

THIS AGREEMENT made this ___th day of October, 2024

BETWEEN: MCCANN REDI-MIX

(Hereinafter called the "Owner")

OF THE FIRST PART

AND

THE CORPORATION OF THE MUNICIPALITY OF LAMBTON SHORES

(Hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Municipality has enacted a Site Plan Control By-law pursuant to the provisions of Section 41 of the Planning Act, 1990;

AND WHEREAS Section 41 of the Planning Act requires the Owner to:

- (a) submit development plans to the Municipality for approval under Section 41(4) of the Act: and
- (b) authorizes the Municipality to require the Owner to enter into an agreement respecting the provision of the services and the approval of the plans and drawings under Section 41(7) of the Act;

AND WHEREAS the Owner represents and warrants that they intend to develop lands described in Schedule 'A' to this Agreement (hereinafter called the "Lands");

AND WHEREAS the Owner of the "Lands" has submitted plans to the Municipality for approval in accordance with subsection (4) of Section 41;

NOW THEREFORE the parties hereto agree as follows:

1. The following Schedules are hereby declared to form part of this Agreement and are attached hereto:

Schedules

Description

"A"

-

being a legal description of the land affected hereinafter referred to as the "Lands".

"B" - being a site plan, showing the location of existing features on the "Lands" and the plans showing the existing facilities, works and matters to be provided on the "Lands", hereinafter referred to as the "Site Plan".

2. The attached Schedule "B" is hereby approved by the Municipality subject to the following conditions:

(a) **GENERAL**

(i) The Owner hereby agrees that the development shall be carried out and completed in accordance with the attached Schedules, subject to minor alteration or variation that has received the approval of the Municipal Engineer. Any item or feature which is not specifically shown on the Schedules or described in this Agreement may be deemed to be prohibited and may only be permitted through an amendment to this Agreement.

(b) **PAVING DRIVEWAYS & PARKING AREA**

(i) The Owner shall pave with asphalt, concrete or other hard surface material approved by the Municipality, those portions of driveway and parking areas and walkways on the "Lands", as shown on Schedule "B", the "Site Plan", to the reasonable satisfaction of the Municipality. No driveway or parking areas shall be used as such unless they are so paved or surfaced.

(c) **VEHICULAR ACCESS**

The Owner shall provide and maintain vehicular access to and from the Lands only as shown on Schedule "B", the Site Plan, and to the satisfaction of the Municipality. The Owner shall prohibit any other vehicular access to and from "the Lands".

(d) **LANDSCAPING**

Any landscaping or plant materials shall be installed and maintained in a healthy condition to the satisfaction of the Municipality. The property shall be kept free of weeds. No landscaping shall be installed on the road allowances or other property of the Municipality without its prior approval. No underground sprinkler systems shall be located on the Municipality's right-of-way or other property.

(e) **LIGHTING**

The Owner shall install and maintain facilities for the lighting, including floodlighting, of the “Lands” or of any buildings or structures including signs thereon to the reasonable satisfaction of the Municipality. Any exterior lighting of the building, parking areas or signs and signs shall comply with Municipal Policy #89 - Dark Sky Policy, shall have its intensity controlled, and shall be directed away from the adjacent properties and streets to the reasonable satisfaction of the Municipality.

(f) **OPEN STORAGE AND GARBAGE**

The Owner hereby agrees that there will be no open storage on the “Lands” unless it is within an area specifically designated for such purposes and shown on Schedule “B”, the “Site Plan”. Garbage shall be stored only within the building within the facilities intended for that purpose. Garbage shall not be placed for garbage pickup until the regular municipal garbage pickup day or the preceding evening.

(g) **SERVICING, GRADING AND INSPECTION**

(i) The Owner shall provide for the construction and/or maintenance of such sewers, water mains, roads, site grading, driveway installation, and service connections as designed, certified and shown in Schedule “B”, and as per the Municipality of Lambton Shores Engineering Standards and Specifications.

(ii) Surface drainage shall be accommodated on the “Lands” and shall not drain onto adjoining property. The Owner shall be responsible to ensure that the proposed development and final grading of the site do not in any way adversely affect the drainage of adjoining properties. The Owner agrees to indemnify the Municipality against any claims that may arise from the development with respect to alterations in the direction, quantity, or quality of surface drainage or storm water.

(iii) The Owner's consultant shall provide inspections for the installation of any and all site services in accordance with the Municipality of Lambton Shores' Engineering Standards and Specifications. Any and all work on Municipal property shall be coordinated with the Municipality and will require full time inspection by the consultant. Full Time Inspection shall include, but not be limited to sewer, water main and road installation on the public right-of-way and road and right-of-way reinstatement in order to verify depths of materials and finished product.

- (iv) Full time inspection is not a requirement for site stripping or the removal of pavement, curb and gutter, and sidewalks.
- (v) The preceding does not absolve the Owner or the Owner's consultant of responsibility for being aware of all activities related to this development. Ignorance of on-site activities will be no excuse for variance from the Site Plan, Municipal specification, or any statute under law, nor for the consultant abdicating responsibility for provision of a letter of certification upon project completion.
- (vi) Any water mains shall be inspected and tested up to and including the water meter(s) in accordance with the Municipality of Lambton Shores Engineering Standards and Specifications.
- (vii) Any service connections shall be in accordance with the Municipality of Lambton Shores Engineering Standards and Specifications.
- (viii) Site services shall be provided as required in the Schedules. No alterations shall be made unless they are minor and receive the prior approval of the Municipal Director of Community Services.
- (xi) Where this agreement requires that the Owner decommission a municipal water and/or sewer connection, such work shall be coordinated with the Municipality and completed in accordance with Municipal standards with a Municipal inspector or designate on site. Only contractors given prior approval by the Municipality shall decommission a water connection.

3. **OCCUPANCY**

- (a) The Owner shall notify the Municipality at least one week prior to the proposed occupancy date in order to arrange for a site inspection to be conducted.
- (b) The Owner and Encumbrancer shall not occupy or use or permit to be occupied or used any new building on the "Lands" before the provisions of this Agreement are complied with.
- (c) Substantial completion of the site is required before occupancy is allowed by the Municipality. The Municipality may permit the occupation or use of any new building or extension or a parking lot before all the provisions of this Agreement are complied with, subject to the following conditions being satisfied:

- i) all off-site services required by this Agreement affecting the “Lands” have been completed to the satisfaction of the Municipality and in compliance with the terms and conditions of this Agreement;
 - ii) the Owner or Encumbrancer deposits with the Municipality a certified cheque in order to secure the completion of the provisions of this Agreement after occupancy has commenced, including the landscaping. Notwithstanding the aforementioned permission, the Owner and Encumbrancer shall not occupy or use or permit to be occupied or used any new building or extension or parking lot on the “Lands” before all of the work, except landscaping, in the Municipality’s right-of-way is complete.
- (d) The Owner hereby authorizes the Municipality to carry out the completion of any of the provisions of this Agreement and to use the aforementioned security funds for this purpose, if the Owner fails to complete the said work within the time agreed to in writing between the Municipality and the Owner at the time the Owner provides security. Upon completion of the work, any unused balance shall forthwith be returned to the Owner and, should the funds deposited be insufficient, the Owner shall forthwith pay to the Municipality such sum as may be required to make up the total cost of the work. Failure to pay the amount within 30 days after the account has been submitted will result in the cost being added to the tax bill for the “Lands” and collected in like manner as municipal taxes.

4. **SPECIAL PROVISIONS**

sanitary capacity

- (a) The Municipality hereby agrees to allocate sanitary capacity to the proposed development.
- (b) The Owner agrees that if this Agreement lapses, sanitary capacity allocated for this development may be reallocated to other properties by the Municipality.

construction

- (c) The Owner agrees that no closure of a road, parking space or sidewalk and no work that requires the closure of a road, parking space or sidewalk shall occur without the formal permission in writing of the Municipal Engineer. Further, the Owner acknowledges that no lanes in the street or parking spaces nor any portion of the sidewalk shall be permitted to be closed during the period commencing the 15th day of May in one year and ending the 5th day of September of the same year.

- (d) The Owner shall provide 5 business days' notice to the Municipality and obtain the Municipal Engineer's approval prior to commencing any work on Municipal lands, including road allowances. In the case of excavations, they shall be backfilled and compacted and all surfaces shall be restored to existing condition and to the specifications and to the satisfaction of the Municipal Engineer.
- (e) The Owner agrees that hours of construction shall comply with municipal noise by-laws.
- (f) The Owner agrees that the subject lands shall be developed consistent with the requirements and recommendations contained in the geotechnical investigation completed by EXP Services Inc, dated September 2024, project number LON-24011426-A0.
- (g) The Owner agrees that work required to be completed on private lands abutting the subject lands shall be completed in accordance with the terms of any easements and only with such permissions as the Owner may require from the adjacent landowner or other beneficiaries of easements.

landscaping

- (h) The Owner agrees to have a landscape architect or similarly qualified person prepare to the satisfaction of the Municipality a landscaping plan of comparable quantity and quality to the development located on the abutting lands known as 10 Summergrove Road. The Owner agrees that the Municipality may withhold an occupancy permit of the building until the landscaping plan has been submitted to and approved by the Municipality. The landscaping shall be installed in accordance with section 3 c) ii) of this agreement.

lot consolidation

- (i) The Owner agrees to take such steps as required to merge the parcels composing the subject lands, being Plan 25M42, Part Block 26 and Plan 25M42, Part Lot 6, and to consolidate their Property Identification Numbers with the Land Registry Office.

5. FUTURE MAINTENANCE

The Owner hereby agrees to maintain to the satisfaction of the Municipality and at the sole risk and expense of the Owner, those facilities, works, or matters required to be provided for in this Agreement.

6. COMPLETION

If the necessary building permits for the development proposed in this Agreement are not obtained within two (2) years of the date of execution of this Agreement, or if said building permits are cancelled subsequent to being obtained, the Agreement shall lapse and the Agreement shall be null and void. Any deposits given to the Municipality as security for site works shall be retained by the Municipality.

7. **STREET CLEANING**

The Owner shall be responsible for cleaning the sidewalk and roadway along the street in the vicinity of the "Lands" to remove all dirt, mud, and debris which, in the opinion of the Municipality, has been deposited thereon as a result of the construction activities on the "Lands". Such cleaning shall be done at the end of each day if required or as otherwise determined by the Municipality. If the Owner is unable or unwilling to clean the sidewalk or street to the reasonable satisfaction of the Municipality, the Owner hereby authorizes the Municipality to clean the sidewalk and street as required by the Municipality and the Owner agrees to pay the Municipality all costs associated with the cleaning operation performed by the Municipality.

8. **DEPOSITS, SECURITIES AND PAYMENTS**

- (a) Prior to the issuance of any building permit, the Owner shall deposit with the Municipality the sum of \$4,000.00 which sum shall be held in trust by the Municipality and from which any engineering review and supervision fees shall be paid during the development process. The Municipality may call upon the Owner from time to time to replenish the deposit. Any unused deposit after the site has been completed in compliance with this Agreement to the satisfaction of the Municipality, shall be refunded to the Owner. The amount invoiced to the Municipality for the above fees in connection with the work required under this Agreement shall include an accounting of the services performed and shall be open to challenge by the Owner in proceedings that may be taken in the name of the Municipality with notice to the Municipality providing that payment in full has been made of the disputed account before such proceedings are taken.
- (b) Prior to the issuance of any building permit, the Owner shall pay to the Municipality a legal deposit of \$1000.00 to cover any miscellaneous legal fees incurred by the Municipality and as a security for the registration on title of this agreement.
- (c) Prior to the issuance of any building permit, the Owner shall deposit with the Municipality a security in the form of a certified cheque or Letter of Credit, equal to 100% of the value (including H.S.T.) of the work to be done on the

Municipality's property, including landscaping, and restoration work. The Owner's consultant shall provide an estimate of the cost of the works to be approved by the Municipality.

9. **INDEMNIFICATION**

- (a) This Agreement and the provisions thereof do not give to any person acquiring any interest in the "Lands" any rights against the Municipality or the Municipal Engineer with respect to the failure to perform any obligations under this Agreement or the failure of the Municipality to force any such persons to perform any obligations under this Agreement or any negligence of any such persons in the performance of the said obligations. The only duty and responsibility of the Municipal Engineer arising out of this Agreement is to the Municipality and the Agreement and any work or service done or performed by the Municipal Engineer under this Agreement does not in any way create any liability on the part of the Municipal Engineer to the Owner or any person acquiring any interest in the "Lands".
- (b) The Owner covenants that it will indemnify and save harmless the Municipality from any and all claims, demands, actions and causes of action, whether the same shall be successful or unsuccessful and from all costs to which the Municipality may be at, suffer, or be put to in respect of any such action, cause of action, claim or demand in any way arising out of or alleged to arise out of any work, service, operation or thing constructed, installed, repaired, maintained or done or omitted to be done or negligently done by the Owner, its servants, agents, contractors or subcontractors under them, in respect of the said works and services, whether or not the same shall be required to be done under the terms of this Agreement, and including (without limiting the generality of the foregoing) the alteration of any grade or existing level construction, maintenance or repair of any road.
- (c) The Owner or its contractor shall, at its own expense, obtain and lodge with the Municipality a certificate of insurance satisfactory to the Municipality indemnifying the Municipality and the Owner with cross liability endorsement, against any claim for public liability, personal injury, including death, or property damage to limits of \$5,000,000, inclusive for any one accident arising in any way out of the construction, installation, repair or maintenance of the works and services required herein to be done. The said policy shall not be subject to lapse or cancellation without thirty days prior written notice to the Municipality. The Owner or its contractor shall, at its own expense, maintain the said policy of insurance in full force and effect until the works required on Schedule "B" are

complete. Failure to procure and maintain the said policy of insurance shall constitute a default under this Agreement.

10. **MAINTENANCE OF MUNICIPAL ROAD ALLOWANCES**

The Owner shall ensure that no earth, debris, or excavated material shall be deposited within the limits of a Municipal/Provincial road allowance or other Municipal lands without permission in writing to do so from the Municipality. In the event that earth, debris or excavated material is deposited on the Municipal/Provincial roadway it shall be removed by the Owner immediately upon notification from the Municipality. If, the earth, debris, or excavated material has not been removed from the road allowance by the Owner, the Owner acknowledges and agrees that the Municipality may take it upon itself to remove the said earth, debris, or excavated material. Notwithstanding this notice to the Owner, the Municipality may at anytime remove debris from the Municipal property, and the cost of such removal will be paid for by the Owner and may be deducted from the Owner's deposit fee or other securities held by the Municipality.

11. **REGISTRATION**

(a) Pursuant to subsection (10) of Section 41 of the Planning Act, 1990, the Municipality will require that the Owner register this Agreement against the "Lands" to which it applies, and the Municipality is entitled to enforce the provisions hereof against the Owner, and subject to the provisions of the Registry Act and the Land Titles Act, any and all subsequent owners of the land. The legal deposit shall not be released and final occupancy of any building shall not be permitted until the Owner satisfies the Municipality that this agreement has been registered on title. By signing this agreement, the Owner hereby gives its consent to the Municipality to register this agreement, once executed by both parties, against the "Lands", without the further direction of the Owner being required.

(b) Pursuant to subsection (11) of Section 41 of the Planning Act, 1990, Section 446 of the Municipal Act applies to any requirements made under clause 2 hereof and to any other requirements made under this Agreement.

12. Notwithstanding any of the provisions of this Agreement, the Owner shall be subject to all of the by-laws of the Municipality and shall construct all work in accordance with the requirements of the Municipality, the County of Lambton, and the Province of Ontario, including any requirement to obtain permits or other approvals.

13. **AMENDMENT**

This Agreement may be amended at anytime with the consent, in writing, of the Municipality and the registered Owner of the "Lands" at the time of such amendment.

- 14. The provisions hereof shall ensure to the benefit of the parties hereto and their heirs, executors, administrators, successors, and assigns.
- 15. Any notices required or permitted to be given pursuant to the terms of this agreement shall be given,

in the case of notice given by the Municipality to:

McCann Redi-Mix
c/o Orno Adair
69478 Bronson Line
RR#3
Dashwood, ON, N0M 1N0

and in the case of notice given by the Owner, addressed to:

The Municipality of Lambton
Shores
R.R. #1
9577 Port Franks Road
Thedford, ON, N0M 2N0

IN WITNESS WHEREOF the parties hereto have hereunto affixed their signatures and Corporate Seals attested to by the hands of their proper officers, duly authorized in that behalf.

SIGNED, SEALED AND DELIVERED

In the presence of:

MCCANN REDI-MIX

Jesse McCann, I have the authority to bind the corporation

Signing Authority, I have the authority to bind the corporation

**THE CORPORATION OF THE
MUNICIPALITY OF LAMBTON SHORES**

Authorized by By-law

Doug Cook, Mayor

(SEAL)

Stephanie Troyer-Boyd, Clerk

DRAFT

SCHEDULE "A"

LEGAL DESCRIPTION OF THE LANDS AFFECTED BY THIS AGREEMENT

Plan 25M42, Part Block 26, (former) Village of Grand Bend, Municipality of Lambton Shores, County of Lambton.

- and –

Plan 25M42, Part Lot 6

(Known municipally as 11 Tattersall Lane, Grand Bend.)

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Schedule “B”**SITE PLAN**

The drawings composing Schedule “B” are:

Those drawings produced by MR Engineering and Design Inc. and stamped September __, 2024, which are attached hereto and for which electronic copies are on file with the Municipality, being drawings:

- C1 – Existing Conditions, Removals and Erosion Control Plan
- C2 – Site Plan
- C3 – Site Grading and Servicing Plan

Those drawings produced by Wasylo Architect Inc. and issued September 23, 2024, which are attached hereto and for which electronic copies are on file with the Municipality, being drawings:

- A1.0 – Site Plan and Site Data
- A2.1 – Underground Parking Floor Plan
- A2.2 – Ground Floor Plan

Those drawings produced by Callidus Engineering and dated September 24, 2024, which are attached hereto and for which electronic copies are on file with the Municipality, being drawings:

- E1 – Site Lighting Layout and Photometrics