

The Corporation of the City of Port Colborne

By-law no. _____

Being a by-law to authorize entering into an amendment to subdivision agreement between The Corporation of the City of Port Colborne and 1399908 Ontario Inc.

Whereas the Council of the Corporation of the City of Port Colborne enacted By-law 2364/185/89, Being a By-law to authorize entering into a Subdivision Agreement with CIFA Development Inc. and Lehndorff Investors Services Ltd. on the 14th day of November, 1989 respecting lands described as Parcel 29-1, Section 59 – Humberstone – 3 being part of lots 29 and 30, Concession 3 shown as parts 1 through 6 on Plan 59R-1, in the City of Port Colborne, Regional Municipality of Niagara; and

Whereas the Council of the Corporation of the City of Port Colborne enacted By-law 3930/75/00, Being a By-law to Authorize Entering into an Amending Agreement with 1399908 Ontario Ltd. et al to the original Subdivision Agreement with CIFA Developments Inc. et al respecting the Meadow Heights Plan of Subdivision; and

Whereas by approving the recommendations of Department of Planning and Development Report No. 2017-150, Subject: Meadow Heights Subdivision Agreement Amendment -Phase 2, on November 27, 2017, Council has approved entering into an amending agreement to the afore-mentioned existing subdivision agreement through By-law 6536/103/17; and

Whereas by approving the recommendations of Planning and Development Department, Planning Division Report No. 2020-157, Subject: Meadow Heights Subdivision Agreement Amendment - Phase 2, Stage 1, Council has approved repealing By-law 6536/103/17 and entering into an amending agreement to the afore-mentioned existing subdivision agreement through By-law 6848/98/20;

Whereas by approving the recommendations of Development and Legislative Services Department Report No. 2022-115, Subject: Meadow Heights Subdivision Amending Agreement – Phase 2, Stage 2, on May 24, 2022, Council has approved the entering into of an amending agreement to the afore-mentioned existing subdivision though the passing of this By-law.

Now therefore the Council of The Corporation of the City of Port Colborne enacts as follows:

1. That Council hereby approves entering into an Amendment to the Subdivision Agreement with 1399908 Ontario Inc., which agreement is attached to this By-law as Schedule "A".
2. That the Mayor and Clerk are hereby authorized and directed to sign the said Agreement and the Clerk is hereby authorized to affix the Corporate Seal thereto.
3. That the executed Amendment to Subdivision Agreement be registered on title to the subject lands in the Niagara Land Registry Office.
4. That this By-law shall come into effect on the date of its final passing by Council.

Enacted and passed this day of , 2022.

William C Steele
Mayor

Nicole Rubli
Acting Clerk

**CITY OF PORT COLBORNE
AMENDMENT TO SUBDIVISION AGREEMENT**

THIS AGREEMENT made this day of , 2022 and
authorized by By-law for the City of Port Colborne.

BETWEEN

1399908 ONTARIO LTD.
Hereinafter called the **OWNER** of the **FIRST PART**;

AND

THE CORPORATION OF THE CITY OF PORT COLBORNE
Hereinafter called the **CITY** of the **SECOND PART**;

AND

MARIA MARINO, MARINA MARINO AND MARIA CANTELMÍ
Hereinafter called the **MORTGAGEE** of the **THIRD PART**;

WHEREAS the lands described in Schedule “A” were subject to an Agreement dated the 3rd of May, 1990 between CIFA Developments Inc., Lehndorff Investors Services Limited and The Corporation of the City of Port Colborne and registered as Instrument No. LT 077615 on January 29, 1991 which is hereinafter referred to as the “original Subdivision Agreement”;

AND WHEREAS the lands described in Schedule “A” were subject to an amending Agreement dated the 28th of September, 2000 between 1399908 ONTARIO LTD, CIFA Developments Inc., and The Corporation of the City of Port Colborne and registered as Instrument No. LT 166874 on September 29, 2000 which is hereinafter referred to as the “existing Subdivision Agreement”;

AND WHEREAS 1399908 Ontario Ltd. obtained title to the lands on or about March 21, 2000 and owns the lands described on Schedule “A”;

AND WHEREAS the Owner has assumed all of the obligations of the original and existing Subdivision Agreement;

AND WHEREAS Council of the City of Port Colborne approved an amendment to the original Subdivision Agreement on December 14, 2020, to enable the development of Lots 48 to 75 inclusive on Plan 59M-195, known as Phase 2 Stage 1;

AND WHEREAS the Owner desires to further amend the original Subdivision Agreement to enable development of a portion of the lands described in Schedule “A” and hereinafter known as “Phase 2 Stage 2”;

AND WHEREAS the Owner desires to amend the existing Subdivision Agreement to enable development of revised Phase 2 Stage 2 by replacing the phasing plan, grading plan; street lighting plan and cost estimates;

NOW THEREFORE this agreement witnesseth that in consideration of the City approving this amending agreement, and in consideration of the sum of \$1.00 of lawful money of Canada now paid by the Owner to the City (the receipt whereof is hereby by the City acknowledged), the Parties hereto mutually covenant and agree as follows:

1. The parties hereto acknowledge that each of the foregoing recitals is true and correct as of the date hereof.

2. The parties hereto agree that the following clauses of the original or the existing Subdivision Agreement are hereby amended:

2.1 Clause 1. of the original Subdivision Agreement entitled Definitions and Clauses 1.1 to 1.11 inclusive be deleted and Clauses 2.1 to 2.6 inclusive on the existing Subdivision Agreement be deleted and replaced with:

2.2 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:

2.3 “**Agreement**” means this Subdivision Agreement.

2.4 “**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 Public Works 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
- c) The utility services other than streetlights

2.5 “**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 Public Works 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.
- c) any other services as noted in 2.4, not already assumed by the City of Port Colborne.

2.6 “**Block**” shall mean the whole of a parcel or tract of land created by the Plan of Subdivision.

2.7 “**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.

2.8 “**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 Public Works 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.

2.9 “**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 Public Works 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.

- 2.10 ‘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.
- 2.11 “City”** means The Corporation of the City of Port Colborne.
- 2.12 “Completion Certificate for Primary Services”** means a certificate prepared by the Developer’s Consulting Engineer and approved in writing by the Director of Public Works upon satisfactory completion of all Primary Services, the approval date of which shall start the Maintenance Warranty Period for such Primary Services.
- 2.13 “Completion Certificate for Secondary Services”** means a certificate prepared by the Developer’s Consulting Engineer and approved in writing by the Director of Public Works upon satisfactory completion of all Secondary Services, the approval date of which shall start the Maintenance Warranty Period for such Secondary Services.
- 2.14 “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.
- 2.15 “Council”** means the Council of The Corporation of the City of Port Colborne.
- 2.16 “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.
- 2.17 “Director of Corporate Services”** means the Director of Corporate Services for The Corporation of the City of Port Colborne or his designate.
- 2.18 “Director of Public Works”** means the Director of Public Works for The Corporation of the City of Port Colborne or his designate.
- 2.19 “Easements”** shall mean the easements described in Schedule "B" hereto, which forms part of this Agreement.
- 2.20 “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 49 hereof.
- 2.21 “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.
- 2.22 “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 6.5 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.

- 2.23 “Grading Conformance Certificate”** means the Certificate identified in Section 31 hereof.
- 2.24 “Lands”** shall mean the lands described in Schedule “A” annexed hereto and forming part of this Agreement.
- 2.25 “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.
- 2.26 “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 41 hereof.
- 2.27 “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.
- 2.28 “Lot”** shall mean the whole of a parcel or tract of land created by the Plan of Subdivision.
- 2.29 “Lot Grading Deposit”** means a deposit of security as specified in Subsection 31(b) hereof.
- 2.30 “Lot Grading Plan”** means a plan for the grading of a Lot as required in Subsection 31(a) hereof.
- 2.31 “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 54(f) hereof.
- 2.32 “Party”** shall mean a party to the Agreement and the successors or permitted assigns.
- 2.33 “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.
- 2.34 “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 Public Works prior to execution of this Agreement by the City.
- 2.35 “Pre-Servicing”** means the installation of Works prior to registration of this Agreement.
- 2.36 “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 Public Works 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) Utility services.

2.37 “Region” means The Corporation of the Regional Municipality of Niagara.

2.38 “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.

2.39 “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.

2.40 “Storm Water Management Report” means an approved storm water management report and specifications prepared by the Developer in accordance with Section 19 of this Agreement.

2.41 “Street Line” means a lot line dividing a Lot from a street and is the limit of the street or road allowance.

2.42 “Subdivision” means the division of a parcel of land into lesser parcels by means of a registered Plan of Subdivision.

2.43 “Supervision” means the full-time inspection and administration of the Works for the expressed purpose of enforcing the provisions of this Agreement and providing certification of the Works in accordance with Section 8.2.

2.44 “City” means The Corporation of the City of Port Colborne.

2.45 “Treasurer” means the Director of Corporate Services for The Corporation of the City of Port Colborne or his designate.

2.46 “Utility Services” means:

- a) all electrical distribution and street lighting systems, complete;
- b) all gas services, complete;
- c) all telephone services, complete; and all co-axial and fibre services, complete.

2.47 “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.

- 3 Clause 2. of the original Subdivision Agreement entitled Schedules to Agreement be amended by the addition of the following references:

SCHEDULE "A" - Description of Lands
SCHEDULE "B" - Lands 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
SCHEDULE "I" - Streetlights
SCHEDULE "J" - Subdivision Deposit
SCHEDULE "K" - Subdivision Phase 2, Stage 2
APPENDIX "A" - Plans, Profiles and Specifications

- 4 That Clause 3 of the Original Subdivision Agreement entitled General be deleted and replaced with the following:

4.1 **GENERAL PROVISIONS**

4.2 **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:

- g) the City c/o David Schulz, Planning Division, City Hall, 66 Charlotte Street, Port Colborne, Ontario L3K 3C8 Facsimile 905-835-2939;
- h) the Developer, to Ray Khanna, Kingsway Investments Ltd.
105 Main Street East, Suite 1510
Hamilton, ON L8N 1G6 Facsimile 905-526-7200

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.

4.3 **Binding on Heirs, etc.**

This Agreement and everything herein contained shall ensure 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.

4.4 **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.

4.5 **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.

4.6 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.

4.7 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.

4.8 Time of the Essence

Time shall be of the essence of this Agreement.

4.9 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 Government and Consumer Services verifying that the Developer is a company duly incorporated under the laws of the Province of Ontario and is in good standing.

4.10 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.

4.11 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.

- 5 That Clauses 4. through 4.5 from the Original Subdivision Agreement be deleted and replaced with the following:

6 LANDS REQUIRED FOR MUNICIPAL PURPOSES

6.1 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.

6.2 The Developer shall transfer the lands referred to in Section 6.1 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 City of Port Colborne.

6.3 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.

EASEMENTS FOR MUNICIPAL PURPOSES

6.4 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.

6.5 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.

6.6 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 Public Works 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.

- 7 That Clause 5. through 15. of the original Subdivision Agreement commencing at and entitled Engineering and Inspections be deleted and replaced with:

SERVICING PLANS AND SPECIFICATIONS

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

7.2 The Developer shall submit to the Director of Public Works three (3) paper copies and one (1) digital copy of each plan required to be submitted for approval with respect to the construction of the Works contemplated in this Agreement.

7.3 It is understood and agreed the Director of Public Works 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.

7.4 No approval by the Director of Public Works shall operate as a release by the City of any liability of the Developer which, but for such approval, might exist or hereafter arise.

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

8 ENGINEERING AND INSPECTION

8.1 Consulting Engineer

The Developer shall employ competent and qualified Consulting Engineers, approved by the Director of Public Works, to:

- a) carry out all necessary soil investigations to the satisfaction of the Director of Public Works;
- 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 Public Works for approval prior to installation or construction of such Works;
- d) obtain from the Director of Public Works 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 Public Works 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 Public Works 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 Public Works with individual record sheets of all sewer and water service locations and depths;
- m) when requested by the Director of Public Works, 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 Public Works may require;
- o) test all services and verify to the Director of Public Works, 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 Public Works, 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.

8.2 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.

8.3 The Developer's Consulting Engineer(s) shall conduct all testing of Works and materials to the complete satisfaction of the Director of Public Works. 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.

8.4 The Director of Public Works 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 Public Works. Such inspections may include testing and the method and time of testing shall be at the sole discretion of the Director of Public Works.

8.5 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.

8.6 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 Developer. Replacement item(s) shall be examined for conformance to the specifications by the City.

8.7 The Director of Public Works 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 Public Works.

9 That Clauses 6 to 6.4 from the Original Subdivision Agreement titled Tenders and Contractors be deleted and replaced with the following:

TENDERS, INSURANCE & BONDING

- 9.1** 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 Public Works.
- 9.2** 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 Public Works. 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.

10 That Clauses 7 to 7.14 titled Installation of Services from the Original Subdivision Agreement be deleted and replaced with the following:

10.1 SERVICES

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 Public Works, 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, odour, exhaust, smoke or any other airborne 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 free as possible from mud, dust, debris etc. 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 Public Works.
- 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 Public Works, 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 Public Works 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 Public Works 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 Public Works.
- 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 Public Works, 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 Public Works, 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 Public Works.

- 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 Public Works, 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 earth from the Lands without first obtaining written approval from the Director of Public Works and following any applicable provincial regulations.
- 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.

11 Survey Monuments to be Preserved

The Developer agrees that all survey monuments or related markings established in connection with the installation of public utility and municipal services are to be preserved; and 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 a Registered Ontario Land Surveyor (OLS).

12 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 Public Works, 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 Public Works 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 Public Works or his representative.

13 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.

14 Land Use Sign

The Developer agrees to erect, to the satisfaction of the Director of Public Works, 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.

15 Interim Works

The Developer agrees and acknowledges that, until the Director of Public Works 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.

16 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 Public Works.
- 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 Public Works, prior to approval of the Certificate of Completion for Primary Services.

- c) The roads shall be named to the satisfaction of the City.

17. 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 Public Works.
- 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 Public Works, the Region of Niagara Public Works Department and the Ministry of the Environment, Conservation and Parks, 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 as per OPSS.MUNI 411:
 - 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 Public Works.
- 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 Public Works.
- e) All sanitary sewer Works shall be inspected and videoed via closed circuit television as per OPSS.MUNI 409 to the satisfaction of, and upon any written notice from, the Director of Public Works 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 Public Works, the Developer shall take such remedial steps as may, in the sole opinion of the Director of Public Works, be required.
- f) Prior to the Director of Public Works approving the Completion Certificate for Primary Services, the Developer shall supply the Director of Public Works with all of the items listed in Section 52 d).
- 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 Public Works.

18 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 Public Works, the Region of Niagara Public Works Department, the Niagara Peninsula Conservation Authority (NPCA) and the Ministry of the Environment, Conservation and Parks, 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 as per OPSS.MUNI 411:
 - 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 Public Works.
- c) All storm sewer Works shall be inspected and videoed via closed circuit television as per OPSS.MUNI 409 to the satisfaction of, and upon any written notice from, the Director of Public Works 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 Public Works, the Developer shall take such remedial steps as may, in the sole opinion of the Director of Public Works, be required.
- d) Prior to the Director of Public Works approving the Completion Certificate for Primary Services, the Developer shall supply the Director of Public Works with all of the items listed in Section 52 d).

19 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 Public Works, the Ministry of the Environment, Conservation and Parks, 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 latest revision of the "Ontario Guidelines on Erosion and Sediment Control for Urban Construction Sites" or such more stringent standards as may be applicable.
- b) The Developer shall prepare and provide a Subdivision Grading Plan in accordance with Section 30 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 Public Works and the Region of Niagara Public Works Department.

20 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 Public Works or the Region of Niagara Public Works Department and the Ministry of the Environment, Conservation and Parks 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 Public Works.
- 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, bacterial tested and tracer wire connectivity tested in accordance with the Provincial Watermain Disinfection Procedure and the most current version of the City of Port Colborne Watermain Commissioning Protocol and to the satisfaction of the Director of Public Works prior to approval of the Completion Certificate for Primary Services.
- e) Prior to the Director of Public Works approving the Completion Certificate for Primary Services, the Developer shall supply the Director of Public Works with all the items listed in Section 52 d).

- f) Performance Based Flushing is to be carried out by a licenced City of Port Colborne Water Operator. The number, frequency and locations of hydrants to be flushed are to be determined by the City to maintain water quality and provide safe drinking water that is representative of the drinking water system. The Developer agrees to pay staff time, vehicle time and water rates per cubic meter as set in the City's rates and fees. The following conditions will apply:
 - i) Flushing and testing will commence once the new watermain has been connected to the network. It will be carried out at a frequency based on performance and to ensure water quality requirements;
 - ii) The Proponent will pay invoices for flushing and testing based on actual costs incurred by the City. Such costs shall be based upon rates established in the City's rates and fees; and,
 - iii) Flushing and testing will cease once tests confirm that water quality requirements have been met as per the Safe Drinking Water Act, or 80% occupancy has been achieved to provide adequate water turnover.

21 Sidewalks

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

22 Fencing

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

23 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 Public Works 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 Public Works. The Developer shall be responsible to install all permanent street and traffic signs to the current standards of the City.

24 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 Public Works. All such facilities shall be installed underground unless specific external systems are approved by CNPI and the Director of Public Works. 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 Public Works 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.

25 Utility Services

All Utility Services required to service the Plan of Subdivision, including, without restricting the generality of the foregoing, hydro service, gas, telephone cables and coaxial and fibre cables, and gas shall be installed underground from the source with pad-mounted transformers. All Utility Services shall be installed, constructed and energized or activated prior to the Director of Public Works approving the Certificate of Completion for Primary Services

26 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.
- d) The Owner agrees to coordinate with Canada Post to determine and provide temporary suitable Centralized Mail Box locations which may be utilized by Canada Post until the curbs, boulevards and sidewalks are in place in the remainder of the subdivision.

27 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 50 millimetres 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, Common Hackberry, Kentucky Coffeetree, Tulip Tree, Redspire Ornamental Pear, Princeton Sentry Ginkgo 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.

28 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 Public Works.
- 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 Public Works approving the Completion Certificate for Secondary Services.

29 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 Public Works 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.

30 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 Public Works 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.

31 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 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. Sodding 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 31. a) 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 Public Works or the Chief Building Official.

32 Foundation Drains

The Developer agrees that foundation drains shall be pumped by a sump pump in each house and discharged to the surface in such a manner that any water collected shall drain away from the foundation of the building. Sump pump connections may be made to the storm lateral provided such connections are made at a point above the finished elevation of the ground adjacent the building.

33 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.

34 Minimum Basement Elevations

If required, the Developer agrees to submit a plan for approval to the Director of Public Works, detailing the basement control elevations for individual dwellings or structures within the Plan of Subdivision and to ensure compliance with approved basement control elevations.

35 BY-LAW(S), DOCUMENTATION AND REGISTRATION

36 That Clauses 8, 13, 14, 16 & 17 from the Original Subdivision Agreement be deleted and replaced with the following:

- a. Before this Agreement is executed by the City, the appropriate authorizing By-law must be enacted by the Council of the City.
- b. 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.
- c. If required, the Developer's solicitor, at the sole expense of the Developer, shall:
 - i. provide and/or prepare all documentation which the City's Solicitor may require, including all necessary Transfers, Easements and restrictive covenants in registerable form;
 - ii. certify title to the City in a signed Certificate of Title;
 - iii. have all documentation signed by the Developer, Charges, and other necessary parties;
 - iv. sub search title and obtain an Execution Certificate prior to registration and provide copies of same to the City's Solicitor;
 - v. deliver all executed documentation to the City; and
 - vi. attend to registration of all documentation, at the Developer's expense, required by this Agreement.
- d. 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.

- e. 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.
- f. 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:
 - i. the approved Plan of Subdivision; and
 - ii. all other documentation related thereto, including without limitation, Cessations of Charge.
- g. 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.
- h. 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.

Permits, Fees, Deposits and Occupancy

37 Building Permits – Issuance

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

- i. all Primary Services have been completed and a Certificate of Completion for Primary Services has been approved to the satisfaction of the Director of Public Works;
- ii. the City has on file an approved Subdivision Grading Plan;
- iii. 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;
- iv. the City has on file an approved Proposed Lot Grading Plan;
- v. 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 6733/97/19 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;
- vi. 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;
 - vii. the City is satisfied all terms and conditions of this Agreement have been complied with insofar as they apply at that point in time;
 - viii. the Developer has paid all development charges required by the Development Charges By-Law of the Regional Municipality of Niagara; and
 - ix. the Developer has otherwise complied with all applicable law.

38 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 Public Works and the Chief Building Official.

39 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.

40 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.

41 Occupancy

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

- i. until the Director of Public Works has approved the Certificate of Completion for Primary Services;
- ii. until the City has on file a Grading Conformance Certificate for the Lot; and;
- iii. until a final inspection has been completed and a Letter of Occupancy is issued by the Chief Building Official.

42 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 41 herein, prior to a Letter of Occupancy being issued for said units.

43 Water Meters

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

SECURITY DEPOSITS AND CASH PAYMENTS

44 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 Public Works, 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 Public Works 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.

45 Cash Payments

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:

- a) all arrears of taxes and all current taxes and local improvement charges assessed against the lands described in Schedule "A" annexed hereto; and
- b) the City's engineering, administration, review, 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) 3% 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 Public Works, 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%).
- c) The Developer shall reimburse the City, all legal costs incurred by the City associated with the preparation, administration and registration of this Agreement.

46 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) 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 one hundred percent (100%) of the estimated cost of uncompleted On-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 On-Site Primary Services secured under Section 44 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 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.

47 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 Section 44 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.

48 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 Section 44 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.
- d) Upon written demand by the Director of Public Works 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:
 - i) the date of completion of the subject services;
 - ii) Works completed to date;
 - iii) 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
 - iv) all requirements of the *Construction Lien Act* have been complied with to date and proof of expiration of liens under the *Construction Lien Act*.

49 That Clause 18 of the Original Subdivision Agreement titled Default be deleted and replaced with the following:

DEFAULT

- a) 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:
 - i) 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;
 - ii) 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;
 - iii) 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;

- iv) 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;
 - v) bring action to compel specific performance of all or any part of this Agreement, or for damages or other relief or remedy; or
 - vi) exercise any other remedy granted to the City under the terms of this Agreement or available to the City in law or in equity.
- b) Developer shall be deemed to be in Final Default if:
- i) the City receives written notice from the Bank of its intention to not renew the Letter of Credit;
 - ii) 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;
 - iii) 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;
 - iv) 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;
 - v) upon sale of the Lands the new Developer has not delivered to the City, replacement security deposits; or
 - vi) the Developer fails to increase security as required by the provisions of this Agreement.

50 That Clause 18 of the Original Subdivision Agreement titled Completion be deleted and replaced with the following:

COMPLETION, MAINTENANCE, ACCEPTANCE AND ASSUMPTION OF WORKS

a) Condition Precedent

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

b) 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:

- i) all required Primary Services within one year after the date of registration of the Plan of Subdivision; and
- ii) 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 Public Works.
- iii) The Director of Public Works 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.

51 **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 Public Works;
 - 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 Public Works.

52 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 Public Works or his designate and the Completion Certificate for Primary Services has been issued by the Director of Public Works. The Director of Public Works 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 Public Works, 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 Public Works, the Developer is in default of its obligations pursuant to this Agreement or the approved Plans.
- c) Prior to the Director of Public Works approving the Completion Certificate for Primary Services, the documentation listed in Subsection 52(d) must be provided to the Director of Public Works in a single submission package.
- d) The Developer's Consulting Engineer shall provide to the Director of Public Works documents verifying that all primary services were installed and constructed in accordance with approved plans and specifications, including;
 - i) Certificate(s) stating that all watermains have been flushed, chlorinated and pressure tested in accordance with City standards;
 - ii) Certificate(s) stating that all watermain tracer wires have been tested and the new water distribution system can be traced;
 - iii) Certificate(s) stating that all fire hydrants servicing the development have been tested by a qualified hydrant testing agent;
 - iv) Copies of the hydrant test reports and fire flow test reports prepared by a qualified hydrant testing agent;

- v) Certificate(s) stating that all storm and sanitary sewers have been flushed after placement of base course asphalt as per OPSS.MUNI 411, low pressure air tested as per OPSS.MUNI 410 for pipes and ASTM C 1244 for maintenance holes, mandrel tested as per OPSS.MUNI 438, and inspected and videoed via closed-circuit television as per OPSS.MUNI 409;
 - vi) Copies of the storm and sanitary sewer inspection reports and supporting data and documentation;
 - vii) Certificate(s) stating that all utility services required to service the Plan of Subdivision are installed, constructed and energized or activated;
 - viii) 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;
 - ix) The original Drawings showing each of the said works “As Constructed” in digital form in both AutoCAD 2018 format and Adobe PDF format; and
 - x) 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 Public Works with:
- i) a Statutory Declaration from the Developer in a form satisfactory to the Director of Public Works 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 Section 52d) hereof, upon receipt of the required documentation and the Director of Public Works’ satisfaction that the installation and construction of all Primary Services has been completed in accordance with this Agreement and approved Plans, the Director of Public Works, shall date and approve the Completion Certificate of Primary Services.

53 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 Public Works or his designate and the Completion Certificate for Secondary Services has been issued by the Director of Public Works. The Director of Public Works 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 Public Works, 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 Public Works, the Developer is in default of its obligations pursuant to this Agreement or the approved Plans.
- c) Prior to the Director of Public Works approving the Completion Certificate for Secondary Services, the documentation listed in Section 53d) must be provided to the Director of Public Works in a single submission package.

- d) The Developer's Consulting Engineer shall provide to the Director of Public Works:
 - 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" in digital form in both AutoCAD 2018 and Adobe PDF format.
- e) The Developer shall provide the Director of Public Works with a Statutory Declaration from the Developer in a form satisfactory to the Director of Public Works 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 Subsection 53 hereof, upon receipt of the required documentation and the Director of Public Works' satisfaction that the installation and construction of all Secondary Services has been completed in accordance with this Agreement and approved Plans, the Director of Public Works shall date and approve the Completion Certificate for Secondary Services.

54. 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 Public Works.
- 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 Public Works 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 Public Works 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 Public Works, 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 Public Works 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 Public Works 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 Public Works approves the Completion Certificate for Primary Services.
- h) The Maintenance Warranty Period for Secondary Services shall commence on the date the Director of Public Works approves the Completion Certificate for Secondary Services.

55 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 Public Works, 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 Public Works 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 Public Works 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 Public Works 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 Public Works.
- d) The Director of Public Works may withhold approval of a Certificate of Final Acceptance for Primary or Secondary Services, if, in the sole opinion of the Director of Public Works, 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.

56 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 Public Works approves the Certificate of Final Acceptance for Primary Services; and

- ii) an Assumption By-Law for Secondary Services after the Director of Public Works 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.

57 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:**

1399908 ONTARIO LTD.

WITNESS

RAY KHANNA
I HAVE THE AUTHORITY TO BIND THE CORPORATION

WITNESS

MARIA MARINO

WITNESS

MARINA MARINO

WITNESS

MARIA CANTELM

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

WILLIAM C. STEELE, MAYOR

NICOLE RUBLI, ACTING CLERK

WE HAVE THE AUTHORITY TO BIND THE CORPORATION

SCHEDULE “A”

Description of Lands

Lots 1-45 inclusive Registered Plan 59M-195; and

Lots 20-23 inclusive and Lots 44-52 inclusive Plan 59M-193 in the City of Port Colborne,
Regional Municipality of Niagara.

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 5-6 inclusive for storm drainage purposes laid out on reference plan 59R-7459, prepared by William A. Mascoe Surveying Ltd., January 13, 1991.

Parts 1-5 inclusive for storm drainage purposes laid out on reference plan 59R-7461, prepared by William A. Mascoe Surveying Ltd., January 13, 1991.

Parts 1-6 inclusive for storm drainage purposes laid out on reference plan 59R-15883, prepared by Kirkup, Mascoe & Ure Surveying Ltd., June 22, 2017.

Parts 1, and 3 to 7 inclusive for storm drainage purposes laid out on reference plan 59R-16971, prepared by Kirkup, Mascoe & Ure Surveying Ltd., May 31, 2021.

Parts 1 and 2 inclusive for storm drainage purposes laid out on reference plan 59R-17228, prepared by Kirkup, Mascoe & Ure Surveying Ltd., February 14, 2022.

SCHEDULE “C”

Additional Site Conditions

1. 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”.
2. 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 Public Works.

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 in full compliance with all regulations. The Developer shall construct, as part of the primary services, the 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, Conservation and Parks’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 designed 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 shall be 200 mm diameter. The City’s standard manholes of a type approved by the Engineer shall be poured or placed at a minimum 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 designed 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 servicing 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.

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 runoff from roads and properties.

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

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. Sump pump 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.

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 approved by the City and constructed in accordance with its specifications. All watermains shall be 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 comply with the Provincial Watermain Disinfection Procedure and the most current version of the City of Port Colborne Watermain Commissioning Protocol at the date of construction.

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 the specifications as required by the Engineer and shall be 1.5 m in width and 125 mm in thickness.

1. Along the north and south side of Meadowlark Drive
 - South side of Lots 44c-52c
 - North side of Lots 23c, 38s-43s
2. Along the east side of Hillcrest Road
 - West side of Lots 19s-38s
3. Along the north side of Parkside Drive
 - South side of Lot 20c

SCHEDULE “I”

Streetlights

The Developer shall construct and pay the cost of a streetlighting network on Meadowlark Drive, Hillcrest Road and Parkside Drive. 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” Drawing Number SL-1 by RTG Systems Inc. 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: Meadow Heights Phase II – **Stage 2**
OWNER: 1399908 ONTARIO LTD.

CONSTRUCTION COST YEAR: **2022**

	<u>Cost of Works</u>	<u>Letter of Credit</u>	<u>Cash Deposit</u>
2. <u>Primary Services (on-site)</u> (Security for Construction Lien Act)	\$1,715,113.80	\$171,511.38	
3. <u>Secondary Services</u> <u>(120% Deposit)</u>	\$367,246.25	\$440,695.50	
4. <u>Inspection Charges</u>	3% of Cost of Works	N/A	\$62,470.80
		<hr/>	<hr/>
		\$612,206.88	\$62,470.80

10. Details of Letters of Credit and Cash Deposit

Remittance of cash deposit of \$62,470.80 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 (Primary Services)	\$171,511.38
City of Port Colborne (Secondary Services)	\$440,695.50

11. Details of Deeds Required

Plans 59M-193 and 59M-195.

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.

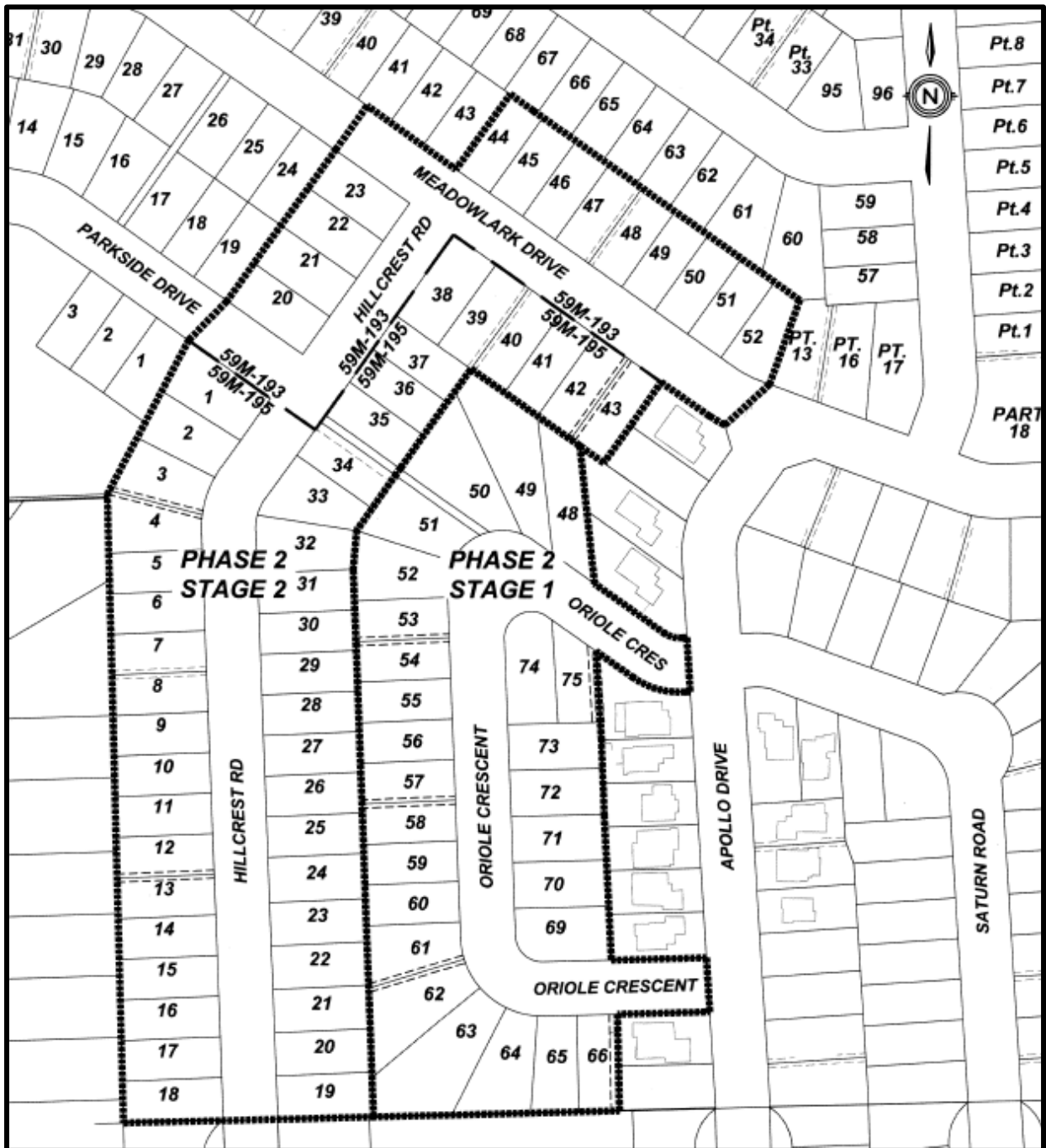
12. Details of Easements Required

Parts 5-6 on Plan 59R-7459, Parts 1-5 on Plan 59R-7461, Parts 1 to 6 on Plan 59R-15883, Parts 1 and 3 to 7 on Plan 59R-16971 and Parts 1 and 2 on Plan 59R-17228 inclusive for storm drainage purposes (to City)

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

SCHEDULE "K"

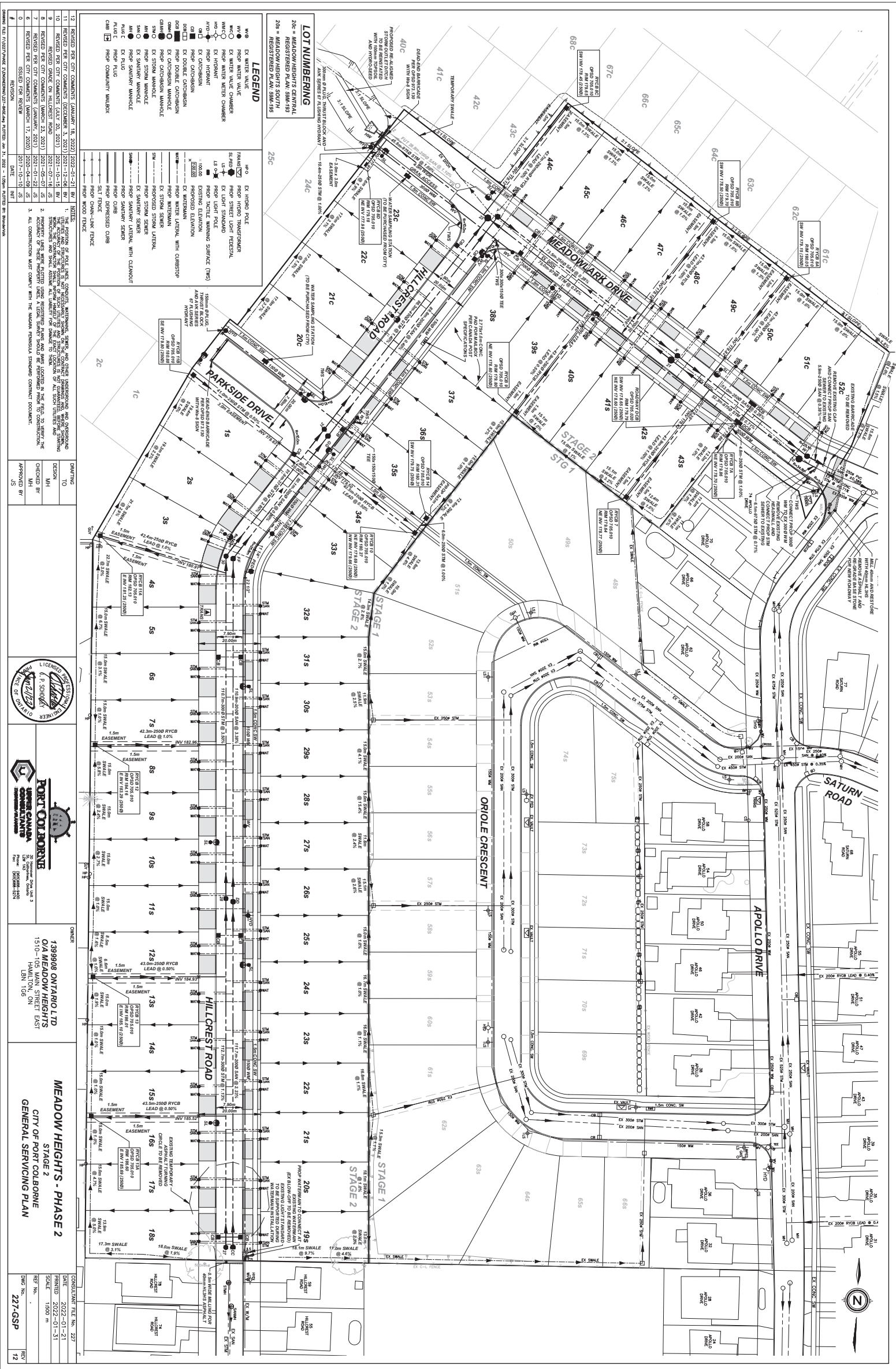
Subdivision Phase 2, Stage 2

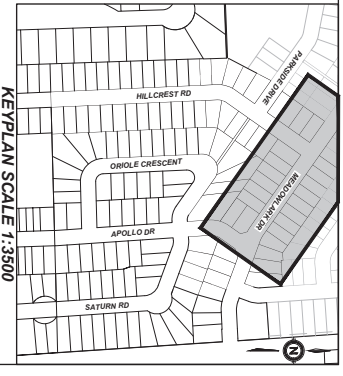
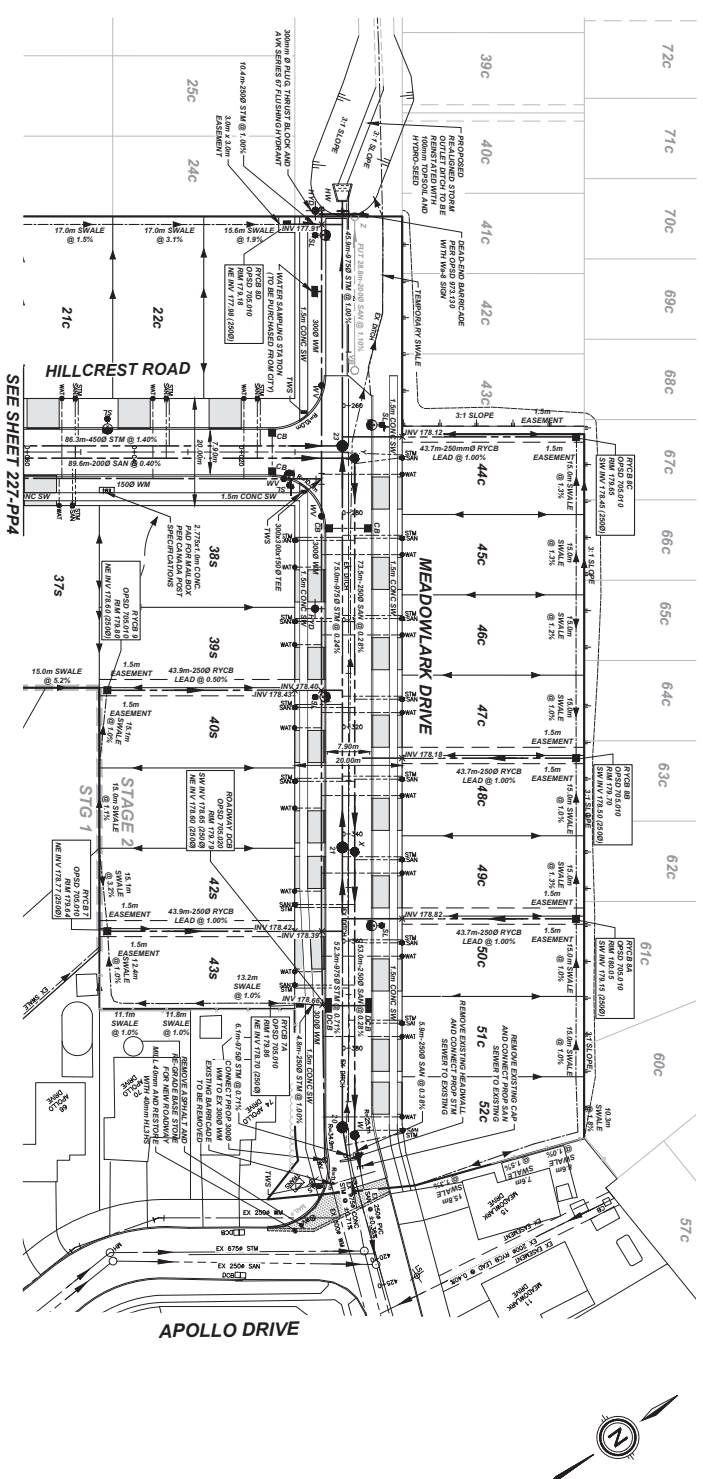


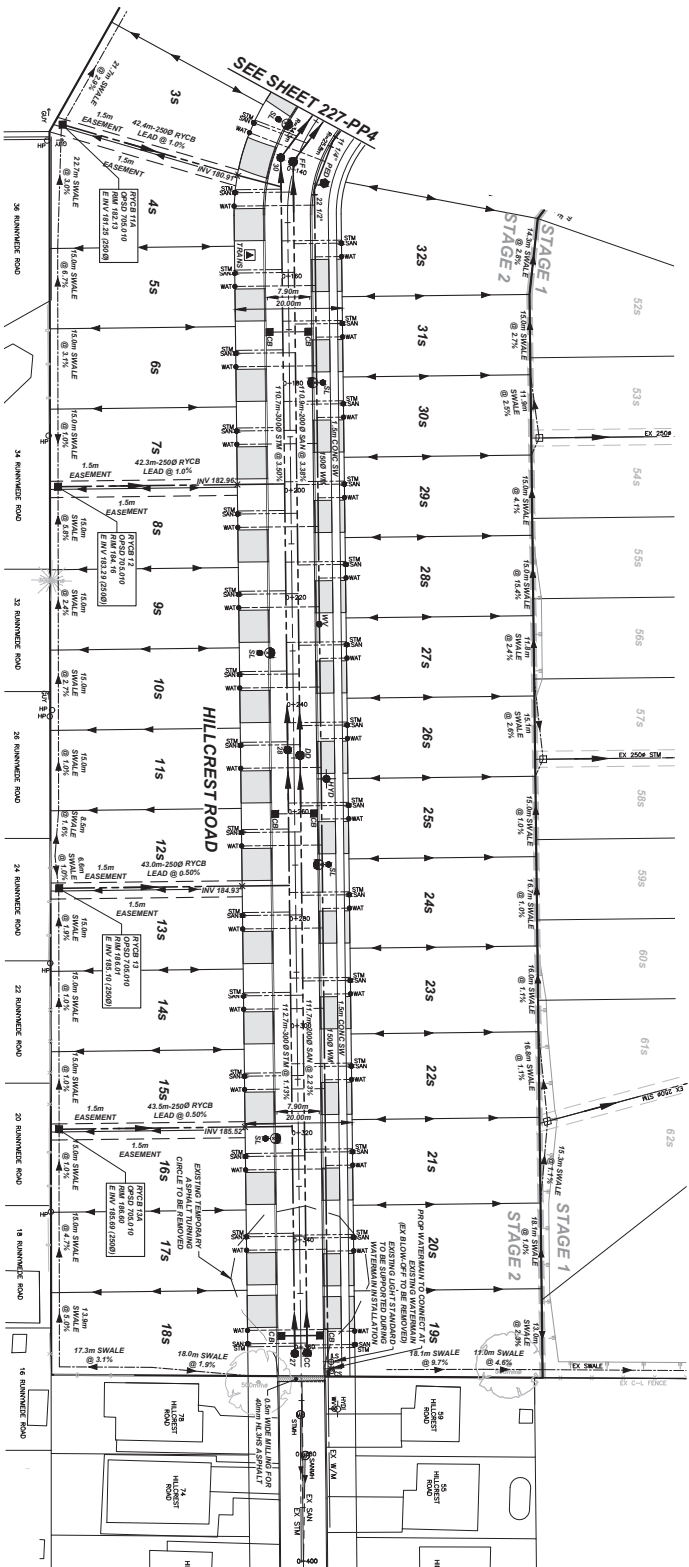
APPENDIX “A”

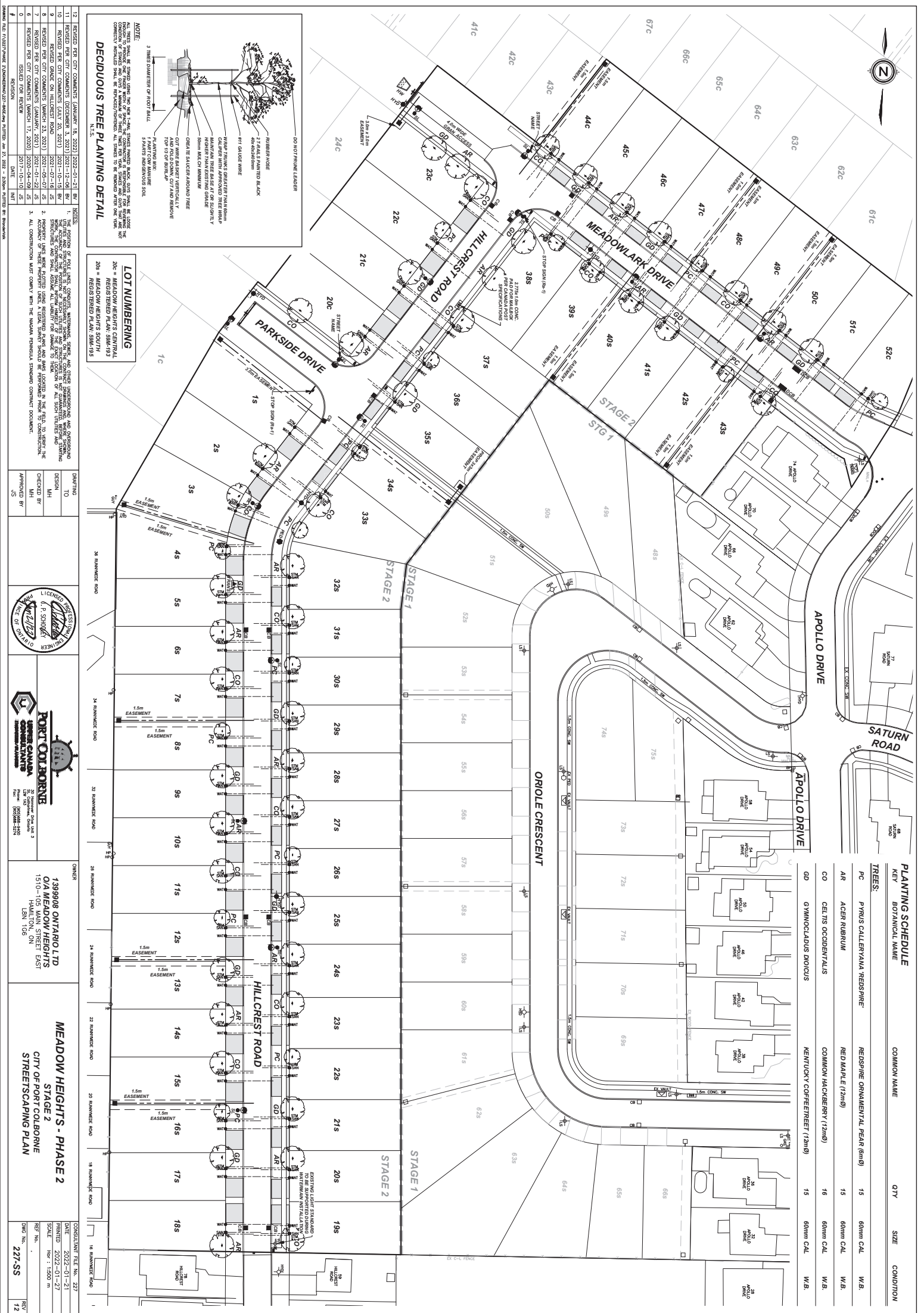
Plans, Profiles and Specifications

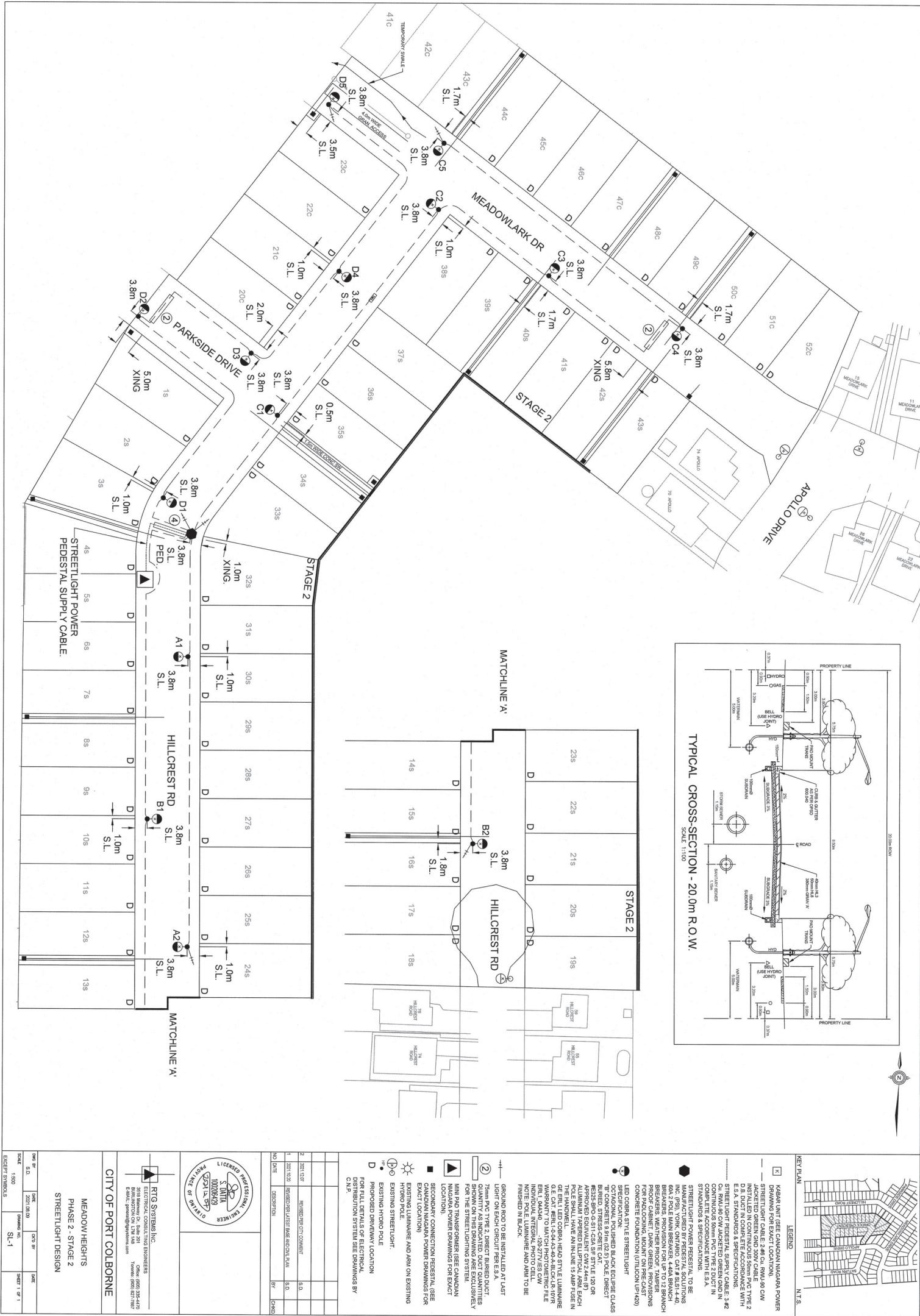
1. General Servicing Plan, prepared by Upper Canada Consultants, dated January 21, 2022, Drawing Number 227-GSP.
2. Plan & Profile – Meadowlark Drive from STA 0+220 to 0+420, prepared by Upper Canada Consultants, dated January 21, 2022, Drawing Number 227-PP3.
3. Plan & Profile – Hillcrest & Parkside Drive from STA 0+000 to 0+200, prepared by Upper Canada Consultants, dated January 21, 2022, Drawing Number 227-PP4.
4. Plan & Profile – Hillcrest Drive from STA 0+200 to 0+380, prepared by Upper Canada Consultants, dated January 21, 2022, Drawing Number 227-PP5.
5. Grading Plan, prepared by Upper Canada Consultants, dated January 21, 2022, Drawing Number 227-GP.
6. Streetscaping Plan, prepared by Upper Canada Consultants, dated January 21, 2022, Drawing Number 227-SS.
7. General Notes and Details, prepared by Upper Canada Consultants, dated January 21, 2022, Drawing Number 227-GND.
8. Streetlight Design, prepared by RTG Systems Inc., dated August 9, 2021, Drawing Number SL-1.
9. Registered Plan 59M-195, prepared by William A. Mascoe Surveying Ltd., dated September 25, 1990.
10. Registered Plan 59M-193, prepared by William A. Mascoe Surveying Ltd., dated September 25, 1990.
11. Registered Plan 59R-7459, prepared by William A. Mascoe Surveying Ltd., January 13, 1991.
12. Registered Plan 59R-7461, prepared by William A. Mascoe Surveying Ltd., January 13, 1991.
13. Registered Plan 59R-15883, prepared by Kirkup, Mascoe and Ure Surveying Ltd., dated June 22, 2017.
14. Registered Plan 59R-16971, prepared by Kirkup, Mascoe and Ure Surveying Ltd., dated April 22, 2021.
15. Registered Plan 59R-17228, prepared by Kirkup, Mascoe and Ure Surveying Ltd., dated February 14, 2022.



[illegible][illegible]

[illegible][illegible]





DEPT. OF THE
LAND OFFICE

PROPERTY OF THE
LAND MINISTRY OFFICE
BEING A SUBDIVISION OF
PART OF LOT 29

FORMERLY IN THE TOWNSHIP OF HUMBERSTONE
COUNTY OF WELLAND
NOW IN THE CITY OF PORT COLBORNE
REGIONAL MUNICIPALITY OF NIAGARA

WILLIAM A. MASCOE
ONTARIO LAND SURVEYOR

[illegible]PROPERTY OF THE
LAND REGISTRY OFFICE

59M-195

Certificate of Registration

I Certify that the plan SHEDDERS registered in the
Land Registry Office for the Land Titles Division of
Manitoba South (N2 59) at 12:00 PM on the
11th day of January, 1995, and entered
in the register for Parcel Plan-1 Section
59pm-195 and required
consents and affidavits are registered on Plan
Document #8 (~~289~~) LT-71336

ASSY DER LAYD REGISTRAR

THIS PLAN COMPRISES PART OF PARCEL 29-11, SECTION 59-HUMBERSTONE - 3 BLOCK 126, PART OF LOTS 100 TO 109, BOTH INCLUSIVE, AND PART OF LOT 122, SUBJECT TO EASEMENT AS IN TRANSFER L.T.-1251 AND INST. 673284 (1963).

PROPERTY OF THE
LAND REVENUE OFFICE

Surveyor's Certificate

1. This survey and plan are correct and in accordance with the Surveys Act and the Land Titles Act and the regulations made thereunder.

2. The survey was completed on the 25th day of September, 1990.

DATE: SEPTEMBER 25, 1930 William A. Mascoe
ST. CATHARINES, ONTARIO
WILLIAM A. MASCOE
ONTARIO LAND SURVEYOR

Bearing Note

Bearings between are automatic and are referred to the westerly limit of the Niagara St. Catharines and Toronto Railway Right-of-Way as shown on a plan of survey deposited in the Land Registry Office for the registry division of Niagara South, containing the B-155, L-155, L-156 and L-157, and the B-155, L-155, L-156 and L-157, have a bearing of $N 2^{\circ} 36' 10'' W$.

Legend

1.1 SLN.	denotes a standard iron bar.
1.1 SLB.	denotes a short standard iron bar.
0	denotes found.
49	denotes an iron bpr.
QU	denotes origin unknown.
FD.	denotes found.
JEL	denotes J.E. Lanthier, O.L.S.
839	denotes D.A. Lane, O.L.S.
739	denotes R. H. Funk, O.L.S.

Owner's Certificate

This is to certify that:

1. Lots 1 to 122, both inclusive, situated, namely Hillcrest Road Orleto Crescent, Apollo Drive and Saturn Road, the O-305 reserves, namely Blocks 124, 125 and 126 and the walkways, namely Block 123 have been sold out in accordance with our instructions.

2. The streets are hereby dedicated to the Corporation of the City of Port Colborne as public highways and the roadway is hereby dedicated to the Corporation of the City of Port Colborne as a public roadway.

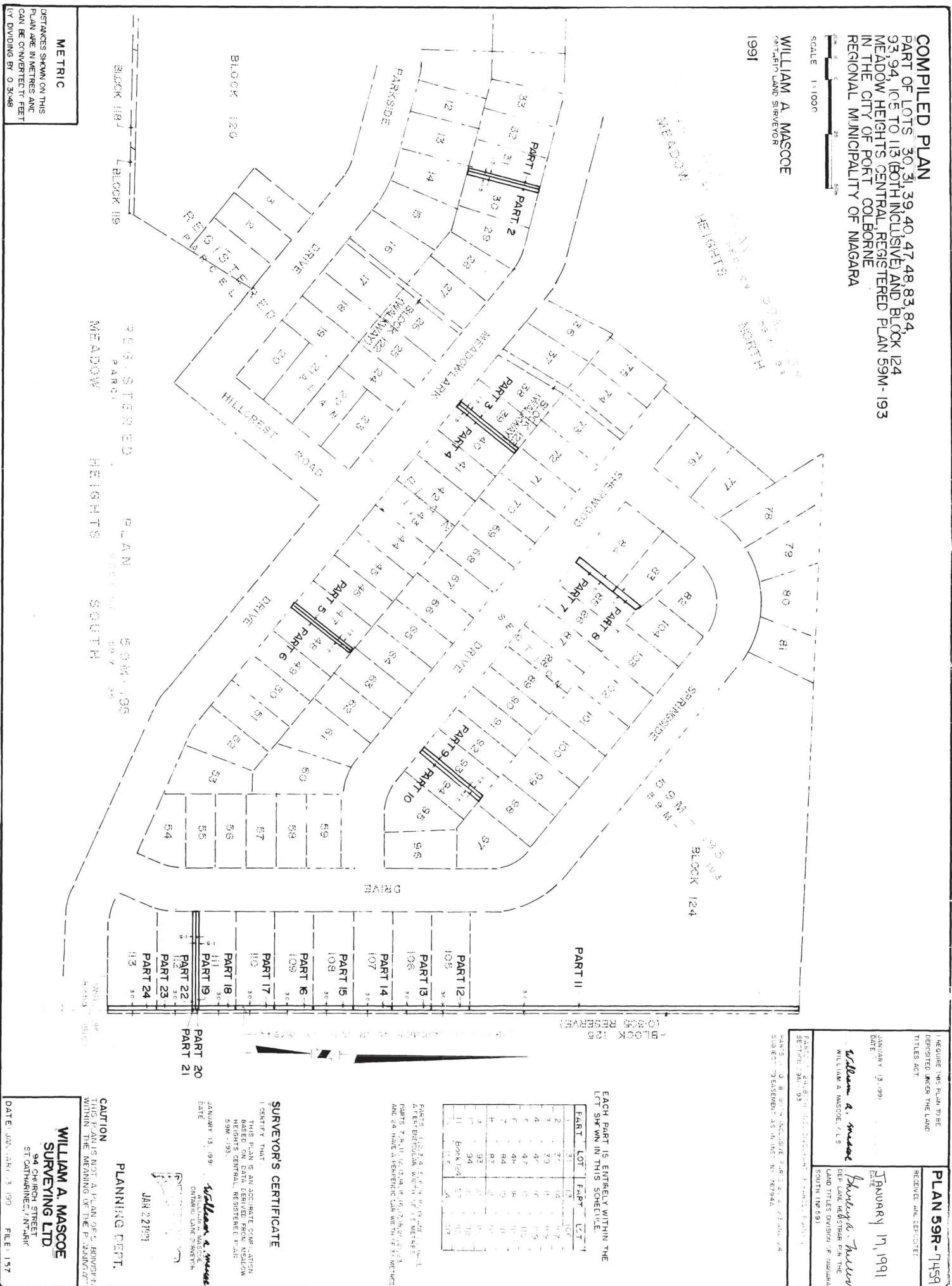
BE FURTHER ORDERED, that the 25th day of SEPTEMBER, 1990,


 GERALD CICCHI
 PRESIDENT
 I HAVE AUTHORITY TO BIND
 THE CORPORATION.


PROPERTY OF THE
AND REGISTRY OFFICE

WILLIAM A. MASCOE
SURVEYING LTD.
94 CHURCH STREET
ST. CATHARINES, ONTARIO

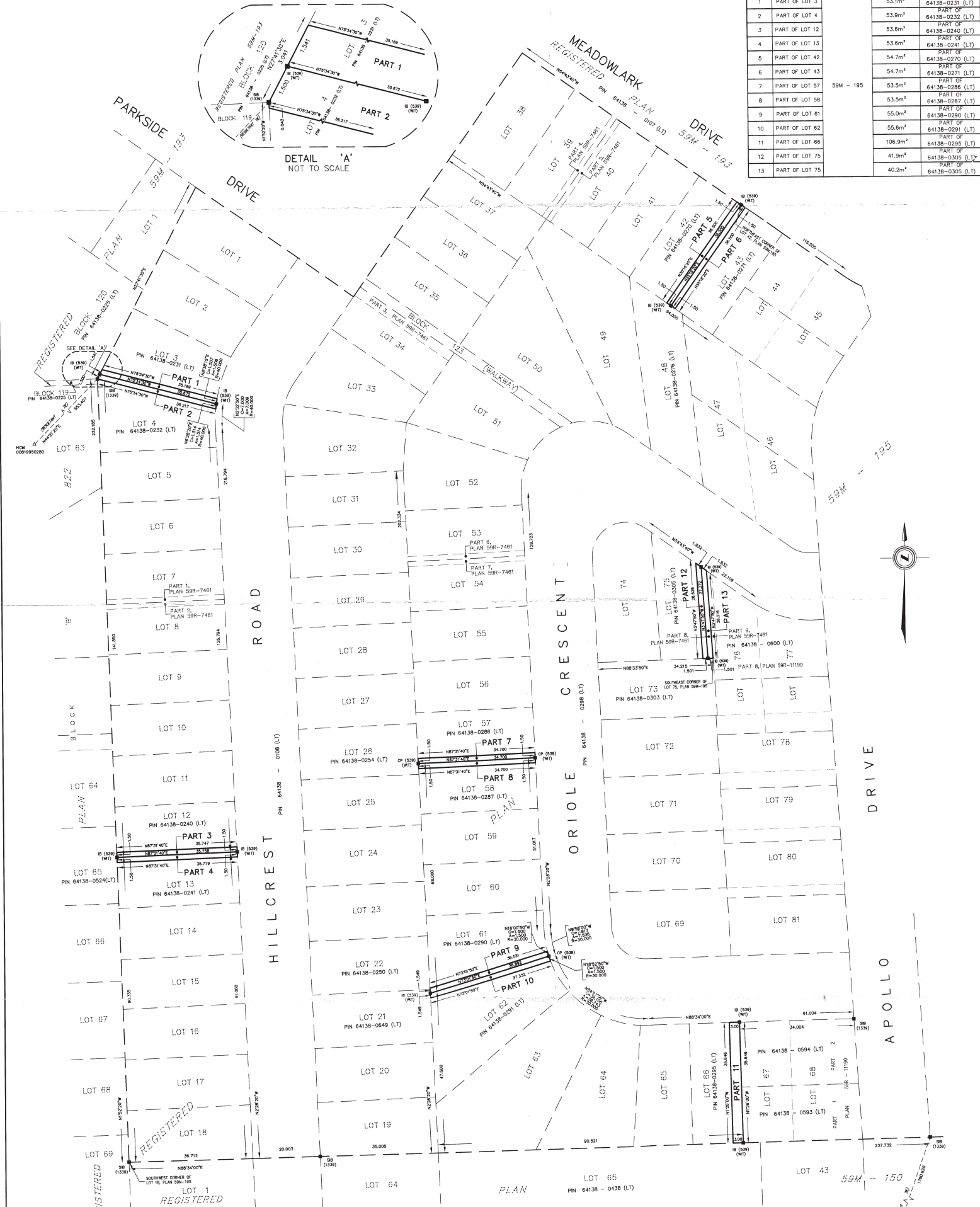
DATE: SEPTEMBER 25, 1991



PLAN OF SURVEY OF
PART OF LOTS 3, 4, 12, 13, 42, 43, 57, 58, 61, 62, 66 AND 75
REGISTERED PLAN 59M-195
CITY OF PORT COLBORNE
REGIONAL MUNICIPALITY OF NIAGARA

SCALE 1 : 500
KIRKUP MASCOE URE SURVEYING LTD.
ONTARIO LAND SURVEYORS

I REQUIRE THIS PLAN TO BE DEPOSITED UNDER THE LAND TITLES ACT			PLAN 59R-15883	
DATE JUNE 12, 2017			RECEIVED AND DEPOSITED	
<i>William A. Mascoe</i> WILLIAM A. MASCOE ONTARIO LAND SURVEYOR			DATE <i>June 22, 2017</i> <i>Amanda M. Asplund</i> REPRESENTATIVE FOR THE LAND REGISTRAR FOR THE LAND TITLES DIVISION OF NIAGARA SOUTH (No. 59)	
SCHEDULE				
PART	LOT	PLAN	AREA	PIN
1	PART OF LOT 3	59M - 195	53.1m ²	PART OF 64138-0231 (LT)
2	PART OF LOT 4		53.9m ²	PART OF 64138-0232 (LT)
3	PART OF LOT 12		53.6m ²	PART OF 64138-0240 (LT)
4	PART OF LOT 13		53.6m ²	PART OF 64138-0241 (LT)
5	PART OF LOT 42		54.7m ²	PART OF 64138-0270 (LT)
6	PART OF LOT 43		54.7m ²	PART OF 64138-0271 (LT)
7	PART OF LOT 57		53.5m ²	PART OF 64138-0286 (LT)
8	PART OF LOT 58		53.5m ²	PART OF 64138-0287 (LT)
9	PART OF LOT 61		55.0m ²	PART OF 64138-0290 (LT)
10	PART OF LOT 62		55.6m ²	PART OF 64138-0291 (LT)
11	PART OF LOT 66		106.9m ²	PART OF 64138-0295 (LT)
12	PART OF LOT 75		41.9m ²	PART OF 64138-0305 (LT)
13	PART OF LOT 75		40.2m ²	PART OF 64138-0305 (LT)



INTEGRATION DATA
BEARINGS HEREON ARE GRID, UTM ZONE 17, (NAD 83-CHRS (EPOCH 2010)), DERIVED FROM HORIZONTAL CONTROL MONUMENTS 00819950280 AND 00819950316.
COORDINATES ARE UTM ZONE 17, (NAD 83-CHRS (2010 EPOCH)), TO URBAN ACCURACY PER SEC. 14 (2) OF O.R.S. 216/70 AND CANNOT, IN THEMSELVES BE USED TO RE-ESTABLISH CORNERS OR BOUNDARIES SHOWN ON THIS PLAN.
DISTANCES ARE GROUND AND CAN BE CONVERTED TO GRID BY MULTIPLYING BY THE COMBINED SCALE FACTOR OF 0.999825

LEGEND
■ DENOTES
SIB SURVEY MONUMENT FOUND
CH SURVEY MONUMENT PLANTED
IB STANDARD IRON BAR
RIB CONCRETE MONUMENT
OP ROUND IRON BAR
MEASURED
NORTH, SOUTH, EAST, WEST
ORIGIN UNKNOWN
WITNESS MONUMENT
PROPERTY IDENTIFIER NUMBER
P1 PLAN 59M-195
P2 PLAN 59M-193
P3 PLAN 59M-190
P4 PLAN 59M-182
P5 PLAN 59M-7481
P6 PLAN 59M-11190
P7 D. G. URE, O.L.S.
(539)
(1335)
WILLIAM A. MASCOE, O.L.S.

SURVEYOR'S CERTIFICATE
I CERTIFY THAT:
1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEY ACT, THE SURVEYORS ACT AND THE LAND TITLES ACT AND THE REGULATIONS MADE UNDER THEM.
2. THE SURVEY WAS COMPLETED ON JUNE 12, 2017.
DATE: JUNE 12, 2017
WILLIAM A. MASCOE
ONTARIO LAND SURVEYOR

ROTATION NOTE - P1
BEARINGS ON THIS PLAN ARE GRID BEARINGS SHOWN ON P1 ARE ASTRONOMIC AND CAN BE CONVERTED TO GRID BY ROTATING COUNTER-CLOCKWISE 111140"

CO-ORDINATES	HCM	NORTHING	EASTING
00819950280	4752429.892	641607.567	
00819950316	4750920.366	641647.785	

KIRKUP MASCOE URE
SURVEYING LTD.
49 EASTCHESTER AVENUE, ST. CATHARINES, ONTARIO L2P-2Y6
TELEPHONE (905) 685-5931, FAX (905) 641-4424
E-MAIL: info@kirkupmascoeure.com
www.kirkupmascoeure.com
JOB No.: 2017-0110 DWS FILE: 17-0110-1trplan

