Security in whole or in part;
- ii) undertake or complete any obligation of the Owner hereunder;
- iii) enter upon the Lands through its servants or agents for any purpose whatsoever;
- iv) issue a stop work order with respect to any further development, re-development or work upon the Lands; and
- v) recover from the Owner all costs and expenses incurred by the Municipality whether directly or indirectly, with respect to the default or the remedy thereof, and as a Performance Security to a maximum of \$225,000 and collect such costs and expenses in like manner as municipal taxes.

20. Drainage

The Owner shall not take any action or cause any work to be done that will adversely affect drainage from or onto properties adjoining the Lands, and the owner shall with the prior approval of the Municipality, at the Owner's expense, construct such drainage works as may be required. Notwithstanding the aforesaid, the Owner shall indemnify and save harmless the Municipality with respect to drainage from or onto lands adjoining the Lands as a result of the development or re-development hereby contemplated and the construction of any works, facilities or structures on the Lands.

21. Occupancy

The Owner covenants and agrees that there shall be no occupancy of the building until all requirements of this Agreement have been complied with and the Chief Building Official has issued an Occupancy Certificate. The Chief Building Official may, however, issue a conditional Occupancy Certificate provided the Letter of Credit is sufficient to cover any outstanding works.

Prior to the issuance of an Occupancy Certificate the Owner shall complete the following:

- i) all Municipal services to be installed;
- ii) all site servicing and storm drainage;
- iii) all internal lighting, fencing and landscaping; and
- iv) the submission of "As Built" lot grading drawings to ensure that the site has been developed in accordance with the approved Site Plan.

22. Successors and Assigns

The parties hereto hereby covenant and agree that this Amended Agreement shall be binding upon them, their respective heirs, executors, administrators, successors and assigns.

23. Invalidity

If a Court of competent jurisdiction should declare any section or part of a section of this Agreement to be invalid or unenforceable, such section or part of a section shall not be construed as being an integral part of the Agreement or having persuaded or influenced a party to this Agreement to execute the same, and it is hereby agreed that the remainder of the Agreement shall be valid and in full force and effect.

24. Counterparts

This Agreement may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute but one and the same instrument.

25. Interpretation

In construing this Agreement, words in the singular shall include the plural and vice versa and words importing the masculine shall include the feminine, and neuter and vice versa, and words importing persons shall include corporations and vice versa. In the event of any conflict or ambiguity in the Site Development Plans or Schedules to this Agreement, the decision of the Clerk of the Municipality shall be final and binding. In the event of conflict between the main body of this Agreement and the Schedules attached hereto, the provisions in the schedules attached hereto shall apply.

26. Notice

All notices, demands or requests provided for or permitted to be given pursuant to this Agreement shall be made in writing as follows:

- i) If made to the Municipality, shall be addressed to The Clerk, City of Dryden
- ii) if made to the Owner and Encumbrancer at their respective designated addresses for service shown on the document General attached to this Agreement in the Registry Office in which this Agreement is registered.

All notices, demands or requests shall be deemed to have been properly given if delivered personally or sent by prepaid and registered mail, return receipt requested. If notice is given by mail, the same shall be effective five (5) business days of being deposited with the post office, or upon proof of delivery by return receipt. However, in the event of the interruption of postal services, the notice shall not be deemed to have been given during such period of interruption, unless the notice has been actually received.

IN WITNESS WHEREOF, the individual parties hereto have hereunto set their hands and seals and the Corporate parties have hereunto affixed their Corporate Seal as attested to by the hands of their proper officers in that behalf duly authorized.

SIGNED, SEALED AND DELIVERED

Authorized to be executed by: THE CORPORATION OF THE CITY OF DRYDEN

By-law 2023-____, passed on the ____ day of January, 2023

MAYOR, Jack Harrison

CLERK, Allyson Euler

KENORA DISTRICT SERVICES BOARD

SCHEDULE “A”

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the City of Dryden, legally know as;

PINS 42084-0525, 42084-0527, 42084-0194 PT LT 15 M318, PT LT 18 PL M318 & PT BLK B PL M318, BEING PT 8, 23R14598; CITY OF DRYDEN

SCHEDULE “B”

<u>Name of Plan, Drawing or Sheets or Specification</u>	<u>Number of Drawing of Pages</u>	<u>Date of Plan Prepared Specification</u>	<u>Date of Approval by By Municipality</u>
19029 Site Plan-IFSPC_r1	C-00 Thru C-06	28/06/2021	26/07/2021 (By-law 2021-66)
19029-Site Plan Additional Entrance/Grading	C-02R	27/05/2022	

SCHEDULE “C”

The Lands shall be used in accordance with the City of Dryden Comprehensive Zoning By-law,
2740-2000, as amended.