

# Appendix B

## SUBDIVISION AGREEMENT

BETWEEN

THE CORPORATION OF THE CITY OF PORT COLBORNE

- and -

LESTER SHOALTS LIMITED

WESTWOOD ESTATES PHASE II SUBDIVISION

Date of this Agreement: JUNE 15, 2016

**THIS AGREEMENT** made this 15 day of JUNE, 2016 pursuant to Section 51 (26) of the *Planning Act* and authorized by By-Law No. of The Corporation of The City of Port Colborne (the "Agreement"),

B E T W E E N:

**LESTER SHOALTS LIMITED**

Hereinafter called the "DEVELOPER"

of the FIRST PART;

- and -

**THE CORPORATION OF THE CITY OF PORT COLBORNE,**

Hereinafter called the "CITY"

of the SECOND PART;

**WHEREAS** the DEVELOPER warrants and represents that:

- a) it is the registered owner in fee simple in possession of the lands described in Schedule "A" (the "Lands") annexed hereto;
- b) as of the date of execution of this Agreement and on the date of registration of this Agreement, **LESTER SHOALTS LIMITED**, shall be a valid and subsisting corporation in good standing duly incorporated under the laws of the Province of Ontario;
- c) as of the date of execution of this Agreement, registration of this Agreement and registration of the Plan of Subdivision, there will be no outstanding claims, liens or encumbrances registered against the lands described in Schedule "A" annexed hereto; and
- d) this Agreement shall take priority over any subsequent registrations against the Lands;

**AND WHEREAS** the Developer has applied to the City for approval of a Plan of Subdivision of the lands described in Schedule "A" annexed hereto;

**AND WHEREAS** the City's "Conditions of Draft Plan Approval" require that before the aforesaid Plan of Subdivision is given final approval, the Developer must enter into a Subdivision Agreement with the City to satisfy all its requirements, financial and otherwise, relating to the lands being subdivided;

**AND WHEREAS** this Agreement is made to satisfy the said Conditions of Draft Plan Approval;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the mutual covenants and agreements to be observed and performed by each of the Parties hereto, and in consideration of the sum of ONE (\$1.00) DOLLAR of lawful money of Canada now paid by the Developer to the City, the receipt whereof is hereby acknowledged by the City, the Parties hereto mutually covenant and agree as follows:

## 1. DEFINITIONS

In this Agreement the following terms shall have the meanings set out below, unless otherwise redefined or where the subject matter or context requires another meaning to be ascribed:

- 1.1 **Agreement** means this Subdivision Agreement.
- 1.2 **Assumption By-Law for Primary Services** means a by-law passed by the Council of The Corporation of the City of Port Colborne forthwith after the Director of Engineering and Operations has approved in writing the Certificate of Final Acceptance for Primary Services, assuming ownership of and responsibility for all Primary Services constructed by the Developer pursuant to the terms of this Agreement and the approved Plans, **SAVE AND EXCEPT** the following Primary Services:
- a) the streets and roadways constructed by the Developer within the Plan of Subdivision;
  - b) the noise attenuation requirements; and
  - c) the utility services other than the streetlights.
- 1.3 **Block** shall mean the whole of a parcel or tract of land created by the Plan of Subdivision.
- 1.4 **Assumption By-Law for Secondary Services** means a by-law passed by the Council of The Corporation of the City of Port Colborne forthwith after the Director of Engineering and Operations has approved in writing the Certificate of Final Acceptance for Secondary Services, assuming ownership of and responsibility for:
- a) all Secondary Services constructed by the Developer; and
  - b) the streets and roadways constructed by the Developer within the Plan of Subdivisions.
- 1.5 **Building Permit** means a permit issued by the Chief Building Official of The Corporation of the City of Port Colborne approving an application for the construction, reconstruction or alteration of any building or structure for which such permit is required pursuant to the provisions of By-Law 129-90 and amendments thereto.
- 1.6 **Certificate of Final Acceptance for Primary Services** means a certificate prepared by the Developer's Consulting Engineer and approved in writing by the Director of Engineering and Operations at the expiration of the Maintenance Warranty Period for Primary Services setting out the Primary Services being accepted by the City and indicating the date of final acceptance of such Works.
- 1.7 **Certificate of Final Acceptance for Secondary Services** means a certificate prepared by the Developer's Consulting Engineer and approved in writing by the Director of Engineering and Operations issued at the expiration of the Maintenance Warranty Period for Secondary Services setting out the Secondary Services being accepted by the City and indicating the date of final acceptance of such Works. The Certificate of Final Acceptance for Secondary Services.
- 1.8 **Chief Building Official** means the Chief Building Official for the Corporation of the City of Port Colborne or his designate appointed pursuant to the Building Code Act.
- 1.9 **Completion Certificate for Primary Services** means a certificate prepared by the Developer's Consulting Engineer and approved in writing by the Director of Engineering and Operations upon satisfactory completion of all Primary Services, the approval date of which shall start the Maintenance Warranty Period for such Primary Services.
- 1.10 **Completion Certificate for Secondary Services** means a certificate prepared by the Developer's Consulting Engineer and approved in writing by the Director of Engineering and Operations upon satisfactory completion of all Secondary Services, the approval date of which shall start the Maintenance Warranty Period for such Secondary Services.

- 1.11 **Consulting Engineer** shall mean the person or persons registered with the Association of Professional Engineers of the Province of Ontario, who for the time being is or are employed by the Developer to provide engineering services on behalf of the Developer for the Plan of Subdivision.
- 1.12 **Council** means the Council of The Corporation of the City of Port Colborne.
- 1.13 **Developer** shall mean the applicant for the approval of a Plan of Subdivision and the registered owner or owners in fee simple of the lands for which the Plan of Subdivision is proposed and their respective heirs, executors, administrators, successors and assigns. Wherever the singular is used herein it shall, where the context requires, include the plural.
- 1.14 **Director of Community and Corporate Services** means the Director of Community and Corporate Services for The Corporation of the City of Port Colborne or his designate.
- 1.15 **Director of Engineering and Operations** means the Director of Engineering and Operations for The Corporation of the City of Port Colborne or his designate.
- 1.16 **Easements** shall mean the easements described in Schedule "B" hereto, which forms part of this Agreement.
- 1.17 **Final Default** means a situation where the Developer fails to remedy a default within such time as provided in the notice given by the City, as provided in Section 15 hereof.
- 1.18 **Front Lot Line** means the lot line that divides a Lot from the street; provided, however, that:
- a) in the case of a corner lot, the shortest Street Line shall be deemed to be the front lot line and the longest Street Line shall be deemed to be the side lot line; and
  - b) in the case of a corner lot with two Street Lines of equal length, the lot line that abuts the wider street or abuts a Regional Road or highway shall be deemed to be the front lot line, and in the case of both streets being under the same jurisdiction or of the same width, the lot line where the principal access to the lot is provided shall be deemed to be the front lot line.
- 1.19 **Grading Conformance Certificate** means the Certificate identified in Section 10.21 hereof.
- 1.20 **Frontage of Lot** means the horizontal distance between the side lot lines measured along the Front Lot Line, but where the Front Lot Line is not a straight line or where the side lot lines are not parallel, the lot frontage is to be measured by a line 7.5 metres back from and parallel to the chord of the lot frontage, and for the purpose of this paragraph the chord of the lot frontage is a straight line joining the two points where the side lot lines intersect the Front Lot Line.
- 1.21 **Lands** shall mean the lands described in Schedule "A" annexed hereto and forming part of this Agreement.
- 1.22 **Letter of Credit** shall mean any municipal standby irrevocable Letter of Credit drawn upon a Chartered Bank posted with and in a form acceptable to the City pursuant to this Agreement. The municipal standby irrevocable Letter of Credit shall contain a provision which automatically renews it from year to year unless the Bank gives thirty (30) days advance written notice of its intention not to renew.
- 1.23 **Letter of Occupancy** means a Letter of Occupancy issued by the Chief Building Official subsequent to final inspection of a dwelling, as required by Section 12.6 hereof.
- 1.24 **Local Improvements** shall include utilities, sanitary sewers, storm sewers, sidewalks, curbs and gutters, pavements and such other local improvements as are defined by the *Local Improvements Act* or the *Municipal Act*.
- 1.25 **Lot** shall mean the whole of a parcel or tract of land created by the Plan of Subdivision.

- 1.26 **Lot Grading Deposit** means a deposit of security as specified in Subsection 10.22(b) hereof.
- 1.27 **Lot Grading Plan** means a plan for the grading of a Lot as required in Subsection 10.22(a) hereof.
- 1.28 **Maintenance Warranty Period** means the period of time during which the Developer is obliged to maintain the Works following approval of the Completion Certificate for Primary Services or Secondary Services, as the case may be, which period is defined in Section 11.6 hereof.
- 1.29 **Party** shall mean a party to the Agreement and the successors or permitted assigns.
- 1.30 **Plan of Subdivision** shall mean the Plan of Subdivision of the Lands described in Schedule "A" hereto ultimately approved for registration by the City and registered on title pursuant to the provisions of the *Planning Act*.
- 1.31 **Plans** shall mean all drawings, plans, specifications, contracts and other documents providing for the installation, construction and erection of the Works approved by and filed in the office of the Director of Engineering and Operations prior to execution of this Agreement by the City.
- 1.32 **Pre-Servicing** means the installation of Works prior to registration of this Agreement.
- 1.33 **Primary Services** shall mean the following municipal services required to be constructed by the Developer:
- a) municipal sanitary sewer system;
  - b) municipal storm sewer system, storm drainage and storm water management facilities sufficient in the opinion of the Director of Engineering and Operations to provide safety and protection from undue inconvenience to the general public;
  - c) municipal water system, including fire hydrants;
  - d) municipal streets and roadways of final design width with granular base, base course asphalt and concrete curbs and gutters;
  - e) street signs and traffic control signs and devices;
  - f) rough grading of the Lands;
  - g) Noise berm, wall or fence required to mitigate noise within the lands described in Schedule "A" annexed hereto; and
  - h) all Utility Services.
- 1.34 **Region** means The Corporation of the Regional Municipality of Niagara.
- 1.35 **Reserve Strip** shall mean a parcel of land conveyed by the Developer to the City in fee simple, free of encumbrances, abutting a Street Line and separating the street from the next abutting lot or block, for the purpose of preventing legal access from the said street to the said next abutting lot or block.
- 1.36 **Secondary Services** shall mean all municipal services required to be constructed by the Developer not defined as "Primary Services", and without limiting the generality of the foregoing, shall include:
- a) top course roadway asphalt;
  - b) sidewalks;
  - c) paved driveway aprons;
  - d) footpaths;
  - e) fencing;
  - f) sodding of boulevards;
  - g) landscaping; and
  - h) tree plantings.
- 1.37 **Storm Water Management Report** means an approved storm water management report and specifications prepared by the Developer in accordance with Section 10.10 of this Agreement.

- 1.38 **Street Line** means a lot line dividing a Lot from a street and is the limit of the street or road allowance.
- 1.39 **Subdivision** means the division of a parcel of land into lesser parcels by means of a registered Plan of Subdivision.
- 1.40 **Supervision** means the full-time inspection and administration of the Works for the express purpose of enforcing the provisions of this Agreement and providing certification of the Works in accordance with Section 6.
- 1.41 **City** means The Corporation of the City of Port Colborne.
- 1.42 **Treasurer** means the Director of Community and Corporate Services for The Corporation of the City of Port Colborne or his designate.
- 1.43 **Utility Services** means:
- a) all electrical distribution and street lighting systems, complete;
  - b) if applicable, all gas services, complete;
  - c) all telephone services, complete; and
  - d) all co-axial services, complete.
- 1.44 **Works** means all Primary Services and Secondary Services, both internal and external, and all construction, erection, installation and engineering required to service the Lands in accordance with the terms of this Agreement and the approved Plans.

## 2. **LANDS TO BE SUBDIVIDED**

The lands to be subdivided by the Plan of Subdivision are those Lands described in Schedule "A" annexed hereto and the Plan shall be registered against all of such Lands.

## 3. **GENERAL PROVISIONS**

### 3.1 **Development at Sole Expense of Developer**

Unless the context otherwise requires, where the Developer is obligated by this Agreement or the approved Plans to make any payments or install or construct or carry out any services or action the provision therefor contained herein shall be deemed to include the words "at the sole expense of the Developer"

### 3.2 **Other Agreements**

If, after this Agreement is executed, the Regional Municipality of Niagara, the City or any other authority having jurisdiction shall impose any further condition or requirement which is not contained herein, the Developer shall forthwith, upon written demand, enter into such further agreement or agreements and give such further assurances as may be required and the Developer shall not contravene any condition or requirement of such authority notwithstanding the same is not contained herein.

### 3.3 **Indemnification, Release and Liens**

- a) The Developer covenants and agrees to indemnify and save the City completely harmless from and against all actions, suits, claims or demands which may arise either directly or indirectly by reason of the permission granted hereunder and the construction and installation of the Works on the Lands, or by reason of the maintenance or lack of maintenance of the Works, or by reason of any defect in workmanship or material. The Developer further covenants and agrees to release and forever discharge the City from and against any and all actions, suits, claims or demands which may arise either directly or indirectly by reason of the permission granted hereunder and the construction and installation of the Works on the Lands for the purposes of development of the Plan of Subdivision;
- b) Furthermore, the Developer shall indemnify and hold the City harmless from and against liability claims, damages or expenses due to or arising

from any claim made against the Lands and adjacent municipal lands where services are installed therein pursuant to this Agreement for all liens related to all work done by or on behalf of the Developer. Any such liability, claims, damages or expenses incurred by the City shall be paid by the Developer to the City forthwith upon demand. The Developer shall further cause all registration of claims for construction liens or certificates of action under the Construction Lien Act, R.S.O. 1990, c. C30, as amended, and relating to any such work done by or on behalf of the Developer to be discharged or vacated, as the case may be, within ten (10) days of such registration or within ten (10) days after notice from the City.

### 3.4 Covenants Run With the Land

The Developer and the City acknowledge and agree that it is their intent that all terms, conditions and covenants contained herein,

- a) shall run with the Lands, and
- b) shall be binding upon the Developer, its heirs, executors, administrators, assigns and successors in title, from time to time,

and that the benefits of the said covenants shall enure to the City, its successors and assigns in title of all roads, streets and public lands forming part of or abutting on the Lands.

### 3.5 Notices

Any notices required or permitted to be given pursuant to the terms of this Agreement shall be given in the manner hereinafter set out, in writing addressed in the case of:

- a) the City c/o Dan Aquilina, to City Hall, 66 Charlotte Street, Port Colborne, Ontario L3K 3C8 Facsimile 905-835-2939;
- b) the Developer, to Lester Shoalts Ltd, 214 West Street, Port Colborne, Ontario L3K 4E3

and the giving of such written notice shall be deemed to be complete, where notice is given by personal service, on the day that the serving of written notice is completed, and where notice is given by prepaid registered mail, two (2) days after the date of mailing, and where notice is given by telephone transmission of a facsimile of the notice, on the day that the transmission of the written notice is completed.

### 3.6 Binding on Heirs, etc.

This Agreement and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the Parties hereto and upon those persons and/or corporations hereafter acquiring title to all or any part of the Lands.

### 3.7 Schedules and Appendices

The following Schedules and Appendices which are identified by the signatures of the parties to this Agreement, and which are attached hereto, together with all provisions contained therein, are hereby made part of this Agreement as fully and to all intents and purposes as though recited in full herein:

- Schedule "A" - Description of Lands
- Schedule "B" - Lands to be Conveyed for Public Purposes
- Schedule "C" - Additional Site Conditions
- Schedule "D" - Roads
- Schedule "E" - Sanitary Sewers
- Schedule "F" - Storm Sewers and Surface Drains

Schedule "G" -	Watermains
Schedule "H" -	Sidewalks and Fencing
Schedule "I" -	Streetlights
Schedule "J" -	Subdivision Deposit
Schedule "K" -	Subdivision Staging Plan
Appendix "A" -	Plans, Profiles and Specifications

### 3.8 Section 67 Planning Act

The Developer agrees to be bound by the penalty provisions set forth in Section 67 of the *Planning Act*, R.S.O. 1990, c.P.13, and amendments thereto.

### 3.9 Applicable Laws

- a) In constructing, installing or providing the Works, the Developer shall comply with all statutes, laws, by-laws, regulations, ordinances, orders and requirements of any governmental or other public authorities having jurisdiction at any time from time to time enforced. Without limiting the foregoing, the Developer agrees to comply with, and cause to be complied with, the provisions of the *Occupational Health and Safety Act*, the *Environmental Protection Act*, and The *Ontario Water Resources Act* and any regulations, policies and guidelines relating thereto. The Developer further agrees to handle and dispose of all materials in accordance with the foregoing legislation.
- b) The Developer shall do, cause to be done, or refrain from doing any act or thing as directed by the City if at any time the City considers that any situation or condition is unsafe, damaging to the environment, or contrary to the provisions of any applicable laws. If the Developer fails to comply with such direction, the City may take action to remedy the situation at the expense of the Developer and in this regard the City shall also be entitled to draw upon any security filed by the Developer under this Agreement.

### 3.10 Severance of *Ultra Vires* Terms

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

### 3.11 Incontestability

The Developer shall not call into question directly or indirectly, in any proceeding whatsoever in law or in equity, before any court or administrative or other tribunal, the right of the City to enter into this Agreement and to enforce each and every term, covenant and condition thereof, and this provision may be pleaded by the City in any such action or proceeding as a complete and conclusive estoppel of any denial of such right.

### 3.12 Time of the Essence

Time shall be of the essence of this Agreement.

### 3.13 Certificate of Status

Prior to execution of this Agreement by the City, the Developer shall deliver to the City a Certificate of Status issued by the Ontario Ministry of Consumer and Commercial Relations verifying that the Developer is a company duly incorporated under the laws of the Province of Ontario and is in good standing.

### **3.14 Mortgagee's Postponement**

The Developer hereby agrees to procure, register and provide to the City any postponement agreements which the City solicitor considers necessary to ensure that this Agreement shall have priority over any interest of a mortgagee in the Lands.

### **3.15 Notice to Purchasers**

The Developer shall notify or cause to be notified each and every purchaser of a Lot or Lots of all Works contracted by the Developer, the Developer's obligations to maintain the Works and all other conditions covered by this Agreement by providing a complete and accurate summary of same and shall cause such information to be fully recorded in any Offer to Purchase or Agreement of Purchase and Sale entered into by the Developer.

## **4. SERVICING PLANS AND SPECIFICATIONS**

4.1 All Plans and specifications must be approved in writing by the Director of Engineering and Operations prior to the execution of this Agreement by the City and the Developer commencing construction of any of the Works.

4.2 The Developer shall submit to the Director of Engineering and Operations three (3) copies of each plan required to be submitted for approval with respect to the construction of the Works contemplated in this Agreement.

4.3 It is understood and agreed the Director of Engineering and Operations in his appraisal of the Plans and specifications will be guided by current requirements of the Province of Ontario, established specifications and standards adopted by the City or existing practices and standards as may from time to time be established or amended by the City by its officials or agents. The City may require, in writing, such variances from the Plans as it may deem appropriate due to conditions which may be disclosed as the work progresses and by sound engineering practices.

4.4 No approval by the Director of Engineering and Operations shall operate as a release by the City of any liability of the Developer which, but for such approval, might exist or hereafter arise.

4.5 All Plans shall be prepared and stamped by a Consulting Engineer or an Ontario Land Surveyor licensed to practice in the Province of Ontario.

## **5. STAGING**

5.1 It is agreed between the parties hereto that the works to be constructed under this Agreement are to proceed in phases numerically in accordance with Schedule "K" attached hereto. Further, the provisions of this Agreement with respect to the construction of said works, security deposit, the acceptance of the work by the City, the maintenance period, building permits and other matters contained within this Agreement shall be applicable separately for each Stage. Prior to commencement of subsequent Stages, the Developer agrees to update Schedule "J" – Subdivision Deposit with current cost estimates concurrent with the year construction is to be completed for each Stage after Stage 1 in order to provide the necessary Security Deposits for those Stages.

## **6. ENGINEERING AND INSPECTION**

### **6.1 Consulting Engineer**

The Developer shall employ a competent and qualified Consulting Engineer, approved by the Director of Engineering and Operations, to:

- a) carry out all necessary soil investigations to the satisfaction of the Director of Engineering and Operations;
- b) design all Works required to be completed by this Agreement;

- c) prepare plans, profiles and specifications for the Works and submit detailed plans, profiles and specifications to the Director of Engineering and Operations for approval prior to installation or construction of such Works;
- d) obtain from the Director of Engineering and Operations details regarding the form and scale of the plans and profiles prior to their preparation;
- e) obtain and provide the City with all necessary approvals prior to installation or construction of the Works and prior to execution of this Agreement;
- f) prior to execution of this Agreement by the City, prepare and furnish the Director of Engineering and Operations with estimates of the cost of installation and construction of the said Works;
- g) if required, prepare contract documents and call tenders for installation and construction of the said Works;
- h) prepare and supply the City with Progress Payment Certificates;
- i) provide full time resident inspection and contract administration of all Works covered by this Agreement;
- j) maintain all records for the installation and construction of the said Works and submit "as constructed" records in electronic form to the Director of Engineering and Operations prior to approving the Completion Certificate for the Works as per the following:
  - i) all reports will be prepared in Microsoft Word and/or Excel and all drawings will be created in AutoCAD (2012) and the latest version of ESRI ArcGIS. Ownership of both hard copies and digital copies must be transferred to the City upon completion of the Works. Metric units are to be used;
  - ii) mapping and associated database information is to be provided in ERSI (.shp) shapefile with object data attached. All information is to be tied to UTM coordinates using the standard NAD83 (Zone 17) datum and should be accompanied by supporting files (font files and plot files) if applicable. Please note that graphical images (.pdf, .cdr, .tif) and CAD files are not considered an acceptable GIS format.
- k) upon completion of installation and construction of the Works, supply the City with a certificate verifying that the Works were installed and constructed in accordance with the approved Plans and specifications;
- l) provide the Director of Engineering and Operations with individual record sheets of all sewer and water services location and depth;
- m) when requested by the Director of Engineering and Operations, accompany him on his inspections of the Works;
- n) supervise construction of all Works on a full time basis, including any remedial work the Director of Engineering and Operations may require;
- o) test all services and verify to the Director of Engineering and Operations, in writing, that all testing has been completed in accordance with the appropriate requirements;
- p) provide building elevations for construction purposes; and
- q) certify, in writing, to the Director of Engineering and Operations, as to the actual cost of all Works completed, prior to the City approving a Completion Certificate for such Works or reducing any Letter of Credit.

**6.2** All Primary, Secondary and Utility Services shall be installed, constructed, inspected and tested under the direct supervision of the Developer's Consulting Engineer at the sole expense of the Developer.

- 6.3 The Developer's Consulting Engineer shall conduct all testing of Works and materials to the complete satisfaction of the Director of Engineering and Operations. All sanitary and storm sewers must be inspected and videoed via closed circuit television (CCTV) prior to final acceptance by the City. Complete CCTV reports in the latest format to be provided to City upon completion with as-built documents.
- 6.4 The Director of Engineering and Operations or his designate shall have the right at any time and from time to time to request an inspection and re-inspection of any of the Works in progress to ensure such Works are being constructed in accordance with the Plans and specifications approved by the Director of Engineering and Operations. Such inspections may include testing and the method and time of testing shall be at the sole discretion of the Director of Engineering and Operations.
- 6.5 The City shall inspect all works as deemed necessary to ensure that the works are being constructed in accordance with the plans and specifications approved by the City, to the Engineer's satisfaction. This inspection shall be in addition to the inspection provided by the Developer's Consulting Engineer, and shall in no way relieve the Developer or its Consulting Engineer of any responsibility with regard to supervision and inspection or the proper completion of the work. The Developer shall pay the full cost of engineering inspection by the City.
- 6.6 The City shall inspect all materials and appurtenances prior to installation to ensure conformance with latest City approved material/manufacture lists. Any items deemed unacceptable are to be tagged or otherwise identified as "unacceptable", and removed from site immediately. Any items deemed "unacceptable" will be replaced at the expense of the Contractor. Replacement item(s) shall be examined for conformance to the specifications by the City.
- 6.7 The Director of Engineering and Operations shall have a discretionary right to order any work-in-progress stopped and such work shall not be recommenced without written authority from the Director of Engineering and Operations.

## **7. BY-LAW(S), DOCUMENTATION AND REGISTRATION**

- 7.1 Before this Agreement is executed by the City, the appropriate authorizing By-law must be enacted by the Council of the City.
- 7.2 The City may, at the sole expense of the Developer, request the Developer's solicitor to prepare such further and other documentation as may be deemed necessary and/or required by the City for the preparation, registration and implementation of the agreement.
- 7.3 If required, the Developer's solicitor, at the sole expense of the Developer, shall:
  - a) provide and/or prepare all documentation which the City's Solicitor may require, including all necessary Transfers, Easements and restrictive covenants in registerable form;
  - b) certify title to the City in a signed Certificate of Title;
  - c) have all documentation signed by the Developer, Chargees, and other necessary parties;
  - d) sub search title and obtain an Execution Certificate prior to registration and provide copies of same to the City's Solicitor;
  - e) deliver all executed documentation to the City; and
  - f) attend to registration of all documentation, at the Developer's expense, required by this Agreement.
- 7.4 Prior to the City executing this Agreement, the Developer shall provide the City with two (2) copies each of the draft Plan of Subdivision (M-Plan) for the Lands and the draft Reference Plan (R-Plan) providing legal descriptions for Easements within or outside the Lands.

- 7.5 The Developer covenants and agrees to register an application, signed by the City, for an order inhibiting any dealings with the Lands to the applicable Land Registrar immediately following the registration of the Agreement. The Developer acknowledges that the City shall not be obligated to register any documents in compliance with the Inhibiting Order or to apply to have the Inhibiting Order removed from title until the Developer has supplied all documents in compliance with this Agreement in a form satisfactory to the City for registration and all other documents required to provide discharges, releases and postponements with respect to any charges, mortgages or encumbrances with respect to the Lands have been registered against title to the lands.
- 7.6 Upon the City being satisfied that all conditions of Draft Plan approval for the Plan of Subdivision have been satisfied by the Developer within the required time, the City shall register the following documentations at the sole expense of the Developer as soon as practicable:
- a) the approved Plan of Subdivision; and
  - b) all other documentation related thereto, including without limitation, Cessations of Charge.
- 7.7 In the event the Plan of Subdivision is not registered within one (1) year from the date of registration on title of this Agreement, the City may declare the Developer in Final Default.
- 7.8 The Developer shall not deal in any manner whatsoever with any Lot or Block shown on the Plan of Subdivision until this Agreement, the Plan of Subdivision and all other documentation (including Transfers, Easements, Cessation of Charge, Inhibiting Orders, Reference Plans, and Postponements of Charges) required by this Agreement and by the City's solicitor have been delivered, approved and registered on title to the complete satisfaction of the City's solicitor.

## **8. LANDS REQUIRED FOR MUNICIPAL PURPOSES**

- 8.1 The Developer shall convey to the City, in fee simple, free from all encumbrances, such other land as may be required in connection with services necessary for the development of the lands described in Schedule "A" attached hereto, which said additional lands conveyed for Public Purposes are described in Schedule "B" attached hereto.
- 8.2 The Developer shall transfer the lands referred to in Section 8.1 above in a neat and tidy condition, free from all debris and trash and in a condition including all necessary improvements completed to the satisfaction of the Council.
- 8.3 The Developer covenants and agrees, at its expense, to obtain and grant to the City, prior to final approval of the subdivision, easements required for the construction of services described in the Schedules attached hereto, in accordance with the City's standard easement agreement form, satisfactory to the City Solicitor. The Developer shall also grant such easements as required by other utility companies or commissions for the installation of their plant.

## **9. EASEMENTS FOR MUNICIPAL PURPOSES**

- 9.1 The Developer covenants and agrees, at its sole expense, to obtain and/or grant to the City such easements as may be required for the installation and construction of services or development of the Lands in accordance with Schedule "B" annexed hereto.
- 9.2 The Developer shall convey to the City or to such public utility company or commission or cable television company as the City may direct, easements required for utility and/or coaxial purposes in accordance with Schedule "B" annexed hereto. All such easements shall be prepared to the complete satisfaction of the City, and if required by the City, any such utility or cable television company.
- 9.3 The Developer shall undertake and complete all improvements in, over, along and upon such easement lands conveyed to the City, including Primary Services, Secondary Services and Utility Services, in accordance with the terms of this

Agreement and the Plans filed to the complete satisfaction of the Director of Engineering and Operations and shall keep such easement lands in a neat and tidy condition, free of all debris and trash until the City has passed the Assumption By-Law for Secondary Services.

## 10. SERVICES

### 10.1 General

- a) Where the Plan of Subdivision is serviced by a secondary means of egress or emergency access to be constructed by the Developer, an existing road allowance, open or unopened, or any newly dedicated widening thereof, the Developer agrees such secondary means of egress or emergency access, road allowance and any widening thereof shall be deemed to form part of the Lands and be subject to the requirements related thereto specifically indicated in the approved Plans.
- b) Where it is necessary to use a secondary means of egress or emergency access to be constructed by the Developer or an unopened road allowance to service all or any part of the Lands, the Developer shall, at its own expense, construct the necessary municipal services in accordance with the approved Plans.
- c) The Developer shall not change, or do any work that will prejudicially effect, any natural watercourse or drainage ditch without making full and proper provisions satisfactory to the Director of Engineering and Operations, and the Developer shall be solely responsible for any damage caused thereby and the Developer hereby indemnifies and saves harmless the City from any claim arising from such damage.
- d) The Developer shall keep all portions of the development well, properly and efficiently drained during construction and completion and will be held responsible for all damage which may be caused or results from water backing up or flowing over, through, from or along any part of the Works, or which any of the Developer's operations may cause to flow elsewhere, and the Developer hereby indemnifies and saves harmless the City from any claim arising from said damage.
- e) The Developer covenants and agrees to carry out all Works necessary to service the Plan of Subdivision in such a manner as to prevent erosion and earth, debris and other material from being washed or carried in any manner onto any road, road allowance or highway whether opened or unopened, or onto the property of any other person or persons. If such earth, debris or other material is washed or carried onto such road, road allowance, whether opened or unopened, or onto the property of any person or persons, the City, its servants or agents, may, at the City's discretion, clean and remove such material, rectify any damage caused, and abate any nuisance created by the Developer in the development of the Plan of Subdivision. The cost of any such work performed by or at the instruction of the City, shall be paid by the Developer on demand, and without limiting any of its remedies at law or in equity, the City may enforce any security available to it to recover such costs or may collect such costs in like manner as municipal taxes as provided in *The Municipal Act* and with the same priorities as taxes that are overdue and payable.
- f) The Developer shall be solely responsible for controlling dust nuisance in conjunction with the Works, both within the Plan of Subdivision and elsewhere.
- g) All streets abutting on the Lands or used for access to the Lands during installation or construction of the Works or during construction of dwellings shall, at all times, be kept as dust free as possible and in a good and usable condition, and without restricting the generality of the foregoing, the Developer shall at the end of each day during such construction cause all such streets to be cleaned of all refuse, rubbish, waste, debris and other materials of any kind, whether the same resulted from installation and construction of Works or otherwise, and if such streets are damaged the Developer shall at its own cost restore same immediately to the City's

requirements and to the satisfaction of the Director of Engineering and Operations.

- h) All trucks making deliveries to or taking materials from the Lands shall be adequately covered and not unreasonably loaded so as to scatter refuse, rubbish, dust or debris on abutting streets or properties. If at any time, in the opinion of the Director of Engineering and Operations, damage is being or is likely to be done to any street or any improvement thereon, other than such portions as are part of the Works, by the Developer's or its contractor's vehicles or other equipment, whether licensed or unlicensed, the Developer or its contractor shall on the direction of the Director of Engineering and Operations make changes in or substitutions for such vehicles or other equipment or shall alter loading or shall in some other manner satisfactory to the Director of Engineering and Operations remove the cause of such damage or nuisance. The Developer shall at its own cost repair any such damage immediately to the City's requirements and to the satisfaction of the Director of Engineering and Operations.
- i) The Developer shall inform all public utility companies having legal authority to install or construct utility systems (including without limitation Bell Canada, Consumer's Gas, Enbridge Gas, Canadian Niagara Power Inc., Regional Cable Television (Central) Inc., Niagara Regional Broadband Network, etc.) of the approximate date of construction of the Works in order that such utility companies may place their work in accordance with their requirements and to the satisfaction of the Director of Engineering and Operations, and the Developer shall assume complete responsibility and make all necessary arrangements for the moving of hydro-electric, gas, telephone and co-axial cables, pipes, conduits, wires, pipe lines, or any other public utility works as necessary and as approved by the Director of Engineering and Operations, and the Developer shall be solely responsible for any damage caused to the said cables, pipes, conduits, wires, pole lines and other works.
- j) The City disclaims any responsibility or liability for the support and protection of sewers, drains, pipes, conduits, tracks or other utilities, services and structures owned by the City or any other public body, by companies, or any other person enjoying special franchises or occupying any portion of the streets or ways on or below or above the surface. The Developer is directed to carefully examine the location of the Works and to make special inquiry of the companies or persons owning, controlling or operating said pipes, conduits, tracks and other utilities, services and structures, and to determine the character, size, position and length of such pipes, conduits, tracks, utilities and structures, and to inspect the public records of the various City Departments having recognizance and control of pipes, conduits and sewers, and to make such further personal inspection and investigation as is necessary to determine the correctness of the information so obtained. It is the Developer's responsibility to consult the companies concerned as to the exact location of said utilities, services and structures, and, where necessary, the Developer shall protect and support same to maintain their operation. In the event damage is done to a utility, service or structure the Developer thereof shall be notified immediately by the Developer and any costs arising from such damage shall be paid for by the Developer. A copy of such notice shall be sent to the Director of Engineering and Operations.
- k) The Developer agrees to keep boulevards and Easements graded and free and clear of all material and obstructions which might interfere with the construction of telephone, co-axial, gas and hydro-electric installations, and other utility works.
- l) The Developer shall remove from all road allowances in the Plan of Subdivision, any surplus or other material and obstructions and such trees and vines, as necessary and to the satisfaction of the Director of Engineering and Operations, and further, shall remove from the Lands any unkempt, diseased or infested trees, vines or bushes. In the event this clause is not complied with within fourteen (14) days of written notice delivered by the City to the Developer, the City may have such material

removed and collect the cost thereof from the Developer, and without limiting its remedies at law or equity, the City may enforce any security held by it to recover costs or may collect the costs in like manner as municipal taxes as provided in *The Municipal Act* and with the same priorities as taxes that are overdue and payable.

- m) The Developer shall not remove any topsoil from the Lands without first obtaining written approval from the Director of Engineering and Operations.
- n) All Works required to be installed or constructed by the Developer shall be installed and constructed in accordance with the City's specifications therefor at the date of the commencement of the installation or construction of the Works and in accordance with the approved Plans.
- o) The Developer acknowledges and agrees, notwithstanding the complete installation of services in the subdivision as authorized by the City, that the City will not be held liable for any stoppage or delay of the registration of the Plan or the issuance of Building Permits for the lots in the Plan.

#### 10.2 Survey Monuments to be Preserved

The Developer agrees:

- a) all survey monuments or related markings established in connection with the installation of public utility and municipal services are to be preserved; and
- b) if any survey monument or related marking is accidentally or deliberately damaged, destroyed or removed, to immediately repair or replace such monuments or related markings under the direction of the person or persons responsible for establishing said survey monuments or related markings.

#### 10.3 City's Right to Enter and Repair

- a) The City shall have the right to enter on the Lands at all times and from time to time and to carry out maintenance and repair of the Works:
  - i) without notice to the Developer where, in the sole opinion of the Director of Engineering and Operations, danger to public safety or an emergency condition exists, or the streets have not been kept free of mud, dust and/or snow or to prevent damage or hardship to any persons or property; and
  - ii) where repairs to or maintenance of the said Works has not been completed within twelve (12) hours after written notice requiring such repairs or maintenance has been delivered to the Developer.
- b) The decision of the Director of Engineering and Operations that repairs, remedial work or maintenance to the said Works is required or that an emergency state exists requiring immediate repair or maintenance shall be final, conclusive and incontestable. Such repairs, remedial works or maintenance shall not be deemed acceptance of the Works by the City or an assumption by the City of any liability in connection therewith and shall not release the Developer from any of its obligations under this Agreement.
- c) The cost of any repair or maintenance work (including professional fees) undertaken by the City pursuant to the provisions of this Agreement shall be borne by the Developer and the amount thereof shall be paid to the City within thirty (30) days after a statement of account therefor has been delivered to the Developer. If the Developer fails to pay the amount due to the City within such thirty (30) day period, the City may and is hereby expressly authorized by the Developer to deduct the amount owing to the City for such repairs or maintenance from any monies or Letters of Credit deposited with the City.

- d) Repairs or maintenance undertaken by the Developer pursuant to this subsection, shall be completed in the presence of the Director of Engineering and Operations or his representative.

#### **10.4 Services to be Co-ordinated**

The Developer agrees and acknowledges that the designs of all municipal and public utilities and services for the subdivision of the Lands must be coordinated with all adjacent developments to ensure secondary access, service main looping and other integration and co-ordination of utilities and services.

#### **10.5 Land Use Sign**

The Developer agrees to erect, to the satisfaction of the Director of Engineering and Operations, a 2.5m x 2.5m Land Use Sign prior to the commencement of construction of the Works, which shall indicate the proposed and abutting street system, lot patterns, sidewalk layout and land uses. The Developer further agrees to make available all such information and related servicing structures to prospective buyers.

#### **10.6 Interim Works**

The Developer agrees and acknowledges that, until the Director of Engineering and Operations affixes his signature of approval to the Plans, all works which may be carried out in the interim are done solely and entirely at the Developer's risk, and that changes to existing works or additional works may be required or reflected in the final approved Plans.

#### **10.7 Roads**

- a) The Developer agrees to perform and complete all road Works required by this Agreement and the approved Plans and specifications to the complete satisfaction of the Director of Engineering and Operations.
- b) Any existing road damaged during the development of the Plan of Subdivision shall be restored by the Developer, to the complete satisfaction of the Director of Engineering and Operations, prior to approval of the Certificate of Completion for Primary Services.
- c) The roads shall be named to the satisfaction of the City.

#### **10.8 Sanitary Sewer System**

- a) If required by the City, and prior to execution of this Agreement by the City, the Developer shall undertake a review of existing downstream sanitary sewer system to ensure the capacity of the system is sufficient for the increase in flows from the Plan of Subdivision. In the event the downstream system is inadequate for the flow increase from this Subdivision, upgrading of those facilities will be the financial responsibility of the Developer and the Work required and/or necessary to upgrade such facilities shall be completed by the Developer as part of development of this Plan of Subdivision to the complete satisfaction of the Director of Engineering and Operations.
- b) The Developer shall construct a sanitary sewer system, including service laterals from the sewer main to the Street Line and other appurtenances, to adequately service the Lands. All sanitary sewers, including upgrading of downstream facilities if deemed necessary by the City, shall be constructed according to the approved Plans and specifications. Plans must be approved by the Director of Engineering and Operations, the Region of Niagara Public Works Department and the Ministry of the Environment, and the construction and materials used therein shall be in accordance with the City's most recent specifications therefor.
- c) All sanitary sewer Works shall be flushed and cleaned by high velocity sewer flushing equipment:

- i) after placement of the base course asphalt upon the streets in the Plan of Subdivision;
  - ii) forthwith after final paving of the streets has been completed; and
  - iii) upon receipt of any written notice from the Director of Engineering and Operations.
- d) All sanitary sewer Works shall be tested, and if necessary re-tested, and the method and time of testing shall be to the satisfaction of the Director of Engineering and Operations.
- e) All sanitary sewer Works shall be inspected and videoed via closed circuit television to the satisfaction, and upon any written notice from, the Director of Engineering and Operations and prior to assumption of the sanitary sewer Works by the City. In the event the results are not satisfactory in the sole opinion of the Director of Engineering and Operations, the Developer shall take such remedial steps as may, in the sole opinion of the Director of Engineering and Operations, be required.
- f) Prior to the Director of Engineering and Operations approving the Completion Certificate for Primary Services, the Developer shall supply the Director of Engineering and Operations with "as constructed drawings" and complete CCTV Reports showing the location and depth of the sanitary sewer lateral constructed to service each Lot.
- g) Prior to registration of the Plan, the Region shall confirm that adequate sanitary sewage allotment is available.
- h) The Developer agrees to perform and complete all sanitary sewer Works required by this Agreement and the approved Plans and specifications to the complete satisfaction of the Director of Engineering and Operations.

#### **10.9 Storm Drainage System**

- a) The Developer agrees to construct a storm drainage and storm water management system to adequately service the Lands and all or any portion of the ultimate drainage area in which the Lands are located. This system shall be constructed in accordance with the Plans approved by the Director of Engineering and Operations, the Region of Niagara Public Works Department, the Region of Niagara Public Works Department, the Niagara Peninsula Conservation Authority (NPCA) and the Ministry of the Environment, and construction and materials used therein shall be in accordance with the City's most recent specifications therefor.
- b) All storm sewer Works shall be flushed and cleaned by high velocity sewer flushing equipment:
  - i) after placement of the base course asphalt upon the streets in the Plan of Subdivision;
  - ii) forthwith after final paving of the streets has been completed; and
  - iii) upon receipt of any written notice from the Director of Engineering and Operations.
- c) All storm sewer Works shall be inspected and videoed via closed circuit television to the satisfaction of, and upon any written notice from, the Director of Engineering and Operations and prior to assumption of the storm sewer Works by the City. In the event the results are not satisfactory in the sole opinion of the Director of Engineering and Operations, the Developer shall take such remedial steps as may, in the sole opinion of the Director of Engineering and Operations, be required.
- d) Prior to the Director of Engineering and Operations approving the Completion Certificate for Primary Services, the Developer shall supply the Director of Engineering and Operations with "as constructed drawings"

and complete CCTV Reports showing the location and depth of the storm sewer lateral constructed to service each Lot.

#### **10.10 Stormwater Management System**

- a) The Developer agrees that prior to the City executing this Agreement the Developer shall prepare and provide a Storm Water Management Report which shall be submitted for approval by the Director of Engineering and Operations, the Ministry of the Environment, the NPCA and the Region of Niagara Public Works Department, indicating the following:
  - i) the manner in which storm water will be conveyed across the Lands in both major and minor storms, using storm water management techniques that are in accordance with the Provincial guidelines contained in "Stormwater Management Practices Planning & Design Manual - June 1994" (Ministry of Environment) and the latest revision thereof or such more stringent standards as may be applicable;
  - ii) an assessment of downstream and upstream constraints and how these constraints can be addressed (at a minimum the storm water management system must provide Level 1 protection for downstream fisheries and resources); and
  - iii) an Erosion and Sediment Control Plan for the development of the Lands whereby erosion and sediment and their effects will be minimized on site during and after construction in accordance with the "Ontario Guidelines on Erosion and Sediment Control for Urban Construction Sites" May 1987 and the latest revision thereof or such more stringent standards as may be applicable.
- b) The Developer shall prepare and provide a Subdivision Grading Plan in accordance with Section 10.21 hereof indicating the existing and proposed grades as well as the means whereby major system flows will be conveyed across the Lands. The 100-year flood level shall be plotted on the Plan to ensure that all structural development will be located above this elevation.
- c) The Developer agrees to implement the Storm Water Management Plan, as approved by the NPCA including the approved grading and drainage plans, any required erosion and flood protection works, and all NPCA requirements.
- d) The Developer agrees to carry out or to have carried out all storm water management techniques and Works necessary and/or required to convey storm water runoff from the Lands in accordance with the approved Subdivision Grading Plan and Storm Water Management Plan to the complete satisfaction of the Director of Engineering and Operations and the Region of Niagara Public Works Department.

#### **10.11 Water Distribution System**

- a) The Developer shall construct a complete water supply and distribution system, including valves, valve boxes, fire hydrants, service connections, curbstops and boxes, blow-offs and ground hydrants as may be required for the purpose of servicing the Plan for Subdivision. The water distribution system shall be constructed according to the Plans approved by the Director of Engineering and Operations or the Region of Niagara Public Works Department and the Ministry of the Environment if required, and the construction and materials used therein shall be in accordance with the City's most recent specifications therefor.

- b) The Developer shall install, charge, test and maintain fire hydrants as required by the approved Plans and specifications in accordance with this Agreement to the complete satisfaction of the Port Colborne Fire Department and the Director of Engineering and Operations.
- c) The water supply and distribution system shall be designed to accommodate residential and fire flows with the minimum size of 150 mm in diameter.
- d) All water mains shall be flushed, chlorinated, pressure tested and bacterial tested in accordance with City Standards and to the satisfaction of the Director of Engineering and Operations prior to approval of the Completion Certificate for Primary Services.
- e) The Developer shall, prior to the Director of Engineering and Operations approving the Completion Certificate for Primary Services, supply the Director of Engineering and Operations with "as constructed drawings" showing the location and depth of the water connections constructed to service each of the Lots.

#### **10.12 Sidewalks**

The Developer shall, at its sole expense, construct concrete sidewalks in accordance with the approved Plans filed and specifications therefor.

#### **10.13 Fencing**

The Developer shall, at its sole expense, construct fencing in accordance with the approved Plans filed and specifications therefor.

#### **10.14 Street and Traffic Signs**

- a) The Developer shall erect and maintain temporary traffic signs and such other traffic control devices to the satisfaction of the Director of Engineering and Operations during the construction period.
- b) The Developer shall pay for all permanent street and traffic signs and other traffic control devices required by the approved Plans and to the satisfaction of the Director of Engineering and Operations. The Developer shall be responsible to install all permanent street and traffic signs to the current standards of the City.

#### **10.15 Electrical Distribution System and Street Lighting**

- a) The Developer shall arrange with Canadian Niagara Power Inc. (CNPI) for the design, provision and installation of all electrical transmission and distribution system and streetlighting system required to service all of the Lots shown on the Plan with electrical power in accordance with the plans and specifications therefor approved by CNPI and the Director of Engineering and Operations. All such facilities shall be installed underground unless specific external systems are approved by CNPI and the Director of Engineering and Operations. The cost of providing such facilities shall be borne by the Developer.
- b) The Developer shall arrange with CNPI for local electrical supply connections and appurtenances thereto from the distribution system to terminals on abutting private property. The wiring for such service connections shall be underground. The cost of providing such service connections and appurtenances shall be borne by the Developer and the Developer shall pay the cost thereof to CNPI upon receipt of a statement of account therefor.
- c) Prior to the Director of Engineering and Operations approving the Certificate of Final Acceptance for Primary Services, the Developer shall deliver to the City satisfactory proof of installation and construction of the aforesaid electrical transmission and distribution system and the street lighting system, which shall have been approved and/or accepted by a utility supplier satisfactory to the City, and upon Council passing the

Assumption By-Law for Primary Services the City will assume the street lighting system into the City's street light inventory.

- d) The Developer will supply the City with 3 spare fixtures including but not limited to poles, arms, luminaires and mounting hardware for replacement inventory.

#### **10.16 Utility Services**

- a) All Utility Services required to service the Plan of Subdivision, including, without restricting the generality of the foregoing, hydro service, telephone cables and coaxial cables, shall be installed underground from the source with pad-mounted transformers. All Utility Services shall be installed and constructed prior to the Director of Engineering and Operations approving the Certificate of Completion for Primary Services.

#### **10.17 Mail Delivery**

- a) The Owner agrees to install a concrete pad at final approved grade in accordance with the requirements of Canada Post to facilitate the installation of Community Mail Boxes. The location of the concrete pads are subject to approval by Canada Post and the Engineer.
- b) The Owner agrees to identify the concrete pads on the engineering servicing drawings. The pads are to be poured at the time of the sidewalk and/or curb installation within each phase of the plan of subdivision.
- c) The Owner agrees to determine the location of all centralized mail facilities in cooperation with Canada Post and to post the location of these sites on appropriate maps, information boards and plans.

#### **10.18 Tree Plantings**

- a) In order to maintain a high standard of amenity and appearance, the Developer, its heirs, executors, administrators, successors and assigns hereby undertake and agree to retain the maximum number of trees within the lands consistent with good design and conservation practices and to deposit a Letter of Credit with the City, to guarantee the total cost of purchasing, planting and maintaining trees within the Plan in accordance with the following:
  - i) The Owner agrees to plant one tree in the front yard of each lot within the plan, 1.5 metres from the front lot line. The location shall be on private property and not interfere with the alignment of the services to the property.
  - ii) Trees shall be 50mm caliper or more and a height of 1.8 metres or more, balled and bur lapped at planting and be of such varieties as Red Maple, Red Oak, Redmond or Little Leaf Linden, Redspire or Chantecleer Ornamental Pear, Shademaster Honeylocust, London Planetree and Princeton Sentry Gingko or such other compatible variety, as approved by the City.
- b) In accordance with Schedule "J" annexed hereto, prior to registration of this Agreement by the City, the Developer shall provide a security in the form of a Letter of Credit to the City for Tree Planting within the subdivision, to cover the cost of purchasing, planting and maintaining trees within the Plan.

#### **10.19 Driveways**

- a) Each Lot shall be serviced with a driveway approach constructed in accordance with the Plans filed to the complete satisfaction of the Director of Engineering and Operations.
- b) All driveway approaches (aprons) between the curb line and the sidewalk, or in the absence of a sidewalk, between the curb line and the Street Line shall be installed and paved by the Developer in accordance with the approved plans and specifications therefor prior to the Director of

Engineering and Operations approving the Completion Certificate for Secondary Services.

**10.20 Landscaping**

- a) The Developer shall grade and place a minimum of 100mm of topsoil together with number one nursery sod on all portions of road allowances in the Plan of Subdivision not covered by asphalt or sidewalks and along all sides of the Plan of Subdivision abutting on adjacent existing streets. All sodding as herein described shall be considered as part of the cost of construction of services for the Plan of Subdivision, and shall be completed prior to the Director of Engineering and Operations approving the Completion Certificate for Secondary Services.
- b) All drainage ditches, major overland flow drainage swales and depressions within the Plan of Subdivision shall be sodded with number one nursery sod prior to the City issuing any building permits. The Developer shall maintain all sod until Council passes the Assumption By-Law for Secondary Services.

**10.21 Subdivision Grading and Drainage**

- a) Unless otherwise approved or required by the City, the Developer, its heirs, executors, administrators, successors and assigns hereby irrevocably undertake not to alter the grades or remove trees or other vegetation from the Lands until such time as:
  - i) the City has agreed in writing to such alteration or removal; and
  - ii) the City has approved the Subdivision Grading Plan pursuant to the terms of this Agreement and the City's Lot Grading and Drainage Policy, By-Law 2464/80/90 and amendments thereto.
- b) Prior to execution of this Agreement by the City or commencing any phase of development, and in accordance with the City's Lot Grading and Drainage Policy, By-Law No. 2464/80/90 and amendments thereto, the Developer shall prepare and provide the City, as part of the engineering drawings, a Subdivision Grading Plan for the purpose of controlling the overall drainage pattern in the Plan of Subdivision. The Subdivision Grading Plan shall be prepared in conformance the City's Lot Grading and Drainage Policy, By-Law 2464/80/90 and amendments thereto.
- c) The following grading works shall be completed prior to the issuance of any Building Permits:
  - i) construction and sodding of all major overland flow drainage swales and other erosion control devices to the satisfaction of the Director of Engineering and Operations for the Plan of Subdivision, subject to weather conditions; and
  - ii) rough grading of all Lots to generally conform to the Subdivision Grading Plan.
- d) If drainage problems arise which are as a result of non-compliance with the requirements of By-Law 2464/80/90 and amendments thereto, the Developer shall within forty-eight (48) hours of receiving notice thereof correct the problems. Without limiting its remedies at law or in equity, the City may enter upon the Lands to remedy any such problem and may use the Subdivider's Grading Deposit to cover the costs of any remedial works deemed necessary. Any costs of these remedial works in excess of the amount of the Subdivider's Grading Deposit shall be the responsibility of the Developer, and if not reimbursed to the City forthwith after being incurred by the City, the City may collect such costs in like manner as municipal taxes as provided in *The Municipal Act* and with the same priorities as taxes that are overdue and payable.
- e) The Developer shall deposit with the City as security for carrying out the provisions of the Subdivision Grading Plan, in accordance with Schedule

"J" annexed hereto, a Subdivider's Grading Deposit as required by By-Law 2464/80/90 and amendments thereto.

- f) Upon completion of the Works and acceptance by the City of a Subdivision Grading Conformance Certificate prepared and signed by an Ontario Land Surveyor or Professional Engineer, the Developer may apply in writing for release of the Subdivider's Grading Deposit, less any cost for remedial work undertaken by the City.

#### **10.22 Lot Grading and Drainage**

- a) Prior to the issuance of a Building Permit for a Lot, the Developer or the Building Permit applicant shall submit to the City three copies of a proposed Lot Grading Plan prepared by a Professional Engineer or an Ontario Land Surveyor and shall conform to the Subdivision Grading Plan.
- b) Prior to issuance of a building permit for a Lot, the Developer or Building Permit applicant shall submit to the City as security for carrying out the provisions of the Lot Grading Plan a Lot Grading Deposit in the amount of \$2,000.00 per Lot.
- c) Upon acceptance of the Grading Conformance Certificate by the City, the Developer may apply in writing for release of the Lot Grading Deposit, less any cost of remedial work performed by the City.
- d) The grading of a Lot shall be considered complete when the building has been erected and such lot has been graded and sodded, and/or seeded. Sodding and/or seeding shall be done within two months after occupancy of the dwelling or by the next June 1st following occupancy should occupancy take place after November 1st.
- e) Upon completion of the grading as noted in Section 10.22 of this Agreement, prior to landscaping or fencing, the Developer shall submit to the City one copy of the Lot Grading Plan which shall indicate the finished elevation as shown on the proposed Lot Grading Plan. This "as constructed" Lot Grading Plan shall be prepared and certified by a Professional Engineer or Ontario Land Surveyor.
- f) Once the "as constructed" grading of a Lot has been certified and signed by an Ontario Land Surveyor or Professional Engineer to be in conformance with the latest revision of the Subdivision Grading Plan, the Lot Grading Plan if approved by the City, shall be accepted and dated by the City, as the "Grading Conformance Certificate."
- g) The Developer, its heirs, executors, administrators, successors and assigns hereby irrevocably undertake to maintain the grading and drainage schemes as established and verified by the Grading Conformance Certificate and not to alter or revise the grading or drainage without the express written consent of the Director of Engineering and Operations or the Chief Building Official.

#### **10.23 Foundation Drains**

The Developer agrees that foundation drains shall be pumped by a sump pump in each house to grade.

#### **10.24 Roof Water**

The Developer agrees that roof water drainage from any structure or building shall be directed via downspouts discharging via splash pads (concrete or other suitable material) to grass surfaces. These splash pads shall extend a distance at least 1.2 metres away from the structure and must direct the flow away from the building, not onto walks or driveways and not towards adjacent property.

#### **10.25 Minimum Basement Elevations**

If required, the Developer agrees to submit a plan for approval to the Director of Engineering and Operations, detailing the basement control elevations for

individual dwellings or structures within the Plan of Subdivision and to ensure compliance with approved basement control elevations.

## **11. COMPLETION, MAINTENANCE, ACCEPTANCE AND ASSUMPTION OF WORKS**

### **11.1 Condition Precedent**

The performance by the Developer of its obligations in this Agreement to the satisfaction of the Director of Engineering and Operations shall be a condition precedent to the approval, maintenance, acceptance and assumption of the Works or any of them by the City.

### **11.2 Time to Complete Servicing**

The Developer shall proceed with the installation or construction of the Works required by this Agreement and the approved Plans with all reasonable dispatch and shall complete:

- a) all required Primary Services within one year after the date of registration of the Plan of Subdivision; and
- b) all required Secondary Services not later than three (3) years after completion of the Primary Services or forthwith after 80% of the building construction has been completed whichever occurs earlier unless otherwise approved by the Director of Engineering and Operations.

The Director of Engineering and Operations may extend the time for completion of Primary and Secondary Services or any of them for such length of time as he or she may deem expedient upon written application of the Developer with reasons why the extension is required.

### **11.3 Roads**

- a) Until Council passes an Assumption By-Law for Secondary Services assuming all the roads constructed, the Developer, on behalf of itself, its successors and assigns, including its successors in title to the Lands in the Plan of Subdivision, hereby releases, discharges and agrees to indemnify and save harmless the City from and against all actions, causes of action, suits, claims and demands whatsoever and howsoever arising, and without limiting the generality of the foregoing, which may arise by reason of:
  - i) any alteration of the existing grade or level of any road or roads on the said Plan to bring the grade or level in accordance with the plans approved by the Director of Engineering and Operations;
  - ii) any damage to the lands abutting on any road or roads shown on the Plan of Subdivision or to any building erected thereon arising from or in consequence of any such alteration of grade or level; and
  - iii) any damages or injuries (including death) to persons or damage to property occurring or arising on any road or roads on the said Plan of Subdivision, however caused.
- b) All road allowances shown on the Plan of Subdivision shall be named to the satisfaction of the Director of Engineering and Operations.

### **11.4 Completion Certificate for Primary Services**

- a) Primary Services installation will not be considered complete by the City until an inspection has been made by the Director of Engineering and Operations or his designate and the Completion Certificate for Primary Services has been issued by the Director of Engineering and Operations. The Director of Engineering and Operations shall be accompanied during his inspection by the Developer's Consulting Engineer. The Works shall be inspected and all deficiencies rectified to the complete satisfaction of

the Director of Engineering and Operations, prior to the approval of the Completion Certificate for Primary Services.

- b) The City may withhold approval of a Completion Certificate if, in the sole opinion of the Director of Engineering and Operations, the Developer is in default of its obligations pursuant to this Agreement or the approved Plans.
- c) Prior to the Director of Engineering and Operations approving the Completion Certificate for Primary Services, the documentation listed in Subsections 11.4(d) and 11.4(e) must be provided to the Director of Engineering and Operations in a single submission package.
- d) The Developer's Consulting Engineer shall provide to the Director of Engineering and Operations:
  - i) Certificate(s) verifying that all primary services were installed and constructed in accordance with approved plans and specifications;
  - ii) Certificate(s) stating that all watermains have been flushed, chlorinated and pressure tested in accordance with City standards;
  - iii) Certificate(s) stating that all watermain tracer wires have been tested and the new water distribution system can be traced;
  - iv) Certificate(s) stating that all fire hydrants servicing the development have been tested by a qualified hydrant testing agent;
  - v) Copies of the hydrant test reports and fire flow test reports;
  - vi) Certificate(s) stating that all storm and sanitary sewers have been flushed after placement of base course asphalt, air pressure tested, and inspected and videoed via close circuit television;
  - vii) Copies of the storm and sanitary sewer inspection reports and supporting data and documentation;
  - viii) Certificate stating that the approved Tree Preservation Plan has been complied with including a Clearance Letter from the Region;
  - ix) Certificate(s) stating that all utility services required to service the Plan of Subdivision are installed & constructed or a letter of commitment to complete the utility services from utility companies;
  - x) Certificate (Overall Grading Certificate) stating that rough grading and major drainage works or swales have been completed in accordance with the Subdivision Grade Control Plan;
  - xi) The original Drawings showing each of the said works "As Constructed" together with electronic drawing files in AutoCAD 2012 format using City of Port Colborne Drafting Standards; and
  - xii) Plans (cards) showing the location and depth of each sanitary sewer lateral, storm sewer lateral and water service lateral constructed to service each of the lots.
- e) The Developer shall provide the Director of Engineering and Operations with:
  - i) a Statutory Declaration from the Developer in a form satisfactory to the Director of Engineering and Operations setting out the Works completed and verifying:
    1. All such works have been completed in accordance with the terms of this Agreement and the approved plan and specifications;
    2. All accounts have been paid for installation, construction, inspection, repair and maintenance of such Works; and
    3. That there are no outstanding debts, claims or liens in respect of such works.

- f) Subject to Subsections 11.4(d) and 11.4(e) hereof, upon receipt of the required documentation and the Director of Engineering and Operations' satisfaction that the installation and construction of all Primary Services has been completed in accordance with this Agreement and approved Plans, the Director of Engineering and Operations, shall date and approve the Completion Certificate of Primary Services.

#### **11.5 Completion Certificate for Secondary Services**

- a) Secondary Services installation will not be considered complete by the City until an inspection has been made by the Director of Engineering and Operations or his designate and the Completion Certificate for Secondary Services has been issued by the Director of Engineering and Operations. The Director of Engineering and Operations shall be accompanied during his inspection by the Developer's Consulting Engineer. The Works shall have been inspected and all deficiencies rectified to the complete satisfaction of the Director of Engineering and Operations, prior to the approval of the Completion Certificate for Secondary Services.
- b) The City may withhold approval of a Completion Certificate if, in the sole opinion of the Director of Engineering and Operations, the Developer is in default of its obligations pursuant to this Agreement or the approved Plans.
- c) Prior to the Director of Engineering and Operations approving the Completion Certificate for Secondary Services, the documentation listed in Subsections 11.5(d) and 11.5(e) must be provided to the Director of Engineering and Operations in a single submission package.
- d) The Developer's Consulting Engineer shall provide to the Director of Engineering and Operations:
  - i) Certificate(s) verifying that all secondary services have been installed, fully completed, repaired and maintained in accordance with approved plans and specifications; and
  - ii) If required, the original Drawings showing each of the said works as constructed together with electronic drawing files in AutoCAD 2012 format using City of Port Colborne Drafting Standards.
- e) The Developer shall provide the Director of Engineering and Operations with a Statutory Declaration from the Developer in a form satisfactory to the Director of Engineering and Operations setting out the Works completed and verifying:
  - i) All such works have been completed in accordance with the terms of this Agreement and the approved plan and specifications;
  - ii) All accounts have been paid for installation, construction, inspection, repair and maintenance of such Works; and
  - iii) that there are no outstanding debts, claims or liens in respect of such works.
- f) Subject to Subsections 11.5(d) and 11.5(e) hereof, upon receipt of the required documentation and the Director of Engineering and Operations' satisfaction that the installation and construction of all Secondary Services has been completed in accordance with this Agreement and approved Plans, the Director of Engineering and Operations shall date and approve the Completion Certificate for Secondary Services.

#### **11.6 Maintenance of the Subdivision**

- a) The Developer shall be responsible for the general tidy appearance of the entire Lands until completion of all building, and carry out all weed cutting and maintenance on all unsold lands and all un-assumed roads to the satisfaction of the Director of Engineering and Operations.

- b) The Developer shall adequately maintain all roads, sidewalks and pedestrian walkways within the Plan of Subdivision free from mud, debris, building materials, and other obstructions, to the satisfaction of the Director of Engineering and Operations until Council passes an Assumption By-Law for Secondary Services.
- c) The Developer shall be responsible to control weeds and to maintain vacant lands free from debris, waste building materials, tree stumps, discarded boulders, and other refuse, and shall notify any purchaser, in writing, to refrain from dumping on such vacant lands, including lands dedicated by it to the City for municipal purposes.
- d) The Developer shall maintain the Works, and every part thereof, in perfect order and in complete repair for the duration of the Maintenance Warranty Period and shall repair in a permanent manner satisfactory to the Director of Engineering and Operations any and all damage or injury to the Works, both during construction and during the period of maintenance as aforesaid.
- e) Should the Developer, for any reason, fail to carry out the repairs or maintenance, including weed control, when requested by the City, the Director of Engineering and Operations, at his sole option, after giving the Developer twelve (12) hours written notice, may perform the repairs or maintenance and all costs, charges and expenses so incurred shall be borne by the Developer. The decision of the Director of Engineering and Operations shall be final as to the necessity of repairs or of any work done or required to be done. Any costs incurred by the City not reimbursed by the Developer forthwith may be collected by the City in like manner as municipal taxes as provided in *The Municipal Act* and with the same priorities as taxes that are overdue and payable.
- f) The Developer's obligation to maintain the Works as aforesaid shall commence on the approval date of the Completion Certificate for the Works and extend for a minimum of two (2) years or until the Director of Engineering and Operations approves the Certificate of Final Acceptance for such Works whichever occurs last (this period is herein referred to as the "Maintenance Warranty Period").
- g) The Maintenance Warranty Period for Primary Services shall commence on the date the Director of Engineering and Operations approves the Completion Certificate for Primary Services.
- h) The Maintenance Warranty Period for Secondary Services shall commence on the date the Director of Engineering and Operations approves the Completion Certificate for Secondary Services.

#### 11.7 Certificate of Final Acceptance

- a) Upon expiration of the two (2) year Maintenance Warranty Period for Primary Services or Secondary Services as the case may be, and upon receipt of written application by the Developer, the applicable Works will be inspected by the Director of Engineering and Operations, and provided all deficiencies have been rectified to his satisfaction and the Developer is not in default of the terms of this Agreement, the subject Works shall be accepted by the City and the Director of Engineering and Operations shall approve the Certificate of Final Acceptance prepared by the Developer's Consulting Engineer provided the requirements identified in Schedule "C" of the Certificate of Final Acceptance have been met.
- b) The Developer is required to submit a certificate from a registered Ontario Land Surveyor certifying he has found and/or replaced all standard iron bars (SIB's) shown on the registered Plan of Subdivision as of a date not earlier than seven days prior to the Director of Engineering and Operations approving the Certificate of Final Acceptance for Secondary Services.
- c) If upon inspection of the applicable Works all deficiencies have not been rectified to the complete satisfaction of the Director of Engineering and Operations the Maintenance Warranty Period shall be extended until such

time as all deficiencies have been rectified and the Certificate of Final Acceptance has been approved by the Director of Engineering and Operations.

- d) The Director of Engineering and Operations may withhold approval of a Certificate of Final Acceptance for Primary or Secondary Services, if, in the sole opinion of the Director of Engineering and Operations, the Developer is in default of its obligations to inspect, repair, construct or maintain any of the Works pursuant to this Agreement and the approved Plans.

#### **11.8 Assumption of Municipal Services**

- a) The Developer hereby acknowledges that upon assumption by the City of the municipal services required to be installed and constructed by this Agreement and the approved Plans, all such municipal services shall wholly vest in the City without payment therefor, free and clear of all claims and liens and the Developer shall have no right, title or interest therein. Municipal services shall be assumed by the City by Council passing:
  - i) an Assumption By-Law for Primary Services after the Director of Engineering and Operations approves the Certificate of Final Acceptance for Primary Services; and
  - ii) an Assumption By-Law for Secondary Services after the Director of Engineering and Operations approves the Certificate of Final Acceptance for Secondary Services.
- b) The Assumption By-Law for Primary Services shall not include the following Primary Services:
  - i) the streets and roadways constructed by the Developer within the Plan of Subdivision; and
  - ii) the Utility Services other than the streetlights.
- c) The Assumption By-Law for Secondary Services shall include the following Primary/Secondary Services:
  - i) finished streets and roadways as constructed by the Developer within the Plan of Subdivision; and
  - ii) all Secondary Services constructed by the Developer in accordance with the approved Plans and this Agreement.

### **12. PERMITS, FEES, DEPOSITS AND OCCUPANCY**

#### **12.1 Building Permits – Issuance**

The Developer covenants and agrees not to apply for building permits until:

- a) all Primary Services have been completed and a Certificate of Completion for Primary Services has been approved to the satisfaction of the Director of Engineering and Operations;
- b) the City has on file an approved Subdivision Grading Plan;
- c) the Developer has completed the following grading works:
  - i) rough grading of all Lots to generally conform to the Subdivision Grading Plan;
  - ii) construction and sodding of all major overland flow drainage swales and other erosion control devices deemed necessary by the City for the Lands;
- d) the City has on file an approved Proposed Lot Grading Plan;

- e) the City is in receipt of all applicable fees and deposits including, without limiting the generality of the foregoing:
  - i) Development fees at the prevailing rate as prescribed by The Development Charges By-Law 5354/108/09 and amendments thereto;
  - ii) the Lot Grading Deposit;
  - iii) Building Permit application fee;
  - iv) Plumbing Permit application fee;
  - v) Water meter fee;
  - vi) Service Main connection application and fee, if applicable;
  - vii) Land for park dedication fee; and
  - viii) Any other fees, deposits or payments required under this Agreement;
- f) the City's Fire Department has confirmed that an adequate water supply for firefighting operations and satisfactory access for firefighting equipment is available to service the Lands;
- g) the City is satisfied all terms and conditions of this Agreement have been complied with insofar as they apply at that point in time;
- h) the Developer has paid all development charges required by the Development Charges By-Law of the Regional Municipality of Niagara; and
- i) the Developer has otherwise complied with all applicable law.

**12.2 Water Saving Devices**

The Developer agrees that all new homes being constructed will utilize water saving devices such as low flow toilets and low flow shower heads, of a standard acceptable to the Director of Engineering and Operations and the Chief Building Official.

**12.3 No Building Permit While In Default**

Notwithstanding anything herein contained, the City may refuse to issue building permits if there is an existing default in any of the provisions of this Agreement.

**12.4 Service Main Connections**

Prior to making any connections, if required, to existing municipal services the Developer shall submit to the City, completed Connection Permit applications and applicable fees for connection to existing sewer or water mains. No connection shall be made until the Connection Permits are approved by the City's Engineering and Operations Department.

**12.5 Development Charges**

- a) Current development charges from time to time may be obtained from the Building Department of the City of Port Colborne and from the Regional Municipality of Niagara;
- b) The Developer acknowledges and confirms that all charges, payments, Works to be constructed or installed, studies to be carried out and all other obligations contained in this Agreement or the cost thereof (except where a charge is referred to herein as "a development charge" are characterized as:

- i) services installed or provided at the expense of the Developer within the Plan of Subdivision, as a condition of approval under Section 51 of the *Planning Act*; or
- ii) services denoted on approved Plans or specifically noted in the Agreement for which the Developer is making no claim for credits under the Development Charge By-law.

and are not charges related to development within the meaning of the *Development Charges Act, 1997*.

- c) The Developer hereby releases and forever discharges the City from any and all claims for credit against development charges payable hereunder or payable at the issuance of a building permit or permits for construction within the Plan of Subdivision and the Developer hereby waives all such claims for credits except for the credits that may be specified in any schedule forming part of this Agreement. Any such credits so specified herein and the calculation thereof shall be deemed to be conclusive and binding on the Developer.

#### 12.6 Occupancy

Unless otherwise determined by the Chief Building Official, no dwelling, including model units, shall be occupied:

- a) until the Director of Engineering and Operations has approved the Certificate of Completion for Primary Services;
- b) until the City has on file a Grading Conformance Certificate for the Lot; and;
- c) until a final inspection has been completed and a Letter of Occupancy is issued by the Chief Building Official.

#### 12.7 Model Units

The Developer agrees to pay all applicable permit fees and development charges for the buildings or structures constructed as model units, and shall otherwise comply with Section 11 herein, prior to a Letter of Occupancy being issued for said units.

#### 12.8 Water Meters

All new homes constructed shall be equipped with water meters at the sole expense of the Developer.

### 13. SECURITY DEPOSITS AND CASH PAYMENTS

#### 13.1 General

- a) The Developer shall be responsible for the full amount of the cost for the design, construction, installation, servicing and maintenance of the Works for the Plan of Subdivision together with all City inspection charges, engineering, administrative and consulting fees and in order to guarantee compliance with all conditions contained herein, the Developer shall be required to post security and cash payments on account of aforesaid costs, charges and fees in accordance with Schedule "J" annexed hereto prior to execution of this Agreement by the City. The security should be in the form of a standby Letter or Letters of Credit with **automatic renewal provision**, in a form approved by the City. The Developer covenants and agrees that the Letter of Credit shall be kept in full force and effect and that it will pay all premiums as the Letter of Credit becomes due or until such time as the City returns the Letter of Credit in accordance with the provisions of this agreement.
- b) The Developer acknowledges and agrees that should there be a deficiency in or failure to carry out any work or matter required by any provision of this Agreement, whether or not such work or matter is

specifically secured by way of Letter of Credit, and the Developer fails to comply within seven (7) days of being given written notice with a direction to carry out such work or matter, the City may draw on the Letter of Credit and enter onto the Lands and complete all outstanding works or matters, and pay all costs and expenses incurred thereby from the proceeds so drawn.

- c) The Developer acknowledges and agrees that the City reserves the right to draw on and use the proceeds from the Letters of Credit to complete any work or matter required to be done by the Developer pursuant to this Agreement. The Developer further acknowledges and agrees that, notwithstanding any provision to the contrary in this Agreement specifying the reduction or release of security, in the event that the City determines that any reduction in the Letter of Credit would create a shortfall with respect to securing the completion of any work or matter remaining to be carried out by the Developer pursuant to this Agreement, the City will not be obligated to reduce or release the Letter of Credit as by the particular provision until such time as such work is satisfactorily completed, or the City has sufficient security to ensure that such work will be completed.
- d) Whenever in this Agreement a Letter of Credit is required to be filed with the City, the Developer may instead deposit cash or a certified cheque to be cashed in an amount equal to the Letter of Credit and such deposit shall be held by the City as security in accordance with this Agreement provided that no interest shall be payable on any such deposit.
- e) The Developer acknowledges that upon the transfer of any ownership of the Lands, the City will not return any Letters of Credit or cash deposit required under this Agreement until the new Developer files a substitute Letter or Letters of Credit or cash or certified cheque in the required amounts with the City.
- f) The Developer acknowledges that for the purpose of determining the amount of security to be posted prior to execution, the Developer's Consulting Engineer shall provide the City with an estimate of the cost of design, construction, supervision, inspection and maintenance of all Works. Security to be posted for Primary Services and Secondary Services and City inspection charges, engineering, administrative and consulting fees shall be calculated, in a manner satisfactory to the Director of Engineering and Operations, on the basis of the Developer's Engineer's estimated cost of design, construction, supervision, inspection and maintenance of all Works as set out in Schedule "J" annexed hereto.
- g) From time to time, upon written request, the Developer's Consulting Engineer shall be required to certify in writing the actual cost of design, construction and maintenance of all Works installed and constructed to date, and the estimated cost of all outstanding Works, and the Director of Engineering and Operations may adjust the amount of security required if the actual cost of construction of all Works, installed and constructed to date or the estimated cost of all outstanding Works exceeds the original estimated costs as set out in Schedule "J" annexed hereto and the Developer shall be required to obtain, and the Developer hereby covenants to obtain, an amendment to the security to give effect thereto. In the event the Developer fails to increase the amount of security within seven (7) days of receipt of aforesaid written notice, then the Developer shall be deemed to be in Final Default of the terms and conditions of this Agreement.

### **13.2 Cash Payments**

- a) Prior to the execution of this Agreement by the City, as security for payment of services to be rendered by the City and its agents as required by this Agreement, and for presently outstanding payments owing to the City, the Developer shall, in accordance with Schedule "J" annexed hereto, deposit with the City cash payment and cash security as set out in Schedule "J", which security shall include, but not be limited to the following:

1. all arrears of taxes and all current taxes and local improvement charges assessed against the lands described in Schedule "A" annexed hereto; and
  2. the City's engineering, administrative, consulting, and inspection costs for this Agreement, approval of the Plans, and enactment of By-laws, shall be payable in cash to the City at the time of signing of this Agreement calculated on the following basis:
    - i. 2% of cost of Works
    - ii. Further, the Developer's Consulting Engineer shall be required to certify the actual cost of all construction in writing to the Director of Engineering and Operations, who may adjust the amount of inspection fee following construction if the actual construction costs vary from the original estimated costs by an amount greater than ten percent (10%).
- b) The Developer shall reimburse the City, all legal costs incurred by the City associated with the preparation, administration and registration of this Agreement.

### 13.3 Letter of Credit for On-Site Primary Services

- a) The Developer shall deposit with the Treasurer of the City, prior to execution of this Agreement, a Letter of Credit in the amount of ten percent (10%) of the estimated cost of the design and construction of all Primary services to be constructed within the boundaries of the Plan of Subdivision (herein referred to as "On-Site Primary Services"). On default by the Developer in providing the On-Site Primary Services in accordance with the provisions of this Agreement and/or the approved Plans, the City shall be entitled to call upon such security deposit to pay for the completion of such On-Site Primary Services. Upon receipt of Claims for Liens filed pursuant to the provisions of the *Construction Lien Act* with respect to the construction of On-Site Primary Services, the City shall also be entitled to call upon the said Letter of Credit.
- b) Prior to execution of this Agreement by the City, the Developer shall deposit a Letter of Credit to secure the Subdivider's Grading Deposit as required by By-Law 2464/80/90 and amendments thereto.
- c) For On-Site Primary Services, the Treasurer, from time to time, upon written application of the Developer, may reduce or release security deposits, provided that at no time shall the amount retained be less than ten percent (10%) of the estimated cost of uncompleted On-Site Primary Services plus five percent (5%) of the actual cost of completed works. Before reduction or release of any security deposit, the Treasurer, from out of the security deposit, may pay firstly, into court or in settlement, any liens arising pursuant to the provisions of the *Construction Lien Act* with respect to the construction of On-Site Primary Services secured under Subsection 13.3a) of this Agreement; secondly, any engineering, consulting, administrative and legal costs still owing; thirdly, any arrears of taxes; fourthly, taxes for the then current year whether levied or unlevied, based on the assessment applicable; and finally, shall return the balance, if any, to the Developer.
- d) The Treasurer shall retain as security for the Maintenance Warranty Period an amount equal to ten percent (10%) of the total actual cost of On-Site Primary Services completed to guarantee the workmanship and materials of the Works until assumption of the On-Site Primary Services by the City. Upon assumption in accordance with the provisions of this Agreement, the ten percent (10%) Maintenance Warranty hereinbefore referred to may be released by the Treasurer to the Developer.

#### 13.4 Letter of Credit for Off-Site Primary Services

- a) The Developer shall deposit with the Treasurer of the City, prior to execution of this Agreement, a Letter of Credit for one hundred percent (100%) of the costs of design and construction of all Primary Services outside the boundaries of the Plan of Subdivision (herein referred to as "Off-Site Primary Services"). On default of the Developer in providing the Off-Site Primary Services in accordance with the provisions of this Agreement and/or the approved Plans, the City shall be entitled to call upon such security deposit to pay for the completion of such Off-Site Primary Services. The City shall also have the right to call upon the said security deposit upon receipt of Claims for Liens filed pursuant to the provisions of the *Construction Lien Act* with respect to Off-Site Primary Services.
- b) For Off-Site Primary Services, the Treasurer, from time to time, upon written application of the Developer, may reduce or release security deposits, provided that at no time shall the amount retained be less than one hundred percent (100%) of the estimated cost of uncompleted Off-Site Primary Services plus ten percent (10%) of the actual cost of completed works. Before reduction or release of any security deposit, the Treasurer, from out of the security deposit, may pay firstly, into court or in settlement, any liens arising pursuant to the provisions of the *Construction Lien Act* with respect to the construction of Off-Site Primary Services secured under Subsection 13.4a) of this Agreement; secondly, any engineering, consulting, administrative and legal costs still owing; thirdly, any arrears of taxes; fourthly, taxes for the then current year whether levied or unlevied, based on the assessment applicable; and finally, shall return the balance, if any, to the Developer.
- c) The Treasurer shall retain as security for the Maintenance Warranty Period an amount equal to ten percent (10%) of the total actual cost of Off-Site Primary Services completed to guarantee the workmanship and materials of the Works until assumption of the Off-Site Primary Services by the City. Upon assumption in accordance with the provisions of this Agreement, the ten percent (10%) Maintenance Warranty hereinbefore referred to may be released by the Treasurer to the Developer.

#### 13.5 Letter of Credit for Off-Site and On-Site Secondary Services

- a) The Developer shall deposit with the Treasurer of the City, prior to execution of this Agreement, a Letter of Credit in the amount of one hundred and twenty percent (120%) of the costs of design and construction of all Off-Site and On-Site Secondary Services. On default of the Developer in providing the Secondary Services in accordance with the provisions of this Agreement and/or the approved Plans, the City shall be entitled to call upon such security deposit in order to pay for the completion of such Secondary Services. The City shall also have the right to call upon the said security deposit upon receipt of Claims for Lien filed pursuant to the provisions of the *Construction Lien Act* with respect to Secondary Services.
- b) For all Secondary Services, the Treasurer, from time to time, upon written application of the Developer, may reduce or release such security deposits, provided that at no time shall the amount retained be less than one hundred and twenty percent (120%) of the estimated cost of uncompleted Secondary Services. Before reduction or release of any security deposit, the Treasurer, from out of the security deposit, may pay firstly, into court or in settlement, any liens arising pursuant to the provisions of the *Construction Lien Act* with respect to the construction of Secondary Services secured under Subsection 13.5a) of this Agreement; secondly, any engineering, consulting, administrative and legal costs still owing; thirdly, any arrears of taxes; fourthly, taxes for the then current year whether levied or unlevied, based on the assessment applicable; and finally, shall return the balance, if any, to the Developer.
- c) The Treasurer shall retain as security for the Maintenance Warranty Period an amount equal to ten percent (10%) of the total actual cost of

Secondary Services completed to guarantee the workmanship and materials of the Works until assumption of Secondary services by the City. Upon assumption in accordance with the provisions of this Agreement, the ten percent (10%) Maintenance Warranty herein before referred to may be released by the Treasurer to the Developer.

- 13.6 Upon written demand by the Director of Engineering and Operations and upon the Developer making application for release of security, the Developer shall deliver to the City, a statutory declaration by or on behalf of the Developer stating:
- a) the date of completion of the subject services;
  - b) Works completed to date;
  - c) all accounts that have become due and payable in connection with the construction, installation, inspection, repair and maintenance of the subject services have been paid; and
  - d) all requirements of the *Construction Lien Act* have been complied with to date and proof of expiration of liens under the *Construction Lien Act*.

#### 14. TENDERS, INSURANCE & BONDING

- 14.1 If required by the City, the Developer shall call for tenders for the Works in accordance with the City's Purchasing Policy (By-law No. 3687/113/98). Where the City requires the Developer to call for tenders, any tender proposed to be accepted by the Developer shall not be accepted until same has been approved in writing by the Director of Engineering and Operations.
- 14.2 Prior to commencement of any Works, the Developer shall, at his sole expense, provide the City with:
- a) a copy of the contractor's Performance and Maintenance Bond and Labour and Material Payment Bond each for one hundred percent (100%) of the contract sum, if required. The aforesaid Bonds shall unconditionally guarantee to the Developer and the City that the Works will be satisfactorily completed and maintained within the terms of the contract, this Agreement and the approved Plans up to the face value of the bond. Without limiting the generality of the foregoing, such Bonds shall cover extensions to the contract, modifications thereof, and the Maintenance Warranty Period. The bonding company shall not replace a prime contractor or sub-contractor without prior written approval of the Director of Engineering and Operations. Bonding companies are subject to acceptance by the City;
  - b) a certified copy of the Developer's third party All Perils and Liability Insurance Policy naming the City as an additional insured in a form satisfactory to the City as follows:
    - i) the policy is to be written on the comprehensive form including contractual liability and complete operations with an inclusive limit of five million dollars (\$5,000,000.00) bodily injury (including death) and property damage with a deductible not greater than one thousand dollars (\$1,000.00);
    - ii) the Liability Insurance Policy shall not contain any exclusions for damage to property, support of any property, building or land arising from the removal or weakening of support of any property, building or land whether such support be natural or otherwise and shall not contain an exclusion for blasting;
    - iii) the Standard Automobile Policy shall cover both owned and non-owned vehicles with inclusive limits of not less than two million dollars (\$2,000,000.00) bodily injury (including death) and property damage with a deductible not greater than one thousand dollars (\$1,000.00);

- iv) excess umbrella liability coverage of four million dollars (\$4,000,000.00) for all risks included in (i) and (ii) above shall be provided with a retained limit up to ten thousand dollars (\$10,000.00);
- v) "Cross Liability" and "Severability of Interest" clauses or endorsements shall be provided;
- vi) an endorsement will be provided to the effect that the policy or policies will not be altered, cancelled or allowed to lapse without thirty (30) days prior written notice to the City from the insurer;
- vii) the premium for the said policies shall be paid initially for a period of two (2) years and the policy shall be renewed for further one-year periods until all Works required under this Agreement are installed and assumed by the City;
- viii) The policy of insurance shall not be construed as relieving the Developer from responsibility for the deductibles or other or larger claims, if any, for which the Developer or City may be held responsible;
- c) a certificate from the Worker's Safety Insurance Board certifying the contractor is in good standing with the Board; and
- d) satisfactory evidence the contractor is qualified, experienced and has the equipment to successfully complete the Works.

## 15. DEFAULT

15.1 Upon breach by the Developer of any covenant, term, condition or requirement of this Agreement, any contract awarded for the Works or the approved Plans, or upon the Developer becoming insolvent or making any assignment for the benefit of creditors, the City, at its option, may declare the Developer to be in default. Notice of such default shall be given by the City, and if the Developer shall not remedy such default within such time as provided in the notice, the City may declare the Developer to be in Final Default under this Agreement and shall then forthwith give notice thereof to the Developer. Upon notice of default having been given, the City may require all work by the Developer, its servants, agents, independent contractors and sub-contractors to cease (other than any work necessary to remedy such default) until such default shall have been remedied, and in the event of final default, may require all work as aforesaid to cease. Upon Final Default of the Developer, the City may, at its option, adopt or pursue any or all of the following remedies, but shall not be bound to do so:

- a) enter upon the land shown on the said Plan of Subdivision, by its servants, agents and contractors and complete any work, service, repair or maintenance wholly or in part required herein to be done by the Developer, and collect the cost thereof from the Developer and/or enforce any security available to it;
- b) make any payment which ought to have been made by the Developer and upon demand collect the amount thereof from the Developer and/or enforce any security available to it;
- c) retain any sum of money heretofore paid by the Developer to the City, for any purpose, and apply the same in payment or part payment for any work which the City may undertake;
- d) assume any work or services whether the same have been completed or not, and thereafter the Developer shall have no claim or title thereto or remuneration therefor;
- e) bring action to compel specific performance of all or any part of this Agreement, or for damages or other relief or remedy; or
- f) exercise any other remedy granted to the City under the terms of this Agreement or available to the City in law or in equity.

15.2 Developer shall be deemed to be in Final Default if:

- a) the City receives written notice from the Bank of its intention to not renew the Letter of Credit;
- b) the Developer has not made provision for renewal at least thirty (30) days prior to the date of maturity of any Letter of Credit posted;
- c) the City receives written notice from the insurance company or the Developer's agent that any insurance policy filed by the Developer with the City is being altered, cancelled or allowed to lapse;
- d) the Developer has not made provision for renewal at least thirty (30) days prior to the date of expiry of any insurance policy, Performance and Maintenance Bond or Labour and Material Payment Bond;
- e) upon sale of the Lands the new Developer has not delivered to the City, replacement security deposits; or
- f) the Developer fails to increase security as required by the provisions of this Agreement.

16. **INTERPRETATION**

It is hereby agreed that in construing this Agreement the words "Developer" and the personal pronoun "he", "it", "his" or "him" relating thereto and used therewith, shall be read and construed as "Developer or Developers", and "he", "she", "it" or "they", "his", "hers", "its" or "their", and "him", "her", "it" or "them" respectively, as the number and gender of the Party or Parties referred to in each case require and the number of the verb agreeing therewith shall be construed as agreeing with the said word or pronoun so substituted.

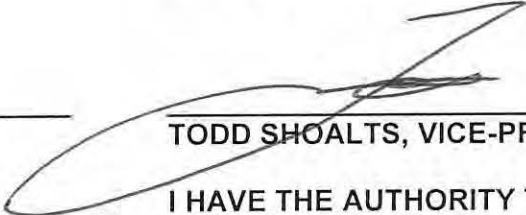
**IN WITNESS WHEREOF** the Parties have hereunto caused their seals to be affixed and attested by their proper signing officers and the individual Parties have hereunto set their hands and seals, as of the date hereof.

**SIGNED, SEALED & DELIVERED  
IN THE PRESENCE OF:**

**LESTER SHOALTS LIMITED, Per:**

  
\_\_\_\_\_

**WITNESS**

  
\_\_\_\_\_  
**TODD SHOALTS, VICE-PRESIDENT**

**I HAVE THE AUTHORITY TO BIND THE  
CORPORATION**

**THE CORPORATION OF THE CITY OF PORT  
COLBORNE, Per:**

  
\_\_\_\_\_  
**BEA KENNY, DEPUTY MAYOR**

  
\_\_\_\_\_  
**ASHLEY GRIGG, CLERK**

**WE HAVE THE AUTHORITY TO BIND THE  
CORPORATION**

## SCHEDULE "A"

### Description of Lands

Part of Lot 33, Concession 1 and Part of the Road Allowance between the Township of Wainfleet and the Township of Humberstone in the City of Port Colborne, Regional Municipality of Niagara.

PART PIN 64403-0004 (LT)

Parts 1, 2, 3 and 4, Plan 59R-\_\_\_\_\_, City of Port Colborne.

Lots 1 to 71 inclusive, Blocks 72 to 77 inclusive, Plan 59M-\_\_\_\_\_, City of Port Colborne.

## SCHEDULE "B"

### Lands Conveyed for Public Purposes

The Developer shall convey free and clear of all encumbrances and at their own expense, easements to the City, over, under and through the following:

#### Easements

Parts 1 and 3 to 25 inclusive easements for storm drainage purposes as laid out on Reference Plan 59R-\_\_\_\_\_, prepared by Lanthier & Gilmore Surveying Ltd, dated \_\_\_\_\_, 20\_\_.

#### Transfers to City

Blocks 75, 76 and 77 for 0.3m reserves and Block 74 for storm drainage purposes as laid out on Reference Plan 59R-\_\_\_\_\_, prepared by Lanthier & Gilmore Surveying Ltd, dated \_\_\_\_\_, 20\_\_.

#### External Easement

Part 2 for a temporary turning circle as laid out on Reference Plan 59R-\_\_\_\_\_, prepared by Lanthier & Gilmore Surveying Ltd, dated \_\_\_\_\_, 20\_\_.

#### Releases

Block 59 & 60 Pin # 64403-0062 to be opened as Road Allowances.

Parts 2 and 3 Plan 59R-6311 existing easement for temporary turning circle to be released.

## SCHEDULE "C"

### Additional Site Conditions

1. That the road allowances included in "Westwood Phase 2 Plan of Subdivision" in Appendix "A", be dedicated as public highways with the names identified in said appendix.
2. Any dead ends and open sides of road allowance included in "Westwood Phase 2 Plan of Subdivision" in Appendix "A" shall be terminated in 0.3 metre reserves to be conveyed, and held in trust by the City.
3. All public roads in "Westwood Phase 2 Plan of Subdivision" in Appendix "A" have sidewalks constructed along one side, with the exception of Limestone Court and Hickory Court.
4. The Developer agrees pay to the City 5% cash-in-lieu of land for park dedication at the time of a building permit application for each lot.
5. The Developer agrees to enter into an agreement with the Corporation of the Township of Wainfleet to contribute \$50,000 (2009 dollars plus indexing based on the Construction Price Index) towards upgrades to the Township's portion of Cement Plant Road payable at the time of approval of the proposed Plan of Subdivision.
6. The Developer agrees to prepare and submit a detailed sedimentation and erosion control plans detailing methods proposed for the control of silt and erosion during the construction phase and restoration proposed for the site after construction satisfactory to the City and the Niagara Peninsula Conservation Authority.
7. The Developer agrees employ appropriate sediment and erosion control measures as established in Schedule "C", Section 6, prior to commencement of and during construction to prevent erosion and to protect fish habitat from sedimentation.
8. The Developer agrees to erect and maintain a sediment control fence 5 metres from the water's edge of the former quarry in the north-east area of the lands described in Schedule "A" during the construction phase satisfactory to the City and the Niagara Peninsula Conservation Authority.
9. The Developer agrees immediately after the registration of this Agreement, to deliver to the City executed transfers of easements and executed deeds of conveyance sufficient to vest in the City, or where applicable, in any other public authority or person, absolute title in fee simple, free and clear of all liens, charges, encumbrances and easements, the lands as set out in Schedule "B".
10. The City and the Region will not assign servicing allocation for the lands described in Schedule "A" until the plan is granted final approval for registration.
11. The Developer agrees to restore the removed vegetation within the 5m buffer around the quarry using plant species as recommended by the Niagara Peninsula Conservation Authority.
12. The Developer agrees to provide the City with a copy of all documentation for installation of services, including drawings, spreadsheets and forms. This includes digital copies of all drawings in ".dwg", ".pdf" and ".shp" formats, with the .pdf copy being full size, scalable, and stamped, signed and dated by the Developer's Consulting Engineer to the satisfaction of the Director of Engineering and Operations.
13. The Developer agrees to insert the following clause into all Agreements of Purchase and Sale or Lease for each dwelling unit:

*"Purchasers/tenants are advised that the nearby active railway line and quarry operation, and the possibility of a future expansion, may occasionally cause nuisance by way of noise, odour, or dust, which may interfere with some activities of the dwelling occupants."*
14. The Developer agrees that the following minimum building component and ventilation measures, as recommended in the "Environmental Noise and Impact Study: Westwood

Phase 2 Subdivision”, prepared by dBA Environmental Services, dated January 18, 2012 be carried out for the affecting dwelling units:

Recommended Window Construction			
LOCATION	AIF/STC	DOOR	Minimum Window Glazing*
All Lots			
First Floor Living Rooms	22/22	OBC	3mm (16mm) 3mm
First Floor Bedrooms	22/22	OBC	3mm (16mm) 3mm

\* Double pane windows – first number denotes glass thickness, following by spacing, and thickness of second pane.

- a) Dwelling units on Lots 44 to 56 shall require forced air heating systems with the ducting etc. sized to accommodate future installation of central air condition.
  - b) Prior to an issuance of a building permit for dwelling units, a qualified acoustical consultant shall certify that the required noise control measures have been incorporated into the builder’s plans. Prior to issuance of an occupancy permit, a qualified acoustical consultant shall certify that the required noise control measures have been properly installed.
15. The Developer agrees, as recommended in the “Environmental Noise and Impact Study: Westwood Phase 2 Subdivision”, prepared by dBA Environmental Services, dated January 18, 2012, to insert the following clauses into Agreements of Purchase and Sale or Lease for each dwelling unit on lots 44 through 56:

*“Purchasers/tenants are advised that sound levels due to increasing rail traffic may occasional interfere with some activities of the dwelling occupants as the sound levels exceed the City’s and the Ontario Ministry of the Environment’s noise criteria.*

*This dwelling unit had been fitted with a forced air heating system and the ducting etc. was sized to accommodate central air conditioning. Installation of central air condition by the occupant will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the City’s and the Ontario Ministry of the Environment’s noise criteria.*

*(Note: The location and installation of the outdoor air conditioning device should be done so as to comply with noise criteria of MOE Publication NPC-216, Residential Air Conditioning Devices and thus minimize the noise impacts both on and in the immediate vicinity of the subject property.”*

16. The Developer agrees to install the Temporary Swale and Ditch Inlet as shown on Drawing Number 0493GSP as part of Stage 1 to remove any drainage impacts Stage 1 may have to neighbouring properties not within the limits of Westwood Estates Phase 2.

## **SCHEDULE "D"**

### **Roads**

The Developer shall clear, excavate and grade the full width of all road allowances within the subdivision, to the City's standard road cross-section and to the grades approved by the Engineer. The Developer shall dispose of all brush, rubble and surplus material resulting from this operation. The Developer shall construct, as part of the primary services as per roadways identified in Appendix "A".

## **SCHEDULE "E"**

### **Sanitary Sewers**

The Developer shall construct a sanitary sewer system or systems including all trunk sewer extensions necessary to service the proposed development. All sewers shall be installed in the locations and at the grades and elevations the Engineer may direct. Capacity shall be provided in the sanitary sewer system for all domestic wastes in accordance with City, Region, and the Ontario Ministry of the Environment's design criteria. The pipe sizes selected shall have sufficient capacity to serve the ultimate drainage area in which the subdivision is located and as designated by the Engineer. PVC sewer pipe shall be used for all local and minor collector sewers except where otherwise specified by the Engineer; a minimum pipe size for local sewers 200 mm diameter. The City's standard manholes of a type approved by the Engineer shall be poured or placed at a maximum spacing of 106 m.

### **Private Drain Connections**

The Developer shall construct separate sanitary sewer connections (laterals) to serve each lot. Sanitary sewer laterals shall be a minimum 100 mm diameter PVC building sewer pipe with proper fittings as designated by City's construction standards.

Only domestic waste from any building constructed on any lot shall be discharged into the sanitary sewer system through a drain connected to the sanitary sewer lateral serving such lot.

Where there is a difference in elevation of the storm and sanitary sewer lateral, these shall be constructed in separate trenches and, in other cases, shall be constructed in accordance with the direction of the Engineer. Joint use of either the storm or sanitary lateral trenches will be permitted for the installation of water service connections subject to the City's approval.

## **SCHEDULE "F"**

### **Storm Sewers and Surface Drains**

The Developer shall construct a storm sewer system and outlet or such extensions as necessary to provide a connection to existing trunk sewers where available. All sewers shall be installed in such locations, grades and depths as the Engineer may direct and such pipe sizes as are required to serve the subdivision lands and all or any portion of the ultimate drainage area the proposed development is located in. The storm sewer shall be designed to accommodate all roof water and surface run-off from roads and properties.

Concrete pipe of the gasket joint, or other approved type, shall be used, minimum pipe size for storm sewer 300 mm diameter, except where otherwise specified by the Engineer.

The Developer agrees to implement the approved stormwater management plan to the satisfaction of the Engineer.

The Developer agrees to obtain and comply with the necessary Ministry of the Environment Certificates of Approval and NPCA approval prior to connection to the existing municipal sanitary and storm sewer services.

The Developer agrees to clean the proposed Oil and Grit Separator(s) (Stormceptor) prior to Assumption By-Law for Primary Services to the complete satisfaction of the Director of Engineering and Operations not less than thirty (30) days prior to Council passing the Assumption By-Law for Primary Services.

### **Private Drain Connections**

The Developer shall construct separate storm sewer connections (laterals) to serve each lot. Storm sewer laterals shall be a minimum 125 mm diameter PVC building sewer pipe with proper fittings as designated by City's construction standards.

The foundation drains shall be collected in a sump from which they will be pumped and discharged to the surface in such a manner that any water collected shall drain away from the foundation. In no case shall the foundation drains be connected to the sanitary sewer lateral. Foundation drain connections may be made to the storm sewer lateral provided such connections are made at a point above the finished elevation of the ground adjacent the building.

Roof water from any building constructed on any lot shall be discharged directly to the ground through rain water leaders.

Where there is a difference in elevation of the storm and sanitary sewer lateral, these shall be constructed in separate trenches and, in other cases, shall be constructed in accordance with the direction of the Engineer. Joint use of either the storm or sanitary lateral trenches will be permitted for the installation of water service connections subject to the City's approval.

## **SCHEDULE "G"**

### **Watermains**

The Developer shall construct a complete watermain system or systems, and all necessary appurtenances, including hydrants and house water service connections from the watermain to the street line. The design shall be prepared and/or approved by the City and constructed in accordance with its specifications. All watermains shall be of sufficient size to service the subdivision, and the lands outside the subdivision, which will require the use of the subdivision's watermains as trunk or feeder mains.

The Developer shall be responsible for any damage caused to such watermains and appurtenances that may occur during construction of buildings on the lands and during the grading of same.

The Developer shall ensure that all service boxes located on the street line shall be adjusted to meet the finished boulevard elevation at the time of final grading of the boulevards and sodding.

The Developer agrees to obtain and comply with the necessary City watermain approvals to connect to the existing municipal water service.

The Developer will need to comply with the City's most recent commissioning plan at the date of construction.

In October of 2013, the Council of the Corporation of the City of Port Colborne directed staff to move forward with the application for Provincial funding under the Small, Rural and Northern Municipal Infrastructure Fund – Capital Program (MIFCP). Through the Provincial selection process, the City of Port Colborne qualified for this program with the submission of the Cement Plant Road, Lakeshore Road West, and Bayview Lane watermain extension.

The construction for the City's watermain extension is scheduled for 2015 as a condition of the funding received. Coordination between the City and the Developer for the construction of the proposed watermains within this Subdivision will need to be initiated with the Developer's Consulting Engineer.

## **SCHEDULE "H"**

### **Sidewalks**

The Developer shall construct and pay the cost of concrete sidewalks along the roads as shown hereunder. The said sidewalks are to be constructed to the satisfaction of the City and to the specifications as required by the Engineer and shall be 1.5 m in width and 15.25 cm in thickness.

1. Along the south side of Clarence Street West, from the curb at Cement Road to the easterly limit of Lot 26.
2. Along the east side of Lancaster Drive, from the sidewalk at Clarence Street West to the southerly limit of Lot 5.
3. Along the south side of Stanley Street, from the sidewalk at Lancaster Drive to the easterly limit of Block 74.
4. Along the west side of Renfield Street to the driveway of Lot 50.

### **Fencing**

A chain link fence 1.83 m in height shall be installed along the northerly boundary of Lots 49 and 50 and Block 75.

## **SCHEDULE "I"**

### **Streetlights**

The Developer shall construct and pay the cost of a streetlighting network on all roads in lands described in Schedule "A". The streetlights will be installed as per approved design by Canadian Niagara Power Company Inc. in accordance with all applicable City standards as per Appendix "A". The Developer will supply the City with 3 spare fixtures including but not limited to poles, arms, luminaires and mounting hardware for replacement inventory.

The Developer shall install the most recent City approved fixtures.

**SCHEDULE "J"**

**Subdivision Deposit**

**NAME OF SUBDIVISION:** Westwood Estates Phase II – Stage 1  
**OWNER:** Lester Shoalts Limited  
**CONSTRUCTION COST YEAR:** 2015

	<u>Deposit</u>	<u>Letter of Credit</u>	<u>Cash Deposit</u>
1. <u>General</u>	\$ 2,880.00	\$ 2,880.00	
2. <u>Primary Services</u> (Security for Construction Lien Act)	\$ 123,520.00	\$ 123,520.00	
3. <u>Secondary Services</u> (120% deposit)	\$ 242,700.00	\$ 242,700.00	
4. <u>Inspection Charges</u>	\$ 31,312.00		\$ 31,312.00
5. <u>Street Lighting &amp; Hydro</u>	\$ 67,450.00	\$ 67,450.00	
6. <u>Tree Planting</u>	\$ 19,250.00	\$ 19,250.00	
7. <u>Street Name Signs</u>	\$ 2,000.00		\$ 2,000.00
8. <u>Sewer Cleaning</u>	\$ 9,632.00	\$ 9,632.00	
9. <u>Lot Grading</u>	\$ 84,000.00	\$ 84,000.00	
10. <u>Other</u>	\$ 0.00		
		<hr/>	
		\$ 549,432.00	\$ 33,312.00

11. Details of Letters of Credit and Cash Deposit

Remittance of cash deposit of **\$ 33,312.00** should be made payable to The Corporation of the City of Port Colborne and the Letters of Credit should be drawn as follows:

City of Port Colborne (General)	\$ 2,880.00
City of Port Colborne (Construction Lien Act)	\$ 123,520.00
City of Port Colborne (Secondary Services)	\$ 242,700.00
City of Port Colborne (Street Lighting & Hydro)	\$ 67,450.00
City of Port Colborne (Tree Planting)	\$ 19,250.00
City of Port Colborne (Sewer Cleaning)	\$ 9,632.00
City of Port Colborne (Lot Grading)	\$ 84,000.00

12. Details of Deeds Required

Parts 1 to 25 inclusive for storm drainage purposes (to City)  
 Blocks 75 and 76 as dead ends or open sides of road allowance (to City)

NOTE: A signed Inhibiting Order must accompany this subdivision agreement. Further confirmation of the partial discharge of any mortgage or other encumbrance affecting the lands being conveyed to the City or Region must be provided to the City or Region.

13. Details of Easements Required

None.

NOTE: Should any of the following land be encumbered with mortgages, etc. the mortgagees must consent to the documents.

14. Development Charges

This development is subject to the City's Development Charges By-law 5354/108/09 and the Region's Development Charges By-law 62/2012 and all amending or succeeding by-laws.

**SCHEDULE "J"**

**Subdivision Deposit**

**NAME OF SUBDIVISION:** Westwood Estates Phase II – Stage 2  
**OWNER:** Lester Shoalts Limited  
**CONSTRUCTION COST YEAR:** 2015

		<u>Deposit</u>	<u>Letter of Credit</u>	<u>Cash Deposit</u>
1.	<u>General</u>	\$ 1,346.00	\$ 1,346.00	
2.	<u>Primary Services</u> (Security for Construction Lien Act)	\$ 33,267.00	\$ 33,267.00	
3.	<u>Secondary Services</u> (120% deposit)	\$ 96,900.00	\$ 96,900.00	
4.	<u>Inspection Charges</u>	\$ 9,052.00		\$ 9,052.00
5.	<u>Street Lighting &amp; Hydro</u>	\$ 15,940.00	\$ 15,940.00	
6.	<u>Tree Planting</u>	\$ 7,000.00	\$ 7,000.00	
7.	<u>Street Name Signs</u>	\$ 1,000.00		\$ 1,000.00
8.	<u>Sewer Cleaning</u>	\$ 1,785.00	\$ 1,785.00	
9.	<u>Lot Grading</u>	\$ 30,000.00	\$ 30,000.00	
10.	<u>Other</u>	\$ 0.00		
			\$ 189,055.00	\$ 9,152.00

11. Details of Letters of Credit and Cash Deposit

Remittance of cash deposit of **\$ 9,152.00** should be made payable to The Corporation of the City of Port Colborne and the Letters of Credit should be drawn as follows:

City of Port Colborne (General)	\$ 1,346.00
City of Port Colborne (Construction Lien Act)	\$ 33,267.00
City of Port Colborne (Secondary Services)	\$ 96,900.00
City of Port Colborne (Street Lighting & Hydro)	\$ 15,940.00
City of Port Colborne (Tree Planting)	\$ 7,000.00
City of Port Colborne (Sewer Cleaning)	\$ 1,785.00
City of Port Colborne (Lot Grading)	\$ 30,000.00

12. Details of Deeds Required

Parts 1 to 25 inclusive for storm drainage purposes (to City)  
 Blocks 75 and 76 as dead ends or open sides of road allowance (to City)

NOTE: A signed Inhibiting Order must accompany this subdivision agreement. Further confirmation of the partial discharge of any mortgage or other encumbrance affecting the lands being conveyed to the City or Region must be provided to the City or Region.

13. Details of Easements Required

None.

NOTE: Should any of the following land be encumbered with mortgages, etc. the mortgagees must consent to the documents.

14. Development Charges

This development is subject to the City's Development Charges By-law 5354/108/09 and the Region's Development Charges By-law 62/2012 and all amending or succeeding by-laws.

**SCHEDULE "J"**

**Subdivision Deposit**

**NAME OF SUBDIVISION:** Westwood Estates Phase II – Stage 3  
**OWNER:** Lester Shoalts Limited  
**CONSTRUCTION COST YEAR:** 2015

	<u>Deposit</u>	<u>Letter of Credit</u>	<u>Cash Deposit</u>
1. <u>General</u>	\$ 1,300.00	\$ 1,300.00	
2. <u>Primary Services</u> (Security for Construction Lien Act)	\$ 52,747.00	\$ 52,747.00	
3. <u>Secondary Services</u> (120% deposit)	\$ 184,236.00	\$ 184,236.00	
4. <u>Inspection Charges</u>	\$ 15,106.00		\$ 15,106.00
5. <u>Street Lighting &amp; Hydro</u>	\$ 42,270.00	\$ 42,270.00	
6. <u>Tree Planting</u>	\$ 15,750.00	\$ 15,750.00	
7. <u>Street Name Signs</u>	\$ 2,000.00		\$ 2,000.00
8. <u>Sewer Cleaning</u>	\$ 1,260.00	\$ 1,260.00	
9. <u>Lot Grading</u>	\$ 56,000.00	\$ 56,000.00	
10. <u>Other</u>	\$ 0.00		
		\$ 352,393.00	\$ 17,106.00

11. Details of Letters of Credit and Cash Deposit

Remittance of cash deposit of **\$ 17,106.00** should be made payable to The Corporation of the City of Port Colborne and the Letters of Credit should be drawn as follows:

City of Port Colborne (General)	\$ 1,300.00
City of Port Colborne (Construction Lien Act)	\$ 52,747.00
City of Port Colborne (Secondary Services)	\$ 184,236.00
City of Port Colborne (Street Lighting & Hydro)	\$ 42,270.00
City of Port Colborne (Tree Planting)	\$ 15,750.00
City of Port Colborne (Sewer Cleaning)	\$ 1,260.00
City of Port Colborne (Lot Grading)	\$ 56,000.00

12. Details of Deeds Required

Parts 1 to 25 inclusive for storm drainage purposes (to City)  
 Blocks 75 and 76 as dead ends or open sides of road allowance (to City)

NOTE: A signed Inhibiting Order must accompany this subdivision agreement. Further confirmation of the partial discharge of any mortgage or other encumbrance affecting the lands being conveyed to the City or Region must be provided to the City or Region.

13. Details of Easements Required

None.

NOTE: Should any of the following land be encumbered with mortgages, etc. the mortgagees must consent to the documents.

14. Development Charges

This development is subject to the City's Development Charges By-law 5354/108/09 and the Region's Development Charges By-law 62/2012 and all amending or succeeding by-laws.

## SCHEDULE "K"

### Subdivision Staging Plan

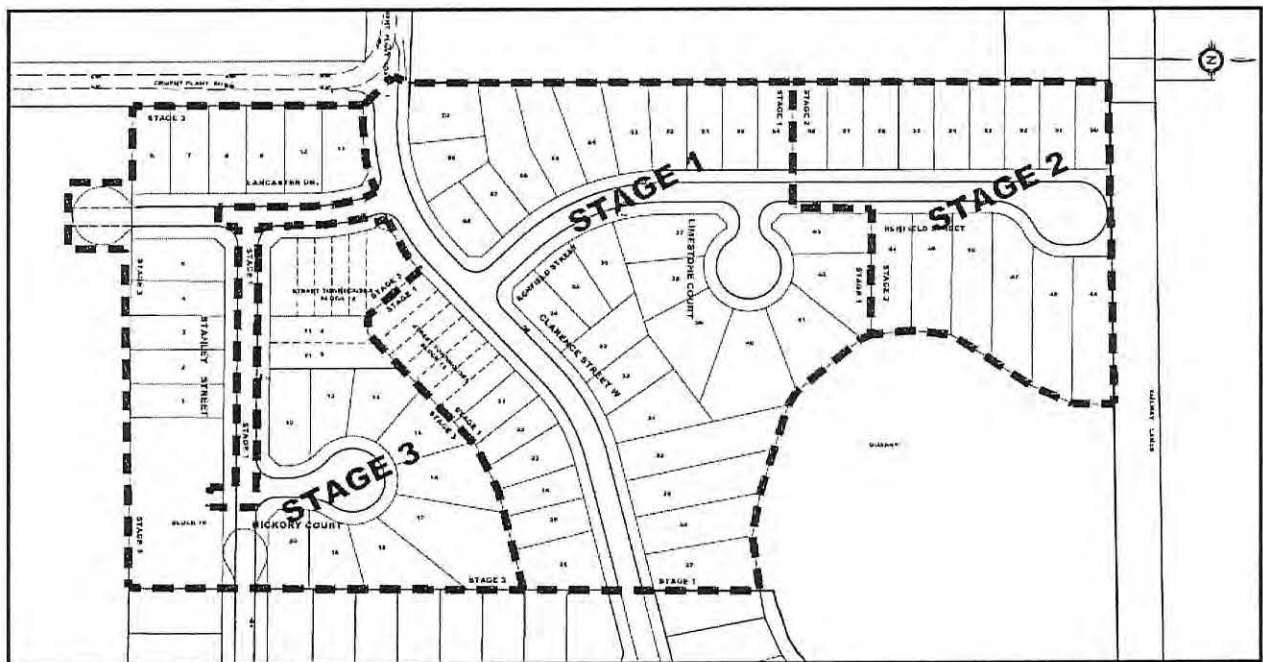
It is agreed between the parties hereto that the works to be constructed under this Agreement are to proceed in stages numerically as referenced below.

Works, as defined in Section 1.44 of this Agreement, may be started in Stage 2 only after 80% of the lots in Stage 1 are built upon, or, upon the approval of City Council to proceed with Stage 2.

Works may be started on Stage 3 only after 80% of the lots/blocks in Stage 2 are built upon, or, upon the approval of City Council to proceed with Stage 3.

Notwithstanding the above, no works may be started in either Stage 2 or Stage 3 until permanent storm sewer outlets for Stage 2 and Stage 3 have been constructed.

Further, Secondary Services, as defined in Section 1.36 of this Agreement, shall be installed and completed once 80% of the lots within a particular Stage are built upon or a period of 36 months elapses from the date of the City's preliminary inspection approval of Primary Services as defined in Section 1.33 hereof, whichever occurs first.



Excerpt from Staging Plan Drawing No. 049STP

## APPENDIX "A"

### Plans, Profiles and Specifications

1. "Westwood Phase 2 Plan of Subdivision", Plan 59M-\_\_\_\_\_, prepared by Lanthier & Gilmore Surveying Ltd, dated \_\_\_\_\_, 20\_\_.
2. "Compiled Easement Plan", Plan 59R-\_\_\_\_\_, prepared by Lanthier & Gilmore Surveying Ltd, dated \_\_\_\_\_, 20\_\_.
3. "Plan of Survey", Plan 59R-\_\_\_\_\_, prepared by Lanthier & Gilmore Surveying Ltd, dated \_\_\_\_\_, 20\_\_.
4. "Location Plan", prepared by Upper Canada Consultants Engineers/Planners, as Drawing No. 0493, revised April 23, 2015.
5. "General Services Plan", prepared by Upper Canada Consultants Engineers/Planners, dated April 23, 2015 as Drawing No. 0493GSP, revised April 23, 2015.
6. Plan and Profile "Clarence Street: Cement Rd to 322m W of Clarence Street", prepared by Upper Canada Consultants Engineers/Planners, dated April 23, 2015 as Drawing No. 0493-PP1, revised April 23, 2015.
7. Plan and Profile "Stanley Street: Lancaster Dr to Existing Stanley St", prepared by Upper Canada Consultants Engineers/Planners, dated April 23, 2015 as Drawing No. 0493-PP2, revised April 23, 2015.
8. Plan and Profile "Renfield Street: Clarence St to 300m on Renfield St", prepared by Upper Canada Consultants Engineers/Planners, dated April 23, 2015 as Drawing No. 0493-PP3, revised April 23, 2015.
9. Plan and Profile "Lancaster Dr: Lancaster Dr to 128.89m to Clarence St", prepared by Upper Canada Consultants Engineers/Planners, dated April 23, 2015 as Drawing No. 0493-PP4, revised April 23, 2015.
10. Plan and Profile "Limestone Crt – Hickory Crt: Limestone Crt 48.06m & Hickory Crt 61.31m", prepared by Upper Canada Consultants Engineers/Planners, dated April 23, 2015 as Drawing No. 0493-PP5, revised April 23, 2015.
11. "Subdivision Grade Control Plan 1", prepared by Upper Canada Consultants Engineers/Planners, dated April 23, 2015 as Drawing No. 0493GP1, revised April 23, 2015.
12. "Subdivision Grade Control Plan 2", prepared by Upper Canada Consultants Engineers/Planners, dated April 23, 2015 as Drawing No. 0493GP2, revised April 23, 2015.
13. "Storm Drainage Area Plan", prepared by Upper Canada Consultants Engineers/Planners, dated December 20, 2012 as Drawing No. 0493STMDA, revised June 12, 2014.
14. "Sanitary Drainage Area Plan", prepared by Upper Canada Consultants Engineers/Planners, dated December 20, 2012 as Drawing No. 0493SANDA, revised June 12, 2014.
15. "Westwood Subdivision Streetlight Design", prepared by RTG Systems Inc., dated November 11, 2013 as Drawing No. SL-1.
16. "Westwood Estates Phase 2 Staging Plan", prepared by Upper Canada Consultants Engineers/Planners, dated December 20, 2012 as Drawing No. 049STP.