

SITE PLAN CONTROL AND DEVELOPMENT AGREEMENT

THIS AGREEMENT made this 14th day of April, 2021.

B E T W E E N:

MUNICIPALITY OF MIDDLESEX CENTRE
(the “Municipality”)

OF THE FIRST PART;

-and-

SOUTHMOOR DEVELOPMENT CORPORATION
(the “Owner”)

OF THE SECOND PART

WHEREAS:

- A. the Municipality has by By-law No. 2003-035, as amended or replaced, designated all Subject Lands within the boundaries of the Municipality as areas of site plan control, pursuant to the provisions of Section 41 of the *Planning Act*, RSO, 1990, c.P.13, as amended or replaced (hereafter, the “**Planning Act**”), and the Subject Lands described in **Schedule “A”** attached hereto are within such boundaries;
- B. The Owner warrants that it is the registered owner of Subject Lands described in **Schedule “A”** (hereinafter, the “**Subject Lands**”) attached hereto, in fee simple;
- C. the Owner has developed and wishes to continue to develop the Subject Lands and has submitted for approval a site plan, as shown on **Schedule “B”** (hereinafter referred to as the “**Site Plan**”);
- D. the Municipality is prepared to approve the Site Plan in the form attached to this Agreement as **Schedule “B”** upon the condition that the Owner enters into this Agreement;
- E. Site Plan Control and Development Agreements may be entered into and registered on title pursuant to subsection 41(7), (8), and (10) of the *Planning Act* and section 71 of the *Land Titles Act*, RSO 1990, c.L.5, as amended or replaced, and are enforceable pursuant to sections 446 and 442 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended or replaced (hereinafter referred to as the “**Municipal Act**”); and
- F. Provided the Owner and the Municipality have entered into this Agreement, the Municipality may at that time issue a building permit subject to approval of building plans and subject to the site plan being in full compliance with the Zoning By-law and all applicable law.

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the payment of the sum of TWO DOLLARS (\$2.00) from each party to the other and for other good and valuable consideration, including the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

Incorporation of Recitals

1. The above recitals are true and are hereby incorporated into this Site Plan Control and Development Agreement (hereinafter referred to as this “**Agreement**”) by reference.

Former Agreement

2. The Owner and the Municipality previously entered into a Site Plan Agreement on July 13, 2011 and that this Site Plan Control and Development Agreement hereby supersedes and replaces the July 13, 2011 Agreement in its entirety. It is recognized by the parties that the appropriate clauses from the 2011 Agreement have been carried forward to this Agreement, including without limitation, the obligation of the Owner and its successors to maintain works and facilities on the Subject Lands at their sole risk and expense, and to Conditional Approval of Development and Site Plan

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3. The Municipality approves the development and Site Plan in accordance with the plans and specifications attached hereto as *Schedule "B"*, subject to the covenants in this Agreement. The Owner warrants and undertakes and complete the development of the Subject Lands in accordance with the Site Plan and that the Land shall be used by the Owner and by any subsequent Owners and occupiers of the Land in accordance with and in conformity the Site Plan.

Responsibility and Cost of the Works and Facilities

4. The Owner is responsible for one hundred percent (100%) of the total cost for completion of the Works and Facilities. Every provision of this Agreement by which the Owner is obliged in any way, even where the provision not specifically enumerate "at the 100% expense of the owner", shall be deemed to include the words "at the 100% expense of the Owner". In the event that the Owner default on any provision of this Agreement, the provisions of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended or replaced (hereafter, the "**Municipal Act**") apply; any monies owing to the Municipality constitute debt to the Municipality and priority lien owing to the Municipality; and the Municipality may use the remedies set out in section 31-32 to address the default.

Installation of Works and Facilities

5. The Owner covenants to provide, construct, install and maintain the works and facilities set out and provided for in *Schedule "B"* and to the satisfaction of the Municipality (hereinafter, the "**Works and Facilities**"). The Works and Facilities shall be provided, constructed, installed and maintained by the Owner at absolutely no expense to the Municipality.

Compliance with Law

6. The Owner and Lessee shall:
 - (a) Be one hundred percent (100%) responsible for ensuring that the installation and construction of the Works and Facilities complies with all applicable Federal, Provincial and Municipal laws, statutes regulations, by-laws and codes of conduct; and
 - (b) Be responsible for obtaining, at one hundred percent (100%) its own risk and cost, any and all approvals necessary for said installation, construction or removal, including without limitation, approvals required by the *Environment Assessment Act*, RSO 1990, c. E.18, as amended or replaced, the *Environmental Protection Act*, RSO 1990, c. E. 19, and any applicable Conservation Authority.

Application of County Highways By-laws

7. County By-laws No. 5783 and No. 6410, as amended or replaced, concerning Access/Entrance Permits, Work Permits, and Oversize Load/Weight Vehicle Permits in relation to County highways (collectively, hereafter referred to as the "**County Highways By-laws**") apply to the commencement of any work on or under Glendon Drive (County Road #14) and Komoka Road (County Road #16). The shall comply with the County Highway By-laws and where applicable, shall apply for any such permit or require any contractors and/or agents acting on their behalf to apply for permits and pay appropriate fees in accordance with the County Highway By-laws in advance of commencing any work on or under Glendon Drive (County Road #14) and Komoka Road (County Road #16). The Owner and Lessee further covenant to provide to the County any security deemed necessary by the County Engineer in accordance with the County Highway By-laws and will require any contractors and/or agents acting on its behalf to provide any security deemed necessary by the County Engineer in accordance with the County Highway By-laws and such security shall take the form of an unconditional and irrevocable letter of credit, certified cheque issued by a Canadian Charter Bank, or similar legal tender in a form approved by the County. The aforementioned security may be drawn upon by the County in the event of default on County permitting conditions.

Development Control

8. Without limiting the covenants and obligations set out elsewhere in this Agreement, the Owner covenants:

Contractors and Agents

- (a) To be responsible for the oversight, supervision, direction, work and service of all contractors and/or agents of the Owner which perform work or services on behalf of the Owner in furtherance of this Agreement and to ensure that all work and

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services performed by its respective contractors and/or agents conforms to the requirements of this Agreement. Any failure by any contractor and/or agent of the Owner to perform work or services to the standard required for the Owner by this Agreement shall constitute a default of this Agreement by the Owner.

Engineering Drawings

- (b) To provide engineering drawings for approval by the Municipal Engineer, inclusive of detailed designs and specifications demonstrating details of all Works and Facilities. Without limiting the foregoing, the Owner shall provide engineering drawings detailing, where applicable, all grading, stormwater management, sediment erosion control, easements, servicing, entrance details, road allowance widening, pavement widening, utility construction and any other work required as part of the development. Approval shall be in the sole and absolute discretion of the Municipal Engineer. Where any of the drawings forming part of *Schedule "B"* require amendment, such amendments shall be subject to the approval of the Municipal Engineer, in his/her sole and absolute discretion, and upon approval such plans and drawings shall form part of *Schedule "B"* to this Agreement where so agreed in writing by the Parties.
- (c) The Owner shall provide to the Municipal Engineer "as constructed" drawings to the specifications and satisfaction of the Municipal Engineer, if required.

Restaurant Patio

- (d) To convert the area marked as "Proposed Patio" on *Schedule "B"* to a patio (hereinafter referred to as the "**Patio**"). The Owner warrants that it shall construct the Patio and ramp in accordance with the Site Plan and in compliance with all applicable laws, zoning, business licensing requirements, regulations, by-laws, permits, building codes, noise regulations, signage requirements, fencing, safety measures and any other laws that may apply for the proper construction and safe operation of the Patio. In addition to and without limiting the foregoing, the Owner warrants that it shall install appropriate bollards, which provide health and safety protection from vehicular traffic to restaurant patrons and limits liability risk of the Owner and its successors.

Parking Areas

- (e) To construct all of the parking areas on the Subject Lands, including the area shown as the "Existing Asphalt Surface" on *Schedule "B"*, of a suitable hard surface to the satisfaction of the Municipality. The Owner warrants that the all parking areas required to accommodate the proposed development shall be restricted to the Subject Lands and the Owner shall ensure that it installs, delineates, and maintains at all times the appropriate number of accessible parking spaces as required under applicable law. Parking spaces other than accessible spaces shall be constructed with a minimum width of 2.7 metres and a minimum depth of 5.5 metres, whereas accessible parking spaces shall be constructed with a minimum width of 3.7 metres and a minimum depth of 6.0 metres. The Owner further agrees that all parking spaces shall be clearly lined and delineated.
- (f) With respect to the paving of the westerly parking area on the Subject Lands marked "Future, to be Constructed When Future Building is Constructed" on the Site Plan (hereinafter referred to as the "**Future Parking Area**"), at the time that the "Future Building" identified on *Schedule "B"* is constructed, it shall be constructed in accordance with all applicable laws, by-laws, regulations and standards that may exist at the time of construction at 100% its cost. The Owner warrants that in advance of constructing any future buildings on the Subject Lands, it shall submit an application for Site Plan Control approval to the Municipality and agrees to amend this Site Plan Control and Development Agreement to reflect the particulars of any new development or uses of the Subject Lands.

Restoration of Highways

- (g) In the event that any highways of the Municipality or the upper-tier municipality, The Corporation of the County of Middlesex, are affected or damaged by any Works and Facilities installed or constructed, the Owner shall restore to their pre-construction condition at 100% its own cost to the satisfaction to the Municipality and or The Corporation of the County of Middlesex, as applicable.

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Road Widening

- (h) To provide and transfer to the upper-tier Municipality, The Corporation of the County of Middlesex (hereinafter referred to as the “**County**”) at 100% its own expense, two road widenings across the frontage of the Subject Lands, one on Glendon Drive (County Road #14) and one on Komoka Road (County Road #16) to the satisfaction of the County Engineer, within sixty (60) days of endorsement of this Agreement. The above road widenings shall be set out in a draft reference plan obtained by the Owner, at its expense, to be shared with and approved by the County Engineer prior to its deposit with the Land Registry Office. Once the County Engineer approves the road widening specifics on the draft Plan, the Owner shall cause Plan to be deposited at the Land Registry Office and the road widenings to be transferred to the County by the Owner’s legal counsel with the transfer clearly identify in the statements section of the transfers are ‘for road widening purposes.’

Stormwater Drainage

- (i) To confine all stormwater to the Subject Lands and maintain appropriate grading. The Owner shall ensure that there is no interruption to any subsurface drainage flow because of construction on the site, which would have an adverse effect on neighbouring properties. Should such an interruption occur, the Owner shall carry out any necessary remedial work to correct the problem as recommended by its consulting engineer and to the satisfaction of the Municipality and the County of Middlesex in the event an upper-tier road allowance be impacted, at no cost to the Municipality, the County, or neighbouring property owners.

Access

- (j) The Owner shall restrict the means of vehicular access to the locations shown on the Site Plan. Prior to any work being undertaken within a road allowance, the Owner will obtain a work permit from the road authority having jurisdiction. The undertaking of such work shall be to the satisfaction of the road authority having jurisdiction.

Municipal Water and Sanitary Sewer Connections

- (k) The Owner agrees to connect the buildings to be constructed on the Subject Lands to the municipal water supply and sanitary sewer systems to the satisfaction of the Municipality. The Owner acknowledges and agrees to be responsible for all costs associated with such connections. Should construction be required within any road allowance, the Owner shall obtain a work permit from the road authority having jurisdiction prior to undertaking the work.

Location of Buildings

- (l) The Owner agrees to construct all buildings in the locations shown on the Site Plan and in conformity with the regulations of the Zoning By-law.

Fire Routes

- (m) To install at 100% its cost, all signage depicting any fire routes required by the Municipality.

Subject Landscaping and Boulevard Maintenance

- (n) To provide landscaping and grass cover on all areas of the Subject Lands not covered by the building, parking areas and driveways. The Owner shall maintain that portion of road allowances between the lot line and the travelled portion of roads.

Exterior Lighting

- (o) To install necessary exterior lighting on the Subject Lands at 100% its cost. The Owner warrants that all exterior lighting shall be oriented and its intensity so controlled as to prevent glare on adjacent roadways and properties.

Open Storage

- (p) Not to engage in any open storage. The Owner hereby acknowledges open storage is not permitted.

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Fencing

- m) In the event the Owner installs a fence, it shall be in compliance with the Municipality's by-law.

Property Maintenance and Garbage

- n) To maintain or cause to be maintained the Subject Lands at all times in as neat and tidy a condition as is reasonably consistent with the development of the Subject Lands pursuant to the Building Permit, including weed removal and grass cutting prior to and during the development, and after completion of the development. The Owner warrants to confine garbage storage containers to the existing location as shown on the Site Plan.

Additional Approvals and Amended Site Plan Control and Development Agreement

- o) To obtain additional approvals from other government agencies or ministries as may be required prior to the issuance of a building permits. The Owner warrants that in advance of constructing any future buildings, it shall submit an application to the Municipality for Site Plan Control approval and agrees to amend this Site Plan Control Agreement to reflect any new development particulars or uses of the Subject Lands.

Signs

- p) In the event the Owner shall install any signs on the Subject Lands, including their locations and graphics, must receive prior approval by the Chief Building Official, in order to ensure compatibility with surrounding properties and to prevent sight line obstructions. The owner acknowledges that portable signs are not permitted.

Maintenance of Works and Facilities

- 9. The Owner covenants to maintain, at its sole risk and expense, all of the Works and Facilities as provided for and set out in *Schedule "B"*. Such obligation does not apply to any works which have been formally assumed by the Municipality pursuant to Assumption By-law. In the event that the Owner fails or neglects to provide such maintenance to the satisfaction of the Municipality or in the event of any failure, malfunction or unauthorized alteration to the Works and Facilities. The Owner will be in default of this Agreement and the Municipality may remedy the default as set out in section 30-31 of this Agreement.

Mud and Debris Clean-up; Dust Suppression

- 10. The Owner is responsible for all mud and debris tracked onto roadways from vehicles entering or leaving the construction site and for all dust generated during construction. The Owner shall, upon verbal and/or written request by the Municipality or County immediately proceed with clean-up operations at the Owner's expense. To eliminate dust, the Owner may be required to apply dust suppressants, covering stock piles of top soil with tarps or applying ground cover to the areas that have been stripped and left undeveloped at the direction of the Municipality.

Timing for Completion

- 11. The Owner shall comply with the requirements of this Agreement within a within one (1) year from the date of issuance of a building permit that relates to the requirement. The Owners shall provide proof of completion of the Works and Facilities to the satisfaction of the Municipal Engineer. Without limiting the foregoing, the proof required shall include but is not limited to a survey, engineering certification, architectural (including subject landscape architectural) certification and/or any other type of certification.
- 12. Upon failure of the Owner to complete the requirements of this Agreement within the said one (1) year period, such will constitute a default of this Agreement and the Municipality may proceed to remedy the default as set out in sections 30-31 of this Agreement.

Retained Engineer Certificate

- 13. All Works and Facilities installed in accordance with *Schedule "B" and this Agreement* shall be installed to the satisfaction of the Owner's retained engineer, the Municipal Engineer and the Municipal Chief Building Official, provided however, approval by the Municipal Engineer and Municipal Chief Building Official does not relieve the Owner and/or Owner's retained engineer from full responsibility for any errors or omissions in engineering specifications and construction/installation of the Works and Facilities. The Owner's retained engineer shall provide a certificate, signed and stamped (hereinafter

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referred to as the “**Engineer Certificate**”), to the Municipal Engineer and the Municipal Chief Building Official confirming his or her engineering approval of the as constructed works. The Municipal Engineer and Municipal Chief Building Official may rely on the stamped certificate of the Owner’s engineer in determining satisfaction with the Works and Facilities. The Owner’s retained engineer shall be responsible for the engineering of the Works and Facilities and the Owner remains responsible for construction and maintenance.

Security

14. So as to ensure due performance of the requirements of this Agreement with respect to the development of the Subject Lands, the Owner shall, prior to endorsement of this Agreement by the Mayor and Clerk of the Municipality, deposit with the Municipality a performance bond or irrevocable letter of credit in favour of and satisfactory to the Municipality for the principal sum of five thousand dollars (\$5,000.00) (hereinafter, the “**Security**”).
15. In the event the form of Security chosen by the Owner is an irrevocable letter of credit, the Owner covenants to keep such letter of credit in full force and effect and warrants that it will pay all premiums for the said letter of credit as they become due. The letter of credit will be able to be drawn upon by the Municipality at its discretion to address any default of the Owner or debt owing pursuant to this Agreement.

Registration and Priority of Agreement

16. The Parties acknowledge and direct that this Agreement be electronically registered on title of the Subject Lands at the appropriate Land Titles Office by legal counsel for the Owner at one hundred percent (100%) the expense of the Owner to the to the intent and purpose that this Agreement and all of the Owner’s covenants herein shall run with the Subject Lands. The Owner shall provide the Municipality with proof of registration.
17. The Owner hereby agrees that if at the time of registration of this Agreement there are any encumbrances on the title to the Subject Lands held by any party other than the Municipality, then the Owner shall arrange for the discharge of such encumbrances from title. In the alternative, the Owner shall, prior to the registration of this Agreement, obtain a postponement and consent in favour of the Municipality for each encumbrance to this Agreement’s priority on title of the Subject Lands.
18. The parties agree and consent to the removal of the replaced July 13, 2011 Site Plan Agreement from title to the Subject Lands.

Responsibility and Indemnity

19. The Owner expressly acknowledges and agrees that the development of the Subject Lands, including the installation and construction of the Works and Facilities, is entirely and solely at its own risk and expense without liability or responsibility of the Municipality.
20. Without limiting the foregoing, the Owner releases, indemnifies, completely holds harmless and agrees to defend the Municipality, its Councillors, officers, employees, legal counsel, agents and contractors, from and against any and all suits, judgments, claims, demands, expenses, actions, causes of action, duties, assessments, fees, penalties, liabilities, losses and costs (including without limitation, legal expenses on a solicitor-client basis and for any claim for lien made pursuant to the *Construction Act* (Ontario) and for any and all liability for:
 - (a) damages to any property, including property other than the Subject Lands;
 - (b) any direct, indirect, special or consequential damages; and
 - (c) any injury to any person (including death) however caused;

which in any manner arise out of or are in any manner related to this Agreement, the development of the Subject Lands and/or the installation and construction of the Works and Facilities pursuant to *Schedule “B”* and this Agreement.

Insurance

Owner Insurance

21. Forthwith upon execution of this Agreement, the Owner shall provide the Municipality with

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insurance policies from the Owner supplied by an insurance broker/provider licenced to provide insurance in Ontario, which provides coverage limits of not less than Five Million Dollars (**\$5,000,000.00**) and names the Municipality as an additional insured from and against personal injury/bodily harm (including death), property damage, errors and omissions, and contractual liability arising from this Agreement, which arise out of the installation/construction and maintenance of the Works and Facilities of this Agreement. In addition, such insurance policies shall contain a cross liability and severability of interest clause, and endeavor to provide for a minimum of thirty (30) days written notice of cancellation. The Owner shall upon the request of the Municipality, and in any event, prior to the commencement of any work, provide a copy of the certificate of insurance and other documentation confirming that the premiums for the above mentioned insurance policies of the Owner shall continue until all of the Works and Facilities are constructed to the satisfaction of the Municipality.

Contractor/Agent Insurance

22. Forthwith upon execution of this Agreement, the Owner shall require any contractor and/or agent providing services or work in relation to this Agreement to provide the Municipality with insurance policies supplied by an insurance broker/provider licenced to provide insurance in Ontario, which provides coverage limits of not be less than Five Million Dollars (**\$5,000,000.00**) for each of the contractor(s) and/or agent(s) and names both the Municipality as an additional insured from and against personal injury/bodily harm (including death), property damage, errors and omissions, contractual liability (from this Agreement), employer's liability, employee benefits liability and non-owned auto liability which arise out of the installation and construction of the Works and Facilities of this Agreement. In addition, such insurance policies shall contain a cross liability and severability of interest clause, and endeavor to provide for a minimum of thirty (30) days written notice of cancellation. The contractor(s) and/or agent(s) shall upon the request of the Municipality and in any event, prior to the commencement of any work, provide a copy of the certificate of insurance and other documentation confirming that the premiums for the abovementioned insurance policies have been paid and that such policies are in full force and effect. Such insurance policies of contractors and/or agents of the Owner retained for construction of the works described herein, shall continue until all of the aforementioned works are constructed to the satisfaction of the Municipality.

Retained Engineer Insurance

23. The Owner further warrants that its respective retained engineer carries Professional Liability Insurance in the amount of at least Two Million Dollars (**\$2,000,000.00**) and that it will require its retained engineer to provide a copy of the certificate of insurance and other documentation to the Municipality confirming that the premiums for the abovementioned insurance has been paid and that such policy is in full force and effect with respect to coverage for the engineering work related to this Agreement.

WSIB Clearance

24. Upon execution of this Agreement, the Owner shall arrange for a Certificate of Clearance from the Workplace Safety and Insurance Board ("**WSIB**") for any contractor and/or agent stating that all assessments or compensations payable have been paid and all the requirements of the WSIB have been complied with. From time to time and when requested, the Owner will be required to provide a certificate of clearance from the WSIB to the Corporation from any contractor and/or agent. Such Certificate of Clearance shall indicate that the contractor and/or agent and any subcontractors have complied with the requirements of the WSIB and are in good standing in the books of the WSIB.

Work Standards and Compliance with Laws

25. The Owner shall ensure that all work completed on property owned by the Municipality or the County is carried out in a manner that is in conformity with the *Occupational Health and Safety Act*, R.S.O. 1990, Ch. O.1, as amended or replaced, and other legislation or requirements. The Municipal Engineer shall provide an "Authorization to Proceed with Construction" and give the Owner a copy that must be on site at all times and available upon request. The Owner shall require that the any contractor and/or agent must complete the form "Registration of Constructors and Employers Engaged in Construction" and it must be on site and available upon request.
26. The Owner shall ensure that the contractor(s)' and/or agent(s)' employees and subcontractors perform all the work and services described in this Agreement with the degree of care, skill and diligence of a professional contractor, as defined by normal industry practice. The Owner shall further ensure, that at all times the contractor(s) and/or agent(s) as well as their subcontractors and employees are in compliance with all Federal,

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Provincial and municipal laws, statutes, regulations, by-laws, and codes of conduct. All certificates of training must be available upon request of the Municipality.

Legal Costs

27. The Owner, within thirty (30) days of the approval of this Agreement by Municipal Council, shall pay to the Municipality, two-thousand dollars (\$2,000.00) for reimbursement of a portion of the Municipality's actual legal fees and disbursements incurred by the Municipality in the drafting and reviewing of this Agreement. Further, the Owner agrees that it does not dispute the reasonableness of the aforementioned payment and is estopped from doing so. Pursuant to the *Municipal Act, 2001*, the costs are a debts and priority liens owing to the Municipality.

Engineering, Planning, Administration, or Surveying Costs

28. In addition to and without limiting section 26 above, the Owner shall reimburse the Municipality, on demand, for its in-house engineering, planning, and administrative consultation, supervision, work and services provided and any external engineering, planning, or surveying costs incurred by the Municipality in connection with this Agreement, including without limitation, the negotiations leading to and the preparation of this Agreement. Pursuant to the *Municipal Act, 2001*, the costs are a debts and priority liens owing to the Municipality.

Realization of Security Costs

29. In addition to and without limiting sections 26 and 27 above, the Owner shall reimburse the Municipality, on demand, for its costs incurred realizing upon any security given under this Agreement. Pursuant to the *Municipal Act, 2001*, the costs are a debts and priority liens owing to the Municipality.

Interest and Lien

30. In the event that there are monies due from the Owner to the Municipality which have not been paid within fifteen (15) days after demand thereof by the Municipality, interest shall be payable on the amount due at the rate of fifteen percent (15%) per annum (in accordance with section 446 of the *Municipal Act*) calculated from the date of demand. The amount due together with interest thereon shall constitute a debt to the Municipality and priority lien owing to the Municipality.

Default and Remedies

31. In the event the Owner fails to provide for or deliver on any covenants or obligations set out in this Agreement as set out herein, the Owner shall deemed to be in default of this Agreement. Where the Owner is in default of this Agreement, the provisions of the *Municipal Act* apply.
32. To remedy any default, and without limiting any remedy otherwise available at law, the Municipality at its discretion may: claim on any bond provided as Security; enter upon the Subject Lands without notice to the Owner and cause itself and/or its agents perform any actions or complete any repairs to remedy the default; draw upon any letter of credit provided as Security to pay for any expenses incurred by the Municipality in addressing the default; add any expense incurred by itself or its authorized agents to address the default to the tax roll of the Subject Lands and collect for such expenses in like manner as municipal taxes; withdraw or revoke any other building permit granted to any other person in respect of the Subject Lands and refuse to issue further building permits in respect of the Subject Lands until the default has been rectified; and/or seek redress by legal action.

Entire Agreement

33. This Agreement, including its schedules, constitutes the entire agreement between the parties with respect to the development of the Subject Lands, including any and all other Site Plan Control Agreements which may have been entered into and/or registered against title to the Subject Lands. This Agreement, inclusive of its schedules, supersedes and replaces in their entirety any and all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties concerning the development of the Subject Lands and the parties hereby acknowledge that there are no representations, warranties or other agreements between the parties in connection with the subject matter of this Agreement and its schedules. No party has been induced to enter into this Agreement in reliance on, and there will be no liability assessed either in tort or contract with respect to any warranty, representation, opinion, advice or assertion of fact, except to the extent it has been reduced to writing and included as term in this Agreement.

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Except as amended in accordance with section 33-34 of this Agreement, the terms of this Agreement shall remain in full force and effect.

Amendment and Waiver

- 34. No amendment, discharge, modification, restatement, supplement, termination or waiver of this Agreement or any section of this Agreement is binding unless it is in writing and executed by the parties to be bound. No waiver of, failure to exercise, or delay in exercising, any section of this Agreement constitutes a waiver of any other section (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.

Future Site Plans and Amending this Agreement

- 35. The Owner agrees to enter into such further or amended site plan control and development agreements as may be deemed necessary by the Municipality, in its discretion. The Owner warrants that in advance of constructing any future buildings, it shall submit an application for Site Plan Control approval to the Municipality and agrees to amend this Site Plan Control and Development Agreement to reflect any new development or uses on the Subject Lands.

Enurement

- 36. The covenants, agreements, conditions and undertakings herein contained on the part of the Owner shall run with the Subject Lands and shall be binding upon the Owner and upon the Owner's heirs, executors, administrators, estate trustees, trustees, personal or legal representatives, successors, assigns, and all occupiers of the Subject Lands. This Agreement shall enure to the benefit of and be binding upon the appropriate authority and its successors and assigns. In the event at any point in time, there is more than one Owner of the Subject Lands, the Owners of the Subject Lands, all covenants and responsibilities under this Agreement shall be joint and several amongst the Owners.

Notice

- 37. Any notice or any other communication required or permitted to be given under this Agreement shall be in writing. E-mail correspondence shall be considered to be 'in writing' and shall be deemed effective if and at the time delivery is confirmed to the e-mail addresses of the representative officer of a party listed below or to such other e-mail address as provided by a party in writing during the course of this Agreement to serve as an e-mail address to which notice may be provided. Notice may also be effected if delivered by registered mail or personal delivery and/or by courier with receipt verified by signature, to the officer position noted below for a party or to such other address as may be provided by a party in writing during the course of this Agreement to serve as an address and officer to which notice may be provided. Notice shall be deemed effective at the time of delivery.
- 38. Any notice in writing may be delivered to each of the parties by delivering to the acting officers and addresses set out below:

To Southmoor Development Corporation at:

301-100 Wellington Street
London, Ontario, N68 2K6
Attention:
E-mail: _____

To the Municipality at:

Municipality of Middlesex Centre
10227 Ilderton Road, R.R. #2
Ilderton, Ontario, N0M 2A0
Attention: Clerk
E-mail: hutson@middlesexcentre.on.ca

or to any other address as any party may at any time advise the other of, in writing.

Voluntary Agreement

- 39. The Parties warrant that this Agreement is voluntary, that none of the parties are under any legal disability and that each party has had an opportunity to seek the advice of independent legal counsel with respect to this Agreement.

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Estoppel

40. The Owner shall not call into question, directly and indirectly, in any proceedings whatsoever, in law or in equity, or before any administrative tribunal, the right of the Municipality to enter into this Agreement or to enforce each and every term, covenant and condition herein contained and this Agreement shall establish estoppel against the Owner in such proceeding where the Owner argues otherwise.

Severability

41. Each section of this Agreement is distinct and severable. If any provision of this Agreement, in whole or in part, is or becomes illegal, invalid, void, voidable, unenforceable or deemed *ultra vires* in any jurisdiction by any court of competent jurisdiction, then the provision, in whole or in part, shall conclusively be severable and the extent of illegality, invalidity or unenforceability of that section, in whole or in part, will not affect:
- (a) the legality, validity or enforceability of the remaining sections of this Agreement, in whole or in part; or
 - (b) the legality, validity or enforceability of that section, in whole or in part, in any other jurisdiction.

The remainder of this Agreement *mutatis mutandis*, shall be and remain in full force and effect.

Time

42. Time shall be of the essence hereof in all respects and the right of the Municipality to require strict performance by the Owner of any and all obligations imposed upon it herein shall not be affected in any way by any previous waive, forbearance or course of dealing.

Electronic Endorsement and Counterparts

43. This Agreement may be executed and intended by the parties by original or electronic signature and be delivered by the parties in separate counterparts by e-mail or other functionally equivalent electronic means of transmission. Execution and delivery copy of this Agreement as set out above shall be deemed to effectively bind the parties. Each counterpart will be considered an original and each, when held together, shall constitute one and the same instrument.

Governing Law

44. This Agreement is governed by and is to be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable in that Province.

[ONE (1) ENDORSEMENT PAGE FOLLOWS]

IN WITNESS WHEREOF the Parties have affixed their respective signatures hereto, being the effective endorsement of their duly authorized officers:

SOUTHMOOR DEVELOPMENT CORPORATION

Per: _____
Name: Michael Howe
Title:

Per: _____
Name:
Title:
I/We have authority to bind the Corporation.

MUNICIPALITY OF MIDDLESEX CENTRE

Per: _____
Name: Aina DeViet
Title: Mayor

Per: _____
Name: James Hutson
Title: Clerk
I/We have authority to bind the Corporation.

Initials: _____

SCHEDULE "A"

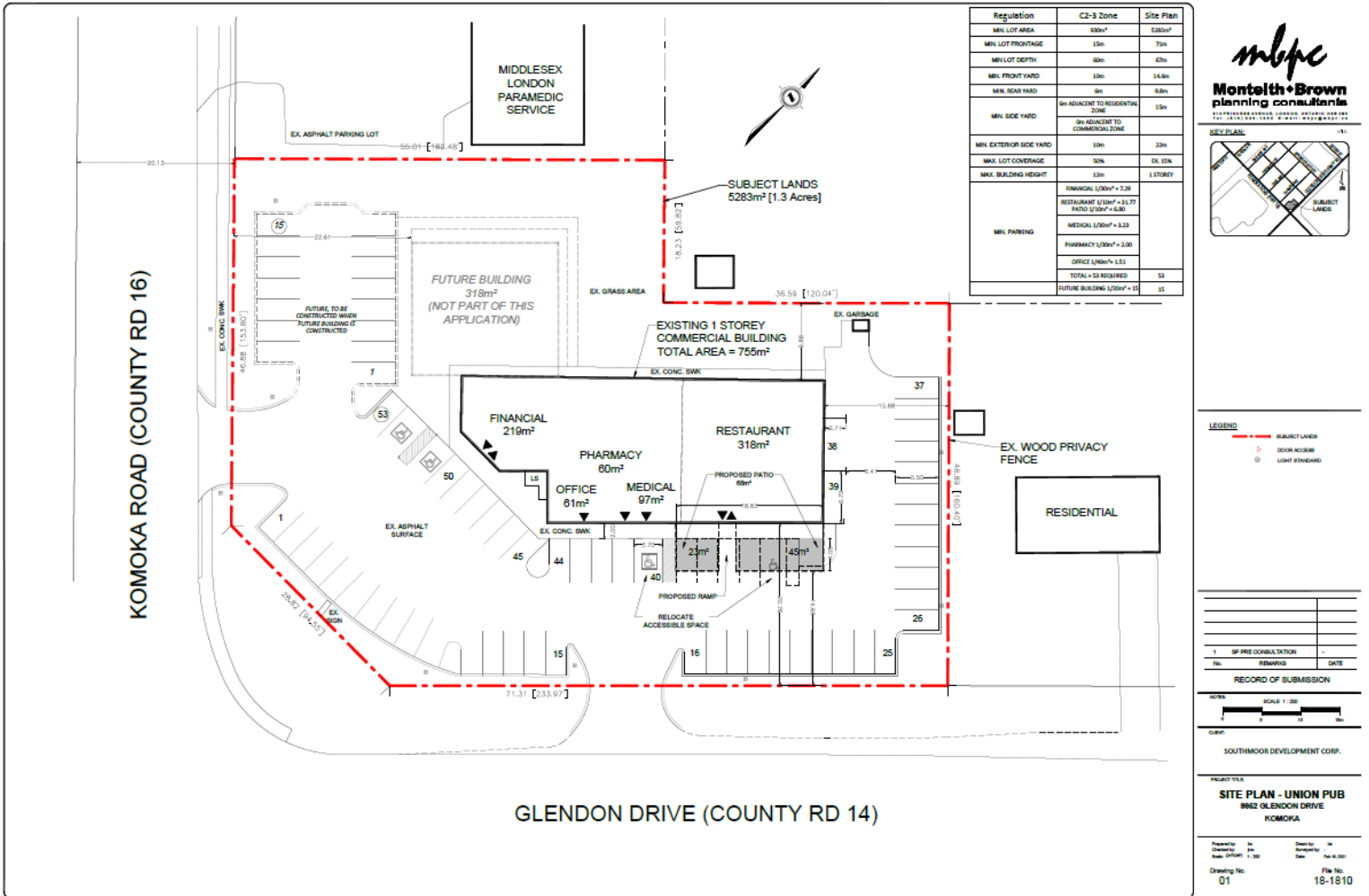
SUBJECT LANDS

All of Lots 3 and 4 and Part of Lots 2, 5, 6, 7, 16 and 17, Block D, Plan 76C; designated as Part 2 as in Plan 33R-16484; formerly in the Township of Lobo and the Township of Middlesex Centre, now in the Municipality of Middlesex Centre; being all of P.I.N. 09661-0072(LT); and municipally known as 9952 Glendon Drive, Komoka, Ontario, N0L 1R0

Initials: _____

SCHEDULE "B"

SITE PLAN



Initials: _____