

THE CORPORATION OF THE VILLAGE OF ST. CLAIR BEACH

BY-LAW NO. 2078

BEING A BY-LAW to authorize the execution of an agreement made between the Corporation of the Village of St. Clair Beach, 388257 Ontario Ltd. and Newmas Holdings Inc.

WHEREAS, The Corporation of the Village of St. Clair Beach, is desirous of entering into an Agreement with 388257 Ontario Ltd., and Newmas Holdings Inc., with respect to the development of a Burger King Restaurant in the St. Clair Beach Shopping Centre.

NOW THEREFORE, the Council of The Corporation of the Village of St. Clair Beach enacts as follows :

1. THAT the Village Corporation approve and enter into and execute an Agreement made between The Corporation of the Village of St. Clair Beach, 388257 Ontario Ltd., and Newmas Holdings Inc., a copy of which Agreement is attached hereto and marked as Schedule "A" to this by-law.
2. THAT the Reeve and the Clerk are hereby authorized and directed to execute on behalf of The Corporation of the Village of St. Clair Beach, the Agreement attached hereto as Schedule "A" and such other documents in order to give effect to the said Agreement.

READ a first, second, third time and finally passed this 1994 09 12.


Reeve


Clerk



Province of Ontario

Document General

Form 4 — Land Registration Reform Act

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1289303

REGISTRAR OF REGISTRATION

08 14 49 01 46

94 10 14 20 20

Additional: See Schedule

New Property Identifiers

Executions

Additional: See Schedule

(1) Registry Land Titles Page 1 of 23 pages

(2) Property Identifier(s) Block Property

Additional: See Schedule

(3) Nature of Document

(4) Consideration Dollars \$

SITE PLAN CONTROL AMENDING AGREEMENT

(5) Description

Part of Lot 1, Concession West of the Pike Creek, containing by admeasurement the sum of 18.192 acres be the same more or less

Village of St. Clair Beach
County of Essex

more particularly described in Schedule "I" attached hereto

(6) This Document Contains: (a) Redescription New Easement Plan/Sketch (b) Schedule for: Description Parties Other

Continued on Schedule

(8) This Document provides as follows:

See schedule attached

C-11-28
 94/11/28
 ✓

(9) This Document relates to instrument number(s)

885423, 885424, 1012083

(10) Party(ies) (Set out Status or Interest)

Name(s)

THE CORPORATION OF THE VILLAGE OF ST. CLAIR BEACH (Municipality)

by its solicitor Chris M. Bondy

Signature(s)

Chris M. Bondy

Date of Signature

Y M D

1994 10 14

(11) Address for Service

13677 St. Gregory's Road, St. Clair Beach, Ontario N8N 3E4

(12) Party(ies) (Set out Status or Interest)

Name(s)

388257 ONTARIO LIMITED (Owner)

NEWMAS HOLDINGS INC.

(Party of the Third Part)

Signature(s)

Date of Signature

Y M D

(13) Address for Service

11 Polson Street, Toronto, Ontario M5A 1A4

(14) Municipal Address of Property

(15) Document Prepared by:

Christopher Bondy/Richard Wolf
Suite 100
72 Talbot Street North
Essex, Ontario
N8M 1A2

Fees and Tax

Registration Fee

Total

507

SCHEDULE "1"LEGAL DESCRIPTION
(St. Clair Beach Property)

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Village of St. Clair Beach, County of Essex and Province of Ontario, being composed of Part of Lot 1, Concession West of the Pike Creek, containing by a measurement the sum of 18.192 acres be the same more or less, more particularly described as follows:

Bearings are astronomic and are referred to those as shown on a Plan of Record of Tecumseh Road registered in the Land Registry System at the Land Registry Office for Essex (No. 12) as Instrument No. 129011;

COMMENCING at a point in the Northern limit of said Tecumseh Road, distant 190.00 feet measured Easterly in that limit from its intersection with the widened Eastern limit of Manning Road (Townline Road between the Town of Tecumseh and the Village of St. Clair Beach), said widening being registered in the aforementioned Land Registry Office as Instrument No. 199717;

THENCE South 85 degrees, 47 minutes East and following the Northern limit of said Tecumseh Road, 76.36 feet to a bend in said limit;

THENCE South 86 degrees, 07 minutes East and following the last mentioned limit, 490.37 feet to a found standard iron bar;

THENCE North 2 degrees, 13 minutes, 10 seconds East, 1,107.82 feet to a point, said point being the South-Eastern corner of Part 2 on a Plan deposited in the aforementioned Land Registry Office as Plan 12R-4183;

THENCE North 87 degrees, 34 minutes, 50 seconds West and following the Southern limit of said Part 2, Plan 12R-4183, 759.53 feet to the South-Western corner thereof, said corner being in the said widened Eastern limit of Manning Road;

THENCE South 2 degrees, 03 minutes West and following the last mentioned limit, 886.29 feet more or less to a point, said point being distant 209.38 feet measured Northerly along the last mentioned limit from its intersection with the said Northern limit of Tecumseh Road;

THENCE South 87 degrees, 59 minutes, 20 seconds East, 197.86 feet to a point;

THENCE South 4 degrees, 13 minutes West, 207.86 feet more or less to the POINT OF COMMENCEMENT.

SAVE AND EXCEPT that portion of the said lands conveyed to the Corporation of the Village of St. Clair Beach, and designated as PART 1 on Plan of Survey of Record deposited in the said Registry Office as Plan 12R-7381;

SUBJECT TO an easement in favour of Union Gas Limited over part of the said lands designated as PART 1 on Plan of Survey of Record deposited in the said Registry Office as Plan 12R-7411;

AND SUBJECT TO an easement for Roof Top Agreement in favour of Union Gas Limited over PARTS 2, 3, 4 and 5 on a Plan of Survey of Record deposited in the said Registry Office as Plan 12R-7411.

SITE PLAN CONTROL AMENDING AGREEMENT

BETWEEN:

THE CORPORATION OF THE VILLAGE OF ST. CLAIR BEACH

-and-

388257 ONTARIO LIMITED

-and-

NEWMAS HOLDINGS INC.

PREPARED BY:

BONDY, BELOWUS
Barristers & Solicitors
72 Talbot Street North, Suite 100
Essex, Ontario
N8M 1A2

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SITE PLAN CONTROL AMENDING AGREEMENT

THIS AGREEMENT made in triplicate this 12th ^{OCTOBER}~~September~~, 1994.

B E T W E E N:

THE CORPORATION OF THE VILLAGE OF ST. CLAIR BEACH,
hereinafter called the "Municipality"

OF THE FIRST PART

-and-

388257 ONTARIO LIMITED,
hereinafter called the "Owner of the Land"

OF THE SECOND PART

-and-

NEWMAS HOLDINGS INC.
hereinafter called the "Party"

OF THE THIRD PART

HEREINAFTER collectively referred to as the "Parties"

RECITALS

WHEREAS the Owner owns certain lands situated in the corporate limits of the Municipality, said Lands being more particularly described in Schedule "C" (the Total Lands);

AND WHEREAS the Owner wishes to develop a portion of those Lands for use as a restaurant which Lands are more particularly described in Schedule "A" (the Subject Lands);

AND WHEREAS by Agreement dated August 11th, 1981 and registered on July 22nd, 1983 as Instrument No. 885423 and Instrument No. 885424 (the 1983 Agreement) which Agreement was amended by Agreement dated March 23rd, 1987 and registered on June 3rd, 1987 as Instrument No. 1012083 (the 1987 Agreement) all of which are hereinafter referred to as the Existing Site Plan Agreement, the Owner of the Lands entered into a Site Plan Control Agreement which respect to the Total Lands;

AND WHEREAS the Parties wish to amend the Existing Site Plan Agreement by:

- (a) Deleting Schedule "B" from the 1987 Agreement and adding Schedule "B" annexed hereto in its place; and by making provision for the works required to bring the existing development into conformity with the Amended Site Plan; and by
- (b) Amending the Existing Agreement as it applies to the subject lands only as set out in Part B contained herein.

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AND WHEREAS the Parties wish to otherwise reconfirm the provisions of said Existing Site Plan Agreement;

AND WHEREAS the Municipality has enacted By-Law 1098, being a by-law designating the Land as a site plan control area, pursuant to Section 41(2) of the Planning Act, RSO, 1990, c.P.13, as amended;

AND WHEREAS where site plan control is in effect, Section 41 of the Planning Act, as amended, states that the approval of plans by Municipal Council is required prior to development of the Lands, and that the Municipality may require the Owners to enter into an Agreement with the Municipality respecting certain prescribed matters;

AND WHEREAS as a condition of agreeing to development, the Municipality has requested the Owner enter into a Site Plan Agreement;

AND WHEREAS the Owner covenants and agrees to develop the Lands in accordance with this agreement;

AND WHEREAS the proposed development of the Lands is in accordance with the Official Zoning Plan and Zoning By-Law of the Municipality as of the date of this Agreement;

WITNESETH that in consideration of these presents, and other good and valuable consideration, the Parties hereto mutually covenant, promise and agree as follows:

PART A

THE SITE PLAN

ARTICLE 1

1.1 THE SITE PLAN

The Parties hereto agree that Schedule "B" annexed hereto shall replace Schedule "B" in the 1987 Agreement and shall, for purposes of the Existing Site Plan Agreement as amended herein (the Site Plan Agreement) be considered to be "The Site Plan". The Owner agrees to forthwith upon execution of this Agreement proceed to conduct any and all work required upon the Total Lands (save and except the Subject Lands) as are required to bring those lands into conformity with the Amended Site Plan contained in Schedule "B". The Parties agree that those works shall be conducted in accordance with, and be governed by, the Existing Site Plan Agreement.

The Parties acknowledge that those parts of the Site Plan marked "future" are for convenience only and do not form part of this Agreement and further that construction of any of those buildings or other features would require further amendments to the Site Plan Agreement, further Municipal approval, and such other items as the Municipality in its sole discretion may require.

1.2 SIGNS

Paragraph 17.2(l) of the 1983 Agreement as amended by Paragraph 7 of the 1987 Agreement is further amended to allow for four (4) pylon-type signs instead of three (3) pylon-type signs.

1.3 DAYLIGHT CORNER

The Owner agrees to convey that part of Lot 1, West of Pike Creek, more particularly

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described as Part 2, 12R-12264 free of encumbrances and at no expense to the Municipality, forthwith upon execution of this Agreement for use by the Municipality as a Daylight Corner or as soon thereafter as is practical. The parties agree that the Owner shall not be allowed any further permits for work or works upon the total lands, save and except those to be issued pursuant to this agreement, prior to such conveyance.

1.4 CONFIRMATION

The Parties acknowledge that this Agreement is an amendment to the Existing Site Plan Agreement.

The Parties confirm the terms of the Existing Site Plan Agreement except as amended herein and further agree that the Existing Site Plan Agreement continues to affect the Total Lands described in Schedule "C" save and except the Subject Lands described in Schedule "A" which are governed by Part B of this amendment.

PART B

THE SUBJECT LANDS

The Parties agree that the existing Agreement shall be amended, as it applies to the subject lands only, to read as follows:

ARTICLE 2

THE OWNER'S COVENANTS

2.1 OWNER AGREES

The Owner makes the following covenants, all of which shall be carried out at the Owner's expense:

2.1.1 Owner to Provide

The following facilities, works or matters shall be provided by the Owner to the satisfaction of and at no expense to the Municipality: all buildings, landscaping, fencing, parking, storage and access areas, lighting, walkways, garbage disposal facilities, grading and provision for storm, surface and waste water in accordance with the attached site plan set out in Schedules B (the Site Plan) and in accordance with all the applicable provisions of the Municipality's By-Laws;

2.1.2 Construction and Maintenance

The Owner agrees that the development of the Subject Lands shall be constructed and forever maintained in accordance with the Site Plan;

2.1.3 The Development

The Owner shall construct, install and provide the facilities, services and works required in and for the development at its own expense and in accordance with the Site Plan and other provisions of the Agreement.

All plans and, construction, installation, facilities and works shall be completed in accordance with:

- a) Sound engineering practice;

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b) The criteria laid down by governmental authorities having jurisdiction including without limiting the generality of the foregoing the Municipality, the St. Clair Beach Hydro Electric Commission, the Tecumseh Public Utilities Commission, the Ministry of the Environment and Energy, the Ministry of Transportation and the Essex Region Conservation Authority (ERCA);

c) Such criteria as approved by Council of the Municipality where those criteria are not dealt with by other governmental authorities.

2.1.4 Engineer

The Owner shall employ at its expense a Consulting Engineer to:

2.1.4.1

Design and submit drawings with respect to all services required.

2.1.4.2

Visit the site as required by the Municipality and inspect all services, etc.

2.1.4.3

Submit to the Municipality (and all other authority having jurisdiction) "as-built" details and elevations.

2.1.5 Lot Grading Plan

The Owner further agrees, if required by the Municipality's Building Inspector, and/or ERCA to submit to the satisfaction of the Building Inspector and/or ERCA, a lot grading plan covering the Subject Lands for their approval prior to the issuance of any building permits. The Owner also agrees to have the approved elevation as per the lot grading plan verified by an Ontario Land Surveyor at the following stages of construction:

- (a) Prior to the pouring of footings (top of forms elevation); and
- (b) Following completion of construction;

Where the finished grade of lot deviates from the original lot grading plan presented to and accepted by the Municipality's Building Inspector and ERCA, the owner shall either submit a new lot grading plan to the satisfaction of the Municipality's Building Inspector and ERCA or regrade the lands to the elevations indicated on the original lot grading plan.

2.1.6 Sanitary Sewers

The Owner agrees that all sanitary sewers shall be developed to the Municipality's standards in that regard and also to the satisfaction of the Municipality's engineer.

2.1.7 Stormwater Management

The Owner agrees that stormwater management measures shall be applicable to the development of the Lands, in a manner which is in accordance with the provisions of the Drainage Act and to the satisfaction of the Municipality's Engineer.

The Owner further agrees that part of the existing north-south storm sewer upon the Subject Lands (approximately 155 feet in length) shall be inspected with sewer cameras prior to commencement of work and again upon completion of work to confirm that no deficiencies exist, and that the sewers are ready for use, and the video tape and reports shall be presented to the Municipality.

2.1.8 Drainage

The Owner shall provide for grading and drainage of the Subject Lands all in accordance with a Drainage Plan and the Engineering Data. Drainage facilities and requirements shall be constructed and installed contemporaneously with the construction of the development. The Owner shall supply, construct or install all facilities and works necessary to connect the Owner's drainage system to the Municipality's storm sewer system, and shall pay to the Municipality any connection charges associated therewith.

2.1.9 Traffic Signs

The Owner shall provide, install and maintain suitable traffic direction and information signs, all in accordance with the Highway Traffic Act of Ontario, RSO 1990 c.H8 and the Public Transportation and Highway Improvement Act, RSO 1990 c.P50 to the satisfaction of the Municipality. The Owner shall provide, install and maintain suitable traffic direction and information signs painted or otherwise marked on the surface of the parking area and driveway approaches, all to the satisfaction of the Municipality.

2.1.10 Entrances

The existing driveway approaches as provided for and built pursuant to the Existing Site Plan Agreement shall be altered as necessary as determined by the Municipality's Engineer. The existing entrances/exits from Tecumseh and Manning Road as set out in the Existing Site Plan Agreement shall be utilized for this development and no additional entrances/exits for this phase shall be allowed.

2.1.11 Parking

The Owner at its own expense shall provide a parking area in accordance with the Site Plan.

2.1.12 Snow Removal

The Owner, and not the Municipality, shall be responsible for keeping the parking and access areas free and clear of all snow and ice. No snow or ice from the Subject Lands shall be deposited on any municipal streets.

2.1.13 Repair

The Owner agrees that any Municipal property, including without limiting the generality of the foregoing, curbs, gutters, pavements, sidewalks, or landscaped areas on the public highway, and any property belonging to a third party, which are damaged during construction, shall be restored by the Owner at its expense, and to the satisfaction of the Municipality. The Owner shall keep the Subject Lands in a state of good repair (including the cutting of weeds) and upon written notice from the Municipality shall correct deficiencies in the state of repair within ten (10) days thereof.

2.1.14 Dirt and Debris

The Owner further agrees to keep the public highways adjacent to the Subject Lands free from dirt and debris caused by the construction of the Subject Lands, and to provide reasonable dust control for the site and adjacent municipal streets during the course of construction.

2.1.15 External Lighting

The Owner shall erect exterior lighting on the Subject Lands as depicted in the Site Plan and all in accordance with the Engineering Data. The Owner shall not erect any exterior lighting on the Subject Lands, other than that provided for in the Engineering Data or depicted in the Site Plan, unless the consent therefor is first had and obtained from the Municipality. The Owner further agrees that all lighting of the said lands shall be

oriented and its intensity so controlled as to prevent glare on adjacent roadways and residential properties.

2.1.16 Signs

The Owner shall not erect any signs on the Subject Lands other than signs allowed by this Agreement or required by applicable law or as shown on the Site Plan.

2.1.17 Refuse Collection

The Owner agrees to provide on-site facilities for refuse collection. Such facilities shall be screened from view in accordance with the requirements of the Municipality's Zoning By-Law. The Owner, and not the Municipality, shall be responsible for the removal of any garbage, refuse or other wastes from the waste storage facility. Waste shall be removed in its entirety from the waste storage facility no less than twice each and every week of the year, and the Owner shall so stipulate in the contract or contracts with the person engaged to remove the same. The Owner shall ensure that its tenants deposit garbage, refuse or other wastes only in the waste storage facility provided for that purpose. The Owner shall include a provision to that effect in all of the leases entered into with its tenants.

2.1.18 Landscaping

The Owner shall landscape the Subject Lands in a good and workmanlike manner. The Owner further agrees to maintain such landscaping for so long as the buildings exist on the lands. Any topsoil removed from the Subject Lands during grading operations shall be stockpiled thereon in areas compatible for the reception of the same and the Owner covenants and agrees that it will not remove such topsoil from the boundaries of the lands without the approval of the Municipality. Any topsoil excavated but not immediately required for landscaping or for grading purposes shall be contoured and bermed to the satisfaction of the Municipality. Alternatively, the Owner, at its sole risk and expense, shall move such topsoil to such area within the Municipality as may be designated by the Municipality or, in the further alternative, the Owner shall, after receiving permission from the Municipality, at its sole risk and expense, remove such topsoil out from within the boundaries of the Municipality.

2.1.19 Water Services

The Owner, at its own expense, shall supply, construct or install all water connections necessary to supply water to the development all in accordance with the Engineering Data. No such work shall be carried out until the Engineering Data has been approved by the Tecumseh Public Utilities Commission. Remote registry water meters shall be installed as specified by the Tecumseh Public Utilities Commission. All costs of connecting water services to existing services shall be borne by the Owner.

2.1.20 Electrical Services

All hydro services shall be underground. The Owner, at its expense, shall supply, construct or install all underground hydro services in the manner, location and design depicted in the Engineering Data but subject to the manner, design and specifications established from time to time by Ontario Hydro and the St. Clair Beach Hydro Electric Commission for such services. All costs of connecting hydro services to existing services shall be borne by the Owner.

2.1.21 Underground Telephone and Gas

The Owner shall ensure that all Bell Canada and Union Gas Company installations shall be underground.

2.1.22 Coordination of Services

The Owner shall be responsible for coordinating the installation of all facilities and works including without limitation the services to be installed by Bell Canada and Union Gas Company. The Municipality will send to the Owner's engineer all plans of installations received from time to time from Bell Canada and Union Gas Company.

2.1.23 Ontario Coordinate System

The Municipality shall at the Owner's expense have Clarke Matthews Limited designated by the Municipality install horizontal coordinates on four (4) corners of the project as directed by the Municipality to third order accuracy in accordance with the latest edition of the Ontario Specifications for Horizontal Control Surveys and Ontario Guidelines for Horizontal Control Surveys published by the Ontario Ministry of Natural Resources.

For the purposes of the Ontario Basic Mapping Program (OBM), the Owner shall provide Clarke Matthews Limited with:

- a) Digital copy of the development in the form of an AutoCad drawing (DWG) or drawing exchange format (DXF) file related to the Universal Transverse Mercator System (UTM) prepared by a certified Ontario Land Surveyor;
- b) An AutoCad DRW or DXF file of as-built services within the road right-of-ways or easements of the development, invert elevation of the storm and sanitary sewers and the water lines at the lot connection and the location of the water shut-off valves and sewer clean-outs.

Specifications for digital format can be obtained from Clarke Matthews Limited, 640 Victoria Avenue, Windsor, Ontario N9A 4N2, Telephone (519) 258-4166.

The Owner shall be required to pay all costs of the Surveyors for services rendered to update the OBM base maps.

2.1.24 Building Design

The Parties agree that the building design shall be in accordance with the following:

- a) Paragraph 17.2(d)(i) of the 1983 Agreement;
- b) Paragraph 17.2(e) of the 1983 Agreement;
- c) Paragraph 17.2(g) of the 1983 Agreement as amended by Paragraph 7 of the 1987 Agreement;

ARTICLE 3

TIMING

3.1 BUILDING PERMITS

No Building Permits shall be issued until the following have been complete:

- a) Workers' Compensation Board Clearance Certificate issued;
- b) A deposit is made pursuant to Paragraph 4.3;
- c) Imposit Charge pursuant to Paragraph 4.4 is paid;
- d) Security for performance is posted pursuant to Paragraph 6.1;
- e) Construction lien deposit pursuant to Paragraph 6.3;
- f) Proof of Insurance is provided pursuant to Paragraph 6.4;

- g) Due registration against the title of the land of this Agreement;
- h) Postponement to this Agreement by all encumbrances;
- i) Receipt of the opinion of the Owner's lawyer confirming 3.1(g) and 3.1(h).

3.2 LANDSCAPING

The Owner to complete landscaping within NINE (9) months of commencement of construction as determined by the Building Inspector.

3.3 COMPLETION

The Owners agree to fulfil all of the covenants set out herein to the satisfaction of the Municipality within ONE (1) year of the date of execution of this Agreement.

3.4 OCCUPANCY PERMITS

No Occupancy Permits shall be issued until:

- a) the development is completed in accordance with this Agreement and all applicable laws and by-laws;
- b) all works upon Municipal property have been accepted by the Municipality;
- c) Security for Maintenance has been delivered pursuant to this Agreement.

ARTICLE 4

PAYMENTS

4.1 COSTS

The Owner shall reimburse the Municipality for all the Municipality costs with respect to the development, including without limiting the generality of the foregoing, the costs of its Engineer, Building Inspector and/or Clerk of the Works, Planner and Solicitor.

4.2 ADMINISTRATION FEE

The Owner agrees to pay the Municipality an administrative fee equal to 3% of the costs set out in Paragraph 4.1. This fee will compensate the Municipality for coordinating and facilitating the collection of fees pursuant to Paragraph 4.1.

4.3 DEPOSIT

The Owner agrees to pay an amount equal to Five Thousand (\$5,000.00) Dollars by certified cheque or bank draft to be applied to the costs set out in Paragraphs 4.1 and 4.2. The Municipality shall deliver invoices to the owner in a timely fashion payment for which shall be due immediately. The Parties agree any unpaid invoice shall bear interest at the rate of fifteen (15%) percent per annum.

4.4 IMPOST CHARGES/DEVELOPMENT CHARGES

The Parties acknowledge that impost fees and/or development charges (the Impost Fees) with respect to this Development were set by the Existing Site Plan Agreement, and the Owner agrees to pay the Municipality said impost charge with respect to the Subject Lands for general administration services, maintenance and capital cost of hydro, water works, storm sewers (including any works for the treatment of sanitary sewers and storm and plumbing stations, but not including any costs related to the alternate sanitary sewer route installed pursuant to an Agreement between the Municipality and the Village Grove Corporation), protection against loss of life or damage to property through fire and police

services and other services required for the general health and welfare of the inhabitants of the Municipality.

The Parties agree that the impost charges for the Subject Lands shall be calculated at a rate of twenty-five (\$0.25) cents per square foot of gross floor area of the building(s) on the Subject Lands pursuant to Section 5 of the 1987 agreement which amount shall be paid to the Municipality by the Owner prior to receiving a building permit for the development.

4.5 EXTERNAL MUNICIPAL SERVICES

The Parties agree that Paragraph 26 of the 1983 Agreement applies to the Subject Lands.

4.6 PARK FEES

The Owner agrees to pay a park fee in the amount of One Thousand (\$1,000.00) Dollars upon execution of this Agreement.

4.7 SIDEWALK

The Owner shall pay the Municipality a sum equal to the cost of constructing a standard five foot (5') wide sidewalk parallel to Manning Road along the entire frontage of the Subject Lands on the said Manning Road. The Parties agree that the cost of the same will be the amount of Twenty-Five Hundred (\$2,500.00) Dollars. Said payment shall be made upon execution of this Agreement.

ARTICLE 5

CONVEYANCES

5.1 EASEMENTS

The Owner shall convey or dedicate to the Municipality upon demand and without cost and free of encumbrance the easements provided for in the Engineering Data and Site Plan, in, through, over and under the Subject Lands as required for drainage purposes, sewers, hydro, gas, watermains, sidewalks and telephones. If the Municipality determines that additional easements are required, the Owner shall also convey or dedicate such additional easements upon demand and without cost and free of encumbrance. The terms and conditions of such additional easements including without limitation the location of the easement shall be negotiated by the parties acting reasonably.

ARTICLE 6

SECURITY

6.1 PERFORMANCE

The Owners agree, so as to assure the performance by the Owners of each of the terms and conditions of this Agreement during the development of the Lands, that the Owners shall, upon execution of this Agreement, forthwith deposit with the Municipality, a Letter of Credit (not a Letter of Guarantee or Bond) issued by a chartered bank of Canada in form satisfactory to the Municipality's Clerk and Solicitor, said Letter of Credit to be for an amount which is equal to Five Thousand (\$5,000.00) Dollars. For greater certainty, the amount of said Letter of Credit shall be subject to approval by the Municipality's Clerk and Solicitor.

6.2 MAINTENANCE

The Municipality agrees to return the said Letter of Credit to the Owner upon the completion and final inspection of the works specified in this Agreement, on condition that the Owner concurrently provide the Corporation with a Letter of Credit (not a Letter of Guarantee or Bond) in form satisfactory to the Municipality's Clerk and Solicitor and in an amount equal to one-half of the amount of the Letter of Credit to guarantee performance, to guarantee that any and all of the works referred to in this Agreement will be maintained to the satisfaction of the Municipality. The said Letter of Credit guaranteeing maintenance shall be returned to the Owner at the end of ONE (1) year from the date of its delivery provided the Owner has maintained the works to the satisfaction of the Municipality as aforesaid.

6.3 CONSTRUCTION LIENS

In as much as the Owner is obligated at the Owner's entire expense and not at the expense of the Municipality, to make improvements to the highway, the Owner shall deposit with the Municipality, in order to satisfy the requirements of Section 17(4) of the Construction Lien Act, RSO 1990, c.C30, a letter of credit in form satisfactory to the Municipality's Clerk and Solicitor and in an amount of the holdbacks (under Part IV of the Construction Lien Act) that would have been required were the improvements made at the expense of the Municipality. The Owner may, at its option, obtain a single letter of credit with respect to its responsibilities pursuant to Paragraph 6.1 and 6.3 of this Article, provided that the Municipality's lawyer is satisfied that the Municipality's security under each paragraph, if read separately, would not be compromised by the Letter of Credit proposed by the Owner.

6.4 INDEMNITY AND INSURANCE

The Owner shall indemnify and save harmless the Municipality, the St. Clair Beach Hydro Electric Commission and the Tecumseh Public Utilities Commission, from and against all actions, claims, loss, damage and liability connected with the development as contemplated herein arising directly or indirectly out of the negligence or unlawful performance or the non-performance of any obligation of the Owner or any contractors to the Owner under this Agreement.

While any of the facilities and works herein have not been accepted or assumed by the Municipality, the Owner shall maintain in full force and effect a policy of personal liability and property damage insurance in form and amount satisfactory to the Municipality's solicitor wherein the Owner, the Municipality, The St. Clair Beach Hydro Electric Commission and Tecumseh Public Utilities Commission, shall be insured as principals against such liability to the limits approved. The Owner shall provide the Municipality with a certified copy of such policy prior to the commencement of construction of any of the facilities and works referred to herein.

ARTICLE 7

DEFAULT

7.1 STOP WORK

In the event of any default by the Owner in the performance of any of the terms and conditions of this Agreement, the Municipality, at its discretion, shall be entitled to refuse building permits with respect to the development or shall be entitled to refuse building and occupancy permits with respect to any buildings, or shall be entitled to issue stop work orders with respect to any matters in respect of which a building permit has been issued and shall be entitled to refuse to issue releases until such time as the default has been cured in a manner satisfactory to the Municipality.

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7.2 MUNICIPALITY MAY COMPLETE

Pursuant to Section 41(11) of the Planning Act, RSO 1990 c.P.13, Section 326 of the Municipal Act, RSO, 1990, c.M.45, as amended, applies to all requirements of this Agreement. If the Owners neglect to undertake any matter or thing required to be done by this Agreement and such default continues after SEVEN (7) days of the Owners being given written notice by the Municipality of such default, in addition to other remedies available to the Municipality, the Municipality may direct that such matter or thing shall be done at the expense of the Owners, and the Municipality may recover the expense incurred in doing it; the Owners hereby authorize the Municipality (including, without limiting the generality of the foregoing, its employees, agents and servants) to enter upon the Lands to do such matter or thing.

ARTICLE 8

REGISTRATION AND LIABILITY

8.1 REGISTRATION AND ENFORCEMENT

Pursuant to Section 41(10) of the said Planning Act, this Agreement may be registered against the Total Lands to which it applies, at the Owner's expense, and the Municipality is entitled to enforce the provisions hereof against the Owners, who shall be jointly and severally liable for the Owners' covenants and obligations outlined herein, and, subject to the provisions of the Registry Act and the Land Titles Act, against any and all subsequent owners of the Total Lands;

8.2 CONSENT

The Owners hereby consent to the registration of this Agreement on the title of the Lands, said registration (as well as the preparation of this Agreement) to be at the Owners' expense. Legal fees with respect to preparation shall be \$200.00 per hour.

8.3 PARTY OF THE THIRD PART

The Party of the Third Part acknowledges and agrees to the terms of this Agreement and agrees to be bound by the same. The Party of the Third Part further acknowledges that the development will have an impact on Manning Road traffic and that there is currently a study being conducted with respect to improvements which will be necessary to that road. The Party of the Third Part covenants and agrees on its own behalf and on behalf of the Owner that it will make a payment equal to Ten Thousand Dollars (\$10,000.00) which the Parties agree is a genuine estimate of the cost of the improvements to Manning Road which will be required as a result of the impact of this development on that road. The Parties agree that that payment shall be due upon execution of this Agreement.

ARTICLE 9

MISCELLANEOUS

9.1 COMMUNICATION

Subject to the express provisions of this Agreement, all communications provided for or permitted hereunder or pursuant to the existing Site Plan Agreement shall be in writing, personally delivered to an officer of the addressee or sent by registered and receipted mail, charges prepaid, or by facsimile transmission or other means of recorded telecommunication, charges prepaid, to the applicable address set forth below or to such other address as either party hereto may from time to time designate to the other in such manner.

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Communications sent to the Municipality shall be addressed to:

13677 St. Gregory's Road
St. Clair Beach, Ontario N8N 3E4

Communications sent to 388257 Ontario Limited shall be addressed to:

11 Polson Street
Toronto, Ontario M5A 1A4

Communications sent to Newmas Holdings Inc. shall be addressed to:

3695 Huntington Road
Windsor, Ontario N9E 3N2

Any communication so personally delivered shall be deemed to have been validly and effectively given on the date of such delivery. Communications so sent by registered and receipted mail shall be deemed to have been validly and effectively given on the Business Day next following the day on which it is received, as evidenced by the postal receipt. Communications so sent by facsimile transmission or other means of recorded telecommunication shall be deemed to have been validly and effectively given on the Business Day next following the day on which it is sent. Any party may from time to time change his or its address for service on written notice to the others.

9.2 TIME OF ESSENCE

Time shall be of the essence of this Agreement and of every part thereof.

9.3 WAIVER

No waiver by any party of a breach of any of the covenants, conditions and provisions herein contained shall be effective or binding upon such party unless the same shall be expressed in writing and any waiver so expressed shall not limit or affect such party's rights with respect to any other future breach.

9.4 FURTHER ASSURANCES

Each of the Parties covenants and agrees that he, his heirs, executors, administrators and assigns will sign such further agreements, assurances, waivers and documents, attend such meetings, enact such by-laws or pass such resolutions and exercise such votes and influence, do and perform or cause to be done and performed such further and other acts and things as may be necessary or desirable from time to time in order to give full effect to this Agreement and every part thereof.

9.5 HEADINGS

The headings of the Articles of this Agreement are inserted for convenience only and do not constitute part of this Agreement.

9.6 SUCCESSORS AND ASSIGNS

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

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9.7 GENDER

All words and personal pronouns relating thereto shall be read and construed as the number and gender of the party or parties referred to in each case require and the verb shall be construed as agreeing with the required word and pronoun.

9.8 SEVERABILITY

If any covenant or provision contained herein is determined to be in whole or in part, invalid or unenforceable by reason of any rule of law or public policy, such invalidity or unenforceability shall not affect the validity or enforceability of any other covenant or provision contained herein and, in the case of partial invalidity or unenforceability of a covenant or provision, such partial invalidity or unenforceability shall not affect the validity or enforceability of the remainder of such covenant or provision, and such invalid or unenforceable covenant or provision or portion thereof, as the case may be, shall be severable from the remainder of this Agreement.

9.9 ENTIRE AGREEMENT

This Agreement expresses the final agreement among the parties hereto with respect to all matters herein and no representations, inducements, promises or agreements or otherwise among the parties not embodied herein shall be of any force and effect. This Agreement shall not be altered, amended or qualified except by a memorandum in writing, signed by all the parties hereto, and any alteration, amendment or qualification thereof shall be null and void and shall not be binding upon any such party unless made and recorded as aforesaid.

9.10 EXECUTION IN COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and all of which together shall constitute one and the same instrument.

9.11 JURISDICTION

This Agreement and all other agreements, security and documents to be delivered in connection with this agreement shall be governed by and construed in accordance with the applicable laws of the Province of Ontario and of Canada.

9.12 ASSIGNMENT

Subject to the terms of this agreement, this agreement is not assignable by the owner prior to completion of the works without the consent of the Municipality.

9.13 TRUE COPY

All of the parties hereto acknowledge having received a true copy of this document.

9.14 CONFIRMATION

The Parties acknowledge that this Agreement is an amendment to the Existing Site Plan Agreement.

The Parties confirm the terms of the Existing Site Plan Agreement except as amended

herein and further agree that the Existing Site Plan Agreement continues to affect the Total Lands described in Schedule "C" save and except the Subject Lands described in Schedule "A" which are governed by Part B of this amendment.

IN WITNESS WHEREOF the Parties hereto have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED
in the presence of

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THE CORPORATION OF THE
VILLAGE OF ST. CLAIR BEACH

Per: *Guy Dorian*
Guy Dorian - REEVE
Andre M. Barrette
Andre M. Barrette - CLERK

388257 ONTARIO LIMITED

Per: *[Signature]*

NEWMAS HOLDINGS INC.

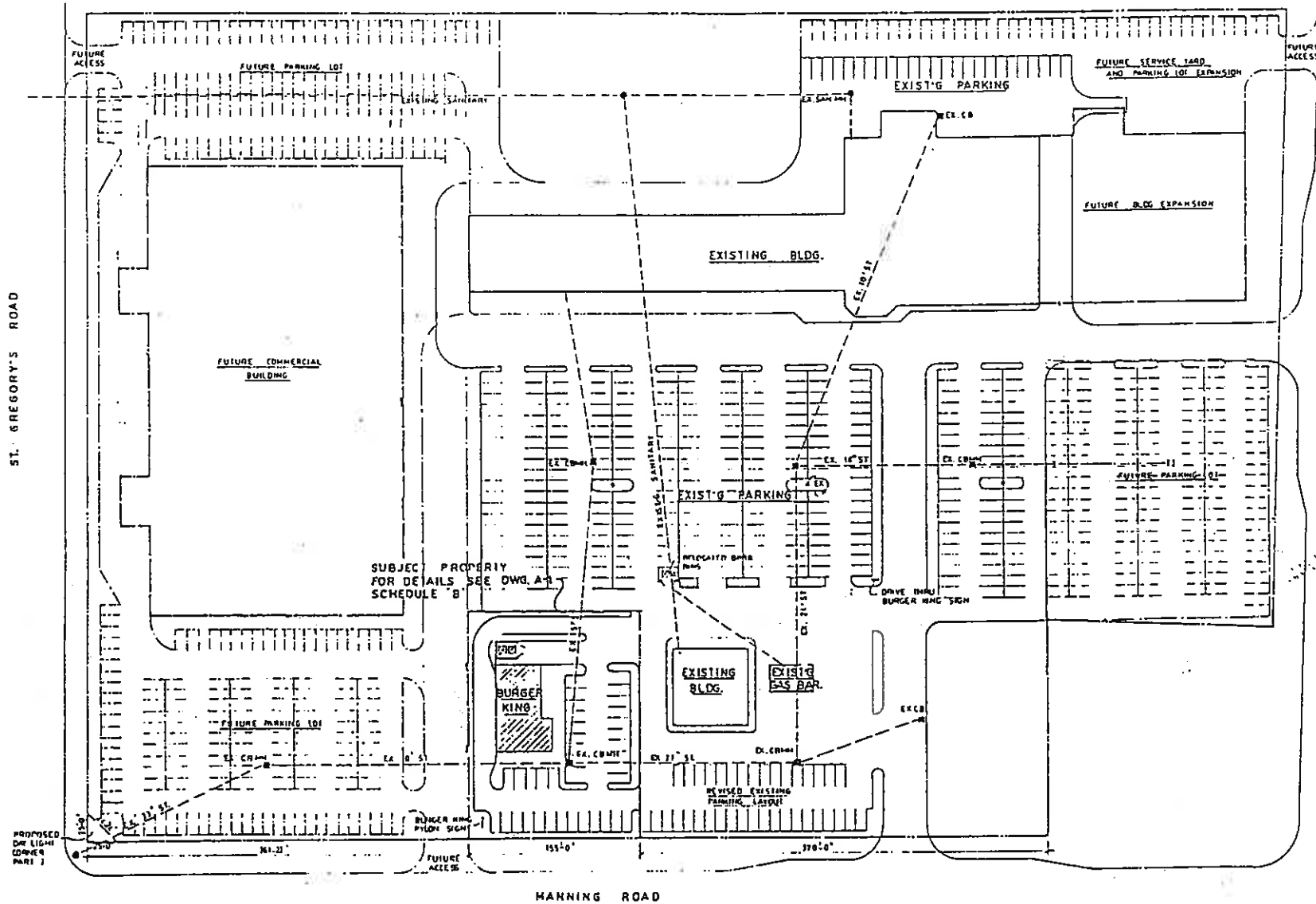
Per: *[Signature]*
Robert Masterß - President
Vice
RMM

SCHEDULE "A"
SUBJECT LANDS

All and Singular that certain parcel or tract of land and premises situate lying and being in the Village of St. Clair Beach in the County of Essex and being composed of part of Lot 1, Concession West of Pike Creek, now designated as Part 1 on Plan 12R-13489.

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SCHEDULE "B-1"
SITE PLAN



SITE PLAN

JOSEPH R. TOTH
ARCHITECT
INC.

WINDSOR ONTARIO



DATE	ISSUED FOR

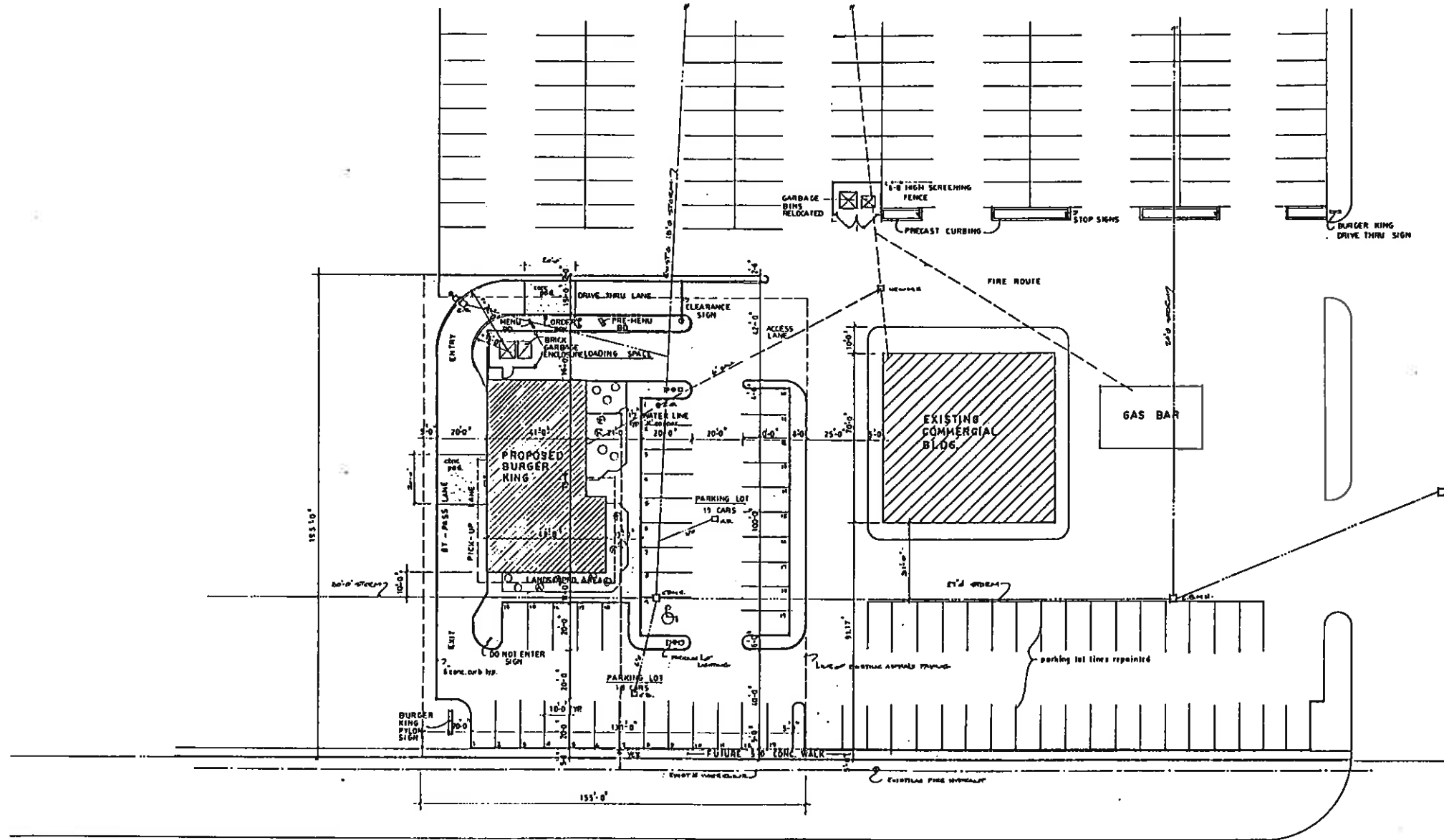
PROJECT
PROPOSED
BURGER KING

ST. CLAIR BEACH ONT.
DWG. TITLE
KEY DEVELOPMENT
PLAN
SCHEDULE 'A'

DATE: SEPT 16/96
 SCALE: 1/250' = 1"
 DRAWN BY: J.P.T.
 CHD. BY:
 PROJ. NO.: 1361
 DWG. NO.:

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SCHEDULE "B-2"



MANNING ROAD

PLOT PLAN

SCALE 1" = 20'-0"

ARCHITECT

INC.

WINDSOR

ONTARIO



DATE	SEPT. 8/94
PROJECT	PROPOSED BURGER KING
LOCATION	ST. CLAIR BEACH
DATE	SEPT. 8/94
SCALE	AS NOTED
DESIGNER	J.P.L.
PROJECT NO.	9361
DRAWING NO.	A-1

LEGAL DESCRIPTION
(St. Clair Beach Property)

TOTAL LANDS

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Village of St. Clair Beach, County of Essex and Province of Ontario, being composed of Part of Lot 1, Concession West of the Pike Creek, containing by a measurement the sum of 18.192 acres be the same more or less, more particularly described as follows:

Bearings are astronomic and are referred to those as shown on a Plan of Record of Tecumseh Road registered in the Land Registry System at the Land Registry Office for Essex (No. 12) as Instrument No. 129011;

COMMENCING at a point in the Northern limit of said Tecumseh Road, distant 190.00 feet measured Easterly in that limit from its intersection with the widened Eastern limit of Manning Road (Townline Road between the Town of Tecumseh and the Village of St. Clair Beach), said widening being registered in the aforementioned Land Registry Office as Instrument No. 199717;

THENCE South 85 degrees, 47 minutes East and following the Northern limit of said Tecumseh Road, 76.36 feet to a bend in said limit;

THENCE South 86 degrees, 07 minutes East and following the last mentioned limit, 490.37 feet to a found standard iron bar;

THENCE North 2 degrees, 13 minutes, 10 seconds East, 1,107.82 feet to a point, said point being the South-Eastern corner of Part 2 on a Plan deposited in the aforementioned Land Registry Office as Plan 12R-4183;

THENCE North 87 degrees, 34 minutes, 50 seconds West and following the Southern limit of said Part 2, Plan 12R-4183, 759.53 feet to the South-Western corner thereof, said corner being in the said widened Eastern limit of Manning Road;

THENCE South 2 degrees, 03 minutes West and following the last mentioned limit, 886.29 feet more or less to a point, said point being distant 209.38 feet measured Northerly along the last mentioned limit from its intersection with the said Northern limit of Tecumseh Road;

THENCE South 87 degrees, 59 minutes, 20 seconds East, 197.86 feet to a point;

THENCE South 4 degrees, 13 minutes West, 207.86 feet more or less to the POINT OF COMMENCEMENT.

SAVE AND EXCEPT that portion of the said lands conveyed to the Corporation of the Village of St. Clair Beach, and designated as PART 1 on Plan of Survey of Record deposited in the said Registry Office as Plan 12R-7381;

SUBJECT TO an easement in favour of Union Gas Limited over part of the said lands designated as PART 1 on Plan of Survey of Record deposited in the said Registry Office as Plan 12R-7411;

AND SUBJECT TO an easement for Roof Top Agreement in favour of Union Gas Limited over PARTS 2, 3, 4 and 5 on a Plan of Survey of Record deposited in the said Registry Office as Plan 12R-7411.