

**SITE PLAN AGREEMENT  
2428887 ONTARIO INC. & 2186772 ONTARIO CORP.  
922 HIGHWAY 20 W**

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THIS AGREEMENT made this 22nd day of August, 2016 A.D.

BETWEEN:

**2428887 ONTARIO INC.**

Hereinafter called the "Owner"

OF THE FIRST PART

- and -

**2186772 ONTARIO CORP.**

Hereinafter called the "Mortgagee"

OF THE SECOND PART

**THE CORPORATION OF THE TOWN OF PELHAM**

Hereinafter called the "Town"

OF THE THIRD PART

**WHEREAS** the Owner represents and warrants that it is the owner of the lands in the Town of Pelham described in Schedule 'A' attached hereto (the "Lands");

**AND WHEREAS** the Owner has assumed and agreed to be bound by the terms and conditions of the Site Plan Agreement;

**AND WHEREAS** the Owner is looking forward to develop the parcel to a commercial use in accordance with Schedule 'B' attached hereto, being a Site Plan filed in the Town's offices;

**AND WHEREAS** the Town has agreed to permit the said construction subject to certain terms and conditions;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the sum of One Dollar (\$1.00) now paid by the Owner to the Town (the receipt whereof is hereby acknowledged), the Parties hereto mutually covenant and agree as follows:

## **1. DEFINITIONS**

In this Agreement:

- (a) **CHIEF BUILDING OFFICIAL** shall mean the Chief Building Official of the Corporation of the Town of Pelham.
- (b) **CLERK** shall mean the Clerk of the Corporation of the Town of Pelham.
- (c) **COUNCIL** shall mean the Council of the Corporation of the Town of Pelham.
- (d) **DIRECTOR OF COMMUNITY PLANNING AND DEVELOPMENT SERVICES** shall mean the Director of Community Planning and Development Services of the Corporation of the Town of Pelham.
- (e) **DIRECTOR OF CORPORATE SERVICES** shall mean the Director of Financial Services of the Corporation of the Town of Pelham.
- (f) **DIRECTOR OF PUBLIC WORKS** shall mean the Director of Public Works of the Corporation of the Town of Pelham.

- (g) **FACILITIES AND WORKS** shall mean and includes those facilities and works which are shown on or referred to in any one or more of the plans, drawings and schedules to this Agreement.
- (h) **LANDS** shall mean the lands described in Schedule 'A' attached hereto.
- (i) **PROFESSIONAL ENGINEER** shall mean a Professional Engineer registered in good standing with the Association of Professional Engineers.

## 2. GENERAL PROVISIONS

- (a) The Owner shall develop and maintain the Lands only in accordance with the terms and conditions contained herein and any other applicable by-law of the Town.
- (b) The Owner shall perform any and all construction and installation on the Lands in accordance with the terms and conditions contained herein and as shown on Schedule 'B' attached hereto and forming part of this Agreement to the reasonable satisfaction of the Town.
- (c) The Owner shall not perform any construction or installation on the Lands except in accordance with the terms and conditions contained herein and shown on said Schedule 'B' attached hereto and forming part of this Agreement and to the reasonable satisfaction of the Town.
- (d) The Owner shall maintain and keep in good repair driveways and access servicing the buildings located in the development.
- (e) The Owner grants to the Town, its servants, agents, and assigns permission to enter upon the Lands for the purpose of inspection of any Facilities and Works referred to in this Agreement and for the purpose of the completion of any Facilities and Works in accordance with this Clause and this Agreement.
- (f) The Owner will, at all times, indemnify and save harmless the Town from all loss, costs, damages and injuries which the Town may suffer or be put to for or by reason of the construction, maintenance, or existence of any Facilities and Works done by the Owner, its contractors, servants or agents on the Lands or which the Town may suffer or be put to for or by reason of the completion by the Town of any of the required Facilities and Works in accordance with this clause and this Agreement.
- (g) The Owner shall not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any administrative tribunal the right of the Town 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 proceeding.
- (h) The Owner agrees that survey evidence adjacent to the Regional road allowance will not to be damaged or removed during the development of the property. The Owner will obtain a certificate from an Ontario Land Surveyor stating that all existing and new evidence is in place at the completion of the development and provide a copy to Niagara Region.
- (i) All construction activities, development, and site alterations shall be restricted to the 'Limit of Development' as shown on Figure 4 in the Environmental Impact Study (EIS).
- (j) Limit of work fencing and sediment control fencing shall be installed as per the EIS and shall be installed prior to any site alterations occurring on site and kept in good working order until all disturbed areas have been vegetated and stabilized with native materials to a pre-disturbed

state or better. If sediment control measures are not functioning properly, no further work shall continue until the sediment and/or erosion problem is addressed.

- (k) No equipment, machinery or materials shall be placed beyond the limit of work fencing.
- (l) Vehicle and equipment refueling and maintenance shall be conducted in a manner to prevent petroleum based fluids from leaving the 'Limit of Development'. Drip pans shall be used during refueling to contain accidental releases and under fuel pump and valve mechanisms of any bulk fueling vehicles parked at the project site.
- (m) All materials and equipment used for the purpose of site preparation and project completion shall be operated and stored in a manner that prevents and deleterious substance (e.g. petroleum products, silt, debris, etc.) from leaving the 'Limit of Development' area.
- (n) Lighting must be shaded and directed away from the natural areas.
- (o) No construction or site alteration shall occur outside of the 'Limit of Development'. All areas beyond the 'Limit of Development' shall be allowed to naturally revegetate.

### **3. GRADING**

- (a) The Owner shall have prepared by an Ontario Land Surveyor or Professional Engineer, a detailed Plan for the site, said Plan to clearly indicate the existing drainage pattern on all adjacent Lands originally flowing through, into, or over the area of the site, to the street storm sewer system or other outlet approved by the Director of Public Works. This Plan, attached hereto as Schedule 'D', shall be approved by the Director of Public Works prior to the execution of this Agreement. Minor changes to the Plan may be permitted subject to the approval of the Director of Public Works.
- (b) The Owner shall submit, upon completion of Facilities and Works, a certificate signed by an Ontario Land Surveyor or Professional Engineer which indicates that the grades as stipulated on Schedule 'D' to this Agreement have been complied with.
- (c) Unless otherwise approved or required by the Town, the Owner shall not alter the grades of the said Lands until such time as a Building Permit is issued for the construction of the buildings contemplated herein on the said Lands.
- (d) The Owner shall provide his Design Engineer's verification that all grading, drainage, and servicing provisions have been installed in conformance with the approved Site Servicing Plan and Grading Plan, prepared by Caledon Hills Engineering Ltd., dated July 7, 2016, attached hereto as Schedule 'D'. The Owner shall provide a copy of the Design Engineer's verification to the Town.

### **4. SEPTIC SYSTEM**

- (a) The Owner shall at its own expense and forever maintain the private septic system necessary to serve the development.
- (b) The owner shall obtain the required Private Sewage System Permit from the Niagara Region Development Services Division and also decommission the concrete well (dug well) shown on the site plan in accordance with the Ministry of the Environment and Climate Change standards.

## **5. WATER SUPPLY**

- (a) The Owner shall, at its own expense, forever maintain the private water supply services necessary to serve the development.
- (b) The Owner shall comply with the provisions of the *Ontario Water Resources Act and Safe Drinking Water Act* and amendments thereto and all regulations thereunder, on all internal water supply services, which said act and regulations shall be enforced by the Town.

## **6. STORM SEWER SYSTEM**

- (a) The Owner undertakes the installation, repair, and forever maintenance the private storm water system as identified in the Site Servicing Plan and Grading Plan, prepared by Caledon Hills Engineering Ltd., dated July 7, 2016, attached hereto as Schedule 'D', and approved by the Director of Public Works.
- (b) The owner acknowledges and agrees that maintenance and replacement of the private storm sewer outlet pipe on the Regional Road Allowance is the responsibility of the owner of the property. The Region will take no responsibility for the private outlet pipe.
- (c) The owner acknowledges and agrees that the private storm sewer pipe shown on the approved site plan has a potential to allow Regional Road water to backflow onto their property if the Regional roadside ditch experiences an overflow.
- (d) The Niagara Peninsula Conservation Authority (NPCA) requires stormwater runoff must be treated to a Normal standard prior to discharge from the site. Provision must be made for stormwater quality controls.
- (e) The NPCA will require that post development stormwater peak flows be attenuated to pre-development levels for up to and including the 100 year storm event prior to discharge from the site. The NPCA has no objection to the proposal to further attenuate post development peak flows to the 2 year pre-development level. The NPCA has no objection to the proposal to utilize parking lot storage to achieve this criteria. The NPCA is satisfied that the NPCA's quantity control requirements have been met.

## **7. ROADS AND ACCESS**

- (a) Prior to construction taking place within a Regional Road Allowance, a Regional Construction Encroachment Permit must be obtained. Applications must be made through the Transportation Division's Permit Section of the Public Works Department.
- (b) The Owner shall, at its own expense, restore any curb cuts and/or reinstate with topsoil and nursery sod the boulevards within the Regional Road Allowance to Regional standards.
- (c) The Owner shall locate all private signs within the Owner's Lands. A Regional Sign Permit must be obtained from the Permits Section of the Transportation Services Division, Niagara Region Public Works Department.

## **8. LANDSCAPING AND TREES**

- (a) The Owner shall, at its own expense, adequately landscape, plant and maintain all of the Lands not required for buildings, parking or roads so as at all times to provide effective green areas enhancing the general appearance of the development contemplated herein, said planting and

landscaping shall be in accordance with the approved Landscape Plan prepared by MSLA Marton Smith Landscape Architects, dated August, 2015, revised May 6, 2015, attached hereto as Schedule 'E'. Minor changes to the Plan may be permitted subject to the approval of the Director of Community Planning and Development Services.

- (b) Unless otherwise approved or required by the Town, the Owner shall not remove trees or other vegetation from the said Lands until such time as a Building Permit is issued for the construction of the buildings contemplated herein on the said Lands.
- (c) The Owner agrees that prior to any trees being planted within the Regional right-of-way, the Regional Tree Crew will review and approve the species and confirm the planting location.

## **9. GARBAGE DISPOSAL**

- (a) The Owner shall at all times provide adequate collection and disposal of garbage and sanitary refuse.

## **10. FLOODLIGHTING**

- (a) The Owner shall ensure that any lighting facility used to illuminate any building or parking area shall be designed and installed as to deflect from adjacent buildings and streets.

## **11. PARKING, CURBING, DRIVEWAYS AND SIDEWALKS**

- (a) The Owner shall, at its own expense, provide and at all times maintain on the said Lands, paved parking and driveway areas acceptable to the Town and Region of Niagara.

## **12. BUILDING AND SERVICES**

The Owner shall construct and the Town shall permit the construction of the buildings and other structures on the Lands in accordance with the Schedules attached hereto to permit the development provided that all such uses shall comply with all building and zoning requirements of the Town.

## **13. ADMINISTRATIVE AND CONSULTING COSTS**

The Owner shall pay the Town's reasonable costs in connection with this Agreement for preparation, processing, administration and supervision including, but not limited to, all administrative, legal, inspection and consulting expenses.

## **14. DEPOSIT FOR FACILITIES AND WORKS**

- (a) At the time of execution of this Agreement, the Owner shall pay to the Town a deposit to guarantee its compliance with this Agreement in an amount equal to the lessor of:
  - i. 20 % of the estimated cost of completing the Facilities and Works; or
  - ii. \$60,000.00.

The parties have calculated that the estimated cost for completion to be One Hundred Eighty-Three Thousand Six Hundred and Sixty Dollars and Seventy-Five Cents (**\$183 660.75**) excluding taxes as set out in Schedule 'F' attached hereto and forming part of this Agreement. Therefore, security in the amount of Thirty-Six Thousand Seven Hundred and Thirty-Two Dollars and Fifteen Cents (**\$36 732.15**) shall be provided to the Town.

- (b) The deposit shall be paid to the Town in cash or in the form of an irrevocable letter of credit from a chartered bank or from a recognized

lending institution, subject to the approval of the Director of Corporate Services and shall be held as security to ensure the completion of the Facilities and Works until such time as the Town permits its release as ordered herein. The deposit may be used to pay for the cost of any work performed by the Town in accordance with the following clause in the event of the failure of the Owners to comply with the terms of this Agreement.

- (c) Upon completion of the Facilities and Works, the Owner shall provide to the Town, at the Owner's expense, confirmation in writing by the Owner's Qualified Designer or Professional Engineer, or both, that the approved plans appended hereto have been complied with. When such confirmation has been received, the Chief Building Official shall confirm such compliance and the deposit, less any amounts expended to enforce compliance with the Agreement and any amounts refunded or reduced as the work required by this Agreement progresses, shall be returned to the Owner, without interest.
- (d) The Town may, from time to time, demand an increase in the sum of the deposit in accordance with increases in the cost of performing the Facilities and Works required herein to be completed and the Owner covenants and agrees to make such increase. At the sole discretion of the Chief Building Official the amount of the deposit may be reduced at any time after the Owner has reached the stage where the costs to complete the Facilities and Works is less than the amount of the deposit.
- (e) The release of the deposit by the Town does not release the Owner from their obligation to maintain all of the Facilities and Works pursuant to this Agreement.
- (f) The Owner agrees that all of the Facilities and Works required to be provided by the Owner shall be provided, installed or constructed by the Owner within one hundred and eighty (180) days after the date of substantial completion of the proposed development as determined by the Chief Building Official and shall be maintained at all times in good condition.

## **15. DEFAULT**

Upon breach by the Owner of any covenant, term, condition or requirement of this Agreement, or upon the Owner becoming insolvent or making any assignment for the benefit of creditors, the Town, at its option, may declare the Owner to be in default. Notice of such default shall be given by the Town, and if the Owner shall not remedy such default within such time as provided in the notice, the Town may declare the Owner to be in final default under this Agreement. Upon notice of default having been given, the Town may require all work by the Owner, its servants, agents, independent contractors and sub-contractors to cease (other than any work necessary to remedy such default) until such default shall have been remedied, and in the event of final default, may require all work as aforesaid, to cease. Upon final default of the Owner, the Town may, at its option, adopt or pursue any or all of the following remedies, but shall not be bound to do so:

- (a) Enter upon the subject Lands by its servants, agents and contractors and complete any work, service, repair or maintenance wholly or in part required herein to be done by the Owner, and collect the cost thereof from the Owner and/or enforce any security available to it;
- (b) Make any payment which ought to have been made by the Owner to the Town, for any purpose, and apply the same in payment or part payment for any work which the Town may undertake;

- (c) Retain any sum of money heretofore paid by the Owner to the Town, for any purpose, and apply the same in payment or part payment for any work which the Town may undertake;
- (d) Bring action to compel specific performance of all or any part of this Agreement for damages; and
- (e) Exercise any other remedy granted to the Town under the terms of this Agreement or available to the Town in law.

**16. COVENANTS**

The Owner covenants for itself, its successors and assigns and the Owners from time to time of the said Lands and the burden of the covenants contained in this Agreement shall be deemed to be negative and shall run with and be binding upon the Lands to and for the Town, its successors and assigns.

**17. REGISTRATION**

The Owner agrees and consents to the registration of notice of this Agreement against the said Lands.

**18. OBLIGATION**

This Agreement and the provisions hereof do not give to the Owner or any person acquiring any interest in the said Lands (each hereinafter in this paragraph called "such person") or any other person any rights against the Town with respect to the failure of any such person to perform or fully perform any obligation under this Agreement, or the failure of the Town to force any such person to perform or fully perform any obligation under this Agreement or any negligence of any such person in the performance of the said obligation.

**19. BUILDING PERMIT**

Notwithstanding any of the provisions of this Agreement, the Owner, its successors and assigns, shall be subject to all of the by-laws, as amended, of the Town at the time of the issuance of a Building Permit required pursuant to the terms of the Agreement or at the time of the execution of this Agreement, whichever is applicable.

The Owner shall pay parkland dedication fees at the time a building permit is issued for the Work shown on Schedule 'B'.

**20. PLANS**

The Owner agrees that all plans shall be drawn by a Qualified Designer or by a Professional Engineer and all surveys by an Ontario Land Surveyor, subject to the reasonable satisfaction of the Town.

**21. NOTICES**

Any notice, demand, acceptance or request provided for in this Agreement shall be in writing and shall be deemed to be sufficiently given if personally delivered or sent by registered mail (postage prepaid) as follows:

To the Town at: Clerk  
Town of Pelham  
P. O. Box 400  
20 Pelham Town Square  
Fonthill, ON L0S 1E0

To the Owner at: 2428887 Ontario Inc.  
2 Merrydale Court  
Brampton, ON LGP 0M4



To the Mortgagee at: 2186772 Ontario Corp.  
65 David Street, Suite B  
Brampton, ON L6X 1J6

or as such other address as the party to whom such notice is to be given shall have last notified the party giving the notice in the manner provided in this Section 21. Any notice delivered to the party to whom it is addressed in this Section 21 shall be deemed to have been given and received on the day it is so delivered at such address. Any notice mailed as aforesaid shall be deemed to have been given and received on the fifth day next following the date of its mailing.

## **22. SCHEDULES**

The originals of the plans set out in Schedule 'B', 'C', 'D', 'E' and 'F' are available at the offices of the Town at the address set out in Section 21.

## **23. BINDING EFFECT**

This Agreement shall be binding upon the parties hereto and their heirs, executors, administrators, successors, and assigns.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the date and year first above written.

**WITNESS**

**2428887 ONTARIO INC.**

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(date)

I have the authority to bind the Corporation

**WITNESS**

**2186772 ONTARIO CORP.**

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(date)

I have the authority to bind the Corporation

**THE CORPORATION OF THE TOWN OF  
PELHAM**

\_\_\_\_\_  
Mayor Dave Augustyn

\_\_\_\_\_  
Clerk Nancy J. Bozzato

# **SCHEDULE 'A'**

## **LEGAL DESCRIPTION**

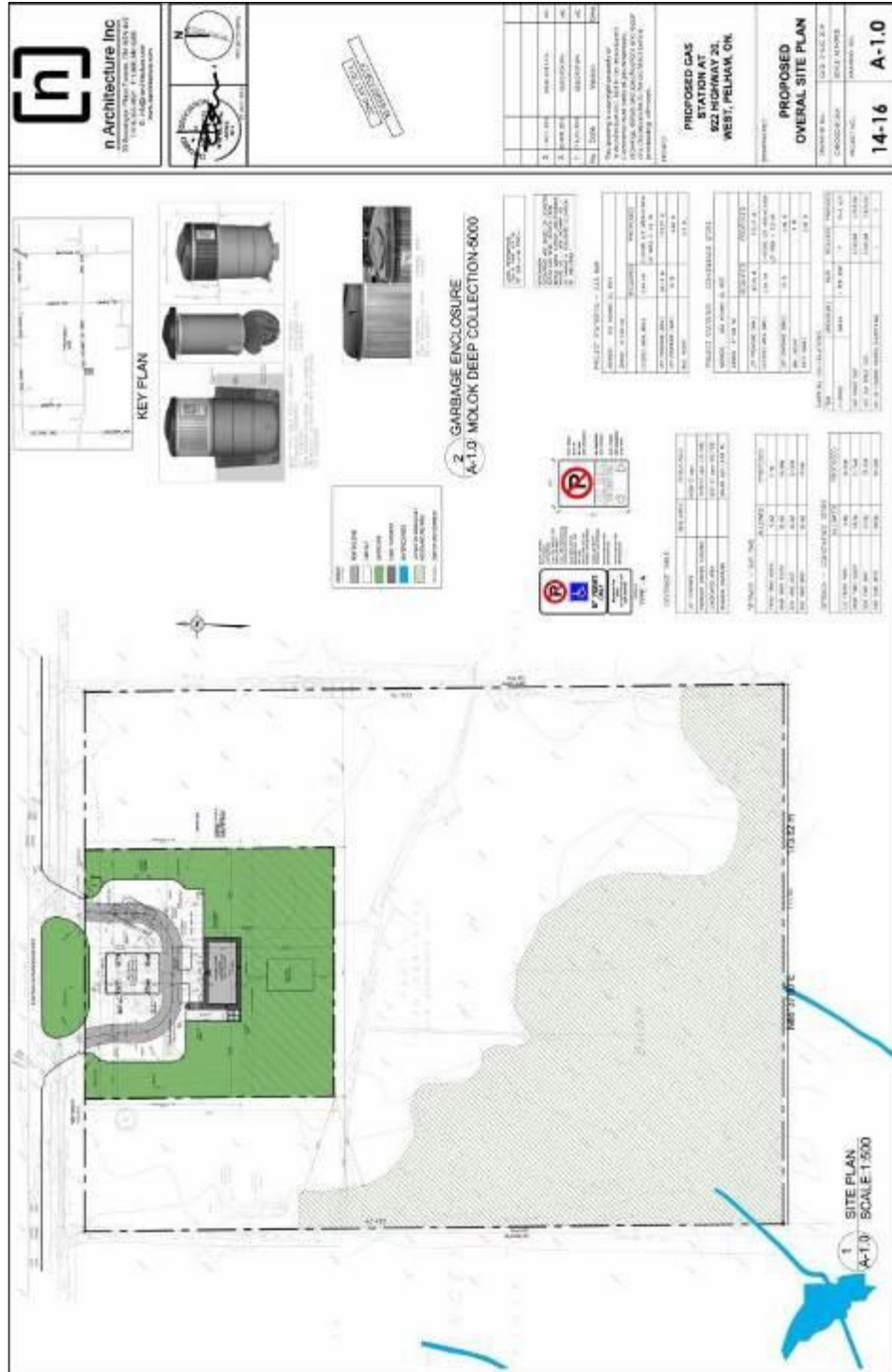
PIN 64030-0010 (LT)

Part Lot 18 Concession 8 Pelham, Part 1, 59R-4140; Pelham

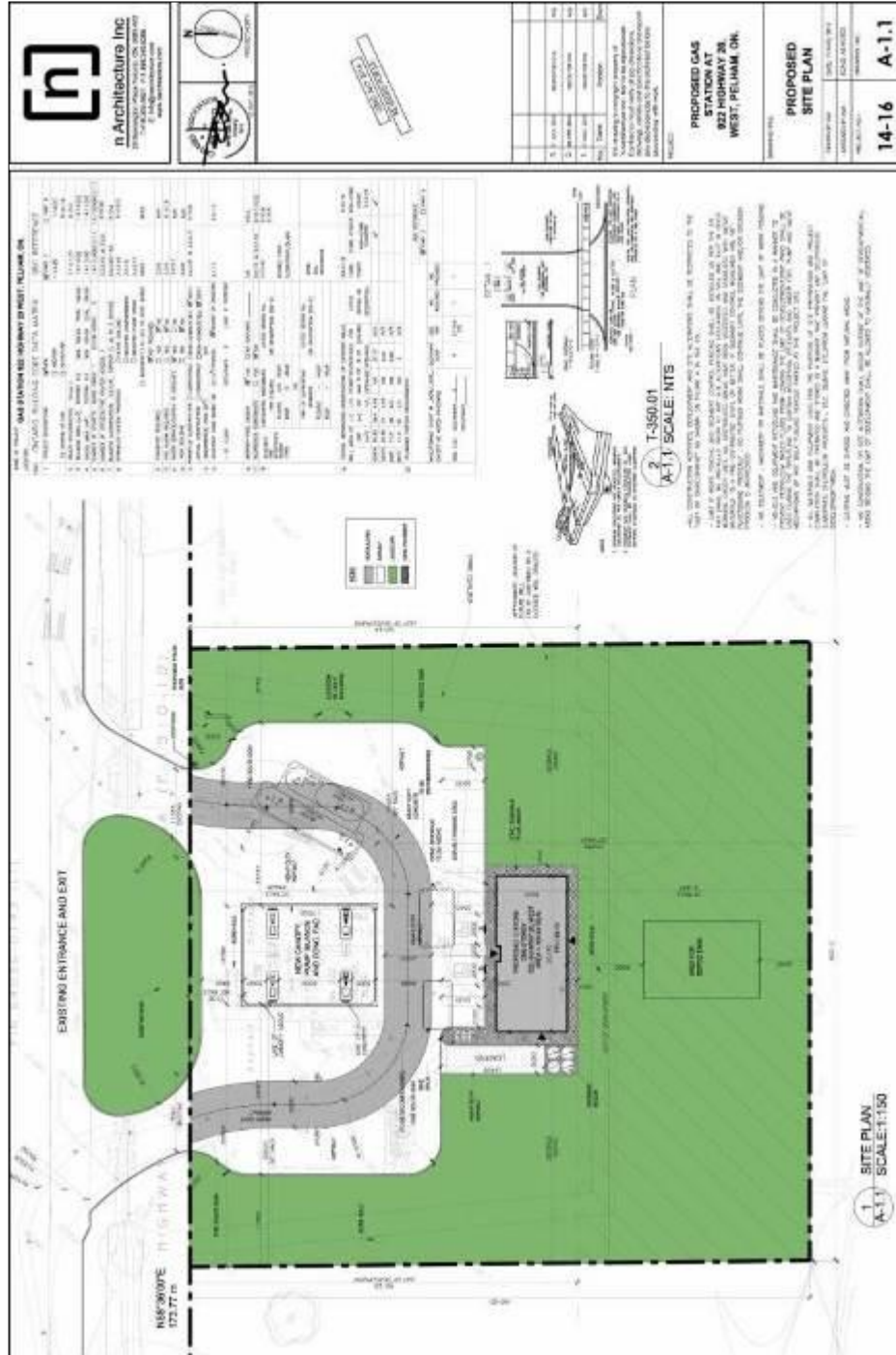
# SCHEDULE 'B'

## SITE PLAN

Proposed Overall Site Plan, A-1.0, prepared by n Architecture Inc.,  
dated August 17, 2015, revised July 11, 2016.



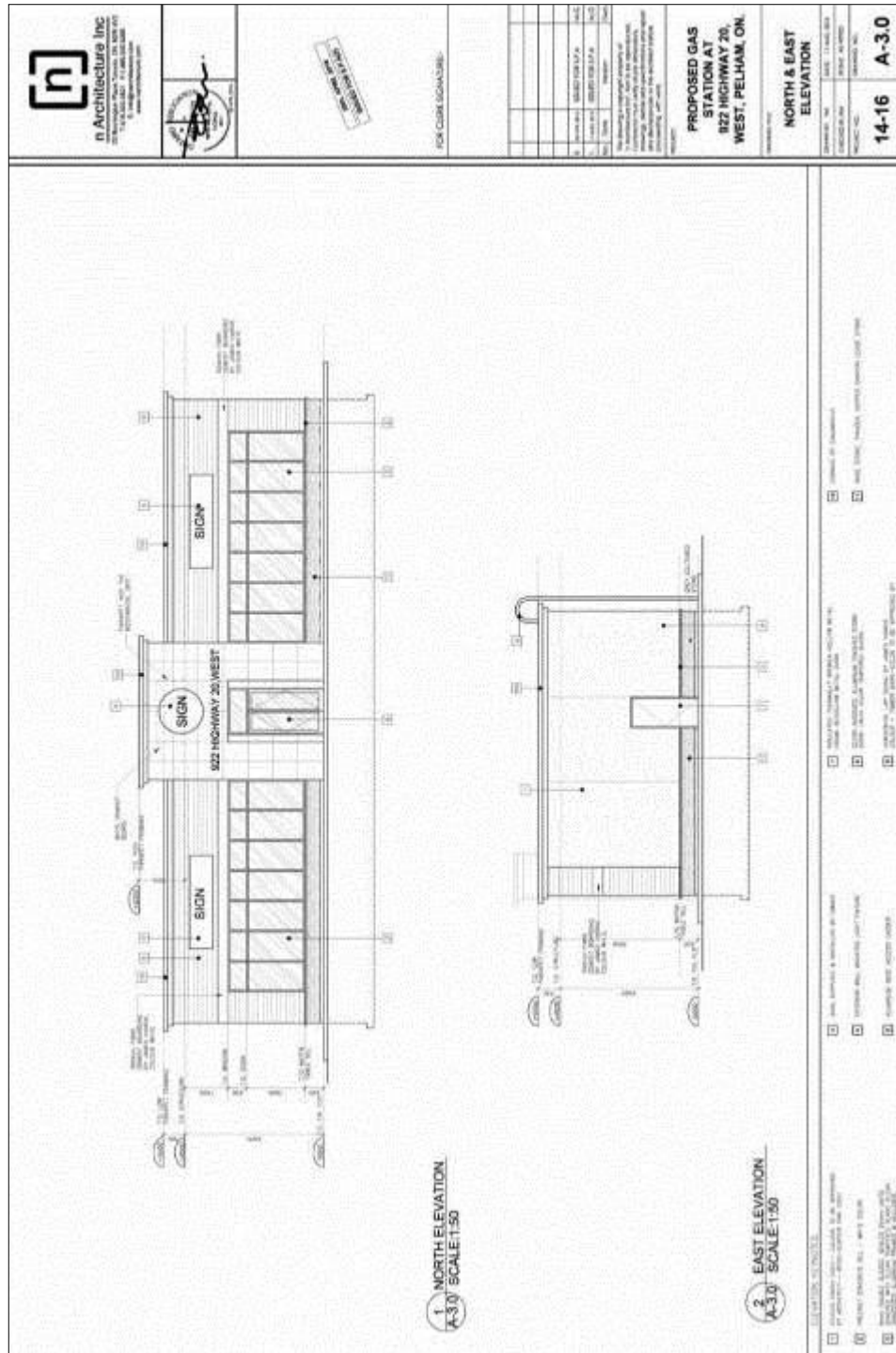
Proposed Site Plan, A-1.1, prepared by n Architecture Inc.,  
 dated August 17, 2015, revised July 11, 2016.



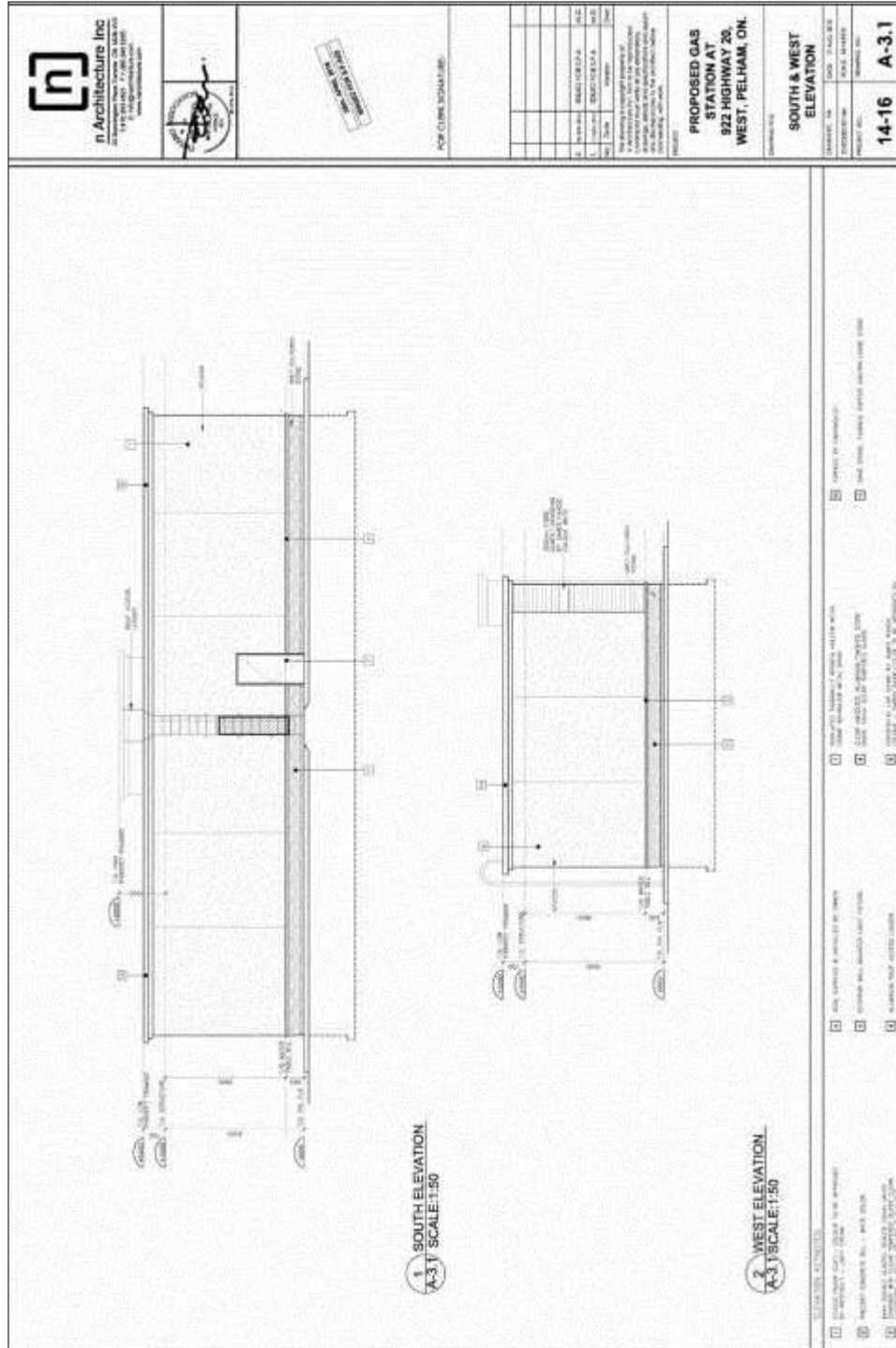
# SC H E D U L E 'C'

## ELEVATIONS

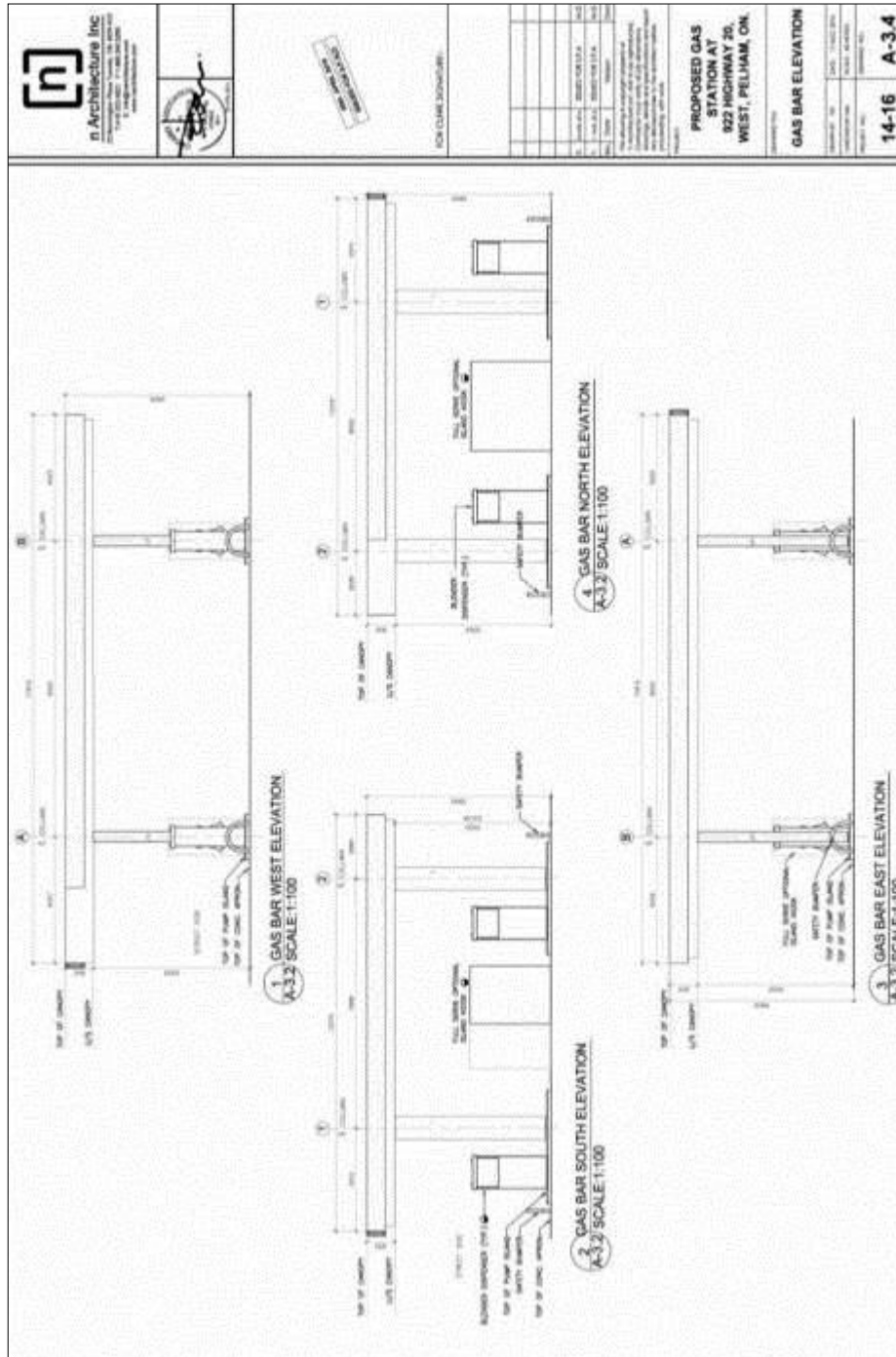
North & East Elevation, A-3.0, prepared by n Architecture Inc.,  
dated August 17, 2015, revised April 5, 2016.



South & West Elevation, A-3.1, prepared by n Architecture Inc.,  
 dated August 17, 2015, revised April 5, 2016.



Gas Bar Elevation, A-3.4, prepared by n Architecture Inc.,  
 dated August 17, 2015, revised April 5, 2016.







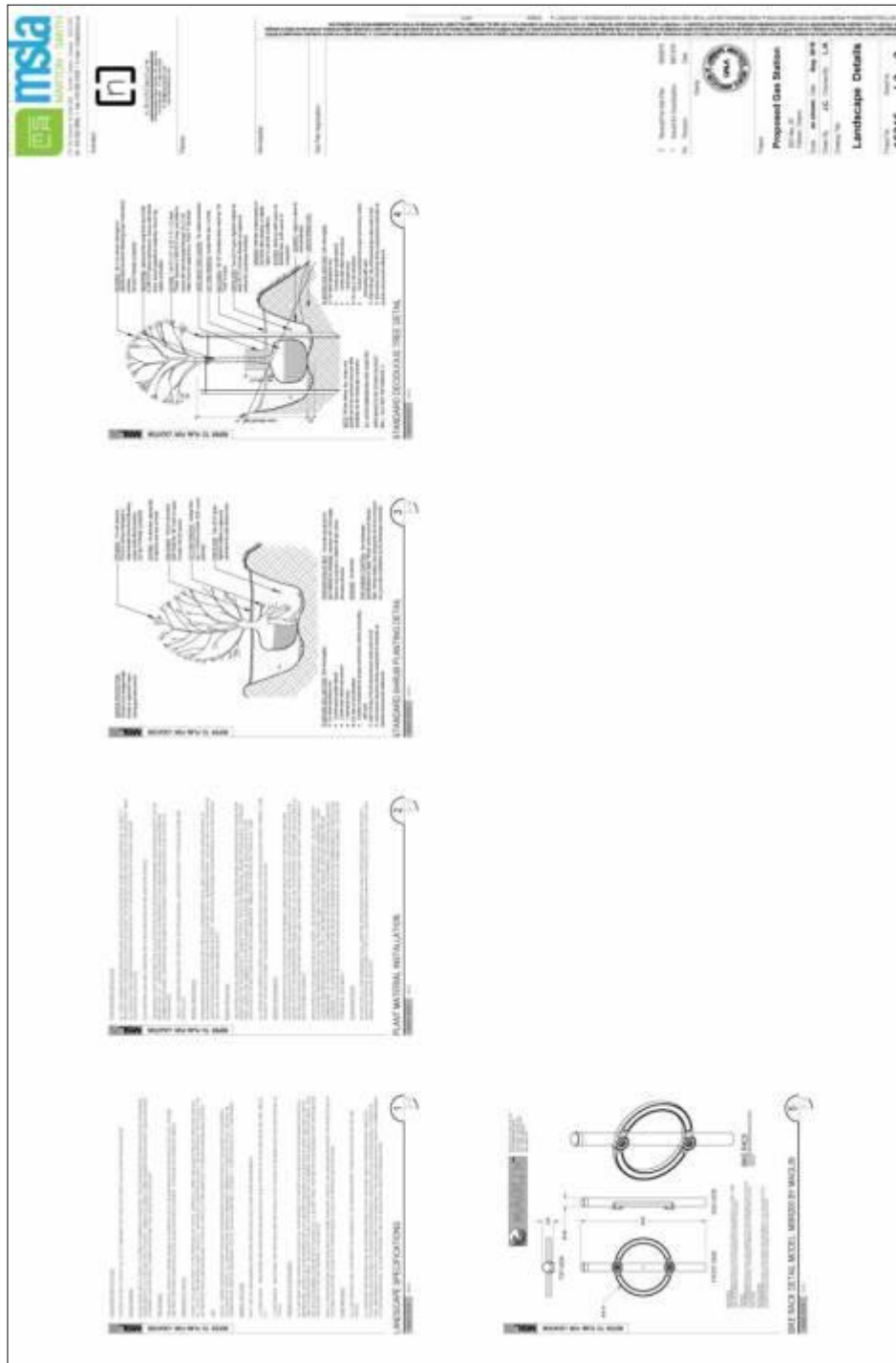








Landscape Details, L2 of 2, prepared by MSLA Marton Smith Landscape Architects, dated August, 2015, revised May 6, 2015.



## SCHEDULE 'F'

### COST ESTIMATES FOR FACILITIES AND WORKS

The on-site work cost estimates are as follows:

<u>Item</u>	<u>Cost Estimate</u>
<b>Site Works</b>	
Grading	\$3 000.00
Granular Material	\$30 000.00
Curbing / Sidewalks	\$16 800.00
Parking / Loading / Driveway Surface (i.e. asphalt/other)	\$24 000.00
Stormwater Management Facilities (including storm sewers)	\$37 920.00
Sewer Facilities	\$20 000.00
Any Other Site Specific Works (i.e. guardrails, retaining wall, etc.)	\$5 000.00
<b>Landscaping</b>	
Excavation for Landscaping Purposes	\$3 000.00
Topsoil	\$3 186.00
Seeding/Sodding	\$4 779.00
Shrub and Groundcover Planting (including annuals and perennials)	\$3 870.00
Hard Landscaping Elements (i.e. interlocking, stone, concrete, etc.)	\$6 370.00
Planting Soil/ Mulch	\$730.00
Fencing (including noise attenuation)	
Outdoor Furnishings (i.e. bike rings)	\$1 050.00
Other	
<b>Sub-Total</b>	<b>\$159 705.00</b>
Contingency and Engineering (15%)	\$23 955.75
<b>Sub-Total</b>	<b>\$183 660.75</b>
HST (13%)	\$23 875.90
<b>TOTAL</b>	<b>\$207 536.65</b>

In accordance with Section 14 (a) of this Agreement, that the estimated cost for completion shall be in the amount of One Hundred Eighty-Three Thousand Six Hundred and Sixty Dollars and Seventy-Five Cents (**\$183 660.75**) excluding taxes.