

The Corporation of the City of Kenora

By Law Number 89 - 2020

A By-law to Enter into a Site Plan Agreement Between the Corporation of the City of Kenora, 2672342 Ontario Inc.

Whereas section 41(2) of the *Planning Act* enables a municipality where in an official plan an area is shown or described as a proposed site plan control area, the council of the local municipality in which the proposed area is situated may, by by-law, designate the whole or any part of such area as a site plan control area; and

Whereas section 41(4)(e) enables a municipality to approve plans for the sustainable design elements on any adjoining highway under a municipality's jurisdiction, including without limitation trees, shrubs, hedges, plantings or other ground cover, permeable paving materials, street furniture, curb ramps, waste and recycling containers and bicycle parking facilities, if an official plan and a by-law passed under subsection (2) are in effect in the municipality; and

Whereas By-laws 189-2010 designated lands subject to Site Plan Control and 79-2016 provides policy for implementation of Site Plan Control; and

Whereas the lands described on Schedule A, are designated pursuant to the City of Kenora Official Plan as being subject to site plan control;

Whereas A site plan for those lands described in Schedule A; drawings dated September 14, 2017 for A101- Site Topography, A102 – Landscaping, and A103 – Details were submitted to the City of Kenora; and the City of Kenora has approved such plans subject to entering into a Site Plan Agreement.

Now Therefore the Corporation of the City of Kenora enacts as follows:

1. **That** the Mayor and the Clerk be and they are hereby empowered to execute the Agreement attached and terms of the conditions set out in the agreement
2. **That** this By-Law shall come into force and be in effect from the day after the final passing thereof.
3. **That** By-Law 55-2020 be hereby repealed.

By-law read a First & Second Time this 19th day of May, 2020

By-law read a Third & Final Time this 19th day of May, 2020

The Corporation of the City of Kenora:-

Daniel Reynard, Mayor

Heather Pihulak, City Clerk

SITE PLAN AGREEMENT

THIS AGREEMENT made this day of ,2020.

BETWEEN:

**2672342 Ontario Inc.
(hereinafter called the "Owner")**

OF THE FIRST PART,

-and-

**THE CORPORATION OF THE CITY OF KENORA
(hereinafter called the "Municipality")**

OF THE SECOND PART,

WHEREAS 2672342 Ontario Inc. will be 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 City of Kenora for the Site Plan as presented;

AND WHEREAS this Agreement has been entered into pursuant to Section 41 of the Planning Act, 1990; RSO 1990 cP13, as amended

AND WHEREAS sub-section 10 of Section 41 of the Planning Act, R.S.O. 1990, c P. 13, provides for the registration of Site Plan Agreements on the title of the Lands;

AND WHEREAS the execution of this agreement was authorized by By-Law No. 16-2020;

NOW THEREFORE THIS 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 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 Plans"), and without limiting the generality of the foregoing, development shall include the construction of a 30 Unit Apartment Dwelling; fully equipped with associated areas for indoor and outdoor parking, outdoor amenity area, dedicated garbage management area, landscaping, lighting, drainage facilities, access driveways, retaining walls, and boulevard. Amendments to the Site Plans as construction progresses will be reasonably approved by the Municipality.

2. Conditions

Unless otherwise approved by the Municipality, the Owner hereby agrees to develop the Lands in accordance with the Site Plans identified in Schedules "B", "C" and "D" attached hereto, and the conditions contained in this agreement:

3. Conformity with Site Development Plans and Conditions

The Owner further agrees that where 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 Plans contained in Schedules "B", "C" and "D" attached hereto.

It is understood and agreed that if construction is not commenced within one year of the approval or any part thereof of the Site Plans, such approval shall at the option of the Municipality become null and void and Site Plans must be re-submitted to the Municipality for approval pursuant to the terms of this Agreement and in accordance with the provisions of the Planning Act, R.S.O. 1990, c P. 13]. 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.

Notwithstanding anything else herein, approval of the Site 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 this Agreement has been executed by the registered Owner of the Lands and has been registered on the title to the Lands.

4. Completion and Security

The Owner agrees that he shall construct and provide the structures, buildings, facilities, service or works shown on the Site Development Plans within two years of the approval by Council of the Site Development Plans. As a condition of approval of any Site Plans, the Owner shall lodge with the Municipality cash security for the works and services described in Schedule "C" attached in such amount as specified therein ("Security").

The Municipality will accept a Certified Cheque, Bank Draft or Letter of Credit for the Security, for any obligations of the Owner pursuant to the provisions of this Agreement, without any limitations whatsoever.

The Municipality will accept an irrevocable Letter of Credit for the Security drawn on a chartered bank of Canada acceptable to the Municipality in lieu of the cash amount referred to above, provided such letter of credit shall be in a form acceptable to the Municipality and contain the following provisions:

- i) the Letter of Credit shall be security for any obligations of the Owner pursuant to the provisions of this Agreement, without any limitations whatsoever;
- ii) drawings on the Letter of Credit shall be permitted upon presentation of a letter from the Municipality to the bank claiming default by the Owner under the terms of this Agreement, and such defaults shall not be limited to the actions of the Owner;
- iii) partial drawings shall be permitted;
- iv) the Letter of Credit shall provide for automatic renewal or a replacement Letter of Credit in such terms acceptable to the City Clerk until such time as the City advises the Bank that the Letter of Credit may be reduced or is no longer required;
- v) if the Letter of Credit is not renewed at least thirty (30) days prior to the date of expiry by an irrevocable letter of renewal or replacement Letter of Credit in such form and on such terms acceptable to the Municipality, the Municipality may be permitted to draw on up to 100% of the Letter of Credit on or before the date of expiry.

The amount of the financial security shall be calculated on the basis of the total value of construction, as follows:

- a) 10% of the first \$500,000.00 of the total value of construction; plus
- b) 1% of the balance of the value of construction in excess of \$500,000.00

The total value of construction shall include any proposed buildings components in accordance with section 41 of Planning Act, including site grading storm water management facilities, landscaping and paving works, sidewalks, fences, retaining walls, on-site lighting, accessory buildings, or similar required works as shown on the approved plans.

5. Release of Security

Upon certification by the City that all conditions imposed by this 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.

In addition, all property taxes with respect to the Lands must be paid in full, and an "As Built" lot grading drawing is submitted, to ensure that the site has been developed in accordance with the approved site plan.

6. Building, Demolition and Occupancy Permits

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

- a) An application is submitted and approved;
- b) all federal, provincial and municipal statutes, regulations, by-laws, ordinances, orders and requirements have been complied with;
- c) any other agreements with any other governmental body or agency are not in default.

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 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), 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.

7. 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 reasonable determination of the City Manager of Operations and Infrastructure 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.

8. Maintenance

The Owner shall maintain in good repair and in a safe and clean condition the Lands and Boulevard, surface asphalt, curbs, walkways, 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.

9. Connections to Municipal Services

All connections to the Municipality's storm sewers/water mains/sanitary sewer mains shall be made in accordance agreements or applications as determined by the City Operations and Infrastructure Department. Any costs to be the responsibility of the owner where a separate agreement to be negotiated, may be required.

All connections to the Municipality's storm sewers/water mains/sanitary sewer mains/sidewalks shall be made under the supervision of the City Operations and Infrastructure Department at the Owner's expense. All storm sewers/water/sanitary sewers/water mains/sanitary sewer mains/sidewalks constructed on or under the Lands shall be constructed to the satisfaction of the City's Operations and Infrastructure Manager. 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 Kenora, the Municipality or any utility company, board or commission) shall be carried out at the Owner's expense.

A portion of the boulevard and driveway loop is proposed on City Right of Way. Installation includes concrete curbing, plantings and sod. A letter of comfort is required in order to indemnify and save harmless the city, for the construction, use and maintenance of the facility.

10. Landscaping

The Owner shall install such landscaping improvements on the Lands as shown on documents already provided to the Municipality. The Owner shall use reasonable efforts to cause all approved landscaping to be maintained in a healthy growing condition at all times.

11. Utilities

The Owner shall, at its sole cost, comply with the requirements of Kenora Hydro, Bell Canada and/or Shaw Cable, etc. where applicable, including bearing the cost of the relocation of existing hydro facilities if applicable.

12. 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 Plans.

13. 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.

14. Registration

The Owner hereby consent to the registration of this Agreement on the title of the Lands and are responsible for said costs, per section 11.

15. 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.

16. 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.

17. Default

In the event of any default by the Owner pursuant to any of the terms of this Agreement, which is not remedied within thirty (30) days of Owner's receipt of notice of default, in addition to any other remedies available to the Municipality and without any limitation thereof, the Municipality may:

- a) undertake or complete any obligation of the Owner hereunder;
- b) enter upon the Lands through its servants or agents for any purpose whatsoever;
- c) issue a stop work order with respect to any further development, re-development or work upon the Lands; and
- d) 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.

18. 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 review 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.

19. Successors and Assigns

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

It is the intent of this Agreement that the Owner of title shall be liable for the obligations hereunder only during the term of the ownership.

20. 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.

21. 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.

22. 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 Plans or Schedules to this Agreement, the decision of the Clerk of the Municipality in consultation with the Site Plan Review Committee, 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.

23. Notice

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

- a) If made to the Municipality, shall be addressed to The Clerk, City of Kenora;
- b) If made to the Owner at its designated address 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 By-law
passed on the 19th day of, May 2020

) THE CORPORATION OF THE CITY OF
) KENORA:-

)
) _____
) Mayor

)
) _____
) Clerk

“We have the authority to bind the Corporation”

) 2672342 Ontario Inc.
)

Signature

Name: Doulas Roy Lafreniere - President

Signature

Name: Tanis McIntosh, Secretary-Treasurer

Signature

“I have the authority to bind the Corporation”

Schedule "A" – Property Description

3 Woods Drive, described as Lot 9 of Plan 23M883, Parcel 39110, in the City of Kenora.

Schedule "B" – Site Plans – Landscaping A102 – September 14, 2017

For illustration purposes only refer to full scale drawings



