



SITE PLAN AGREEMENT

THIS AGREEMENT made on the _____ day of _____ 2021.

BETWEEN:

POLLY INVESTMENTS
Hereinafter called the "Owner"

OF THE FIRST PART

- and -

**THE CORPORATION OF
THE TOWN OF ESPANOLA**

Hereinafter called the "Town"

OF THE SECOND PART

WHEREAS the Owner is the owner of the lands and premises described in Schedule "A" of this Agreement;

AND WHEREAS the Owner and the Town have agreed to certain matters hereinafter expressed relating to the planning and development of the said lands pursuant to the Town's Site Plan Control Bylaw and in accordance with Section 41 of the Planning Act, R.S.O. 1990, as amended.

THIS AGREEMENT WITNESSETH that the parties hereto agree to the following terms and conditions:

1. In this Agreement:

"ACCEPTANCE" means the date on which the Town accepts that all works and obligations which are constructed, installed, supplied or performed by the Owner pursuant to this Agreement and further referred to in this Agreement;

"AGREEMENT" means this Agreement and the Schedules which shall be deemed to be covenants as though specifically set out therein;

"APPROVAL" means the date on which the Town is satisfied that certain works have been constructed, installed or performed to the satisfaction of the Town, and further referred to in this Agreement;

"TOWN" shall mean the Town of Espanola and includes its successors and assigns and its officers, employees, agents and contractors;

"COUNCIL" shall mean the Council of the Town of Espanola;

"TOWN SPECIFICATIONS OR STANDARDS" means the detailed description of construction materials, workmanship and standards of works to be carried out by the Owner as prescribed by the Town and its amendment from time to time by the Town and which are hereby incorporated by reference to and shall form part of this Agreement as though the same were attached thereto;

"MAINTAIN" includes repair, replace, reinstate and/or keep operational;

"OWNER" includes the party of the First Part, its heirs, executors, administrators, successors and assigns and agents thereof or contractor or subcontractor carrying out the works for or on behalf of the Owner;

"PLAN" or **"SITE PLAN"** means the Site Plan approved by Council or a delegate of Council to act in the capacity of Council and includes the lands described in Schedule "A";

"ROAD" shall mean those private roads or any part thereof, any daylighting triangles, and any areas of road widening shown or laid out on the Site Plan. The use of "Streets" or "Private Highway" shall be synonymous with "Road";

"WORKS" shall mean all matters and things to be provided, listed in and required by this Agreement including infrastructure services, installations, and buildings or structures.

2. Lands

The Owner agrees that the lands affected by this Agreement shall be those described in Schedule "A" hereto and warrants that it is the Owner of those lands.

3. Scope of Works and Conformity

The Owner agrees to construct and maintain the proposed development in conformity with this Agreement and Schedules attached hereto. No works shall be erected on the lands other than those erected in conformity with the said Schedules. It is understood and agreed that written approval of the Town, in a form determined solely by the Town, is required prior to any departure from the specifications of the said Schedules being undertaken.

4. Registration and Issuance of Building Permits

The Town shall cause this Agreement to be registered against the lands to which it applies immediately following execution by the parties hereto and the Owner agrees not to register any other instrument against the subject lands until this has been accomplished. The Owner may apply for, but not request nor require the Town to issue building permits for the construction of the Works on the said lands, until this Agreement has been signed and until all of the payments and performance deposits required of the Owner by the terms and conditions of this Agreement have been made.

5. Insurance Policy

In the case where Works are to be performed or erected on public rights-of-way, the Owner shall provide, prior to commencing work, and keep in force during the construction and operation of the business, a comprehensive policy of public liability and property damage insurance acceptable to the Town, providing insurance in the amount of not less than \$5,000,000.00 per occurrence exclusive of interest and costs against loss or damage resulting from bodily injury to, or death of one or more persons and loss of or damage to property, with a property damage deductible of not more than \$5,000.00. Such policy shall name the Town of Espanola as a named insured thereunder.

The policy shall provide coverage against all claims for all damage or injury including death to a person or persons, for damage to any property of the Town of any other public or private property resulting from or arising out of any act or omission on the part of the Owner or any of its servants or agents during the construction or installation or maintenance of any Works to be performed upon public rights-of-way pursuant to this Agreement. The policy shall include completed operations coverage and shall be maintained in force until final release by the Town of this Agreement.

The policy shall include blanket written contractual liability, cross liability, contingent employer's liability, personal injury endorsement, liability with respect to non-owned licensed vehicles and have no exclusion pertaining to

shoring, blasting, excavating, underpinning, demolition, pile driving, caisson work and work below ground surface including tunnelling and grading. The Owner shall forward to the Town, prior to the signing of this Agreement by the Town, a Certificate of Liability Insurance. This Certificate of Liability Insurance shall be signed by an authorized employee of the Insurance Company providing the insurance. Such insurance policy shall contain an endorsement to provide the Town and the Owner with not less than 30 days written notice of cancellation.

6. Failure to Comply

The Owner acknowledges and agrees that failure to comply with any term or condition herein may result in the Town taking such action to enforce compliance, as deemed appropriate by the Town.

7. Implementation of Reports/Studies

All reports and/or studies required as a result of the works in this Agreement shall be implemented to the Town's satisfaction at the sole expense of the Owner.

8. Completion Time Limit

Failure by the Owner to complete all works required by this Agreement within two years from the date of the signing of this Agreement by the Owner or as extended, in writing, by the Town, at its sole discretion, shall constitute a default, in which case the Town may avail itself of the remedies hereinafter prescribed or available to it in law.

9. Expiry

If a Building Permit has not been issued within one year of the date of signing of this Agreement by the Owner, the approval inherent herein shall be null and void, at the Town's discretion, unless an extension is granted in writing by the Town.

10. Default

In the event of a default by the Owner or its assigns in the provision and maintenance of all works required to be done by the Owner pursuant to this Agreement, the Town may enter upon the lands and do all works as are in default at the expense of the Owner. "Cost" and "expense of the Owner" in this clause shall be actual cost incurred by the Town plus 25% of such cost as a charge for overhead. Any costs incurred by the Town pursuant to this clause which shall be paid by the Owner to the Town within 30 days of the mailing of an invoice by the Town, addressed to the Owner at its last known address.

11. Continued Maintenance

While this Agreement is in effect, the Owner shall maintain the outside landscaping, including all road allowances abutting the lands, so as to provide a neat and tidy appearance, to a standard satisfactory to the Town. Maintenance shall include but not be limited to the regular watering, weeding, and cutting or pruning of all grass, shrubs and trees. All other landscape materials such as fencing and walkway surfaces shall similarly be maintained in a manner satisfactory to the Town. All grass, shrubs and trees shall be replaced if they become unhealthy or die. Any vegetation, which by its size or nature, creates a hazard or becomes a nuisance, shall be replaced with planting materials approved by the Town. All curbs, asphalt, catch basins and other drainage facilities shall be maintained so as to ensure their continued, proper and safe functioning. All traffic aisles, parking stalls and accesses shall be kept free of snow and all painted markings shall be maintained so as to be clearly visible. All other matters and things to be

provided and maintained by the Owner pursuant to this Agreement shall be so continually maintained to the satisfaction of the Town.

If, in the sole opinion of the Town, the Owner has defaulted in the maintenance of all works to be provided, the Owner shall rectify, to the satisfaction of the Town, all such works as are in default, within 60 days of mailing of a notification by the Town addressed to the Owner at its last known address, or within a time deemed reasonable by the Town and stipulated in writing. If, in the opinion of the Town, the Owner has not rectified all such works as are in default after said stipulated time period, the Town may enter upon the lands and do all such works as are in default, at the expense of the Owner. Actual cost incurred by the Town in carrying out such works plus 25% of such cost as a charge for overhead, shall be paid by the Owner to the Town within 30 days of mailing of an invoice by the Town addressed to the Owner at its last known address.

12. Relocation of Utilities and Provision of Easements

The Owner shall obtain approval for, arrange for and pay for the cost of the relocation of any existing utilities which are necessary due to this development to the satisfaction of, and at a time satisfactory to the authority having jurisdiction, together with the granting of such new easements as may be required and the release of any existing easements which are rendered unnecessary.

13. Financial Requirements

The Owner shall deposit with the Town, an irrevocable letter of credit or bond in the amounts as set out in Schedule "G" attached hereto and other financial requirements including but not limited to legal fees, development charges, road cuts and building permit fees that may be required by the Town as established by by-law or resolution of Council from time to time, which pertain to this development and are not specifically referred to herein. It is the Owner's responsibility to verify which financial requirements are applicable to this development and the Owner shall pay same when required by the Town.

14. Performance Deposits

All Works required to be provided and maintained in this Agreement shall be provided and maintained by the Owner at its sole risk and expense and shall be to the satisfaction of the Town. In order to ensure that such Works are provided and maintained by the Owner, the Owner shall deposit with the Town, before this Agreement is executed by the Town, an irrevocable letter(s) of credit or a bond and from a financial institution/user approved by the Town, which deposit however made, may be referred to hereafter as a "performance deposit". The performance deposit shall be based upon the total estimated cost of the Works required to be constructed or installed. The estimate of the cost of the Works and the amount of the performance deposit shall be those prescribed in Schedule "G" attached hereto, as approved by the Town.

15. Letters of Credit – Renewal

If the Owner satisfies the provisions of Clause 14 by depositing irrevocable letter(s) of credit with the Town, the following provisions shall apply:

- (a) Until the Acceptance or Approval of all Works required to be provided and maintained by the Owner pursuant to this Agreement, to the satisfaction of the Town, it will be a condition of the letter of credit that it shall be deemed to be automatically extended without amendment from year to year from the existing or any expiration date thereof, unless at least thirty (30) days prior to any such future expiration date, the financial institution which issued the letter of credit notifies the Town in writing by

registered mail that it elects not to consider the letter of credit to be renewable for any additional period.

(b) Until the Acceptance or Approval of all Works required to be provided and maintained by the Owner pursuant to this Agreement, to the satisfaction of the Town, the irrevocable letter(s) of credit shall continue to be automatically extended in the same manner as provided in sub-clause (a) hereof.

(c) If the Owner and/or financial institution fails to extend the letter(s) of credit as required under sub-clauses (a) and (b) hereof as required by the Town, such failure shall be deemed to be a breach of this Agreement by the Owner, and the Town, without notice to the Owner, may call upon any part or the whole amount of the existing letter(s) of credit notwithstanding anything otherwise contained herein. Any amount received by the Town shall be held by the Town in the same manner as if it had originally been cash deposited under the provisions of Clause 14.

16. Release of Plans

The Owner hereby releases to the Town its rights to any approved drawings that form part of this Agreement, for the purposes of tendering the construction upon default of this Agreement. The Owner shall also ensure that appropriate releases to the Town are obtained from the Owner's consultants, if required.

17. Notices

Any notice required to be given herein shall be in writing and shall be delivered personally or by prepaid registered mail and, if to the Town, shall be addressed to the office of the Town at 100 Tudhope Street, Suite 2, Espanola, ON P5E 1S6, or at such other address at which the Town offices are located in the future and, if to the Owner or their agent at the addresses provided in the application submitted for approval of the subject project or at such other address as the Owner may advise the Town in writing.

18. Subsequent Parties and Gender

This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns, and all covenants and agreements herein contained, assumed by, or imposed upon the Owner are deemed to be covenants which run with and bind the lands and every part thereof. All covenants herein contained shall be construed to be several as well as joint, and wherever the singular or masculine is used, it shall be construed as if the plural or the feminine or the neuter, as the case may be, had been used where the context or the party or the parties hereto so require, and the rest of the sentence shall be construed as if the grammatical and terminological changes thereby rendered necessary had been made.

19. Indemnity

The Owner, executors, administrators and assigns, including successors in title, covenants and agrees to indemnify and save harmless the Town from all actions, causes of actions, suits, claims or demands whatsoever which arise directly or by reason of the development of the Site Plan and the construction and maintenance or the improper or inadequate construction and/or maintenance of the works.

20. Schedules

The following Schedules are attached hereto and form part of this Agreement:

Schedule "A" Description of Lands to which this Agreement Applies

Schedule "B" Survey

Schedule "C" Town Standards and Specifications

Schedule "D" Site Plan Standard Conditions

Schedule "E" Site Plan

Schedule "F" Geotechnical Report

Schedule "G" Financial Requirements

If plans listed above are reduced copies, then reference should be made to full-sized plans filed in the offices of the Town.

21. Clause Headings

All paragraph headings are for ease of reference only and shall not affect the construction or interpretation of this Agreement.

IN WITNESS WHEREOF THE Owner have hereunto set their Hand and Seal or affixed the Corporate Seal of the Company duly attested to by its proper signing officers duly authorized in that behalf.

DATED AT _____ **this** _____ **day of** _____, 20__.

SIGNED, SEALED AND DELIVERED
in the presence of

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) POLLY INVESTMENTS

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Per:

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SCHEDULE "A"

DESCRIPTION OF LANDS TO WHICH THIS AGREEMENT APPLIES

All and singular that certain parcel or tract of land and premises situate, lying and being in the Town of Espanola, being composed of:

Description	Roll Number	PIN
MERRITT CON 4 LOT 7 PCL26486 RP 53R8004 PART 2	5226-000-011-18100-0000	73406-0056

DRAFT

SCHEDULE "B"

REFERENCE SURVEY PLAN

Plan 53R-8004

Full size Plan filed with the Town of Espanola

DRAFT

SCHEDULE "C"

TOWN STANDARDS AND SPECIFICATIONS

ENGINEERING

1. Extension of Municipal Services

The Town will have no responsibility to install any extension to municipal services which may be required in order for the Owner to comply with this Agreement or with any Provincial or Municipal laws or by-laws.

The Owner agrees during construction to connect to the Town's municipal services, and that the Owner's consulting engineer shall test the completed works in accordance with the Town's standards and Provincial Regulations 170 which require over the shoulder supervision by the Town.

2. Work on Town Road Allowances

Any works required to be done by the Owner on Town road allowances shall be according to the specifications and by-laws of the Town. The Owner, or its contractor, shall be required to obtain all the necessary permits for road cuts prior to the disruption of the Town road allowance and it is further understood and agreed that the aforementioned cuts shall be reinstated to the satisfaction of the Town.

A Certificate of Insurance naming the Town of Espanola as an additional insurance shall be provided to the Town by the Owner and all contractors working on the road allowances on behalf of the Owner prior to the work commencing.

3. Approvals

The Owner shall obtain all permits, licenses and approvals from all Federal, Provincial, Municipal or regulatory agencies, as may be required.

4. Performance of Works

The Owner shall ensure that the performance of Works required as a result of this Agreement, whether by the Owner or its employees, servants or agents or its contractors or subcontractors, shall be so performed as not to constitute a nuisance or disturbance to abutting or nearby properties or the Owner thereof. The Owner shall comply with and shall ensure that all of its contractors and subcontractors comply with any written instructions issued by the Town concerning any such nuisance or disturbance regardless of whether such instructions require positive action or discontinuance of action.

INSPECTION

FIRE REQUIREMENTS

5. Fire Fighting Performance Standards

Every Owner of a building or structure shall ensure that its building is served by access routes for fire fighting, as required, designed and constructed in accordance with the Ontario Building Code Act and Regulations made thereunder and all other applicable laws. The approved access routes shall be maintained in accordance with the Ontario Fire Code.

6. Fire Lanes and Parking Spaces

For the Commercial Mall, the site plan sets out 37 parking spaces, of which 6 are Accessible parking spaces, and 3 loading spaces for the Commercial Mall.

The Owner agrees to provide, maintain and post signs designating fire lanes and accessible parking spaces in conformity with Town by-laws. The Owner shall ensure that fire lanes are kept free and clear of vehicles and that accessible parking spaces are not illegally occupied.

Fire Lanes and Parking spaces to be in accordance with Schedule "E" and shall be clearly identified and marked appropriately with proper permanent signage.

LANDSCAPING

7. Inspections and Maintenance

Maintenance of plant material, by the Owner, shall begin immediately following completion of each portion of planting. Maintenance shall consist of watering, weeding, and rodent, pest and disease control in accordance with generally accepted horticultural practices.

GENERAL

8. Access/Egress

Specifications shown on the approved Plans attached hereto in Schedule "E".

9. Buffering / Fencing

Specifications shown on the approved Plans attached hereto in Schedule "E".

10. Exterior Lighting

All exterior lighting proposed for the subject lands shall be installed in the locations and in accordance with specifications shown on the approved plans attached hereto in Schedule "E" unless otherwise approved in writing by the

Town.

11. Loading

The loading shall be at least 9.0 m long, 3.6 m wide as shown on the approved plans attached hereto in Schedule "E".

12. Snow Removal

Snow removal around the perimeter of the Owner's property is as per the Town of Espanola snow removal policies. Service levels beyond these policies will be the responsibility of the Owner. Snow removal on the property shall take place in a manner ensuring no required parking spaces, access / egress areas or fire lanes are blocked and in accordance with the approved plans attached hereto in Schedule "E".

13. Municipal Number Signs

The Owner shall provide and erect or affix, at its expense, such municipal number signs, illuminated or otherwise, in such locations and of such a size, design and colour as submitted to and approved by the Town, prior to occupancy of any buildings, or part thereof, in the subject development.

14. Waste Handling

The Owner shall provide, to the Town's satisfaction, enclosed environmentally acceptable solid waste disposal systems and handling facilities for waste generated from the Commercial Mall as per the approved plans attached hereto on Schedule "E".

PLANS

15. Submission of Approved Plans

The Owner shall file with the Town one copy of all approved Plans which form Schedules to this Agreement, in a format acceptable to the Town.

16. Provision of As-Built Drawings

The Owner shall submit to the Chief Building Official, As-Built Drawings, prepared and certified by an Engineer.

SCHEDULE "D"

SITE PLAN STANDARD CONDITIONS

1. The Owner shall obtain such permits as may be required from Municipal or Provincial authorities and shall file copies thereof with the Town.
2. The Owner shall provide adequate water supply for firefighting for the building.
3. Any portion of the subject property which is intended to be used for snow storage shall be as shown on the approved site plan or as otherwise approved by the Town. Snow storage areas shall be set back from property lines, foundations, fencing or landscaping a minimum of 1.5 metres. Snow storage areas shall not occupy driveways, aisles, required parking spaces, fire lanes or any portion of a road allowance.
4. The Town does not guarantee the quality or quantity of the groundwater. If, at some future date, the quality or the quantity of the groundwater becomes deficient, the Town bears no responsibility, financial or otherwise, to provide solutions to the deficiency, such solutions being the sole responsibility of the Owner.
5. No occupancy permit shall be issued until all requirements with respect to completion of the Works as identified in this Agreement have been carried out and received approval by the Town. Provided that notwithstanding the non-completion of the foregoing Works, conveyance and/or occupancy of a lot or structure may otherwise be permitted, if in the sole opinion of the Town, the aforesaid Works are proceeding satisfactorily toward completion. The consent of the Town for such conveyance and/or occupancy shall be obtained in writing by the Owner.

SCHEDULE "E"

Site Plan

**POLLY INVESTMENTS
257 Queensway Avenue**

DRAFT

SCHEDULE "F"

GEOTECHNICAL REPORT

(To be attached when completed prior to issuance of Building Permit)

DRAFT

SCHEDULE "G"

FINANCIAL REQUIREMENTS

The Owner covenants and agrees that prior to the COMMENCEMENT OF WORK ON THE SITE and or the registration of the Site Plan Agreement, the Owner will deposit with the Town Treasurer the sum of \$106,250 DOLLAR (25% of development cost estimates) in Canadian dollars or by way of an irrevocable Letter of Credit to ensure fulfilment of all the terms and conditions of the Site Plan Agreement.

The Owner further covenants and agrees that the Owner shall, PRIOR TO THE COMMENCEMENT OF WORK ON THE SITE OR ON TOWN PROPERTY and or REGISTRATION of the SITE PLAN AGREEMENT, deposit with the Town of Espanola the Sum of \$32,000 DOLLARS (100% of the cost estimates of the work on municipal property) in Canadian dollars or by way of irrevocable Letter of Credit to ensure the satisfactory performance of all work to be done on municipal property.