

THIS AGREEMENT made this day of , 2021

BETWEEN: TOP SHELF PROPERTIES INC.

(Hereinafter called the "Owner")

OF THE FIRST PART

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"

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

"B"

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being a site plan, showing the location of existing features on the "Lands" and the

plans showing the new 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. Any item or feature which is not specifically shown on the Schedules or described in this Agreement shall be deemed to be prohibited and will 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. The Owner shall so construct and maintain the surface of all fire lanes on the "Lands" so that the surface will support fire apparatus weighing 18 tonnes under all weather conditions.

(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**

The Owner shall provide landscaping and plant trees on the "lands" as shown in Schedule "B". Final occupancy of the building shall not be granted until the landscaping is installed to the Municipality's satisfaction. All plant materials shall be installed and maintained in a healthy condition to the satisfaction of the Municipality and kept free of weeds. No landscaping shall be installed on the road allowances of the Municipality without its prior approval. No underground sprinkler systems shall be located on the Municipality's right-of-way.

(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 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 carried out on the “Lands”. Garbage shall be stored only within the building within the facilities intended for that purpose. Garbage shall not be placed at the edge of the travelled portion of the road 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 maintenance of such sewers, water mains, roads, site grading, driveway installation, and service connections as designed, certified and shown in the 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.

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 the 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 funds secured by

the said cheque 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 such cheque. 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**

parking

- (a) The Owner may make use of car lifts on at-grade parking spaces to provide additional parking capacity on site, provided the lifts meet and are installed in accordance with all applicable regulatory requirements and safety standards. Such lifts shall not however be considered parking spaces for the purposes of meeting Municipal parking requirements under the Zoning By-law. The Owner hereby agrees to assume all liability directly or indirectly associated with such car lifts.

construction

- (b) 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 of Main Street West nor any portion of the side walk 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.
- (c) The Owner agrees to take such measures as needed to keep sidewalks open and provide for the safety of pedestrians, which shall include but not necessarily be limited to fencing, barriers and covered walkways. Covered walkways are required for any work located above one storey. All such measures shall receive the prior approval of the Municipal Engineer before installation.
- (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 back-filled 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.

hydro transmission lines

- (f) The Owner agrees to satisfy all requirements of Hydro One with respect to setback and other requirements with respect to the hydro lines located to the front and rear of the subject lands with respect to all structures and construction activities proposed on the lot. The Owner acknowledges his responsibility to satisfy such requirements and that the issuance of a building permit by the Municipality does not indicate any concurrence on the part of the Municipality that such requirements respecting the hydro lines have been or will be met.

roads

- (g) The Owner agrees that deliveries to the commercial areas' tenants or occupants shall be prohibited via Lakeside Circle and Shady Lane. The Owner agrees to ensure all tenants or occupants of the commercial units are aware of this prohibition and taking measures to ensure it is followed by those making deliveries. The Owner will ensure that commercial tenants and/or occupants are instructing those making deliveries to make deliveries, as much as is possible, during times of off-peak hours traffic volumes.
- (h) The Owner agrees, at the Owner's cost and to the specification and to the satisfaction of the Municipal Engineer, to remove the two pillars, one on each side of Lakeside Circle, at the intersection of Lakeside Circle and Main Street West.

servicing capacity

- (i) The Municipality hereby confirms that it has allocated Sewage Capacity to this development in the Grand Bend Sewage Treatment Facility in the amount of an average daily flow of 13,504.80 litres per day and a peak sewage flow of 0.62 litres per second. This allocation shall expire if the development of the property does not commence or proceed in accordance with the time frames and other requirements outlined in this agreement.

nuisance and emergency services

- (j) The Owner shall provide the Municipality contact information for use in the event of any emergency or nuisance complaint and update this information if it changes. This shall include any property maintenance provider.
- (k) The Owner shall take measures to prevent activities occurring on the roof top or other patio areas that would be a public nuisance. This shall include

restricting roof top access to building residents only and posting signage respecting prohibited activities and municipal noise by-law requirements. Use of the roof top patio shall generally be limited to use as a passive outdoor amenity area; live entertainment shall be prohibited. The Owner shall post the property management company's or other appropriate contact information on the exterior of the building for reporting any incidents of public nuisance.

- (l) The Owner agrees to enter into a fire safety plan with the fire department prior to occupancy of the building.

drawing revisions

- (m) The Owner and Municipality agree that some of the details on the landscaping plan, photometric plan, and the architectural drawings of Levels 2 and 3 do not reflect the final site and building layout. The only details on the landscaping plans applicable to the site development are the landscaping details. The only details on the photometric plan applicable to the site development are with respect to lighting. The architectural drawings of Levels 2 and 3 of the building are representative only of the internal layout and the number of dwelling units within the building will not exceed 20 in number.

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 development proposed in this Agreement is not carried out and completed in accordance with this Agreement within two (2) years of the date of execution of this Agreement, 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 streets 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 otherwise as 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 account. Any sum remaining in the account 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 of this agreement on title.
- (c) Prior to the execution of this Agreement 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 G.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 work's cost to be approved by the Municipality.
- (d) Prior to the execution of this Agreement the Owner shall pay to the Municipality a cash-in-lieu of parking payment of \$156,000.00. This fee is being paid in lieu of 12 parking spaces which are not provided for in the redevelopment of the "Lands". The "Lands" are being developed with new retail areas having a floor area of approximately 324m² and 20 new dwelling units. In total the new retail area is required to provide 9 parking spaces and the residential units are required to provide 30 parking spaces. 27 onsite parking spaces are being provided.
- (e) Prior to the execution of this Agreement the Owner shall pay to the Municipality a cash-in-lieu of parkland dedication fee of \$84,000.00.

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 he 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, his 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 his contractor shall, at his 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 his contractor shall, at his 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 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. Prior to the issuance of any building permit on the "Lands", the Owner must satisfy the Municipality that this agreement has been registered on title.
- (b) Pursuant to subsection (11) of Section 41 of the Planning Act, 1990, Section 326 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:

Top Shelf Properties Inc.
525 McGarrell Place
London, ON, N6C 4P4

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

The Municipality of Lambton
Shores
R.R. #1
9575 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:

TOP SHELF PROPERTIES INC.

Perry Sempecos, I have the power to bind
the corporation

Ben Giancola, I have the power to bind
the corporation

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

Authorized by By-law

Bill Weber, Mayor

(SEAL)

Stephanie Troyer-Boyd, Clerk

SCHEDULE "A"**LEGAL DESCRIPTION OF THE LANDS AFFECTED BY THIS AGREEMENT**

Plan 1, Lot 15, West Part Lot 14; Plan 4, Part Lot 62 and RP 25R7033 Part 1 (former)
Village of Grand Bend, Municipality of Lambton Shores, County of Lambton.

(Known Municipally as 62 Main St West, Grand Bend.)

Schedule “B”

SITE PLAN

The drawings composing Schedule “B” are:

Those drawings produced by Matter Architectural Studio Inc., which are attached hereto and for which electronic copies are on file with the Municipality, including drawings:

- A100 – Site Plan, Site Data – submitted to the Municipality October 25, 2021
- A101 – Site Details, OBC Matrix – dated August 16, 2021
- A202 – Level 2 – dated August 16, 2021
- A203 – Level 3 – dated August 16, 2021
- A204 – Roof Plan – dated August 16, 2021
- A300 – Elevations – revised September 17, 2021
- A301 – Elevations – revised September 17, 2021
- A302 – 3D Rendering – dated August 16, 2021

Those drawings produced by Strik Baldinelli Moniz, which are attached hereto and for which electronic copies are on file with the Municipality, including drawings:

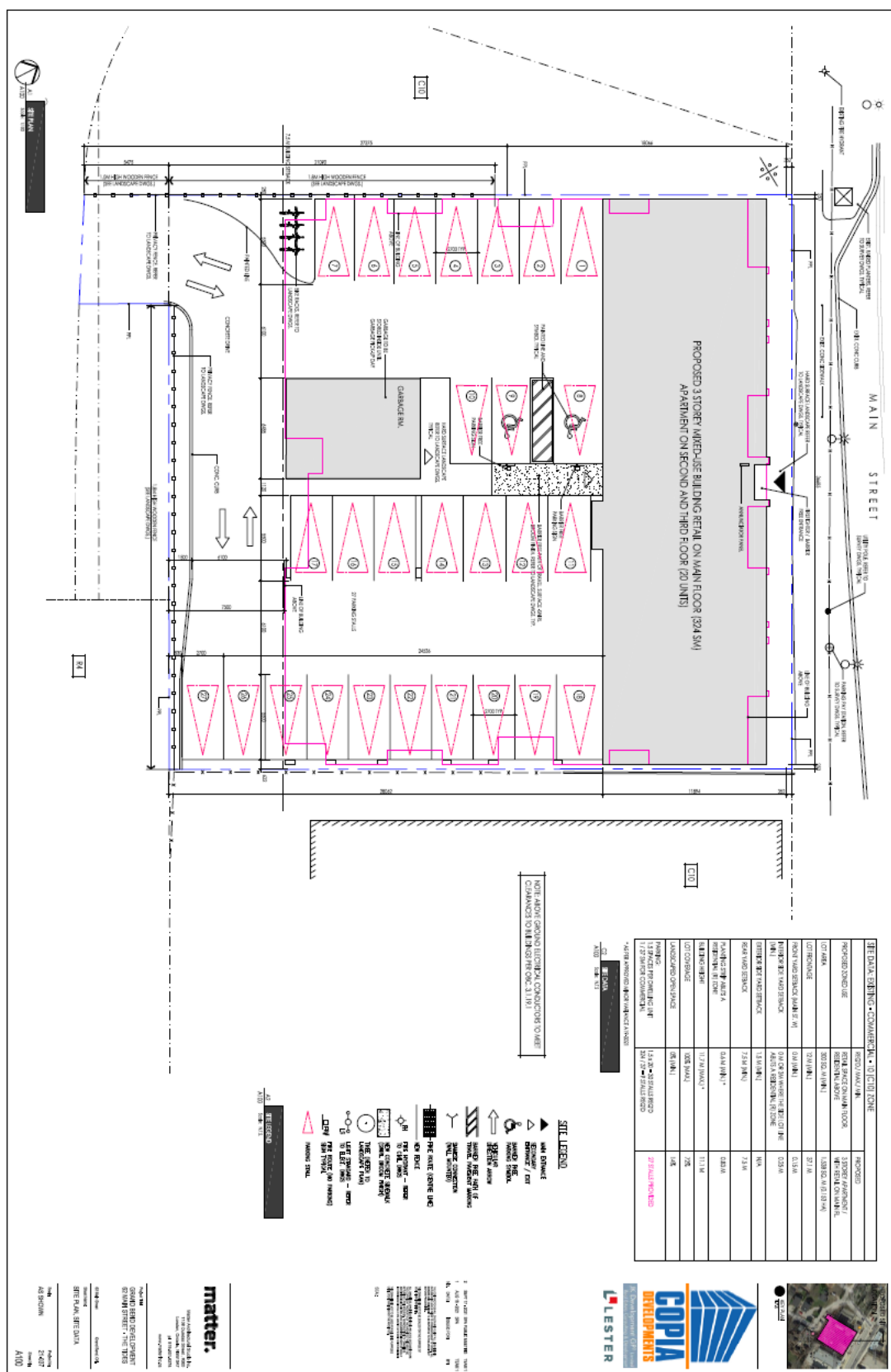
- C1 – Notes and Legend – dated October 25, 2021
- C2 – Existing Conditions, etc. – dated October 25, 2021
- C3 – Site Servicing Plan – dated October 25, 2021
- C4 – Site Grading Plan – dated October 25, 2021
- C5 – Standards Details – dated October 25, 2021

Those drawings produced by Arthur Lierman Landscape Architect, which are attached hereto and for which electronic copies are on file with the Municipality, including drawings:

- L.1 – Landscape Plan – revised September 22, 2021

-and-

The Photometric Plan produced by WSE, dated August 17, 2021.



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