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2022-02-04  
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This Development Agreement made in duplicate as of the 12 day of January, 2022, **BY AND BETWEEN** (the "**Agreement**"):

Parcel Identifier: **00039982 and 00037093**

Developer: **W/L Holdings Inc.**  
1121 Kennebecasis Drive  
Saint John, New Brunswick  
E2K 5A7

City: **The City of Saint John**  
City Hall Building  
15 Market Square, P.O. Box 1971  
Saint John, New Brunswick  
E2L 4L1

### Background

- A. An application was submitted to the City of Saint John (the "**City**") seeking the rezoning of two parcels of land having an area of approximately 1709 square meters located at 85-87 and 91 King Street, identified as PIDs and 00037093 and 00039982, in the City of Saint John (collectively, the "**Lands**").
- B. The application referred to in paragraph A sought to amend Schedule "G" of the Zoning By-Law of the City of Saint John, By-law number CP-111, to increase the maximum building height from 28 meters and 42 meters to 55 meters for the **Lands**,
- C. The **City** gave third reading to the requested redesignations in accordance with the *Community Planning Act*, SNB 2017, c. 19, (the "**Act**") at an open session meeting held on September 7, 2021, and passed By-Law Number C.P. 111-116 "A Law to Amend the Zoning By-Law of The City of Saint John."
- D. Pursuant to s. 131(1) of the **Act**, the **City** accepted conditions proposed by the **Developer** for public benefits associated with the development and said conditions are contained in the body of this **Agreement**.

**IT IS HEREBY AGREED AND WITNESSED** that the **Developer** for and in consideration of the **City** amending the **By-Law** as outlined at paragraph C, and the **City** entering into this **Agreement** as well as other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, agree as follows:

## Conditions

1. The **Developer** shall be solely responsible for the following:
  - a. resurfacing of the upper portion of the **City**-owned lands known as South Market Street to highlight the separation between the vehicular and pedestrian areas in order to implement a shared street design. The **Developer's** responsibility shall begin at Charlotte Street and extend westward to the rear of the property line for 85-87 King Street, as identified in yellow on the Site Plan attached hereto as Schedule "A". This shall include the use of decorative paving materials and may include the use of stamped concrete, subject to the approval of the Development Officer and alignment with the approved design for South Market Street; and
  - b. establishing a canopy between the proposed building and the City Market from Charlotte Street extending westward to the rear of the property line for 85-87 King Street, as identified in yellow on the Site Plan attached hereto as Schedule "A". The **Developer** shall provide the City with design specifications for the canopy which shall be of high-quality material and consistent with the approved design for South Market Street.
2. The **City** shall have the opportunity to use the loading dock, during non-business hours, of the proposed building for public purposes, including the Night Market and pedestrian use, upon written request to the **Developer** and on the condition that the loading dock is not otherwise in use by the **Developer**, tenants, or other occupiers of the building. A canopy shall be placed over the loading doors and ramp, to enhance the space for public use. The **City** and the **Developer** may enter into further agreements regarding the use of the loading dock by the **City**, which agreements shall be satisfactory to both parties, acting reasonably. For greater certainty, in no way shall this **Agreement**, or any future agreement entered into by the **City** and the **Developer** regarding use of the said loading dock for public purposes, be construed as the **Developer** granting to the **City** an easement, right of way or any other rights running with the land.

## Default and Enforcement

3. Any alleged failure to comply with the material terms of this **Agreement** shall be delivered in writing by the party alleging the default to the defaulting party ("**Notice**"). The terms of the **Notice** shall include the nature of the default, how the default may be remedied, and a commercially reasonable timeframe for the default to be remedied.

4. Upon expiration of the timeframe given in the **Notice** to remedy a default, without the default being remedied, the **City** shall be at liberty to enforce this **Agreement**. Enforcement action by the **City** may include, but is not limited to, a call on any letter of credit given by the **Developer** to the **City** or other security to arrange for the remedial steps identified in the Notice to be taken, without any further notice being given to the **Developer**.

General Terms

5. Any notice, direction, or other document required or permitted to be given pursuant to this **Agreement** to any party shall be in writing and shall be sufficiently given if delivered personally, sent by prepaid registered mail, or if transmitted by facsimile or other form of recorded communication tested prior to the transmission to each party:
  - a. In the case of the **City** at:  
15 Market Square  
P.O. Box 1971  
Saint John, New Brunswick E2L 4L1  
Attention: City Clerk
  - b. In the case of the **Developer** at:  
1121 Kennebecasis Drive  
Saint John, New Brunswick E2K 5A7  
Attention: Percy Wilbur
6. Any notice delivered to the party to whom it is addressed as provided at paragraph 5 herein shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such a day is not a business day then the notice shall be deemed to have been given and received on the next business day. Any notice mailed shall be deemed to have been given and received on the third business day following the mailing. Any notice transmitted by facsimile or other form of recorded communication shall be deemed given and received on the first business day after its transmission.
7. This **Agreement** shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, and successors or assigns.
8. The parties shall act with reasonable diligence to do all such things and provide all such reasonable assurances as may be required to complete this **Agreement**, and each party shall provide such further documents or instruments required by

any other party as may be reasonably necessary or desirable to effect the purpose of this **Agreement** and carry out its provisions.

9. If any covenant or provision of this **Agreement** is prohibited in whole or in part, such covenant or provision shall be ineffective to the extent of such prohibition without invalidating the remaining covenants and provisions hereof and shall be deemed to be severed from their **Agreement** to the extent of such prohibition.
10. Except as specifically provided for herein, nothing herein, express or implied, is intended or shall be construed to confer upon or to give any person, other than the parties and their respective successors and assigns, any rights or remedies under or by reason of this **Agreement**.
11. Neither party is responsible for any loss, detention, default, damage or delay in fulfilling the obligations under this Agreement caused by or resulting from reasons beyond its reasonable control, such as acts of god or war, public health emergencies, epidemics and pandemics, including the coronavirus pandemic (COVID-19), flood, fire, or explosion, shortage of water, power, facilities, materials and supplies, breakdowns in or the loss of production, strikes, lockouts, riots, embargoes, inability to obtain necessary labour, materials or manufacturing facilities due to such causes or delays of subcontractors and suppliers of each party furnishing materials or supplies due to one or more of the foregoing causes. In an event of a *force majeure*, each party is allowed a reasonable period of time to fulfil the obligations under this Agreement having regard to the applicable circumstances.
12. This **Agreement** and the rights, obligations, and relations of the parties shall be governed by the and construed in accordance with the laws of the Province of New Brunswick and the federal laws of Canada applicable therein. The parties agree that the courts of New Brunswick shall have jurisdiction to entertain any action or other legal proceedings based upon any provision of this **Agreement** and each party does hereby attorn and irrevocably submit to the exclusive jurisdiction of the courts of New Brunswick.
13. This Agreement may be signed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.

[Signature Page to Follow]

**IN WITNESS WHEREOF** the parties hereto have caused these presents to be duly executed by the properly authorized officers and their respective corporate seals affixed hereto the 20 day of January, 2022.

**SIGNED, SEALED & DELIVERED**

In the presence of:



**THE CITY OF SAINT JOHN**

*[Handwritten Signature]*

Mayor

*[Handwritten Signature]*

Common Clerk

Common Council Resolution:  
September 7, 2021

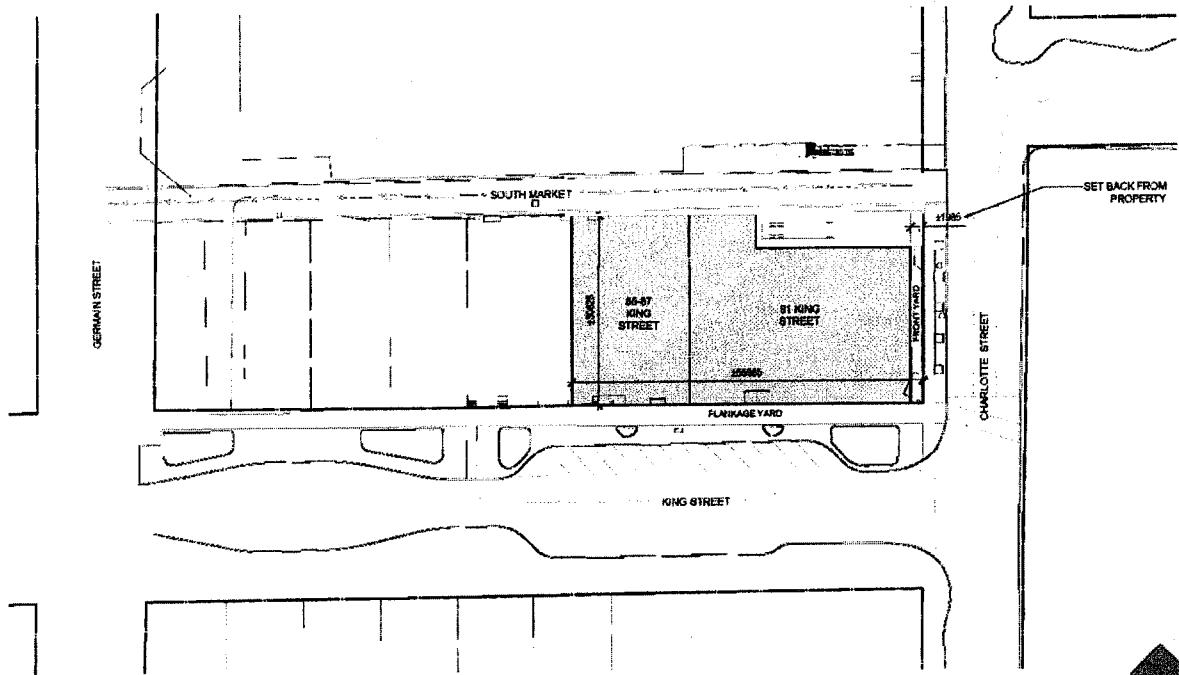
**W/L Holdings Inc.**

Per:

*[Handwritten Signature]*

*[Handwritten Signature]*

**Schedule "A"**  
**Site Plan Denoting Developer's Obligations for Street Paving and Canopy**



PRELIMINARY SITE PLAN  
1:500

AFFIDAVIT OF CORPORATE EXECUTION

Land Titles Act, S.N.B. 1981, c.L-1.1, s.55

Deponent: Percy Wilbur  
1 Germain Street, Suite 1500  
Saint John, NB  
E2L 4H8

Office Held by Deponent: President

Corporation: W/L Holdings Inc.

Place of Execution: Saint John, New Brunswick

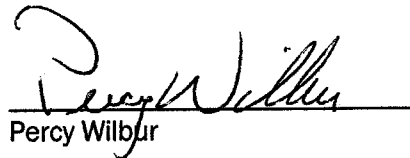

Date of Execution: January 1, 2022.

I, Percy Wilbur, the deponent, make oath and say:

1. That I hold the office specified above in the corporation specified above, and am authorized to make this affidavit and have personal knowledge of the matters hereinafter deposed to;
2. That the attached instrument was executed by me as the officer duly authorized to execute the instrument on behalf of the corporation;
3. That the corporate has no seal;
4. That the instrument was executed at the place and on the date specified above;
5. That the ownership of a share of the corporation does not entitle the owner thereof to occupy the parcel described in the attached instrument as a marital home.

DECLARED TO at the City of )  
Saint John, in the County of )  
Saint John and Province of )  
New Brunswick, on the 1 day of )  
January, 2022 )

BEFORE ME: )  
)  
)  
)  
)  
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)  
)  
)  
)  
)  
Michael A. Gillis )  
Commissioner of Oaths )  
Being a Solicitor )

  
Percy Wilbur

**Form 45**  
**AFFIDAVIT OF CORPORATE EXECUTION**  
*Land Titles Act, S.N.B. 1981, c.L-1.1, s.55*

Deponent: Jonathan Taylor  
2<sup>nd</sup> Floor, City Hall Building  
15 Market Square, P.O. Box 1971  
Saint John, NB E2L 4L1

Office Held by Deponent: Common Clerk

Corporation: The City of Saint John

Other Officer Who Executed the Instrument: Donna Noade Reardon  
3<sup>rd</sup> Floor, City Hall Building  
15 Market Square, P.O. Box 1971  
Saint John, NB E2L 4L1

Office Held by Other Officer Who Executed the Instrument: Mayor

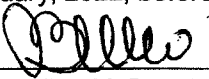
Place of Execution: Saint John, New Brunswick

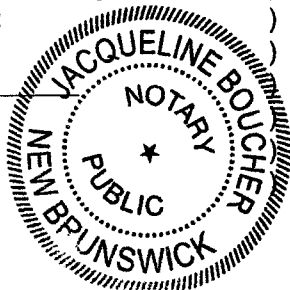
Date of Execution: January 20, 2022

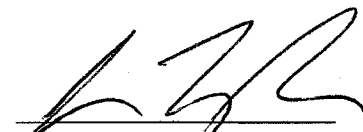
I, Jonathan Taylor, the deponent, make oath and say:

1. That I hold the office specified above in the corporation specified above, and am authorized to make this affidavit and have personal knowledge of the matters hereinafter deposed to;
2. That the attached instrument was executed by me and the other officer specified above as the officers duly authorized to execute the instrument on behalf of the corporation;
3. The seal affixed to the foregoing instrument is the Common Seal of The City of Saint John and that it was so affixed by Order of the Common Council of the said City;
4. That the instrument was executed at the place and on the date specified above.

SWORN to at the City of Saint John, in )  
the County of Saint John, in the Province )  
of New Brunswick, this 20 day of )  
January, 2022, before me: )

  
\_\_\_\_\_  
Jacqueline M. Boucher  
Commissioner of Oaths  
Being a Solicitor



  
\_\_\_\_\_  
Jonathan Taylor



**CERTIFICATE OF EFFECT**

Parcel Identifier: 00039982 and 00037093


Owner: W/L Holdings Inc.  
1121 Kennebecasis Drive  
Saint John, New Brunswick  
E2K 5A7

THIS IS TO CERTIFY THAT the intended effect of the registration of the attached **AGREEMENT** on the current Certificate of Registered Ownership for the specified parcel is as follows:

Add Encumbrance: The City of Saint John  
Agreement Holder  
**INSTRUMENT: Agreement**

Date: JANUARY 20, 2022

Subscriber:

  
\_\_\_\_\_  
Jacqueline Boucher  
The City of Saint John  
15 Market Square  
Saint John, New Brunswick E2L 1E8

OUR FILE NO. 4324