

TEMPORARY SHORING INDEMNITY AGREEMENT

THIS AGREEMENT made effective as of the ____ day of _____, _____.

BETWEEN:

[DEVELOPER]
[address]
(the "Developer")

OF THE FIRST PART

- and -

[CITY]
a municipal corporation having jurisdiction in
[jurisdiction]
(the "City")

OF THE SECOND PART

WHEREAS:

- A. On [approval date] the City Planning Commission, pursuant to [specify municipal planning act and land use by-laws], approved the issuance of a development permit bearing Number [permit number], and on [2nd approval date] approved the issuance of development permit Number [2nd permit number], which permits are for construction of a development on the following lands:

[legal description of lands]

- B. The Developer is the ground lessee of the land;
- C. [OWNER], as fee simple owner of the land (the "Owner"), has consented to and agreed to be bound by the terms of this Agreement;
- D. [OWNER] and the Developer entered into an agreement in order to develop and manage the land and have leased the land from [OWNER] for a term ending the ____ day of _____;
- E. The Developer is desirous of providing temporary supports for the walls of the excavation within the adjacent property.
- F. Pursuant to [specify municipal government legislation], the City is prepared to allow such use subject to the covenants hereinafter to be performed and observed by the Developer.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants contained in this Agreement, the parties hereby agree as follows:

1. In this Agreement, the following terms shall have the following meanings:
 - (a) "adjacent property" means any municipal roadways, lands dedicated to the City for roadway purposes or bylawed road widening setbacks and corner cuts which are adjacent to the land;
 - (b) "City Standard Rates" means the most recent rates as set by the City Engineer for payment in lieu of removal of shoring components. The effective date of the said rate shall be as of the date of removal of the removable portions of the shoring components from the adjacent property or the date the Developer notifies the City of its intentions to leave said removable portions of the shoring components in the adjacent property as described in paragraph 11, whichever date first occurs;

- (c) "completion date" means the day on which all removable portions of the shoring work have been removed from the adjacent property, and the Developer has satisfied its obligation under paragraph 13 of this Agreement;
- (d) "removable portions of the shoring work" means all shoring components which includes piles, tiebacks, corner bracings, walers, timber lagging and all other related components except the cement grout and the bell anchor (metal anchor and grout body) which are less than 760 mm (30") in length and 200 mm (8") in diameter;
- (e) "shoring work" means the installation of a temporary shoring system and/or backsloping in accordance with the attached Schedules "A" and "B" including but not limited to piles, timber lagging, tiebacks and related components which are to be installed in the adjacent property;
- (f) "tieback" means the steel tendon, connection and all related components including the steel rod in the dywidag anchor;
- (g) "utility" means any public or private utility including water, storm sewer, sanitary sewer, gas, electricity, heat, transportation, telephone, cable or telecommunications.

2. The Developer is hereby granted the privilege to use the adjacent property for the purpose of performing the shoring work and maintaining the same subject to the terms, conditions and covenants to be observed or performed in this Agreement.

3. Prior to commencement of the shoring work, the Developer shall notify the owner of each utility within the adjacent property of the shoring work giving the location of each pile and obtaining approval for such location. In the event of damage to any utility caused by the shoring work, the Developer shall forthwith repair the same at no expense to the utility owner.

4. The Developer shall perform the shoring work strictly in accordance with the Schedules attached hereto, and if any deviations are required, the Developer shall again obtain the approvals referred to in the previous paragraph and submit revised Schedules "A" and "B" to the City for the purposes of amending this Agreement. The Developer shall take all necessary precautions to protect any utility from damage.

5. (a) The Developer shall indemnify and save harmless the City and the owner of each utility within the adjacent property from and against all damages, costs, claims, charges, actions or causes of action related to or arising out of the performance of the shoring work.

(b) As further security of the obligation to indemnify, the Developer shall maintain in full force and effect the following insurance, from the date of this Agreement until the completion date: a public liability policy providing a bodily injury and property damage inclusive limit of \$2,000,000 with the City and all owners of any utility within the adjacent property being added as named insureds. If a third party is providing the insurance, then the Developer must also be added as a named insured. A certificate of insurance shall be provided to the City prior to commencement of the shoring work.

6. (a) Concurrently with the execution of this Agreement, the Developer shall pay to the City an administration and inspection fee of _____ (\$_____) Dollars and shall provide the City with an unconditional letter of credit from a bank branch in [city], or any other form of negotiable security in lieu thereof, showing the Developer as the principal and the City as the recipient, in the amount of _____ (\$_____) Dollars to secure the performance by the Developer of the removal of the removable portions of the shoring work from the adjacent property and repair of any damage to the surface thereof. The unconditional letter of credit or performance bond shall not be released until the Developer has performed and fulfilled every covenant and clause in this Agreement, and without limiting the generality of the foregoing, has met the requirements set forth in paragraph 13, to the satisfaction of the City Engineer.

THIS IS AN 8-PAGE DOCUMENT, INCLUDING SCHEDULES.