

**AGREEMENT MADE UNDER SECTION 45 OF
THE PLANNING ACT, R.S.O. 1990**

THIS AGREEMENT made this _____ day of _____, 2018.

BETWEEN:

THE CORPORATION OF THE TOWN OF ST. MARYS

(Hereinafter called the “Town”)

OF THE FIRST PART

AND:

MARIANNE DEBRABANDERE

(Hereinafter called the “Owner”)

OF THE SECOND PART

WHEREAS the Owner represents that she is the owner of the lands municipally known as 256 Church Street South, St. Marys, Ontario, and legally described as Part Lot 18 West Side Church Street, Plan 235, St. Marys as in R240515; St. Marys, being all of PIN 53247-0075 (LT) all in the Registry Office for the Land Titles Division of Perth (No. 44) (hereinafter referred to as the “Lands”);

AND WHEREAS the Owner has applied to the Committee of Adjustment for the Town of St. Marys for approval of a minor variance File Number A02-2017 and such approval dated May 17, 2017 has been granted subject to certain conditions; the execution and

registration on title to the Lands of a Development Agreement between the Owner and the Town;

AND WHEREAS the Committee of Adjustment has authority to impose such terms and conditions as the Committee considers advisable and as are set out in the decision, including requiring the Owner to enter into one or more agreement with the municipality dealing with some or all of the terms and conditions, pursuant to section 45 (9), (9.1) and (9.2) of the *Planning Act*, RSO 1990, c P.13, as amended (the “*Planning Act*”), and further provides that such an agreement may be registered against title to the lands to which it applies and enforced against all subsequent owners of the land;

AND WHEREAS this Agreement shall be registered against title to the Lands and the Town shall be entitled to enforce the provisions thereof against the Owner and, subject to the provisions of the *Registry Act* and the *Land Titles Act*, any and all subsequent owners of the land, in accordance with of Section 45 (9), (9.1) and (9.2) of the *Planning Act*;

NOW THEREFORE WITNESSETH that for the sum of TWO DOLLARS (\$2.00) paid by the Town to the Owner, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant, promise and agree with each other as follows:

1. The parties warrant that the above recitals are true.
2. In this Agreement,
 - a. “Director of Public Works” means the Town’s Director of Public Works, including an acting Director of Public Works, and his or her delegate.

- b. “Home occupation” means a home occupation as defined in the Town’s Zoning By-law.
 - c. “Work” means any and all of the work done in performance of the Owner’s obligations pursuant to this Agreement.
3. The Owner agrees that, at the Owner’s sole risk and expense:
- a) A parking area on the Lands shall be installed and maintained in accordance with the approved parking plan attached hereto as Schedule “A” Sheet 1 and the Town’s Zoning By-law;
 - b) A lot grading/drainage plan for the Lands shall be designed by an Engineer or an Ontario Land Surveyor to the satisfaction of the Town such that there is no impact on any other property, and that the Lands shall be constructed in accordance with the approved lot grading/drainage plan attached hereto as Schedule “A” Sheet 2;
 - c) A 6-foot high barrier fence shall be installed and maintained at a location along the north property line extending from the northwest corner of the lot terminating at a point in line with the rear wall of the dwelling, as shown on Schedule “A”, Sheet 1, so as to reduce the impact of headlights on adjacent properties. Drawings showing fence details and specifications shall be provided to the Town prior to installation;
 - d) Barrier landscaping shall be installed on the Lands to the satisfaction of the Town at a location immediately south of proposed parking space number five on the approved site/parking plan and shown on Schedule “A” Sheet 1, so as to reduce the impact of headlights on adjacent properties. Drawings showing landscape details shall be provided to the Town prior to installation.

4. Prior to the Work commencing, the Owner shall take measures to protect the telecommunications panel located next to the existing hard surface driveway. Such measures shall be to the satisfaction of the Director of Public Works.
5. The Owner agrees that:
 - a. The gravel area located within the Victoria Street road allowance, previously used for parking, shall be removed and replaced with topsoil and seeded to the satisfaction of the Town's Director of Public Works, at the Owner's expense.
 - b. Prior to the commencement of any work on the Victoria Street road allowance, the Owner shall, at its expense, arrange for, obtain and maintain insurance, commencing at the time work on the Victoria Street road allowance begins and continuing in effect until the said work has been completed to the satisfaction of the Director of Public Works, with an insurance company licensed to conduct business in the Province of Ontario, in accordance with the following:
 - i. Comprehensive General Liability insurance subject to limits of not less than five million dollars (\$5,000,000) per occurrence for personal injury, including death, and damage to property, including loss of use thereof, and such policy or policies shall name the Town as an additional insured. Such insurance policy shall include collision and comprehensive coverage, personal injury, contractual liability, owned and non-owned automobile liability, and a cross-liability clause.
 - ii. The insurance policy shall include a provision that requires the insurance company to provide the Municipality with thirty (30) days' notice of termination or cancellation of such policy or policies.

- iii. If the Owner fails to renew the policy, pay premiums, or otherwise fails to keep in force such insurance, then the Town may make any payments necessary to maintain the policy or an equivalent policy of insurance, and the provisions of paragraph 13 shall apply to any such payments.
 - iv. The Owner shall provide a copy of the insurance policy to the Director of Public Works prior to the commencement of any work on the Victoria Street road allowance.
 - c. The Owner shall immediately notify the Town of any occurrence, incident, or event which may reasonably be expected to expose the Town to liability of any kind in relation to this Agreement.
 - d. Written confirmation that the work described in paragraph 5(a) of this Agreement has been completed to the satisfaction of the Director of Public Works shall be obtained prior to issuance of any building permit.
6. The Owner acknowledges that the approval for minor variance granted by Committee of Adjustment for the Town on May 17, 2017 for construction of a third unit will expire on May 16, 2018.
7. Nothing in this Agreement constitutes a waiver of the obligation of the Owner to comply with the Zoning By-law of the Town, Ontario Building Code or any other By-laws of the Town or any statutes, restrictions or regulations lawfully imposed by the provincial government or federal government or any other authorities having jurisdiction in connection therewith. For greater clarity, fulfilment of the terms of this Agreement does not exempt the Owner from the requirements under the *Building Code Act* in obtaining a building permit for construction of the third unit.

8. The Owner agrees that the space subject to File A02-2017, being the third unit, shall not be used for a home occupation or any other business.
9. The Owner agrees that the abutting street to be used for access during construction shall be kept in good and usable condition during the said construction and all necessary care will be taken to see that mud and soil is not tracked or pulled onto any public street or sidewalks. If damaged or muddied, such streets or sidewalks shall be restored and/or cleaned up by the owner at his own expense. The owner acknowledges that she has the responsibility to correct or clean muddied streets used for access during construction. If the owner fails to complete said work, then the provision of paragraph 13 of this Agreement shall apply.
10. All works constructed or installed under this Agreement shall be maintained to the satisfaction of the Town at the expense of the Owner and/or subsequent owners of the lands subject to the Agreement.
11. All costs incurred to satisfy and maintain the requirements of the Agreement shall be at the expense of the Owner and/or subsequent owner of the lands.
12. Minor adjustments to the requirements of this Agreement may be made subject to the approval of the Town provided that the spirit and intent of the Agreement is maintained. Such minor adjustments shall not require an amendment to this Agreement; however, the written approval of the Town is required before such minor adjustments can be made.
13. In the event of the failure by the Owner to comply with any of the provisions of this Agreement, the Town, its servants or agents, on seven (7) days' notice in writing to the Owner of its intention and forthwith in the case of any emergency, shall at its sole

discretion have the right to rectify such failure to comply to its satisfaction and recover the expense incurred by the Town in a like manner as municipal taxes.

14. The Town shall require a refundable security deposit in the amount of Four Thousand Dollars (\$4,000.00) at the time of signing of this Agreement, to be refunded at such time that a 6-foot high barrier fence has been installed on the Lands to the satisfaction of the Town at a location along the north property line extending from the northwest corner of the lot terminating at a point in line with the rear wall of the dwelling. In addition, the Town shall require a refundable security deposit in the amount of 100% of the estimated costs of works for completion of final lot grading of the rear yard and removal of parking and subsequent grass seeding along the Victoria Street road allowance. Said deposit shall be refunded at such time that the lot grading and Victoria Street road allowance restoration are completed to the satisfaction of the Town.
15. The Owner acknowledges that it is the Owner's responsibility to submit a request for the refund of deposits in writing when all of the work has been completed to the standards of this Agreement.
16. This Agreement shall be registered against the Lands by the Town and all costs associated with the said registration shall be the responsibility of the Owner. The covenants, agreements, conditions and understandings herein contained on the part of the Owner shall run with the Lands and shall enure to the benefit of and be binding upon the parties hereto and their respective successors, heirs, executors, administrators and assigns.
17. Execution of this Agreement shall be deemed to be authorization by all parties to legal counsel for the Town to register same in the appropriate Land Registry Office without further written authorization.

18. The failure of a Party at any time to require performance by the other Party of any obligation under this Agreement shall in no way affect the first Party's right thereafter to enforce such obligation, nor shall any such waiver be taken or held to be a waiver of the performance of the same or any other obligation hereunder at any later time.
19. The parties hereto covenant and agree that at all times and from time to time hereafter upon every reasonable written request so to do, they shall make, execute, deliver or cause to be made, done, executed and delivered, all such further acts, deeds, assurances and things as may be required for more effectively implementing and carrying out the true intent and meaning of this Agreement including any amendments to this Agreement required to affect the registration of this Agreement.
20. The parties hereto acknowledge and agree that this agreement is further to and does not remove any of the Owner's obligations under any prior Agreements.
21. Any notice given to the Town pursuant to this Agreement shall be sufficiently given if sent by registered mail, registered courier or delivered personally by the Town's employee or its agent to:

Marianne DeBrabandere
1842 Perth Road 163
RR #1
St. Marys ON N4X 1C4

or to such other addresses of which the Owner has notified the Town in writing. Such notice shall be deemed to have been received on the date of its delivery or in the case of mailing, three (3) business days after it was delivered to the post office.

22. Any notice given to the Owner pursuant to this Agreement shall be sufficiently given if sent by registered mail, registered courier or delivered personally by the Owner or his or her agent to:

Town of St. Marys
175 Queen Street East
PO Box 998
St. Marys, ON N4X 1B6

Attention: Clerk

or to such other addresses of which the Owner has notified the Town in writing. Such notice shall be deemed to have been received on the date of its delivery or in the case of mailing, three (3) business days after it was delivered to the post office.

23. The Owner agrees on behalf of itself and its heirs, executors, administrators, successors and assigns to indemnify the Town from all losses, damages, costs, changes and expenses which may be claimed or recovered against the Town by any person or persons arising either directly or indirectly as a result of any action taken by the Owner pursuant to this agreement.
24. The Owner hereby covenants and agrees to save harmless the Town from any loss whatsoever arising out of or pursuant to the execution of this Agreement and the issuing of a building permit whether final or conditional for any construction on the Lands. This indemnification shall apply to all claims, demands, costs and expenses in respect to the development of the Lands as set out in this Agreement.

25. Schedule "A", attached hereto and referred to herein, is hereby incorporated into and forms part of this Agreement.

IN WITNESS WHEREOF the Owner has hereunto set its hand and seal and the Town has hereunto affixed its corporate seal under the hands of its Mayor and Clerk.

MARIANNE DEBRABANDERE

Per: _____
Marianne DeBrabandere, Owner

THE CORPORATION OF THE TOWN OF ST. MARYS

Per: _____
Mayor: Al Strathdee

Per: _____
CAO/Clerk: Brent Kittmer

(We have the authority to bind the Corporation.)

Schedule “A”

Attach Sheets 1 and 2.