SITE PLAN AGREEMENT

THIS PAGE IS TO BE REPLACED
WITH FIRST PAGE CONTAINING
PARTICULARS OF REGISTRATION

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SITE PLAN AGREEMENT

B E T W E E N:

THE CORPORATION OF THE TOWN OF ERIN

- and -

DEVELOPER

I N D E X

Page No.

ARTICLE 1 - IDENTIFICATION OF LANDS APPROVED FOR DEVELOPMENT

1.1 Legal description 3

ARTICLE 2 - IDENTIFICATION OF PLAN(S)

2.1 Approved plan(s) 3
2.2 Filing of plan(s) 3

ARTICLE 3 - SPECIAL REQUIREMENTS

3.1 Additional requirements and provisions 4

ARTICLE 4 - IMPLEMENTATION OF PLAN(S)

4.1 Developer's covenant to implement plan(s) 4
4.2 Town's right of entry 4
4.3 Stop work orders 4
4.4 Notice to comply 4

ARTICLE 5 - FINANCIAL ASSURANCES

5.1 Security requirement - public lands 4
5.2 Security requirement - subject lands 4
5.3 Town's right to draw upon security 5
5 Release of security 5

ARTICLE 6 - INDEMNIFICATION

6.1 Developer's agreement to indemnify 5

ARTICLE 7 - LIABILITY INSURANCE

7.1 When liability insurance required 5

ARTICLE 8 - TIME LIMITS FOR COMPLETION

8.1 Consequences of delay 5

ARTICLE 9 - MAINTENANCE OBLIGATIONS

9.1 General covenant to maintain and repair 5
9.2 Specific maintenance obligations 5

ARTICLE 10 - CONVEYANCES AND EASEMENTS

10.1 Developer's obligation to provide 6

ARTICLE 11 - ENCUMBRANCERS' CONSENT AND ACKNOWLEDGMENT

11.1 All encumbrancers to consent prior to permit issuance 6

ARTICLE 12 - REGISTRATION OF AGREEMENT

12.1 Registration prior to permit issuance *6*

ARTICLE 13 - GENERAL PROVISIONS

13.1 Notices 6
13.2 Town costs recoverable like taxes 6
13.3 Waiver 8
13.4 Covenants as restrictive covenants 8
13.5 No permit if money owed to Town 8
13.6 Number and Gender 8
13.7 Headings and Index 8
13.8 No assignment without consent 8
13.9 Ultra vires terms 8
13.10 Developer's acceptance of agreement 8
13.11 Enurement 8

SCHEDULE "A" Description of Lands 9
SCHEDULE "B" Description of Approved Plan(s) 9
SCHEDULE "C" SPECIAL ADDITIONAL REQUIREMENTS 9

SITE PLAN AGREEMENT

THIS AGREEMENT made this March 21, 2017 pursuant to Section 41 of the *Planning Act*, R.S.O. 1990, as amended.

B E T W E E N:

THE CORPORATION OF THE TOWN OF ERIN.
(hereinafter called the "**Town**")

PARTY OF THE FIRST PART

- and -

Timpano Investment Properties LTD.
(hereinafter called the "**Developer**")

PARTY OF THE SECOND PART

W H E R E A S:

A. The Developer is, the owner of the property described in Schedule "A" to this Agreement which property is the subject matter of an application for Site Plan Approval pursuant to Section 41 of the *Planning Act*;

B. The property is within a designated site plan control area and the Town requires that the Developer as the Developer enter into a written agreement to identify approved plans, drawings and specifications and to require that the property be developed and maintained in accordance with the approved documents.

NOW THEREFORE this Agreement witnesseth that in consideration of the premises, other good and valuable consideration and the sum of Two Dollars ($2.00) of lawful money of Canada, now paid by each of the parties hereto to each of the other parties hereto (the receipt whereof is hereby acknowledged), the parties agree as follows:

ARTICLE 1 - IDENTIFICATION OF LANDS APPROVED FOR DEVELOPMENT

1.1 Legal description

The Developer's property which is the subject matter of this agreement is described in Schedule "A" attached (herein called "the Lands").

ARTICLE 2 - IDENTIFICATION OF PLAN(S)

2.1 Approved plan(s)

The Developer in making application for site plan approval has agreed to provide to the satisfaction of the Town, plans showing the location of all buildings, structures, facilities, works and site elevations and services existing and proposed and, where required, drawings showing plan, elevation and cross-section views for each building or structure and to include all matters as contemplated by section 41 of the *Planning Act*. The plan(s) and drawings described in Schedule "B" [hereinafter called the "Approved Plan(s)] shall be deemed to have been approved by the Town upon execution and registration of this Agreement.

2.2 Filing of plan(s)

Three (or such greater number as shall be requested by the Town) copies of the Approved Plan(s) shall be filed with the Town's Planning Coordinator.

ARTICLE 3 - SPECIAL REQUIREMENTS

3.1 Additional requirements and provisions

Notwithstanding the approval by the Town of the plans and drawings described in Schedule "B" the parties agree that the additional requirements referred to in Schedule "C", (if any) shall apply to the development of the Lands in addition to the information shown on the Approved Plan(s) and in the event of a conflict between the provisions of the Approved Plans and Schedule “C” then the provisions of the latter shall prevail.

ARTICLE 4 - IMPLEMENTATION OF PLAN(S)

4.1 Developer's covenant to implement plan(s)

The Developer covenants and agrees that the buildings, structures and all of the facilities, works and features illustrated on the Approved Plan(s) and the additional requirements set out in Schedule "C", if any, shall be constructed, installed, performed or provided as the case may be at the Developer's sole risk and expense and to the satisfaction of the Town.

4.2 Town's right of entry

The Town shall have a right of entry upon the Lands, through employees, agents or contractors to ensure that the provisions of this agreement are complied with at all times.

4.3 Stop work orders

The Town's Chief Building Official shall treat a breach of the terms of this Agreement or covenants contained herein in a manner similar to a breach of the Town's Building By-law or the Ontario Building Code and may issue a stop work order until such breach is rectified.

4.4 Notice to comply

In the event that the Town gives written notice to the Developer or the then-registered owner of the Lands that it has failed to construct, provide or maintain any matter or thing illustrated on the Approved Plan(s) or required by this Agreement, and if the Developer or then-registered owner fails to construct, provide or maintain such required matter or thing within thirty (30) days of the date that such notice is mailed by prepaid registered mail to such person at the address for such person set out in Article 13.1 or as shown on the most-recently revised assessment roll then the Town may enter upon the Lands, through employees, agents or contractors and construct, provide or maintain such matter or thing which had been specified in the notice at the expense of then-registered owner of the Land.

ARTICLE 5 - FINANCIAL ASSURANCES

5.1 Security requirement - subject lands

Prior to the issuance of a building permit for buildings on the Lands the Developer shall supply the Town with an irrevocable standby Letter of Credit from a chartered Canadian bank as described in Schedule “C”, which shall be in a form and amount satisfactory to the Town sufficient to guarantee the satisfactory completion of the work and facilities to be provided on the Lands pursuant to the Approved Plan(s) and this Agreement and further guaranteeing the materials and workmanship of the work and facilities. The Letter of Credit shall further guarantee payment to the Town of all inspection or other costs that the Town may incur in connection with such works or the preparation and implementation of this Agreement.

5.2 Town's right to draw upon security

In the event that the Developer fails to comply with a notice given to him pursuant to Article 4.4 hereof the Town shall be at liberty to draw upon the security provided to it pursuant to this Article to pay for the cost of any work undertaken by it or on its behalf pursuant to such notice and to pay the costs incurred by the Town in the administration and implementation of this Agreement.

5.3 Release of Security

The security provided under this Article, or the amount thereof remaining after draws referred to in Article 5.2, shall be delivered or repaid to the Developer after all of the works have been completed to the satisfaction of the Town.

ARTICLE 6 - INDEMNIFICATION

6.1 Developer's agreement to indemnify

The Developer agrees on behalf of itself, its successors and assigns to save harmless and indemnify the Town and its officials, employees and agents, from all losses, damages, costs, charges and expenses which may be claimed or recovered against the Town, or its officials, employees and agents, as the case may be, by any person or persons arising either directly or indirectly as a result of any action taken by the Developer pursuant to or implementing the terms of this Agreement.

ARTICLE 7 - LIABILITY INSURANCE

7.1 When liability insurance required

In the event that work is to be performed by the Developer, its servants, agents or contractors on lands owned by the Town the Developer shall supply the Town with written evidence of a current comprehensive liability insurance policy in form satisfactory to the Town, holding the Town harmless from any and all claims for damages, injuries or losses in connection with the work done by or on behalf of the Developer, its servants, agents or contractors on or adjacent to the Lands in an amount of not less than Two Million ($2,000,000.00) Dollars inclusive. The Town is to be named as an insured party in the said policy.

ARTICLE 8 - TIME LIMITS FOR COMPLETION

8.1 Consequences of delay

In the event that a building permit is not issued and construction commenced within one year from the date of this Agreement, or if the works and facilities contemplated in the Approved Plan(s) are not fully completed within three years from the date of this Agreement, the conditions of approval and provisions of this Agreement will be reviewed and may be subject to revision by the Town by notice in writing to the Developer which revisions shall be accepted and implemented by the Developer.

ARTICLE 9 - MAINTENANCE OBLIGATIONS

9.1 General covenant to maintain and repair

The Developer, for itself and its successors and assigns, agrees that the buildings, structures and all of the facilities, works and features illustrated on the Approved Plan(s) shall be maintained and kept in good repair at the Developer's sole risk and expense and to the satisfaction of the Town and that the grading of the lands and the storm drainage facilities shall not be altered from that illustrated on the Approved Plans. In the event Town gives written notice to the Developer, or the then-registered owner of the Lands, to undertake maintenance of or repair to any matter or thing required by this Agreement, and if the Developer or then registered owner fails to undertake such required maintenance or repair within thirty (30) days of the date that such notice is mailed by prepaid registered mail to such person at the address for such person set out in Article 13.1 or as shown on the most-recently revised assessment roll then the Town may enter upon the Lands, through employees, agents or contractors and perform such maintenance or repairs which had been specified in the notice at the expense of then-registered owner of the Land.

9.2 Specific maintenance obligations

The Developer, for itself and its successors and assigns, covenants with the Town as follows:

(a) that it shall at all times maintain the installations, structures and facilities illustrated on the Approved Plan(s) and described in Schedule "C", if applicable, in good condition and repair;

(b) that at any time or times that the building(s) on the Lands are occupied or are in use it shall ensure that all driveways, parking spaces and access points are cleared of snow within twelve (12) hours of any major snow storm (which shall be deemed to be an accumulation in excess of 5cm of snow in any twenty-four hour period) and that if snow is stored on the Lands it shall ensure that it is stored in a location which does not reduce the number of parking spaces illustrated on the Approved Plan(s);

(c) that it shall ensure that all required signs, parking spaces and lane markings identified on the Approved Plan(s) are properly painted and maintained and that it shall ensure that each such sign and parking space or lane is clearly delineated at all times.

In the event that the Developer, or then registered owner of the Lands, is in breach of any of the covenants in this Article then the provisions of Article 13.2 hereof shall apply.

ARTICLE 10 - CONVEYANCES AND EASEMENTS

N/A.

ARTICLE 11 - ENCUMBRANCERS' CONSENT AND ACKNOWLEDGMENT

11.1 All encumbrancers to consent prior to permit issuance

Not applicable.

ARTICLE 12 - REGISTRATION OF AGREEMENT

12.1 Registration prior to permit issuance

This Agreement will be registered against the title to the Lands and the Developer will pay for the cost of registration.

ARTICLE 13 - GENERAL PROVISIONS

13.1 Notices

Any notice, invoice or other writing required or permitted to be given pursuant to this agreement (including notice of a change of address) shall be deemed to have been given if delivered personally to the party or to an officer of the applicable corporation or if delivered by prepaid first class mail, on the third (3rd) day after mailing. The address for service of each of the parties is as follows:

Developer: Timpano Investment Properties LTD
C/O Albert Timpano
7108 Gablehurst Crescent
Mississauga, Ontario
L5W 1E7

Town: The Corporation of the Town of Erin
5684 Trafalgar Rd.
Hillsburgh, Ontario
N0B 1Z0

To any other person: at the address shown for such person in the last revised assessment roll or the latest address for such person as shown in the Town's records.

13.2 Town costs recoverable like taxes

Notwithstanding any other remedy available to the Town, the Developer acknowledges and agrees that any expense incurred by the Town in connection with the approval of the Approved Plans or the preparation, registration, administration, implementation and enforcement of this Agreement, and specifically the maintenance obligations in Article 9 and Schedule “C”, shall be recovered by the Town from the Developer as a debt owing to the Town.

13.3 Waiver

It is expressly understood and agreed that the remedies of the Town under this Agreement are cumulative and the exercise by the Town of any right or remedy for the default or breach of any term, covenant, condition or agreement herein contained shall not be deemed to be a waiver or alter, affect or prejudice any other right or remedy or other rights or remedies, to which the Town may be lawfully entitled for the same default or breach; and any waiver by the Town of the strict observance, performance or compliance by the Developer of or with any term, covenant, condition or agreement herein contained, or any indulgence granted by the Town to the Developer shall not be deemed to be a waiver of any subsequent default or breach by the Developer, nor entitle the Developer to any similar indulgence heretofore granted.

13.4 Covenants as restrictive covenants

So far as may be, the covenants of the Developer herein shall be restrictive covenants running with the land for the benefit of the adjoining lands of the Town or such of them as may be benefitted thereby and shall be binding on the Developer, and its successors and assigns as owner and occupier of the said land from time to time.

13.5 No permit if money owed to Town

Not applicable.

13.6 Number and Gender

It is agreed between the parties hereto that the appropriate changes in the number and gender shall be implied where the context of this Agreement and any schedules hereto so require in order that the Agreement and any part thereof shall be construed to have its proper and reasonable meaning.

13.7 Headings and Index

All headings and sub-headings and the Index within this agreement are incorporated for ease of reference purposes only and do not form an integral part of the Agreement.

13.8 No assignment without consent

The Developer shall not assign this Agreement until all works and facilities required by this Agreement have been completed without the prior written consent of the Town, which consent will not be unreasonably withheld.

13.9 Ultra vires terms

If any term of this Agreement shall be found to be Ultra Vires of the Town, or otherwise unlawful, such term shall conclusively be deemed severable and the remainder of this Agreement *mutatis mutandis* shall be and remain in full force and effect.

13.10 Developer's acceptance of agreement

The Developer shall not call into question, directly or indirectly, in any proceedings whatsoever in law or in equity or before any administrative tribunal the right of the Town to enter into this Agreement and to enforce each and every term of this Agreement and this Agreement may be pleaded as an estoppel against the Developer in any such proceedings.

13.11 Enurement

This Agreement shall enure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this agreement under the hand of their duly authorized signing officers.

SIGNED, SEALED AND DELIVERED	)	Timpano Investment Properties LTD.
	)	
in the presence of		
	)	
_____	)	_____
Witness Signature	)	Name:
	)	
_____	)	_____
Witness Signature	)	Name:
	)	
	)	I/We have the authority to bind
	)	the Corporation
	)	
	)	THE CORPORATION OF THE
	)	TOWN OF ERIN
	)	_____
	)	Allan Alls
	)	Mayor
	)	
	)	_____
	)	Dina Lundy
	)	Clerk
	)	
	)	We have the authority to bind
	)	the Corporation.

SCHEDULE "A"

DESCRIPTION OF DEVELOPER'S LANDS

Part of Block 5, Registered Plan 814, Formerly in the Village of Erin, Now in the Town of Erin, County of Wellington

SCHEDULE "B"

DESCRIPTION OF APPROVED PLANS

A. Site Plan Drawings prepared by Van Harten Surveying Inc. most recently revised on the 29th day of November, 2016, (Revision No.1)

SCHEDULE "C"

ADDITIONAL REQUIREMENTS (in addition to matters shown on Approved Plan(s)

1. That the Developer deposit securities ($40,150.00) with the Finance Department, in a form meeting the Finance Department's requirements, covering full costs of landscaping, all paving, curbing, drainage and storm sewers, stormwater management facilities, installation and maintenance of erosion and siltation control measures, tree protection, boulevard restoration, roof top mechanical screening, garbage enclosures and site restoration.
2. The proposed use of the property is to provide various truck related services. These vehicles will be parked on site at various times when not in service. Any dump trucks will be empty and there will be no disposal of material on-site.