

SITE PLAN AGREEMENT

THIS AGREEMENT made this 5th DAY OF OCTOBER 2021.

BETWEEN:

THE CORPORATION OF THE CITY OF THOROLD
(Hereinafter called the 'City')

OF THE FIRST PART

-and-

JON JUS DEVELOPMENTS
(Hereinafter called the 'Owner')

OF THE SECOND PART

WHEREAS the Owner represents that it is the registered Owner of the lands located in the City of Thorold, in the Regional Municipality of Niagara, described in Schedule A attached hereto and hereinafter referred to as 'the lands';

AND WHEREAS the Owner has applied for Site Plan approval to construct an apartment building in accordance with Schedule C attached hereto and the approved drawings on file, all of which plans and design standards shall comply with the Ontario Building Code, and with all City building and zoning requirements;

AND WHEREAS the Council of the City of Thorold has delegated authority to the Director of Planning and Development Services to approve Site Plan drawings and agreements and to authorize the execution of Site Plan agreements by the Mayor and Clerk by By-law 108-2014, passed by The Corporation of the City of Thorold on the 2nd day of September 2014;

AND WHEREAS the City has agreed to permit the said development subject to the terms and conditions prescribed herein;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises, and the sum of One Dollar (\$1.00) of lawful money of Canada now paid by the Owner to the City, the receipt of which monies is hereby acknowledged; the parties hereto do mutually covenant and agree as follows:

1. DEFINITIONS

- 1.1 'Approved Plans' shall mean plans approved and signed by the City
- 1.2 'Council' shall mean the Council of The Corporation of the City of Thorold.
- 1.3 'Director of Planning and Development Services' shall mean the Director of Planning and Development Services of the City of Thorold.

- 1.4 'Fire Chief' shall mean the Fire Chief of the City of Thorold.
- 1.5 'Chief Building Official' shall mean the Chief Building Officer of the City of Thorold.
- 1.6 'City' shall mean The Corporation of the City of Thorold.
- 1.7 'Lands' shall mean the lands as described in Schedule A attached hereto.
- 1.8 'Region' shall mean The Corporation of the Regional Municipality of Niagara.

2. STORM WATER MANAGEMENT

- 2.1 The Owner agrees to, at its own expense, construct such works as may be required to collect and contain all storm water on site and channel such storm water to an approved outlet in accordance with specifications and plans approved by the City. In this paragraph, storm water shall include all surface water on the land including roof run-off, eavestroughs, surface catch basins and water from the foundation perimeter-weeping tile.
- 2.2 The Owner will ensure that storm and sanitary flows are separated.
- 2.3 Any alteration or improvements to the existing services will be at the Owner's expense.
- 2.4 All underground servicing must be approved and inspected by the City.
- 2.5 The Owner agrees, at its own expense, to undertake, to repair, forever maintain, and, where necessary, replace any storm water system located on the lands.
- 2.6 Where the stormwater system has not been maintained, the City or designate may enter upon the lands after reasonable notice having been given to the Owner, and affect such repairs as are deemed necessary and that all such repairs shall be at the Owner's expense.

3. SANITARY SYSTEM

- 3.1. All underground servicing must be approved and inspected by the City.
- 3.2. The Owner agrees to undertake, at its own expense, to repair, forever maintain, and, where necessary, replace any sanitary system located on the lands identified in Schedule A hereto attached.
- 3.3. Where the sanitary system has not been maintained the City may enter upon the lands after reasonable notice having been given to the Owner, and affect such repairs as are deemed necessary and that all such repairs shall be at the Owner's expense.

4. WATER SERVICES

- 4.1. The Owner agrees to, at its own expense, construct all internal water supply services necessary to serve the development, such construction to be in accordance with specifications and design approved by the City.

- 4.2. The Owner agrees to carry out and pay for any water system upgrades that may be required.
- 4.3. All water supplies shall be metered, if required.
- 4.4. The Owner agrees to install and maintain a back flow preventor in accordance with the Manufacturer's specifications to the satisfaction of the City.
- 4.5. Any alteration or improvements to the existing service will be at the Owner's expense.
- 4.6. All underground servicing must be approved and inspected by the City.
- 4.7. The Owner agrees, at its own expense, to undertake, to repair, forever maintain, and, where necessary, replace any water distribution system located on the lands.
- 4.8. If required, the Owner shall submit calculations to support the water service sizes for both daily consumption and fire flow requirements that will be required.
- 4.9. Where the water distribution system has not been maintained the City may enter upon the lands after reasonable notice having been given the Owner, and affect such repairs as are deemed necessary and that all such repairs shall be at the Owner's expense.

5. PARKING AND DRIVEWAY

- 5.1. The Owner shall, at its own expense, and at all times maintain on the said lands ninety six (96) parking spaces in accordance with that shown on the approved plans. Curbing shall be constructed, if required, along the edges of all driveways and parking areas to acceptable design standards as detailed on Schedule C attached.
- 5.2. The surface treatment of all parking areas shall be in accordance with the approved plans, as indicated on Schedule C attached.
- 5.3. Underground parking areas and access driveways shall be in accordance with the locations shown on the approved plans and to specifications and a design in accordance with the Ontario Building Code.

6. SIDEWALKS, ROADS AND ENTRANCEWAYS

- 6.1. The Owner agrees to construct the entrances in accordance with the plans approved by the City.
- 6.2. The emergency access route and entranceways must conform to the requirements of the Fire Department.

7. LIGHTING/FLOODLIGHTING

- 7.1. Floodlighting of the land and/or of the subject buildings shall be directed in such a way and be of an intensity so as not to interfere with adjacent properties and the traveling public. For this purpose cut-off lighting shall

be used for all exterior lighting of the subject property to a design and specifications subject to the approval of the City.

8. LANDSCAPING

- 8.1. The Owner shall, at its own expense, adequately landscape, plant and maintain all those parts of the lands as indicated on Schedule C attached, which are not required for buildings, parking or driveways in order to provide an effective green area enhancing the general appearance of the development contemplated herein.
- 8.2. Landscaping shall be in variety and type of vegetation plantings as indicated on Schedule C attached.
- 8.3. It is understood and agreed that all vegetation on the site shall be maintained in a healthy condition and any diseased or dead vegetation shall be replaced within twelve (12) months of the recognition of their deteriorated condition.

9. NOISE ATTENUATION

- 9.1. The Owner agrees that all external air conditioners, ventilation systems, exhaust fans or other similar mechanical equipment are directed away from abutting properties and screened from view or otherwise located on the subject lands so as to attenuate noise impact on neighbouring properties to the satisfaction of the City.

10. GARBAGE DISPOSAL & STORAGE

- 10.1. The Owner shall, at all times, provide adequate facilities for the collection and disposal of garbage, sanitary refuse and commercial waste in accordance with the Regional Waste Collection Policy and the City's Property Standards By-law, and in the event of its failing to do so, the City or its agents shall have the right to enter upon the said lands and, at the expense of the Owner, undertake the collection and disposal and recover the costs thereof by action or in like manner as municipal taxes.
- 10.2. The storage, collection and disposal of refuse, garbage and waste in the development shall be so conducted as to create no health hazards, rodent harbourage, insect breeding areas, accident, fire hazards or pollution. This responsibility will rest entirely on the Owner.
- 10.3. The Owner agrees that if the development does not comply with Niagara Region's Corporate Policy for Waste Collection, that garbage collection will be provided through a private contractor and not Niagara Region.

11. SIGNAGE

- 11.1. Any signage located on the subject lands shall be at a location and to specifications subject to the approval of the City and in compliance with the City's sign by-law.
- 11.2. The Owner agrees to obtain the necessary sign permits from the City, where required.

12. ENGINEERING, LEGAL AND INSPECTION COSTS

- 12.1. The Owner agrees to deposit with the City, prior to the construction of services, and keep in full force and effect until completion of all on-site and off-site construction and services set out herein, an irrevocable letter of credit or security deposit in the amount of 10% of the cost of on-site primary services and 110% of secondary services which may include servicing, parking treatment, landscaping, fencing, grading and similar elements as per the approved plans to ensure that all terms of this agreement are fulfilled and that the site is left in a safe and tidy condition. The securities as detailed in Schedule B that are required to be posted as per Section 12.1 of this agreement total **\$335,430.00.**
- 12.2. Upon completion of all on-site and off-site works set out within this agreement, all securities shall be released after a one year maintenance period.
- 12.3. The Department of Planning and Development Services shall upon written application thereof, by the Owner, authorize the release of the deposits identified in this agreement, subject to the following:
 - 12.3.1. Submission of a letter confirming that the required works and services have been installed and/or constructed in accordance with the approved site plan agreement. The letter shall be prepared by the company responsible for the installation and/or construction of the required works and services.
 - 12.3.2. Submission of "as-built" drawings to the satisfaction of the Department of Public Works and Community Services.
 - 12.3.3. Submission of a letter by the Owner, requesting the return of the securities which identifies that all works and services have been completed in accordance with the Site Plan Agreement and that no Construction Lien Claims have been filed.
 - 12.3.4. Submission of a subsequent letter by the Owner, no earlier than forty-five (45) days from the completion of Section 12.4.1 and 12.4.2. above, to certify that no Construction Lien Claims have been filed.

- 12.3.5. Upon receipt of the above to the satisfaction of the City, the City may return to the Owner the amount on hand of the deposits under Section 12.
- 12.3.6. Submission of verification that there are no arrears of taxes outstanding against the lands, prior to the release of any deposits.

13. GRADING

- 13.1. The Owner agrees to construct and grade the lands in accordance with the approved plans certified by and filed at the City.
- 13.2. The grading plans shall require grades to be established and maintained which, will ensure proper drainage without interference with or flooding of adjacent properties and will retain all storm water as required under Section 2, Storm Water Management, of this Agreement. Any deviation from such grades shall constitute a violation of this Agreement.
- 13.3. Any change to the grading plans certified and approved pursuant to this Agreement may require the submission of revised drawings prepared by an Ontario Land Surveyor or Professional Engineer and must be approved by the City.
- 13.4. Unless otherwise approved or required by the City, the Owner agrees not to undertake any site alteration of the said lands until such time as a building permit is issued for the construction of the building contemplated herein on the said lands.

14. ARCHAEOLOGICAL ASSESSMENT

- 14.1. Should deeply buried archaeological material be found on the property during construction activities, all activities impacting archaeological resources must cease immediately, and the proponent must notify the Archaeology Programs Unit of the Ontario Ministry of Heritage, Sport, Tourism, and Culture Industries (416-212-8886) and a licensed archaeologist is required to carry out an archaeological assessment in accordance with the *Ontario Heritage Act* and the Standards and Guidelines for Consultant Archaeologists.

In the event that human remains are encountered during construction, all activities must cease immediately and the local police as well as the Cemeteries Regulation Unit of the Ministry of Government and Consumer Services in Toronto (416-326-8800) must be contacted. In situations where human remains are associated with archaeological resources, MHSTCI should also be notified to ensure that the site is not subject to unlicensed alterations which would be a contravention of the *Ontario Heritage Act*.

15. GENERAL

- 15.1. If required under the Ontario Building Code, the Owner shall provide land surveys by an Ontario Land Surveyor, and ensure that all construction shall be carried out under the direction of such architect or engineer. Evidence of this direction and control must be submitted to the Chief Building Official, prior to the issuance of a building permit.
- 15.2. The Owner shall not call into question directly or indirectly in any proceedings whatsoever in law or in equity or before any administrative tribunal the right of the City to enter into this Agreement and to enforce each and every term, covenant and condition herein contained and this Agreement may be pleaded as an estoppel against the Owner in any such proceedings. Each of the terms of this Agreement is independent of the other and in the event any term of this Agreement is held to be invalid or unenforceable for any reason, then such invalidity or unenforceability shall affect that term only and the remainder of the Agreement shall remain in full force and effect.
- 15.3. In the event of failure of the Owner to carry out any of the provisions of this Agreement, then the Municipality, its servants, or agents shall, on fifteen (15) days notice in writing of its intention so to do and forthwith in cases or emergency, have the right to enter on to the said lands and, at the expense of the Owner, do any work required hereby and further, shall have the right to recover the costs thereof by action or as municipal taxes, pursuant to the provisions of the *Municipal Act, R.S.O. 2001*, as amended.
- 15.4. The Owner agrees that if construction has not been seriously commenced within two (2) years of the date of this Agreement or where the construction is substantially suspended or discontinued for a period of more than one year, the Chief Building Official may revoke the building permit issued heretofore and not issue a new permit until such time as a new Agreement has been entered into. This clause is inserted to protect the Municipality from any change in its standards of service or any change in the requirements for municipal services relating to the capacity of any service, to service this or any other project.
- 15.5. The Owner agrees that all work authorized by this Agreement shall be completed within three (3) years of the date of the execution of this Agreement. If work has not commenced within two (2) years from the date of execution of this Agreement, this agreement will become null and void.
- 15.6. This agreement shall enure to the benefit of and be binding upon the parties hereto and their heirs, executors, administrators, successors, mortgagees and assigns and all covenants, agreements, conditions and

understandings herein contained on the part of the Owner shall run with the lands and it shall enure to the benefit of the lands of the City and it shall be binding upon the Owner and its successors and assigns as Owners or occupiers of the lands from time to time.

- 15.7. The Owner herein agrees and consents to the registration of this Agreement, against the title of the said lands.
- 15.8. The Owner shall be subject to all by-laws of the City and shall abide by them.
- 15.9. Notwithstanding any other provisions of this Agreement,
 - 15.9.1. Where a Mortgagee has executed this Agreement and, acting under its security, has gone into actual possession of the land described herein or has by way of foreclosure become the owner thereof, the mortgagee shall only be bound by the terms, conditions, rights and obligations enjoyed or borne by the Owner under this Agreement for the period of time the mortgagee is either in actual possession or is the owner by way of foreclosure; and,
 - 15.9.2. The applicant agrees to obtain a postponement of the Mortgagee's rights under its Charge/Mortgage of Land registered on title to the lands described in Schedule A to this Agreement to the rights of the City under this Agreement.
- 15.10. The Owner shall indemnify and save harmless the City from and against all actions, causes of action, interest, claims, demands, costs, charges, damages, expenses and loss which the City may at any time bear, incur, be liable for, sustain or be put unto for any reason or, on account of, or by reason of, or in the consequence of, related to the discharge of stormwater.
- 15.11. The Owner shall, at its own expense, provide an accessible centralized mail facility, if required, as per Canada Post's multi-unit policy.
- 15.12. The Owner will grant Bell Canada any easements that may be required, which may include a blanket easement, for communication/telecommunication infrastructure. In the event of any conflict with existing Bell Canada facilities or easements, the Owner shall be responsible for the relocation of such facilities or easements.
- 15.13. The Owner is advised that prior to commencing any work within the site, the owner must confirm that sufficient wire line communication/telecommunication infrastructure is available within the development to provide communication/telecommunication services to the development. In the event that such infrastructure is not available, the Owner may be required to pay for the connection to and/or extension to an existing communication/telecommunication infrastructure.

- 15.14. The Owner understands that Bell Canada requires one or more conduit or conduits of sufficient size from each unit to the room(s) in which the telecommunication facilities are situated and one or more conduits from the room(s) in which the telecommunication facilities are located to the street line.
- 15.15. In case the Owner wishes not to pay for the connection to and/or extension to an existing communication/telecommunication infrastructure, the Owner shall be required to demonstrate to the municipality that sufficient alternative communication/telecommunication facilities are available within the proposed site to enable, at a minimum, the efficient delivery of communication/telecommunication services for emergency management services (i.e. 911 Emergency service).
- 15.16. The Owner shall contact Enbridge Gas Distribution's Customer Connections department by emailing SalesArea80@enbridge.com for service and meter installation details and to ensure all gas piping is installed prior to the commencement of site landscaping (including, but not limited to: tree planting, Silva cells, and/or soil trenches) and/or asphalt paving. If the gas main needs to be relocated as a result of changes in the alignment or grade of the future road allowances or for temporary gas pipe installations pertaining to phase construction, all costs are the responsibility of the applicant. In the event that easement(s) are required to service this development, the Owner will provide the easement(s) to Enbridge Gas Distribution at no cost.
- 15.17. The Owner shall obtain a certificate from an Ontario Land Surveyor stating that all existing and new evidence is in place at the completion of the said development.
- 15.18. The Owner covenants and agrees to pay any arrears of taxes outstanding against the lands, prior to the execution of this Agreement by the City.
- 15.19. Prior to the release of any securities, the Owner agrees to pay any arrears of taxes outstanding against the lands.
- 15.20. The Owner agrees that there shall be no open burning of waste or construction materials unless specifically approved by the Fire Department.
- 15.21. The Owner shall enter into separate agreements for the provision of utilities to service the development, including; gas, telephone and cable, as required.
- 15.22. The Owner agrees to implement the mitigation measures and recommendations described in the *Constraints Analysis Update and Recommendations Report* prepared by LCA Environmental Consulting (dated October 2020), including:
- a. Permanent fencing should be placed along the top of slope to prevent encroachment.

15.23. The Owner agrees to implement the *Wetland Buffer Planting Plan*, prepared by LCA Environmental Consultants (dated June 14, 2021).

15.24. That the Developer obtain a Work Permit from the Niagara Peninsula Conservation Authority for the proposed 15m wetland buffer enhancement work. In support of the Work Permit application, the following information will be required:

- a. A planting plan providing details about species, planting densities and locations.
- b. Any other information as may be determined at the time a Work Permit application is submitted to the Niagara Peninsula Conservation Authority.

Any notice given hereunder shall be sufficiently given and addressed to:

OWNER

Jon Jus Developments
c/o John Passero
144 Dunkirk Road
St. Catharines, ON
L2P 3H6

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals under the hands of their officers duly authorized in that behalf.

SIGNED, SEALED AND DELIVERED
the presence of:

THE CORPORATION OF THE CITY
OF THOROLD:
Per:

Terry Ugolini, Mayor

Joanne Hyde, City Clerk

OWNER

JON JUS DEVELOPMENTS

Per:

I, John Passero, have the authority to
bind the Corporation

SCHEDULE A

PARTS 2 & 3 PLAN 59R-16856; PART OF LOT 25; GEOGRAPHIC TOWNSHIP
OF THOROLD; CITY OF THOROLD

SCHEDULE B

SECURITY DEPOSITS AND REQUIRED PAYMENTS

	Items	Estimated Cost	Letter of Credit
Primary Services			
1	Water supply	\$0.00	
2	Storm supply	\$247,043.00	
3	Sanitary sewer	\$22,738.00	
4	Lot grading	\$0.00	
5	General/parking lot (including concrete curb, base course and building entrance, concrete islands, concrete pads)	\$181,225.00	
	TOTAL	\$451,006.00	10% of total = \$*45,101.00
Secondary Services			
1	Landscaping (includes plant material, edging, gravel/stone, fencing, topsoil, top of slope fencing)	\$108,035.00	
2	Top course	\$106,400.00	
3	Sidewalk	\$45,000.00	
4	Line painting	\$0.00	
5	Parking lot signs	\$3,750.00	
6	Bike Rack	\$750.00	
	TOTAL	\$263,935.00	110% of total = \$*290,329.00
	TOTAL		\$335,430.00

* Rounded to nearest dollar

SCHEDULE C

Approved Plans

Site Plan, prepared by Upper Canada Consultants, dated July 19, 2021, as drawing 1852-SP

Site Servicing and Grading Plan, prepared by Upper Canada Consultants, dated July 19, 2021, as drawing 1852-SSGP

Lighting Site Plan – Electrical, prepared by mpc engineering consulting, dated November 5, 2020, as drawing EL-1

Landscape Plan, prepared by James McWilliam Landscape Architect, dated October 2020, as drawing L1

Landscape Details, prepared by James McWilliam Landscape Architect, dated October 2020, as drawing L2

Wetland Buffer Planting Plan, prepared by LCA Environmental Consultants, dated June 14, 2021.

Barn Addition – A3.0, prepared by Forestgreen Creations Inc. dated August 11, 2020

Proposed Storage Building – Elevations, prepared by Silvergate Homes, dated October 22, 2019

Proposed Service Shop - Front and Right Side Elevations, prepared by Silvergate Homes, dated March 5, 2018

Proposed Service Shop - Rear and Left Side Elevations, prepared by Silvergate Homes, dated March 5, 2018