

This agreement made in triplicate this 14th day of July, 2020

BETWEEN:

THE CORPORATION OF THE TOWN OF MINTO,

hereinafter called the "Town" of the First Part,

-and-

DM SCHOLTEN HOLDINGS INC.

hereinafter called the "Owner" of the Second Part.

SITE PLAN AGREEMENT

WHEREAS *the Owner represents to be the registered owner of those lands in the Town of Minto, County of Wellington, described in Schedule "A" attached hereto and the Owner represents to have signing authority with respect to the said lands and the development described by Schedule "B";*

AND WHEREAS *the parties hereto agree that the lands affected by this Agreement are as set out in Schedule "A" attached hereto;*

AND WHEREAS *the Town has enacted a Site Plan Control Area By-law pursuant to the provisions of Section 41 of The Planning Act, 1990;*

AND WHEREAS *by an application dated on or about February 05, 2020 the Owner applied to the Town for Site plan approval in respect of its development of the lands described in Schedule "A";*

AND WHEREAS *the Town approved the Plans and Drawings submitted with the Owner's application subject to certain conditions on June 23rd, 2020;*

AND WHEREAS *the Town provided approval of the Owner's Application subject to the Owner entering into an Agreement as permitted by subsection 41(7) of the Planning Act, R.S.O.1990 c.P.13;*

AND WHEREAS *the covenants in this Agreement are binding upon the Owner and when registered on title are binding upon all successors in title;*

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT *in consideration of the approval of plans by the Town for the development of the subject lands and the sum of ONE (\$1.00) DOLLAR, the receipt of which hereby admitted, the Owner hereby agrees with the Town as follows:*

PART A - GENERAL PROVISIONS

1. The parties to this Agreement hereby agree that:
 - i) the Owner as herein stated is the registered owner of the lands described in Schedule "A" to this Agreement; and
 - ii) the lands affected by this Agreement are as described in Schedule "A" to this Agreement, hereinafter called the "subject lands"; and
 - iii) this Agreement shall apply to and be binding upon all successors in title to the Owner.

2. The Owner for himself/herself and all successors in title hereby releases the Town, its servants, agents and contractors from any and all liability in respect of the proper maintenance and operation of the matters and facilities required by this Agreement and shall indemnify the Town in respect of any loss or damage to any person or property entering the "subject lands" under the terms of this Agreement.
3. The Owner consents to the Town at its sole expense and discretion to register this Agreement in the Registry Office for the County of Wellington against the "subject lands".
4. The Owner will at all times indemnify and save harmless the Town of and from all loss, costs and damages which the Town may suffer, be at 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 untravelled portions of road allowances where the same are required by this Agreement to be provided by or at the expense of the Owner and such indemnity shall constitute a first lien and charge upon the "subject lands".
5. The Parties covenant and agree with each other not to call into question or challenge, directly or indirectly, in any proceeding or action in Court, or before any Administrative Tribunal, the Parties' right to enter and enforce this Agreement. The Law of Contract applies to this Agreement and the Parties are entitled to all remedies arising from it, notwithstanding any provision in section 41 of the Planning Act interpreted to the contrary. The Parties agree that adequate consideration has flowed from each Party to the other and they are not severable. This provision may be pleaded by either Party in any action or proceeding as an estoppel of any denial of such right.
6. The Town's CAO/Clerk at his/her sole discretion may agree to minor variations to provisions of this Agreement, and such minor variations shall not constitute an amendment to this Agreement.
7. The clauses of this Agreement are independent and severable and the striking down or invalidation of any one or more of the clauses does not invalidate all or any of the remaining clauses.
8. Nothing in this Agreement shall relieve the Owner from complying with all applicable municipal by-laws and requirements, including the requirement for building permits.
 - (i) Building Permits: The Owner covenants and agrees that neither it nor any person under its authority shall be entitled to the issuance of one or more building permits to construct any buildings or structures contemplated under this Agreement until this Agreement has been fully executed and registered on title to the subject lands.
 - (ii) Occupancy: The Owner covenants and agrees not to permit occupancy of any building or part thereof for which building permits have been issued until sufficient required works under this agreement have been completed in accordance with the requirements of the Ontario Building Code, the Zoning By-law, the Water Supply By-law, the Sewer Use By-law and any other municipal By-laws, including testing and approval of the internal water distribution and sanitary sewer collection to ensure operation in accordance with conditions established by the Town.
 - (iii) In the event that a building or part thereof is occupied otherwise and in accordance with the provisions of clause 8(ii), the Owner covenants and agrees that the Town shall be entitled to obtain an Order from a Court of competent jurisdiction prohibiting the occupancy of any building or part thereof until such time as the terms of this Agreement have been fully complied with, and the Owner shall be estopped from opposing such Application on the part of the Town.

9. The Owner hereby grants to the Town, its servants, agents, and contractors a license to enter the "subject lands" for the purpose of inspection of the works and the "subject lands" or for any other purpose pursuant to the rights of the Town under this Agreement.

PART B - SITE DEVELOPMENT AND MAINTENANCE PROVISIONS

10. The Owner agrees to undertake development of the "subject lands", at his/her sole expense, in conformity with the site plan described in Schedule "B" attached hereto, which shall hereinafter be referred to as the "approved site plan".

The Owner covenants and agrees that no work shall be undertaken or performed on the subject lands except in accordance with the terms of this Agreement (including the Schedules attached hereto), the approved Site Plan, and all other plans and specifications submitted to and accepted by the Town, and by such other agencies or approval authorities as may be applicable including, without limiting the generality of the foregoing, the County of Wellington and the applicable Conservation Authority.

11. The Owner agrees to provide, install or otherwise abide by, at his/her sole expense, the "site development requirements" as detailed in Schedule "C" attached hereto.

12. (a) Upon completion of the development of the "subject lands" in conformity with the provisions of this Agreement, the Town shall issue a "Certificate of Compliance".

- (b) "Certificate of Compliance" shall mean a statement of the Town as to the substantial completion of the works, matters and facilities required by this Agreement and shall not be deemed to certify compliance with any other municipal requirements, regulations, or by-laws, and the Town shall not be estopped from pursuing any or all of its rights to enforce the continuing obligations of the Owner under this Agreement or to enforce any other of the Town's requirements, regulations or by-laws which relate to the "subject lands".

13. (a) Unless otherwise agreed to by the Town, prior to obtaining a building permit or proceeding with any work in support of the approved development, the Owner agrees to provide a security (hereinafter called the "security") to the Town in the amount as detailed in Schedule "C" attached hereto by way of cash or a letter of credit in a form acceptable to the Town (see Schedule "E" to this Agreement for sample letter of credit) which shall have an initial expiry date no sooner than the date as detailed in Schedule "C" hereof, to ensure the provision of all matters and facilities required pursuant to this Agreement and other applicable municipal requirements within the prescribed time period, and such security shall be refunded to the Owner without interest upon issuance of a "certificate of compliance", unless the Town exercises its rights under clauses 14 or 15 of Part "B" of this Agreement, in which case the "security" shall be drawn upon by the Town to the extent necessary to secure conformity with this agreement.

- (b) In accordance with the standard policies of the Town, the Owner agrees to pay the cost of those works described in Schedule "D" attached hereto, which are works to be done by the Town, or its contractors.

14. (a) Where the Owner is required by this Agreement to do work and where such work is not done within the prescribed time period, or where the facilities and matters required by this Agreement are not so provided, maintained or used by the Owner in accordance with this Agreement, or where the Owner does not otherwise abide by the requirements of this Agreement including clause 8(ii), the "security" may be drawn on by the Town to the extent necessary to ensure compliance with this agreement, and a "certificate of compliance" shall not be issued until such matters have been brought into conformity with this Agreement.

- (b) The Owner agrees that in default of any required work being completed within the prescribed time period, or failure to provide, retain, maintain, repair or use those matters and facilities required by this Agreement, or otherwise abide by the

requirements of this Agreement, the Town, its servants, agents, and contractors shall have the right after thirty (30) days of the mailing of a notice to the Owner at the address as detailed in the last revised assessment role, to enter the "subject lands" to complete such works required by this Agreement as the Town deems necessary at its sole discretion, and all expenses incurred by the Town in doing such work shall become a charge against the "subject lands", and may be recovered by Court Action and with the same priority as municipal taxes.

- (c) The Owner agrees that the Town shall not be liable to compensate the Owner, occupant, or any other person having an interest in the property, by reason of anything done by or on behalf of the Town under the provisions of this Agreement.
15. The Owner agrees that the "security" may be used to rebuild or repair any public facilities damaged or altered during development of the "subject lands". The Owner acknowledges that this provision does not relieve the Owner of the responsibility to repair or rebuild any public facilities damaged or altered during development of the "subject lands" to the requirements of the Town's Public Works Director and the Owner shall pay all costs of such reconstruction or repair.
 16. The Owner hereby acknowledges that failure to complete all required works within the specified time period shall mean a "certificate of compliance" will not be issued until such work necessary to complete the development is done, and that until a "certificate of compliance" has been issued, in the event that the prescribed time period has lapsed, the Town has the right to refuse issuance of any permit necessary to carry out any additional work on the "subject lands".
 17. All maintenance and repair of facilities and matters required by this Agreement shall be done by the Owner from time to time at his sole risk and expense and the Owner agrees the "subject lands" will not be used in any manner which will impede or prohibit performance of the maintenance provided for in this Agreement.
 18. The Owner agrees to maintain in good repair and at his sole expense the "subject lands" in conformity with the provisions of the approved site plan described by Schedule "B" and with Schedule "C" (site development requirements), and all other requirements pursuant to this Agreement, and all repair or maintenance shall conform with the requirements of this Agreement as it applied to the original development.
 19. The Owner agrees that all vaults, containers, collection bins and other facilities which may be required for the storage of garbage and other waste material shall be kept within a completely enclosed building or a completely enclosed container in a location acceptable to the Town.
 20.
 - (a) The Owner agrees that at his sole expense, all parking areas provided on the "subject lands" shall be maintained clear of snow reasonably in all circumstances so as not to prohibit or block or in any way restrict access along any driveway, walkway for vehicular and pedestrian traffic or reduce the number of usable parking spaces below the minimum number of spaces required by the Town's zoning by-law.
 - (b) The Owner agrees not to store snow on the "subject lands" or municipal road allowances such that it blocks visibility adjacent to a street or drainage facilities or where adequate drainage facilities are not provided or where melt-water would adversely affect an abutting property.
 21. The Owner agrees to maintain at his sole expense and in good repair to standards acceptable to the Town all landscaped open space, private driveways and complementary facilities, and private approach sidewalks which are located on untraveled portions of Town owned road allowances abutting the "subject lands".

PART C - OTHER PROVISIONS

22. Definitions for terms which may be used in this Agreement shall be as follows:

- (1) "Building Area" shall mean the only area upon which the erection and use of buildings and structures shall be permitted but may include areas of Landscaped Open Space.
 - (2) "Landscaped Open Space" shall mean the areas of open space comprised of lawn and ornamental shrubs, flowers and trees and may include space occupied by paths, walks, courts, patios, but shall not include parking areas, traffic aisles, driveways and ramps.
 - (3) "Parking Area" shall mean the areas of open space other than a street to be used for the parking of motor vehicles and access ramps and driveways to areas used for the parking of motor vehicles which shall be clear of buildings and structures except those accessory to the operation of the parking area, and which shall be available and maintained for the parking of motor vehicles including manoeuvring aisles and other space necessarily incidental to the parking of vehicles, and may include areas of Landscaped Open Space.
 - (4) "Natural Open Space" shall mean the areas of open space which are to remain in a natural state with a minimum amount of maintenance, but shall not include areas of outside storage, parking areas, traffic aisles, driveways or ramps, or Building Area. Natural Open Space areas shall be kept clear of all weeds and natural growth which is prohibited by Town by-laws. Areas of Natural Open Space may include areas of Landscaped Open Space.
23. (a) During development of the "subject lands", the Owner shall:
- i) abide by those provisions of Schedule "C" to this Agreement relating to erosion and sediment control; and
 - ii) install and maintain at his/her sole expense all necessary erosion control works and structures (ie. sediment traps, silt fence, check dams, etc.) required by the Town's Public Works Director or the Chief Building Official from time to time to minimize erosion on and off the subject lands.
- (b) Should the Owner be in default of any requirement under Clause 23 (a) of this Agreement, the provisions of Clause 14 (b) shall apply, except that in an emergency situation where the potential of damage to any lands is deemed by the Public Works Director to be imminent, the thirty (30) day notice shall not be required, and the Town shall have the right of entry immediately after providing the Owner with notice.
24. The Owner agrees to obtain all required approvals from the County of Wellington where the lands described by Schedule "A" to this agreement are located on or require access to any road under the jurisdiction of the County of Wellington, and that the Town will not release the terms of this agreement, or any security required thereto, where approvals from the County of Wellington have not been obtained by the Owner.
25. In the event of transfer of ownership of the subject lands, the Town will not return any Letter of Credit or security required under this agreement until such time as the new Owner files with the Town a replacement security in a form satisfactory to the Town. Pending the provision of a replacement security the Town may use the security filed pursuant to this agreement for any purpose set out herein.
26. The Owner covenants and agrees that a General Comprehensive Liability Insurance Policy in the amount of not less than Five Million Dollars is in place and that the Town is indemnified under the said policy for any loss arising from claims or damages, injuries or otherwise in connection with work done by or on behalf of the Owner. The Town shall be named as an additional insured within the said insurance policy. The Owner shall maintain such overage throughout the course of the development and shall supply a certificate of insurance as proof of coverage upon demand of the Town.
27. Failure of the Town at any time to require performance by the Owner of any

obligation under the Agreement shall in no way affect the Town's rights thereafter to enforce such obligation, nor shall the waiver by the Town of the performance of any obligation be taken or held to be a waiver of performance of the same, or any other obligation under the Agreement, and the Town shall specifically retain its right at law to enforce the Agreement.

IN WITNESS WHEREOF the parties have duly executed this agreement.

THE CORPORATION OF THE TOWN OF MINTO

Per: _____
Mayor George Bridge

Per: _____
Acting Clerk Annilene McRobb

DM SCHOLTEN HOLDENINGS INC.

Per: _____
Director
David Paul Scholten

I/We have the authority to bind the Corporation.

SCHEDULE "A"

SUBJECT LANDS

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the Town of Minto, County of Wellington, Province of Ontario, and composed of:

125 Noble Family Road

Minto Con 1 Pt Lot 24, RP 61R21379 Part 2; former Town of Palmerston, Town of Minto, County of Wellington.

SCHEDULE "B"

APPROVED SITE PLAN

The "approved site plan" shall be the following plans referred to thereon as the "approved site plan" as indicated by the signature of the CAO/Clerk for the Town of Minto, and on file in the Town office:

1) 125 Noble Rd. Development, Project A6861, Dated February 2020

Such plans prepared by Triton Engineering Servicing Limited last revised 2020/06/20 unless otherwise noted.

SCHEDULE "C"

SITE DEVELOPMENT REQUIREMENTS

1. Completion Date

The Owner agrees that the completion date for all the works required pursuant to this Agreement, with the exception of the asphalt works, shall be within One Year from the date of the Occupancy of the building. The asphalt works is to be completed within 2 years of the date the Town paves Noble Family Road.

2. Security

Pursuant to clause 13 (a) of Part B of this Agreement, the Town has security in the amount of \$3,000 (amount) to this Agreement.

The security includes \$3,000 submitted at the time of site plan approval for legal and engineering costs related to processing this development. This amount shall be retained by the Town as a deposit for legal, engineering and planning related costs which shall be deducted from this amount, the balance of which after such costs shall be refunded upon substantial completion of the project.

Where works required by this Agreement have not been completed, and where the Owner has not provided to the Town other security acceptable to the Town, the Town may use such security to secure completion of the said works, and the Town shall maintain such security until completion of the works in accordance with the terms of this Agreement.

3. Erosion and Sediment Control

a) If required by the Town Public Works Director or the Town's Chief Building Official, the Owner shall prepare and submit an Erosion Control Plan acceptable to the Town Public Works Director to be adhered to during development of the "subject lands", which plan shall include an acceptable maintenance schedule and starting and completion dates.

b) To minimize erosion problems, the Owner shall schedule construction such that:

- i) all activities on the site be conducted in a logical sequence to minimize the area of bare soil exposed at one time;
- ii) soil stockpiles be located away from watercourses and stabilized against erosion as soon as possible; soil stockpiles remaining longer than 30 days should be stabilized by mulching, vegetative cover, tarps or other means, whereas soil stockpiles intended to remain for less than 30 days can be controlled by filter fence barriers around the pile or acceptable equivalent;
- iii) construction vehicles leave the site at a designated point(s) provided with a rock or gravel mat to minimize the amount of mud tracking off-site; a temporary vehicle wash down facility may be required for truck wheels;
- iv) where work is suspended, temporary drainage and erosion control works should be undertaken to minimize erosion, to include steel plates placed over catch basins, sediment traps and silt fences, and sediment storage areas, to ensure sediment and debris do not enter the municipal sewer system on nearby creek or flood adjacent properties;
- v) all temporary and permanent detention works and facilities be constructed prior to installation of any services on the site or commencement of earth moving operations;
- vi) all disturbed areas be properly stabilized as soon as possible, and if areas are to remain disturbed through the winter, such areas shall be seeded and mulched or sodded as determined by the Public Works Director.

c) During the construction period, the Owner shall employ the following "good housekeeping" practices regardless of the soil erodibility and any other erosion and sediment control measures undertaken:

- i) All catchbasins should be provided with sumps which should be inspected and cleaned frequently;
- ii) A site supervisor must be designated by the Owner to ensure the approved Erosion Control Plan measures (when such plan is required by

the Town) are implemented in a timely and effective manner, who shall conduct inspections of the subject lands on a regular basis and after significant storm events to ensure the components of the Erosion Control Plan are functioning properly, and who shall maintain a work log to record dates and a description of the work activities and site inspections.

4. Completion of Adjoining Town Lands

The Owner agrees to appropriately and properly finish to the requirements and satisfaction of the Town's Public Works Director all lands lying between the "subject lands" and any and all abutting streets, excluding those works which are detailed in Schedule "D" which are works to be undertaken by the Town, which, without limiting the generality of the foregoing shall include the following works required to be completed by the Owner in accordance with the "approved site plan":

- i) landscaping of lands lying between the street line and property line not to be used for vehicular or pedestrian entrances with topsoil and sod/seed;
- ii) installation of driveways of proper width and grade from the street line to the property line with asphalt, concrete or other hard surfacing acceptable to the Town's Engineer;

5. Grading and Drainage

The Owner agrees to prepare a grading and a drainage plan acceptable to the Public Works Director and all surface and roof drainage shall be controlled in accordance with the approved plans in a manner satisfactory to the Town's Public Works Director.

6. Lighting

The Owner agrees that any lighting of the land shall be installed in such a manner so as to deflect the light away from adjacent streets and properties or so controlled in intensity so as to prevent glare on adjacent streets and properties.

7. Directional Signage

The Owner, upon request by the Town, shall prepare and submit for approval to the Town's Public Works Director and Fire Chief a signage plan, and the Owner agrees to install all signage pursuant to the approved signage plan.

8. Temporary Fencing

(a) The Owner shall install temporary construction fencing on the "subject lands" in accordance with sound construction practice and in accordance with the requirements of the Public Works Director or the Town's Chief Building Official, acting reasonably, from the time of commencement of construction to the time of completion of the construction, to secure the site and to provide protection to the general public.

(b) The Owner agrees to install temporary fencing or otherwise adequately protect all trees, shrubs and other vegetation which are to be retained, and such fencing shall be located no closer to any trees than the drip line of such trees, and the Owner agrees to abide by the requirements of the Town's Public Works Director in this regard, acting reasonably.

9. Fire Routes

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 Town's Fire Fighting equipment.

10. Landscaping

The Owner agrees to provide all landscaping, including any fencing, curbing, sidewalks, plantings (trees and shrubs), ground cover, and the like, as shown on the "approved site plan" or a landscape plan to be approved by the Public Works Director to the specifications and requirements as indicated thereon and to the satisfaction of the Town's Chief Building Official, acting reasonably.

11. Building Accessibility
The Owner agrees that the site and building shall be designed so as to provide unobstructed access for wheelchairs to at least one main building entrance from the public sidewalk/street and one parking area by use of sidewalk ramps of proper gradient and surfacing.
12. Parking Lot Finishing
The Owner agrees that all parking areas and driveways shall be surfaced with asphalt or cement, and all parking stalls shall be visually identified by line painting as shown on the “approved site plan”.
13. Road Widening
The Owner agrees to convey in fee simple and free from encumbrances any land which may be required by the Town for the purpose road widening and for the purpose of establishing a one foot reserve across that portion of the frontage of real properties herein no required for an entrance or exit, in order to ensure proper ingress and egress from the subject lands in accordance with the “approved site plan”.
14. Solid Waste and Recycling
The Owner agrees to comply with the County’s requirements respecting the disposal of solid waste and the recovery of recyclable materials, and to provide all required facilities indicated on the “approved site plan” to accommodate proper retention, disposal and recycling including appropriate screening of waste bins and separation from sensitive land uses as may be required to comply with applicable municipal regulations.
15. Private Services
The Owner shall obtain all approvals for and make all necessary arrangements for any and all private services such as telephone, telecommunications, cable television, electricity, hydro, gas and other such service and shall provide any easements required by private service companies necessary to supply said private services, and the Owner further acknowledges that the Town shall bear no expense, cost or obligation with regard to the installation, relocation or re-design of said private services that may be necessary to comply with the requirements of the “approved site plan”.
16. Servicing Design
The Owner acknowledges and agrees that it is the responsibility of the Owner or their consultant to confirm that the proposed servicing design, and location of proposed structures, will not be in conflict with other utilities located in the right-of-way.
17. Record Drawings
Prior to the return of any securities held against this project, the Town may require the original engineering drawings shall be revised to illustrate the recorded changes and variances from the approved construction drawings.
18. Engineering Approvals
That the Owner obtain all permits necessary from the Public Works Director respecting new driveway access to the site and post any required security prior to commencement of any works on the site or within the municipal right-of-way prior to the issuance of any building permit.
19. Recycling Facilities
That the Owner acknowledges and agrees that facilities shall be provided for recycling in accordance with the requirements of the County.
20. Sign Permits
That the Owner acknowledges and agrees that a sign permit is required prior to the erection or replacement of any signage on site and approval from the Ministry of Transportation may be required for such signage.

SCHEDULE "D"

WORKS TO BE UNDERTAKEN BY THE TOWN

1. None.

SCHEDULE "E"

SAMPLE LETTER OF CREDIT

CAO/Clerk of The Corporation of the Town of Minto
5941 Highway 89, Harriston, ON NOG 1Z0

In consideration of the agreement between The Corporation of the Town of Minto and *(Name of Owner)* which is dated the _____ day of _____, 20____, we hereby authorize you to draw on the *(Name and Address of Bank)* up to an aggregate amount of \$_____ available by draft at sight for 100% of invoice value of credit, with guarantee as follows:

As requested by our customer *(Name of Owner)*, we the *(Name of Bank)* hereby establish and give an Irrevocable Letter of Credit in your favour in the total amount of \$_____, which may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you, which demand we shall honour without question as to rights between you and our said customer, provided however, that you are to deliver to the *(Name of Bank)* at such time as a written demand for payment is made by you upon us, a statement signed by you confirming that the monies drawn by you are pursuant to our customer's agreement with The Corporation of the Town of Minto.

The amount of this Letter of Credit may be reduced from time to time as advised in writing from time to time by you to us.

This Letter of Credit shall remain in full force and effect for a period of _____ months and will expire on _____, 20____, provided however, that unless notice of expiry is given by registered mail to the Clerk of The Corporation of the Town of Minto by us no later than 30 days prior to the expiry date, the Letter of Credit shall be deemed to be renewed from year to year on the same terms and conditions.

In the event that we refuse to renew the Letter of Credit at the aforementioned date of expiry, prior to such date the Town shall have the right to draw such amount of money as it shall in its absolute discretion deem necessary.

Letter to be Dated, Signed and Sealed

Note: The Letter of Credit must be irrevocable.

The Letter of Credit must be written so as to be honoured by the Surety without question or without just cause having to be proven by the Town to the Bank.

Automatic renewal provisions with 30 day notice of expiry must be included in the Letter of Credit.

The date of expiry as stated in the Letter of Credit must be in accordance with Schedule "C" of this Agreement.