

APPENDIX A

THE AGREEMENT made in triplicate this day of 2012

BETWEEN: THE CORPORATION OF THE CITY OF LONDON
(hereinafter called the "City")

OF THE FIRST PART

-AND-

SAMUEL JOHN SHIRLEY
(hereinafter called the "Owners")

OF THE SECOND PART

WHEREAS the Owner is the registered owner of the lands more particularly described on Schedule A attached hereto (the "Subject Lands");

AND WHEREAS the Owner is currently in arrears on the payment of municipal taxes for the Subject Lands;

AND WHEREAS the City has been unsuccessful in its attempt to sell the Subject Lands to recover the tax arrears;

AND WHEREAS the Subject Lands are covered by debris, garbage, brush and other rubbish, and Phase 1 and Phase 2 environmental site assessments conducted by the City have revealed that portions of the Subject Lands are contaminated by pesticides, xylene and heavy metals;

AND WHEREAS the Owner has agreed to clean up the Subject Lands and remediate the contamination in exchange for a forgiveness of the outstanding tax arrears;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants contained herein and the sum of TEN (\$10.00) DOLLARS now paid by the Owner to the City (the receipt and sufficiency of which is hereby acknowledged) the parties covenant and agree as follows:

1.0 **OWNER'S OBLIGATIONS**

1.0.1 Surface Cleanup

The Owner shall, at his own expense, remove all debris, garbage, brush and rubbish from the Subject Lands to the satisfaction of the City's Manager of By-Law Enforcement.

1.0.2 Site Security

The Owner shall, at his own expense, erect fencing around the perimeter of Subject Lands to prevent illegal dumping, to the satisfaction of the City's Manager of By-Law Enforcement.

1.0.3 Site Remediation

The Owner shall, at his own expense, complete a site remediation of the Subject Lands, including the filing of a Record of Site Condition under Part XV.1 of the *Environmental Protection Act*, including obtaining a written acknowledgement in accordance with section 168.4(3.1)(3) thereof confirming that the record of site condition for the Subject Lands has been filed in the Environmental site Registry.

1.0.4 As part of the site remediation, the Owner shall engage the services of a professional engineer or professional geoscientist competent in the field of contaminated site remediation to design and install a system to prevent migration of contaminants from abutting properties owned by the Owner. The system shall include consideration of ground and surface water impacts and possible migration of contaminants from the adjoining property of the Owner and a monitoring program to ensure that the system is functioning properly. The City shall have the right to review the system design and monitoring program prior to its construction to confirm that the system is adequate, including the right to have the system and monitoring program reviewed by third party consultants retained by the City for that purpose. Any deficiencies identified in such review shall be resolved to the satisfaction of the City.

APPENDIX A (CONTINUED)

2.0 **CITY'S OBLIGATIONS**

2.0.1 Forgiveness of Tax Arrears

Upon the Owner completing his obligations described herein to the satisfaction of the City, the City shall write off the current tax arrears on the Subject Lands in accordance with the provisions of section 354 of the *Municipal Act*, which are currently estimated to be \$3,958,906.71. The Owner shall not be entitled to any partial write off of tax arrears whether on a lot by lot basis, for a partial site remediation, or otherwise.

3.0 **GENERAL**

3.0.1 Indemnification

The Owner shall indemnify and save the City harmless from and against any and all claims, demands, losses, costs, charges, expenses, damages, actions, and proceedings, made, brought against, suffered by or imposed on the City in respect of the Owner's failure to fulfill any of his obligations hereunder or caused by any contaminants found on the Subject Lands or any adjoining land owned by the Owner which have escaped or been discharged there from.

3.0.2 Non-Waiver of City's Rights

The Owner specifically acknowledges that the City by this agreement has not waived any of its rights presently or in the future to enforce any claim, demand, loss, cost, damage, expense, action or cause of action arising or to arise by reason of the contamination of the Subject Lands, including but not limited to, the City's right to enforce any of its By-laws, to levy taxes against the Subject Lands, or take any action authorized under Part XI of the *Municipal Act*.

3.0.3 Term

This Agreement shall be effective for a term of Two (2) years from the date of execution. If the Owner has not commenced or is not diligently undertaking the required site remediation, then this Agreement shall be at an end and neither party shall be liable to the other for any costs or damages.

3.0.4 Notice

Any notice required to be given to the City shall be sufficiently given if delivered to the City or mailed by prepaid registered mail addressed to the City at:

The Corporation of the City of London
300 Dufferin Ave.,
London, ON N6A 4L9
Attention: City Treasurer

Any notice required to be given to the Owner shall be sufficiently given if delivered to the Owner or mailed by prepaid registered mail addressed to the Owner at:

595 Exeter Road
London, ON N6E 2Z2

Or at such other address as the parties may in writing designate. In either case, such notice shall be deemed to have been received on the date of its delivery, or in the case of mailing, three (3) business days after it is delivered to the post office.

3.0.5 Understanding of Parties

It is understood and agreed by the Owner and the City that this Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

3.0.6 Assignment

The Owner shall not assign this Agreement to any person or corporation without the written consent of the City, which consent shall not be unreasonably withheld.

APPENDIX A (CONTINUED)

3.0.7 Entire Agreement

This Agreement contains all agreements of the parties with respect to matters covered herein, superseding any prior agreements and may not be changed other than by an agreement in writing signed by the parties hereto.

3.0.8 Enurement

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

IN WITNESS WHEREOF, the parties have executed this Agreement.

THE CORPORATION OF THE CITY OF LONDON

By: _____
Joe Fontana, Mayor

By: _____
Catharine Saunders, City Clerk

Witness: _____ By: _____
Samuel John Shirley

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SCHEDULE "A"

In the City of London, County of Middlesex and being comprised of:

Lots 1 to 8 (both inclusive); Lots 10 to 26 (both inclusive); and lots 28 to 36 (both inclusive), on Registered Plan 33M-272.

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