

**THE CORPORATION
OF THE TOWN
OF NIAGARA-ON-THE-LAKE
BY-LAW NO. 5017-17**

Woodcastle Acres Subdivision
1532 Concession 4 Road
2627-020-013-07100

A BY-LAW TO AUTHORIZE A SUBDIVISION AGREEMENT
BETWEEN THE CORPORATION OF THE TOWN OF NIAGARA-
ON-THE-LAKE AND WOODCASTLE DEVELOPMENTS INC. AND
MARIA BARTEL

BE IT ENACTED AS A BY-LAW OF THE CORPORATION OF THE
TOWN OF NIAGARA-ON-THE-LAKE as follows:

1. THAT the Agreement dated the 13th day of November, 2017 between The Corporation of the Town of Niagara-on-the-Lake and Woodcastle Developments Inc. and Maria Bartel, be and the same is hereby approved; and,
2. THAT the Lord Mayor and Town Clerk be authorized to affix their hands and the Corporate Seal; and,
3. THAT this by-law shall come into force and take effect immediately upon the passing thereof.

**READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 13TH DAY OF
NOVEMBER, 2017.**

LORD MAYOR PAT DARTE

TOWN CLERK PETER TODD

BETWEEN:

THE CORPORATION OF THE TOWN
OF NIAGARA-ON-THE-LAKE
(Hereinafter called the 'Town')

OF THE FIRST PART

-and-

WOODCASTLE DEVELOPMENTS INC.
(Hereinafter called the 'Owner')

OF THE SECONDE PART

-and-

MARIA BARTEL
(Hereinafter called the 'Mortgagee')

OF THE THIRD PART

WHEREAS the Owner warrants and represents that it is the registered Owner of the lands described in Schedule "A" attached hereto and forming part of this Agreement (the "Lands");

AND WHEREAS the Owner has made an application to the Town for approval of a plan of subdivision (for the Lands (the "Subdivision") attached hereto as Schedule "B") known as Woodcastle Acres Subdivision for the purpose of registering the same;

AND WHEREAS the Town, as a condition of granting such approval, has imposed certain conditions upon the Owner to be carried out to the satisfaction of the Town;

AND WHEREAS the Town requires the Owner, before final approval of the plan of Subdivision, to agree to pay for the construction and installation of certain municipal services to serve such Subdivision, or that part of such Subdivision for which approval is sought, and to agree to the other provisions contained herein;

AND WHEREAS this Agreement is entered into pursuant to the authority conferred by Section 51 of the *Planning Act*, R.S.O. 1990, Chapter P. 13, as amended, for the purpose of fulfilling the said conditions and obtaining such approval;

AND WHEREAS the Owner agrees to be bound by and to fulfil the obligations and conditions imposed on the Owner of the Lands.

NOW THEREFORE THIS AGREEMENT WITNESSES that the parties hereto, in consideration of the premises and the sum of One Dollar (\$1.00) of lawful money of Canada now paid by each of the said parties to the other (the receipt and sufficiency of which is hereby acknowledged), covenant and agree as follows:

1. DEFINITIONS

1.1 **Acceptance or Accept** means the Works that have been accepted by the Town in accordance with an Assumption By-law.

1.2 **Agreement** means this Subdivision Agreement.

1.3 **Approved Plans** means the required plans as approved by the Town and other government agencies including conservation authorities.

1.4 **Assume or Assumption** means the Town's acceptance of the Works to be constructed in accordance with this Agreement, as evidenced by a by-law of Council of the Town, whereby such Works vest in the Town and the Owner has no right, title or interest therein.

1.5 **Assumption By-law** means a by-law passed by the Town accepting the Works to be constructed herein, whereby such Works vest in the Town and the Owner has no right, title or interest therein.

1.6 **Builder** means the Person engaged by the Owner or subsequent owner to construct a building or any other work on a Lot.

1.7 **Building** means a building as defined in the *Building Code Act*.

1.8 **Building Code Act** means the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended, or any successor legislation thereto.

- 1.9 Building Permit** means a permit issued by the Chief Building Official of the Town 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 the *Building Code Act*.
- 1.10 Certificate of Completion** means the certificate of completion of all primary and secondary services when all works under the Agreement have been completed, the maintenance period for Operations has expired, and no other obligations under the Agreement remain outstanding other than as may be specified on the date of assumption.
- 1.11 Chief Building Official** means the Chief Building Official as appointed by by-law of the Council of the Town of Niagara-on-the-Lake or his designate.
- 1.12 Clerk** means the Clerk of the Town.
- 1.13 Conditions** means the conditions of draft approval for the Draft Plan of Subdivision imposed by the Town in accordance with the requirements of the Planning Act, Ontario.
- 1.14 Consulting Engineering Firm** means a competent professional engineer or firm of engineers registered with the Professional Engineers of Ontario, possessing a current certificate of authorization to practice professional engineering as required by the *Professional Engineers Act*, R.S.O. 1990, c.P. 28, as amended, who are retained or employed by the Owner to provide and carry out professional engineering services required pursuant to this Agreement on behalf of the Owner.
- 1.15 Council** means the Council of the Corporation of the Town of Niagara-on-the-Lake.
- 1.16 Construction Drawings** means the drawings showing building components and the manner in which they are assembled to form a building.
- 1.17 Developer** includes the successors, assigns, heirs, executors, administrators, or other legal representatives of the Developer to whom the context can apply according to law.
- 1.18 Director of Community and Development Services** means the Director of Community and Development Services of the Town or his or her designate.
- 1.19 Director of Operations** means the Director of Operations of the Town or his or her designate.
- 1.20 Easement** means the easements that are to be conveyed to the Town or Region to service Lands.
- 1.21 Final Approval** means final approval of the Plan for registration given by the Town in accordance with the requirements of the Ontario *Planning Act*.
- 1.22 Final Inspection** means an inspection of a building or structure for which a Building Permit has been issued by the Town, to determine whether all works required by the Building Permit have been completed to the satisfaction of the Town.
- 1.23 Final Plan** means a Plan prepared at the request of the Developer and submitted to the approval authority as a Final Plan suitable for registration. Upon registration the registered plan shall be the final plan for the purposes of this Agreement.
- 1.24 Grading Conformance Certificate** means a declaration by the Consulting Engineering Firm certifying that the Lands and any individual lot and/or block has been graded in accordance with the Grading Plan approved by the Director of Operations.
- 1.25 Grading Plan** means a drawing showing grades, swales, and drainage patterns and may include catch basins and floor heights in relation to grades.
- 1.26 Highway** means land dedicated as a public highway by the Plan and includes a

proposed road widening shown on the Draft Plan.

- 1.27 Inspector** means the Inspector appointed by the Town of Niagara-on-the-Lake for the Subdivision who provides inspection services on behalf of the Town.
- 1.28 Install** shall also mean reinstall, provide, construct, or reconstruct.
- 1.29 Lands** means all the lands shown on the Draft Approved Plan and described in Schedule 'A'.
- 1.30 Letter of Credit** means a standby municipal, irrevocable letter of credit issued by a major chartered bank or credit union, posted with the Town pursuant to the terms of this Agreement.
- 1.31 Local Improvement** shall include utilities, sanitary sewers, storm sewers, sidewalks, curbs and gutters, pavements and other such local improvements as are defined in the former *Local Improvement Act*, R.S.O. 1990, c. L. 26, as amended, or in the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, or any successor thereto and regulations made thereunder.
- 1.32 Occupancy Permit** means a permit or other written authorization, issued by the Chief Building Official of the Town, permitting occupancy of a Building for which a Building Permit has been issued.
- 1.33 Owner** means Woodcastle Developments Inc. and the registered owner or owners in fee simple of the Lands and their respective heirs, executors, administrators, successors and assigns. Wherever the singular is used herein it shall, where the context requires, include the plural.
- 1.34 Person** means a person, firm or corporation and where required, may mean all or a combination of them.
- 1.35 Plot Plan/ Site Plan** means a drawing showing the building in relation to property lines and may include the locations of driveways and other structures and services.
- 1.36 Preliminary Certificate of Completion of Primary Services** means the certificate issued by the Director of Operations upon satisfactory completion of all Primary Services prior to commencement of the maintenance period.
- 1.37 Primary Services** means road signs, hydro wiring, street lighting, watermains, sewers, both sanitary and storm, storm water management ponds, and any pumping station, catch basins or other appurtenances, the base road including base asphalt, curbs and gutters, emergency accesses, regulatory signs, public utilities, community mail box pads, lot pre-grading including sodded swales, retaining walls, and fences.
- 1.38 Region** means The Corporation of the Regional Municipality of Niagara.
- 1.39 Regional Public Works Department** means the Region of Niagara Public Works Department.
- 1.40 Registration** means the time of registration in the office of Land Titles at St. Catharines and "register" has a corresponding meaning.
- 1.41 Reserve Strip** means a parcel of land conveyed by the Owner to the Town in fee simple and 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 lot.
- 1.42 Required Plans** means all of the plans and specifications for all of the works and matters required to be designed, installed, and done by the Developer by way of this Agreement for the subdivision and development of the Lands, including without limiting the generality of the forgoing, servicing plans, streetscape plan, street lighting plans, landscape and fencing plans, which include the plans for the noise attenuation works and which shall be completed by a qualified landscape architect, etc. Where the subject matter or context of a particular section of this Agreement requires reference to any one of the required plans, it may be referred to by its individual name,

e.g., 'required street lighting plans'.

- 1.43 Secondary Services** means all Works to be installed, constructed or erected which are not defined as Primary Services or Public Utilities. Included as a Secondary Service is the cleaning of any storm water management pond and/or stormceptor, if applicable. All Storm Ponds shall be cleaned out and silt removed to the original approved design elevations prior to the assumption by the Town.
- 1.44 Section** when used in reference to a numbered part of this Agreement means:
- (a) A complete section including all its sections and subsections;
 - (b) A particular subsection including its subsections; and,
 - (c) A particular subsection as the context may dictate or require.
- 1.45 Street Lighting** means street lighting and park walkway lighting system which includes all poles, standards, arms, lights, fixtures, wires, ducts and related equipment's that are necessary for the safe illumination of the roadway, boulevard, park and walkway to the Town requirements. All lighting shall be LED.
- 1.46 Subdivision** means the plan of subdivision as set out and illustrated on Schedule "B" of this Agreement.
- 1.47 Surveyor** means the Ontario Land Surveyor.
- 1.48 The Engineer** shall refer to the Developer's Consulting Engineer.
- 1.49 Town** means The Corporation of the Town of Niagara-on-the-Lake.
- 1.50 Treasurer** means the Treasurer of the Town.
- 1.51 Works** shall mean and include all Primary and Secondary Services and any and all works, services, things, actions and other matters without limitation required to be completed or performed by the Owner pursuant to this Agreement.

2. GENERAL PROVISIONS

- 2.1** The Owner covenants and agrees to pay all arrears of taxes outstanding and all taxes for the current year in respect to the Lands described in Schedule A, prior to the execution of this Agreement by the Town.
- 2.2** The Owner covenants and agrees to commute and pay, upon execution of this Agreement, all designated charges, local improvement charges, and imposed rates now assessed and levied upon the Land, including but not limited to levies under the *Local Improvement Act*, *Ontario Water Resources Act*, *Public Utilities Act*, *Drainage Act*, and the *Municipal Act, 2001*, and any other special levies or charge against the property, save and except development charges.
- 2.3** The Owner shall prepare cost estimates for the construction of all Primary and Secondary off-site and on-site services and estimate the number of working days associated with the construction of such services upon which the calculation for inspections, Letter of Credit and security deposits shall be based.
- 2.4** The Owner hereby consents to the registration of this Agreement against the title of the Lands. The Owner agrees that it shall not sell or convey any portion of the Lands described in Schedule "A" attached hereto until such time as this Agreement and all other documents required by this Agreement have been registered on title to the Lands. The Owner therefore agrees to restrictions being placed on title to the Lands preventing the transfer of all or a portion of the Lands until the Town has received all documents required by this Agreement and these documents have been registered on title.
- 2.5** In the event that any monies payable hereunder by the Owner to the Town have not been paid within thirty (30) days after the date when the same becomes due and payable, then the Owner shall pay interest on the amount so payable at a rate equal

to that established by the Town's current bank borrowing prime rate of interest plus two percent (2%) calculated from the date that the said monies become payable.

- 2.6** Unless expressly stated otherwise, where under any provision of this Agreement, the Owner is obligated to make any payments, or to make conveyances or dedications of lands, or to install or construct or carry out any Works on the Lands or external to the Lands, or to provide any services by any other Persons, the provision provisions contained herein shall be deemed to include the words "solely at the expense of the Owner." For clarity, all matters to be done or carried out pursuant to this Agreement, whether by the Owner or the Town, shall be at the sole expense of the Owner, whether or not such words appear in any section of this Agreement.
- 2.7** As per the Town's Street Cleaning Policy, all streets abutting on the Lands or used for access to the Lands during the installation or construction of the Works or during the construction of dwellings upon the Lots shall, at all times, be kept by the Owner in a good, clean and usable condition and, if damaged or littered, shall be restored immediately to the Town's requirements.
- 2.8** The Owner shall ensure that 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.
- 2.9** The Owner agrees that access to the site for construction and servicing shall be from Concession 4 Road, rather than from Annmarie Drive.
- 2.10** In the event that the Subdivision has not been registered within one (1) year from the date of this Agreement, the Town may, at its sole option and within its sole and absolute discretion, on thirty (30) days' notice in writing to the Owner, declare this Agreement to be null and void.
- 2.11** In the event that the Owner wishes to register more than one Subdivision over the Lands, the Owner shall first obtain the written consent of the Town to do so, and such consent shall be conditional upon the Owner registering such plans in such order as determined by the Town and upon registering such plans concurrently. The Owner shall not register a Subdivision over part of the Lands without prior written consent of the Town.
- 2.12** The Owner agrees to provide all rights, lands, matters and easements to construct and provide all of the Works described in all the Schedules of this Agreement, in accordance with the conditions and specifications contained in the respective Schedules, and in accordance with all applicable terms of this Agreement, unless otherwise provided in the Schedules.
- 2.13** The Owner does hereby agree to indemnify and save harmless the Town from any liability for the cost of the Works described in any of the Schedules.

3. CONVEYANCES AND DEDICATIONS OF LAND FOR MUNICIPAL AND OTHER PURPOSES

- 3.1** The Owner shall convey to the Town and/or Region, free of all encumbrances, all dedications, which are described in Schedule "C", forthwith upon registration of this Agreement.
- 3.2** All roads shown on the Plan of Subdivision shall be dedicated by the Owner to the Town as public highways and all such public highways shall be named to the satisfaction of the Town prior to the registration of the Subdivision.
- 3.3** The Owner shall convey to the Town, the easements in, over, along and upon such parts of lands described in Schedule "C", forthwith upon registration of this Agreement. The Owner further agrees that no land affected by any such easement shall be sold, transferred or encumbered unless made subject thereto.
- 3.4** The Owner shall convey to such public utility company or commission, as the Town may direct, easements as required for utility or drainage purposes in, over, across and under the Lands. All such grants of easement shall be in a form satisfactory to

those for whom they are intended.

3.7 The Owner shall obtain and convey to the Town such further easements that, at the sole discretion of the Director of Operations, are required for the construction of the Works to be constructed pursuant to this Agreement.

3.8 The Owner shall transfer the lands referred to in this Section in a neat and tidy condition, free of all debris and trash and with all necessary improvements completed to the satisfaction of the Town.

4. ENGINEERING AND INSPECTION

4.1 The Owner shall, with the approval of the Town, retain or employ a competent and qualified Consulting Engineering Firm licensed in Ontario, to carry out any professional engineering services required herein, in accordance with the Town's Municipal Design Standards Manual, and approved by the Director of Operations. The Consulting Engineering Firm shall undertake and/or prepare and execute the following:

- (a) Design brief including the following:
 - (i) Geotechnical Report;
 - (ii) Calculations for pipe strength and bedding requirements;
 - (iii) Sanitary sewer design calculations including standard form;
 - (iv) Storm sewer design calculations including standard form;
 - (v) Watermain design calculations/analysis;
 - (vi) Pavement/roadway design calculations/analysis; and
 - (vii) Stormwater Management calculations/analysis;
- (b) Detailed estimates of costs;
- (c) Plans, profiles and specifications for the Works;
- (d) A Geodetic Bench Mark at such locations required by the Director of Operations;
- (e) Applications for submission to the necessary authorities for approval of the Works prior to their construction;
- (f) Call tenders for the Works, analysis of bids and recommendations to the Owner including the provision of adequate bonding or other security for the performance of all Works;
- (g) Construction layout of the Works;
- (h) Provide full-time competent field supervision of the construction of the Works to the satisfaction of the Director of Operations;
- (i) Maintain all records of the installation or construction of the Works and submit a copy to the Director of Operations;
- (j) Supply the Town with a set of the "as constructed" final drawings in a PDF and AutoCAD format of all Works, to the satisfaction of the Director of Operations at the time of the completion of the Primary Services;
- (k) Supply to the Town pre-construction and post-construction surveys of the storm water management pond. The Owner will be responsible for the entire cost of such survey work. Any siltation accumulated as a result of construction of the subdivision shall be removed at the expense of the Owner.

- (l) Review and approve individual lot grading submissions prior to the issuance of a Building Permit for the Lot under review. Further, co-ordinate all grading activity within the Subdivision, and provide Grading Conformance Certificates for all Lots and blocks within the Subdivision in the Town's standard form for grading plan, prior to the issuance of the Final Certificate of Completion of Services; and,
 - (m) Supply the Region with a set of the "as constructed" final drawings in a PDF and AutoCAD format of all Works to the satisfaction of the Region.
- 4.2** The Owner shall ensure that the Consulting Engineering Firm files forthwith after the execution of this Agreement, with the Director Operations, a written undertaking outlining the following:
- (a) That the firm does not have any direct or indirect monetary interest in the proposed development contemplated by this Agreement;
 - (b) That the firm has been authorized in writing by the Owner to perform the services set forth in Section 4.1;
 - (c) That the construction of the Works will be done in accordance with the contract drawings and specifications and all other provisions of this Agreement;
 - (d) That all phases of the Works are subject to prior approval of the Director of Operations; and,
 - (e) That, when requested by the Director of Operations, the final drawings, inspections and testing reports shall be forwarded to the Director of Operations.
- 4.3** The Owner shall be liable for any loss, costs or damages arising out of or attributable to failure by the Consulting Engineering Firm to provide or fulfil the requirements set forth in Sections 4.1 and 4.2 herein and any other requirements arising from the performance of the Consulting Engineering Firm's obligations pursuant to or arising from this Agreement. Prior to any construction of Works, the Consulting Engineering Firm shall provide to the Town proof, satisfactory to the Town, of the Consulting Engineering Firm's liability coverage for the minimum amount of Five Million (\$5,000,000.00) Dollars per occurrence and that it has errors and omissions insurance in the amount of Five Million (\$5,000,000.00) Dollars per occurrence.
- 4.4** The Owner shall pay the full cost of all inspections and testing, including geotechnical, and all corrective work called for herein and required by emergency conditions, whether performed by the Owner and its agents or performed by the employees or consultants of the Town including overhead. An inspector or inspectors will be assigned to the Lands by the Director of Operations on such basis either full or part-time as at the Director of Operations sole discretion is deemed appropriate during installation of the Works, regardless of who designs the Works. The costs of all Works, testing and inspections done by such inspector or inspectors, shall be solely at the expense of the Owner. The Owner agrees to obey all orders and directives made pursuant to this Section 4.4. by the Director of Operations.
- 4.5** The Regional Public Works Department shall have the right to inspect and approve all Works over which it has jurisdiction and this Section 4 shall be applicable with necessary modifications to such inspection and approval.
- 4.6** The Consulting Engineering Firm shall be required to certify the conformity of the completed Works with submitted and approved drawings. A copy of the said certification shall be provided to the Town and the Niagara Peninsula Conservation Authority.
- 4.7** The Owner shall obtain from the Ministry of the Environment and Climate Change an Environmental Compliance Approval under the Transfer of Review Program for the necessary servicing (sanitary sewer and storm water drainage) for the development prior to final approval for registration.

Note: The design of any new stormwater management system should be submitted directly to the Ministry of the Environment and Climate Change, Toronto office, for an Environmental Compliance Approval.

- 4.8** The Developer shall be required to submit a completed Form One, Record of Watermains Authorized as a Future Alteration as published by the Ministry of the Environment and engineering drawings, prepared by a Professional Engineer, to the Town Operations Department for review and approval in accordance with the Town's Drinking Water Works Permit. The design must satisfy the design criteria set out in the Ministry of the Environment publication "Water Main Design Criteria for Future Alterations Authorized under a Drinking Water Permit – June 2012".
- 4.9** The Owner agrees that all servicing plans and supporting reports will be subject to a peer review at the Owner's expense.

5. TENDERS AND CONTRACTORS

- 5.1** All contractors must be approved by the Director of Operations before commencement of any Works and the Director of Operations shall provide his reasons in writing should the proposed contractor not be recommended for approval.
- 5.2** Before commencement of any Works, the Owner shall provide documentary proof to the Town that the proposed contractor has sufficient and valid insurance liability policies for the minimum amount of Five Million (\$5,000,000.00) Dollars per occurrence; a certificate from the Workers' Compensation Board showing that the contractor is in good standing; and, satisfactory evidence that the contractor is qualified, experienced and has all necessary equipment to successfully complete the Works.
- 5.3** The Owner shall give seven (7) days' notice to the Director of Operations prior to the commencement of construction. The Owner agrees to hold a pre-construction meeting in accordance with the Town's Municipal Design Standards Manual, prior to commencement of any Works contemplated by this Agreement. The Owner agrees that the Director of Operations must approve all construction entrances into the Lands, prior to commencement of any Works on the Lands. If construction ceases for twenty-eight (28) days or more, seven (7) days' notice must be given to the Director of Operations of any intention to resume construction. The Owner shall also provide a construction work schedule for the project to the Director of Operations. It is the responsibility of the owner, or his contractors, to notify adjacent and abutting property owners of the work schedule.
- 5.4** The Owner shall, before commencement of any Works, ensure that all contractors deposit with the Town a performance and maintenance bond guaranteeing to the Owner the completion of the Works and the maintenance thereof, for a minimum period of twenty-four (24) months after the Acceptance of the Works by the Director of Operations of all such construction. Bonds shall be in the amount of one hundred percent (100%) of the construction value of all Works and the form of the bond must be approved by the Director of Operations prior to the undertaking of construction of any Works contemplated by this Agreement.
- 5.5** The Owner shall, before commencement of any Works:
- (a) Undertake a pre-condition survey of structures located on surrounding lands, as identified by the Director of Operations at the pre-construction meeting noted in Section 5.3, for the purpose of identifying structures that may be susceptible to vibration resulting from the Works; and,
 - (b) Provide to the Town a copy of the pre-condition survey completed to the satisfaction of the Director of Operations.

6. INSTALLATION OF SERVICES

6.1 General

- (a) The Owner shall remove any surplus or other material as may be designated

by the Director of Operations and further, shall remove from the Lands any unkempt, diseased or infested trees, vines, bushes or weeds. In the event the same are not removed within fourteen (14) days of written notice delivered to the Owner, the Town may have the same removed and the Owner agrees to pay to the Town the cost incurred thereby.

- (b) The Owner shall not change or do any Works or carry out any activities that will prejudicially affect any natural watercourse or drainage ditch, without making full and proper provisions, to the satisfaction of the Director of Operations, for the continuance of such drainage facilities and the Owner shall be solely responsible for all loss or damages caused thereby and shall indemnify and hereby does save harmless the Town therefrom.
- (c) The Owner shall assume complete responsibility and make all necessary arrangements for the moving or disturbance of any Public Utilities, including water, sewer, hydro-electric, gas or telephone, pipes, conduits, wires or pole lines, or any other public utility works as required or approved by the Director of Operations and shall be solely responsible for any damage caused to the said pipes, conduits, wires, pole lines, hydrants or other Works and shall and hereby does indemnify and save harmless the Town therefrom. Notice of any work to move or disturb any of the herein mentioned Public Utilities shall be provided to the Town and the Public Utility as the case may be.
- (d) The Owner agrees to keep boulevards and easements clear and free of all material and obstructions, which might interfere with the installation or construction of telephone, gas, water, cable and hydroelectric installations, and other Public Utility works.
- (e) The Owner shall not remove or permit any site alteration or the removal of any soil from the Lands without first obtaining written approval from the Chief Building Official. The Owner further acknowledges that there is a Site Alteration By-law in effect in the Town with which the Owner must comply.
- (f) The Director of Operations may have qualitative and quantitative tests made of any materials which have been, or are proposed to be, used in the construction of any Works required by this Agreement and the costs of such tests shall be paid by the Owner.
- (g) The Owner agrees that the Works constructed by it may be used, prior to Acceptance by the Town, for the purpose for which they are designed, subject to the approval of all other parties as may be required. Such use shall not constitute Acceptance of the Works and shall not relieve the Owner of any of its obligations.
- (h) The Owner covenants and agrees to carry out all Works on the Subdivision in such a manner as to prevent erosion as well as 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 or highway, whether opened or unopened, or onto the property of any Person or Persons, the Town, its servants or agents, may at its sole and absolute discretion clean and remove such material, rectify any damage caused as aforesaid, and abate any nuisance created by the Owner. The cost of any such Works performed by or at the instructions of the Town shall be paid by the Owner on demand, and this cost may be paid out of any money the Owner may have deposited with or paid to the Town for any purpose whatsoever. The Owner agrees to provide silt control around the entire site, as well as silt sacks in all catch basins. All silt control measures shall be maintained for the entirety of the construction.
- (i) The Owner shall provide the Town with written confirmation from any and all Public Utilities that satisfactory arrangements have been made for underground services in the Subdivision prior to final approval of the proposed Subdivision.

6.2 Roads

- (a) The Owner shall construct all roads as shown on the Subdivision in accordance with the plans approved by the Director of Operations. The Owner agrees that no Works shall commence until such time as the designs, plans and specifications have been submitted to and approved by the Director of Operations in writing.
- (b) All Works to be undertaken within the road allowance of Concession 4 Road or Annmarie Drive are subject to the prior approval of the Town. The Owner shall obtain a municipal consent permit and utility installation permit from the Town prior to carrying out any Works within the Concession 4 Road or Annmarie Drive road allowance. The Owner shall, upon the completion of all Works, reconstruct and restore Concession 4 Road or Annmarie Drive to the satisfaction of the Director Operations.
- (c) Unless otherwise directed by the Director of Operations, the Owner agrees to remove from all roads shown on the Subdivision, any trees, brush or other material as designated by the Director of Operations. The Owner shall rough grade to the Town's specifications, the full width of all roads as shown on the Subdivision prior to the installation or construction of the Works. Prior to the construction of any Works, the topsoil shall be stripped and shall be stockpiled during the period of construction at a location which is approved by the Director of Operations and which is conducive to the interim drainage requirements of the Subdivision. The topsoil, so stockpiled, shall be used to grade the Lots and boulevards after construction thereon in accordance with the Grading Plan. No topsoil shall be removed from any of the Lands for any reason unless approved by the Director of Operations in writing. Further, the stockpile, or any open areas, are to be seeded to prevent erosion and assist with dust control.
- (d) The Owner agrees to pave all driveways between the edge of the pavement of the street and to the property line and/or sidewalk as the case may be, for the Lots/blocks shown on Schedule "B" attached hereto.
- (e) The road design of the subdivision shall comply with the Regional waste collection policy to the satisfaction of the Niagara Region Planning and Development Services Department.

6.3 Storm Drainage and Sanitary Sewers

- (a) The Owner shall construct a storm drainage system to adequately service the Lands and all or any portion of the ultimate drainage area in which the Lands are located. This drainage system shall be constructed in accordance with the design, plans and specifications approved by the Town. The Owner covenants and warrants that the storm drainage system will be designed and installed such that surrounding lands are not adversely impacted and that there is no increase in post development flows. The Owner shall ensure that any Lot or block or part thereof is filled with clean fill and graded so as to prevent the ponding of water on such Lot or block or part thereof, or the flooding of adjacent lots or properties.
- (b) All rainwater leads shall discharge on the surface of front and/or rear lawns and away from the building and shall not be connected to the storm sewer laterals or the sanitary sewer laterals.

House foundation drain shall be gravity connected to the storm sewers. Should sump pumps be required, they shall outlet to Storm Sewer lateral.

The Owner agrees to mark all Sanitary and Storm Sewer laterals. White marking is required for Sanitary Sewer laterals. Green marking is required for Storm Sewer laterals.

- (c) The Owner shall construct a sanitary sewer drainage system to adequately service the Lands and all or any portion of the ultimate drainage area in which the Lands are located. This sanitary sewer system shall be constructed in accordance with the design, plans and specifications approved by the Town. The Owner covenants and warrants that the sanitary sewer drainage system

will be designed and installed in such a way that surrounding lands are not adversely impacted.

- (d) The Owner shall, prior to the issuance of the Preliminary Certificate of Completion of Primary Services, supply the Director of Operations with the Town's standard service cards showing the location and depth of each sanitary sewer lateral and storm sewer lateral constructed to serve the buildings which are to be erected on the Lands.
- (e) Upon completion of the Primary Services, the Owner shall have all storm sewer and sanitary sewer systems cleaned and flushed to the satisfaction of the Director of Operations.
- (f) Prior to the placement of the base course asphalt, the Owner shall be responsible for carrying out an in-line inspection of all storm sewer and sanitary sewer systems by television as directed by the Director of Operations, and the report and video thereof shall be provided to the Town. In the event that results are not, in the opinion of the Director of Operations, satisfactory, then the Owner shall take such remedial steps including re-televising the repairs as may, in the opinion of the Director of Operations, be required.
- (g) Prior to the placement of the base course asphalt, the Owner shall have all sanitary sewer systems tested either by infiltration or by exfiltration and the method of testing shall be in the sole direction of the Director of Operations.
- (h) Prior to the placement of the base course asphalt, the Owner shall have all sanitary sewer and storm sewer systems, which have been constructed using flexible piping mandrel tested to the satisfaction of the Director of Operations.
- (i) After the placement of the topcoat asphalt and prior to the Final Certificate of Completion, the Owner shall have all sanitary sewer and storm sewers flushed and carry out an in-line television inspection of all sanitary sewer and storm sewers, to the satisfaction of the Director of Operations.
- (j) The Owner agrees to:
 - (i) Implement to the satisfaction of the Niagara Peninsula Conservation Authority, the Niagara Peninsula Conservation Authority approved grading, sedimentation and erosion control plans, and storm water management plans;
 - (ii) Ensure that vegetation removal associated with clearing, site access and staging should occur outside the key breeding bird period identified by Environment Canada for migratory birds to ensure compliance with the Migratory Birds Convention Act (MBCA), 1994 and Migratory Bird Regulations (MBR). Vegetation removal should be undertaken outside the breeding season for migratory birds (March 15 and August 31). For any proposed clearing of vegetation within this timeframe a nest survey should be completed by a qualified avian biologist prior to commencement of works to identify and locate active nests of species covered by the MBCA. This should include the development of a mitigation plan to address any potential impacts on migratory birds and their active nests.
- (n) The Owner agrees to supply to the Town pre-construction and post-construction surveys of the storm water management pond. The Owner will be responsible for the entire cost of such survey work. Any siltation accumulated as a result of construction of the subdivision shall be removed at the expense of the Owner.

6.4 Watermains

- (a) The Owner shall connect to the existing watermain system for the purpose of servicing the Lands in accordance with the design, plans and specifications approved by the Director of Operations.
- (b) Upon completion of the Primary Services, the Owner shall have all watermains

swabbed, flushed, pressure tested, chlorinated and bacterial tested in accordance with Town requirements and approved by the Director of Operations.

- (c) The Owner shall flow test all new fire hydrants and colour code in accordance with the requirements of NFPA 291
- (d) The Owner shall supply the Town with standard service cards showing the location of the water lines serving each dwelling to be erected upon the Lots.
- (e) The Owner agrees to place a plastic or burlap bag over all hydrants that are not actively in service.
- (f) The Owner agrees to mark each valve box with a 1.2 metre marker painted blue and shall ensure the same is kept clear of debris, fill, equipment or material.
- (g) The Owner agrees that no Person or Persons, except the Director of Operations or those acting under the Director of Operations authority, shall open or close any valve, or hydrant in any street main connected into and served by the Towns water system or interfere with the source in any manner.

6.5 Public Utilities

- (a) The design and installation of all Public Utilities shall be at the sole cost of the Owner and shall be subject to the terms and conditions of the utility company or commission.
- (b) The Owner shall grant to Bell Canada any easements that may be required for telecommunications services. Easements may be required subject to final servicing decisions. In the event of any conflict with existing Bell Canada facilities or easements, the Owner shall be responsible for the relocation of such facilities or easements.
- (c) Prior to commencing any Work on the Lands, the Owner must confirm that sufficient wire-line communication/telecommunication infrastructure is currently available within the proposed development to provide communication/telecommunication service to the proposed development. In the event that such infrastructure is not available, the Owner is hereby advised that the Owner may be required to pay for the connection to and/or extension of the existing communication/telecommunication infrastructure. If the Owner elects not to pay for such connection to and/or extension of the existing communication/telecommunication infrastructure, the Owner shall be required to demonstrate to the municipality that sufficient alternative communication/telecommunication facilities are available within the proposed development to enable, at a minimum, the effective delivery of communication/telecommunication services for emergency management services (i.e., 911 Emergency Services).
- (d) The Owner shall ensure that all gas piping is installed prior to the commencement of site landscaping (including, but not limited to: tree planting, silva cells and / or soil trenches) and/or asphalt paving, all costs are the responsibility of the applicant. In the event that easement(s) are required to service this development, the applicant will provide the easement(s) to Enbridge Gas Distribution at no cost.
- (e) In the event a pressure reducing regulator station is required, the Owner is to provide a 3 metre by 3 metre exclusive use location that is within the municipal road allowance. The final size and location of the regulator station will be confirmed by Enbridge Gas Distribution's Customer Connections Department.
- (f) The owner agrees to grade all road allowances to as final elevation as possible, provide necessary field survey information and all approved municipal road cross sections, identifying all utility locations prior to the installation of the gas piping.

6.6 Streetlights

The Owner agrees to install LED streetlights in accordance with the plans identified on Schedule "E", to the satisfaction of the Town.

6.7 Signage

The Owner shall provide and install all street and traffic control signs as shown on the approved street scape plan. Sign installation and design shall be as per Town Standards. A signage deposit shall be provided in order to ensure that signage is installed as per the approved plans.

6.8 Sidewalks

The Owner shall install sidewalks in accordance with as per both: the approved drawings, and the Town's Sidewalk Installation policy for new developments. The construction of sidewalks is required as part of primary services. A sidewalk connection with a width of 2.0 metres constructed of asphalt shall also be provided connecting Block 24 to the existing trail within the Virgil Sports Park, in accordance with the approved Site Plan drawings.

6.9 Geotechnical Report and Inspections

The Owner shall prepare and submit to the Town prior to the execution of this Agreement, a report from an independent professional geotechnical soils consultant. The details to be included within the geotechnical soils report are to be reviewed and approved by the Town. The Owner agrees that the Director of Operations may increase the number and/or frequency of any inspections relating to the geotechnical report and the Owner shall pay the full cost of all such inspections.

6.10 Fencing

(a) The Owner shall provide the following fencing:

- i. A fence six (6) metres in height for up to a maximum of 42.5 metres length between the Virgil Sports Park and the residential development, to the satisfaction of the Director of Operations. Prior to the construction of the fence, the Owner shall confirm with the Director of Operations the specifications and location for the required fence. All fencing shall be completed prior to the construction of any dwelling on Blocks 12 or 13 as shown on Schedule "B."
- ii. The installation of a fence or fence posts to delineate the block for public use, shown as Block 24, as shown on Schedule "B" from blocks for residential use, shown as Block 12 and Block 13, as shown on Schedule "B". The fence posts shall be at a height of 2 metres and be set a maximum of 4 metres apart. The design and location of the required fence or fence posts shall be approved by the Director of Community and Development Services.

(b) The required fence noted in subsection 6.10(a)(i) shall not be constructed between May 1st and September 30th, and shall be constructed prior to occupancy of Blocks 12 or 13 as shown on Schedule "B."

7. WARNING CLAUSES

7.1 That the owner provides a written acknowledgement to the Niagara Region Planning and Development Services Department stating that draft approval of this subdivision does not include a commitment of servicing allocation by the Niagara Region as servicing allocation will not be assigned until the plan is registered and until the new Niagara-on-the-Lake Wastewater Treatment Plant is completed and that any pre-servicing will be at the sole risk and responsibility of the owner.

7.2 The Owner acknowledges and hereby agrees to include, in all offers of purchase and sale agreements, the following clauses:

- (a) “The lands are subject to the payment of development charges in accordance with the Region and Town Development Charge By-laws in effect at the time of payment. Development charges are payable prior to the issuance of a building permit”.
- (b) “If any change is made to the grading of the Lot, which in the opinion of the Town is contrary to the approved Grading Plan for the Lot (a copy of which may be obtained from the Town), the Town may, at its sole discretion, enter upon the Lot and correct the grading deficiency and add the cost of effecting the correction to the assessment roll for the Lot. Such cost shall constitute a special lien upon the Lot and may be collected in the same manner, and with the same remedies, as municipal taxes.”
- (c) “Due to the proximity of the Subdivision to nearby agricultural uses, noise, dust and odours may, at times, be generated from nearby agricultural uses and may occasionally interfere with some activities of the owners who may occupy these lands.”
- (d) “Servicing allocation will not be assigned until the Final Plan is registered.”

7.3 The Owner agrees, at the time of the installation of the sidewalks and/or curbs, to provide the Town with evidence that satisfactory arrangements have been made with the Canada Post Corporation for the installation of Community Mail Boxes, as required by Canada Post Corporation and as shown on the approved plans. The Owner further agrees to provide notice to prospective purchasers and/or tenants of the location of the Community Mail Boxes and that mail delivery will be provided via Community Mail Boxes provided the Owner has paid for the activation of the equipment and installation of the Community Mail Boxes.

7.4 The Owner acknowledges and hereby agrees that an electrical distribution line operating below 50,000 volts might be located within the Subdivision or in the vicinity of the Lands. Pursuant to the section entitled “Electrical Hazards” in Part II and Section 188 thereunder of *Ontario Regulation 213/91 (amended to Ontario Regulation 627/05)*, as amended, being the Regulation relating to construction projects and made under the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 as amended, no object shall be brought closer than 3 metres to the energized conductor. The Owner agrees that it is the Owner’s responsibility to be aware and to make all personnel on site aware, that all equipment and personnel must come no closer than the distance specified in the Regulation. The Owner acknowledges and hereby agrees that the electrical conductors could raise and lower without warning, depending on the electrical demand placed on the line. The Owner agrees to place warning signs on the wood poles supporting the conductors stating “Danger-Overhead Electrical Wires” in all locations where personnel and construction vehicles might come in close proximity to the conductors.

8. LANDSCAPING, LOT GRADING AND DRAINAGE

8.1 The Owner shall grade and place a minimum of one-hundred millimetres (100 mm) of topsoil, together with No. 1 nursery sod, on all portions of road allowances not covered by asphalt, sidewalks or gravel shoulder shown on the Subdivision, and along any side of the Subdivision abutting on adjacent existing streets. All sodding as herein described shall be considered as part of the cost of construction of Secondary Services for the said Subdivision and shall be completed before October 15th in the year in which the dwelling is occupied when the dwelling is occupied prior to October 15th. When the dwelling is occupied after October 15th, the sodding shall be completed by no later than June 30th in the year following the date of occupancy. The Owner further agrees that no sodding shall be carried out between July 1st and August 31st, unless approval is given by the Director of Operations.

8.3 The Owner shall, upon completion of each dwelling on each of the Lots, lay No. 1 nursery sod and shall maintain all sod until it has become well established. All sodding as herein described shall be completed before October 15th in the year in which the dwelling is occupied when the dwelling is occupied prior to October 15th. Where the dwelling is occupied after October 15th the sodding shall be completed by no later than June 30th in the year following the date of occupancy. The Owner further

agrees that no sodding will be carried out between July 1st and August 31st, unless approval is given by the Director of Operations.

- 8.4** If the Town determines that the Works outlined in Section 8.1 and 8.3 have not been completed and the Owner does not complete the Works within fourteen (14) days of written notice to the Owner, the Town may have the Works completed and the Owner agrees to pay to the Town the cost incurred thereby.
- 8.5** The owner agrees to provide a landscape plan for the subdivision including the public use block. The landscape plan shall provide for boulevard trees as per the Town standards as well as one additional tree per unit. A clause shall be included in all Offers and Agreements of Purchase and Sale/Lease for each dwelling unit requiring the maintenance and preservation of any trees the developer has planted on the property. The species of trees shall be subject to the approval of the Director of Community and Development Services and the Director of Operations and the trees shall have a minimum caliper of 6.5 cm at a height of 1.5 m above base/ground level.
- 8.6** In addition to the number of trees required under Clause 8.5, there shall be one (1) additional tree for each of the three (3) townhouse units on Block 3 that share a portion of the property line with 15 Diana Drive. More specifically, within Block 3 for each townhouse unit sharing a portion of the property line with 15 Diana Drive, there shall be one (1) tree located within the Town boulevard and two (2) trees located in the rear yard. Further, there will be three (3) additional trees in the rear yard of Block 14. More specifically, over the entire Block 14, there shall be six (6) trees planted within the Town boulevard and nine (9) trees planted in the rear yard. The location and species of trees will be determined in consultation with the Town as part of the development of the Landscape Plan. All required trees located in the rear yard of Blocks 3 and 14 shall be planted within two (2) metres of the rear property line. The trees shall have a minimum caliper of 6.5 cm at a height of 1.5 m above base/ground level. No planting of trees shall occur within rear yard swales.
- 8.7** Unless exempted by the Director of Operations, all lands conveyed to the Town shall be serviced, sodded and landscaped by the Owner, within eighteen (18) months from the date of registration of this Agreement or such extension of such time period as may be approved by the Director of Operations in writing.
- 8.8** The Owner agrees to submit a Grading Plan prepared in accordance with the Town's Municipal Design Standards Manual to the Director of Operations and the Niagara Peninsula Conservation Authority for his/their respective review and written approval. The Owner further agrees to implement the Grading Plan under the supervision of the Consulting Engineering Firm, to the satisfaction of the Town and the Niagara Peninsula Conservation Authority.
- 8.9** All buildings shall be erected on the Lots and blocks in accordance with the elevations and the spot levels of the Grading Plan approved by the Director of Operations.
- 8.10** Until the completion of all buildings on the Lots and blocks, the Owner shall ensure that the front yards, rear yards and side yards of each of the Lots and blocks are properly graded and completed to prevent the ponding of surface water on the Lots and blocks or on adjacent lands.
- 8.11** All drainage ditches, swales or depressions within the Subdivision shall be final graded and maintained with approved silt traps prior to the issuance of the Preliminary Certificate of Completion of Primary Services and the said surface drainage Works shall be sodded prior to the occupancy of any dwelling in accordance with the requirements of the Director of Operations. If the Town determines that the said surface drainage Works have not been maintained and the Owner does not repair the Works within three (3) days of written notice to the Owner, the Town may have the Works repaired and the Owner agrees to pay to the Town the cost incurred thereby.
- 8.12** The stormwater management Works shall be constructed in accordance with the design and plans approved by the Town, the Region of Niagara Public Works Department (Development Services Division) and the Niagara Peninsula Conservation Authority and the Owner shall be responsible to ensure that the

construction of the Works is carried out in accordance with the “Storm Water Management Planning and Design Manual March 2003”, “Stormwater Quality Guidelines for New Development May 1991” and “Ministry of the Environment” (collectively the “Manual and Guidelines”) as revised or replaced from time to time. The Owner shall ensure that its contractors carry out adequate controls in conformity with the said Manual and Guidelines. The Director of Operations in consultation with the Niagara Peninsula Conservation Authority shall provide the final directive as to interpretation of the requirements of the Manual and Guidelines should questions or conflicts arise. Failure of the Owner to comply with the Manual and Guidelines and to implement the requirements therein may result in the necessary controls being carried out by the Town with all associated costs charged back to the Owner. Any related damages to downstream or adjacent landowners for failure of the Owner’s contractors to comply with the Manual and Guidelines or to implement proper controls shall be the sole responsibility of the Owner.

- 8.13** If, after the Town accepts the Grading Plan as satisfactory, a change is made to the grading of a Lot or block by the Owner or a subsequent owner which, in the opinion of the Town, is contrary to the Grading Plan, the Town may, at its sole discretion, enter upon the said Lot and correct the grading deficiency. The Town may then, after having corrected the grading deficiency, either charge back the cost thereof to the Owner or add the cost of effecting the correction to the assessment roll for the Lot or block and such cost shall constitute a special lien upon the Lot and may be collected in the same manner, and with the same remedies, as municipal taxes.
- 8.14** The Town may, upon the written application of the Owner or any subsequent owner of any Lot or block authorize an amendment to the Grading Plan. Before granting such an amendment, or as a condition of granting the amendment, the Town may impose such terms and conditions on the Owner or subsequent owner as it deems appropriate. Forthwith upon the granting of any amendment, the Director of Operations shall make such changes in the Grading Plan as are necessary to give effect thereto and shall ensure that any terms or conditions of the granting of the amendment are fulfilled.
- 8.15** Forthwith after the completion of all buildings or structures constructed pursuant to a Building Permit on any Lot or block, the Chief Building Official shall require the Owner to apply for a Grading Conformance Certificate that certifies conformity with the Grading Plan. Such application shall be accompanied by a surveyor’s plan or certificate indicating the location of all buildings or structures and the grade levels of the Lot or block. The Owner shall provide a final grading plan, completed by a surveyor, which certifies conformity with the grading plan.

The Consulting Engineer shall certify that the Lot or block is graded in compliance with the Grading Plan. A final lot Grading Conformance Certificate may be delayed for a period of not greater than six (6) months for any dwelling occupied after October 15th of any year.

If the Chief Building Official is not satisfied he may either:

- (a) Require the Owner to make alteration(s) to such Lot or block into substantial conformity with the Grading Plan; or,
- (b) Require an amendment to the Grading Plan under Section 8.13.

In every such case the Chief Building Official shall not approve the certificate until he is satisfied that the Lot or block substantially conforms to the Grading Plan or the amended Grading Plan as the case may be.

- 8.16** The Owner covenants and agrees that the provisions of this Section are to constitute a separate registered restriction on title to every Lot and block on the Plan of Subdivision (except for the lands mentioned in Schedule “C” attached hereto and forming part of this Agreement) and agrees to execute and register all further documents required for the purpose of carrying out the intent of this Section before selling or further encumbering any such Lot or block.
- 8.17** The Owner shall cooperate with the Town in registering the following covenant on title to each of the Lots and blocks within the Subdivision:

“No person shall interfere with the drainage swales or surface drainage pattern on the Lot or block without explicit written permission from the Town. All swales are for drainage purposes and it shall be the responsibility of the Owner to maintain drainage across the Lot or block in accordance with the approved Grading Plan. Should the Town find it necessary to enter upon the Lands to undertake any inspection of any Works with regard to any drainage works, the Town shall have such rights as are prescribed by the Agreement dated the _____ day of _____, 2017 and registered on the _____ day of _____, 2017, particularly Section 8.”

Such registration shall occur at the time of, or immediately after, registration of the Agreement. The Owner shall provide documentary proof to the Town that such covenant has been registered on title to each of the Lots and blocks within the Subdivision.

- 8.18** It is agreed and understood that the Owner and the Town shall have the right to enter upon the Lands from time to time, prior to Acceptance by the Town, to undertake any grading works which may be deemed necessary by the Chief Building Official in order to ensure compliance with the Grading Plan. In the event that the Town finds it necessary to undertake any drainage works, the cost of any such Works performed by the Town shall be paid by the Owner upon demand and this cost may be paid out of any money the Owner may have deposited or paid to the Town for this purpose. It is agreed and understood that should the Town find it necessary to enter upon the Lands to undertake any drainage works that the Town shall proceed with reasonable care and shall not be responsible for the final restoration of any property including fences, gardens, landscaping, etc. The Town shall have no further responsibility with respect to grading upon Acceptance of the Subdivision by the Town.
- 8.19** The Owner shall advise all builders and subsequent purchasers with respect to all of the terms, conditions and requirements of this Agreement, with particular regard to, but not limited to, the provisions of this Section 8.
- 8.20** Unless otherwise approved or required by the Town, the Owner, hereby irrevocably undertake not to alter the grades or remove trees or other vegetation from the Lands until such time as the Director of Operations has agreed in writing to such alteration or removal and the Director of Operations has approved a Grading Plan, or an amendment to the Grading Plan as may be necessary, pursuant to the terms of this Agreement.

9. COMPLETION OF SERVICES

9.1 Primary Services

- (a) The Owner shall proceed with the installation or construction of the Works required in Phase 1 hereunder with all reasonable dispatch and shall complete all of the Primary Services within one (1) year after the date of the registration of this Agreement. The Owner shall proceed with the installation or construction of the Works in Phase 2 within one (1) year of the date of the Final Certificate of Completion of Services in Phase 1, and shall commence construction of Primary Services on Phase 3 within one (1) year of Final Certification of Completion of Services in Phase 2. The Director of Operations may extend the time for completion of the Primary Services, as he may deem expedient upon the written application of the Owner.
- (b) The Owner agrees that if construction has not been commenced within one (1) year of the registration of this Agreement or in the opinion of the Town where construction is substantially suspended or discontinued for a period of more than one (1) year, the Town may refuse to issue any further approvals or Building Permits under the terms of this Agreement or, may revoke any existing approvals or buildings permits issued to the Owner pursuant to the terms of this Agreement, and may require the execution of a new Agreement.
- (c) The performance by the Owner of its obligations in this Section 9.1, to the satisfaction of the Town and the Director of Operations shall be a condition precedent to the Acceptance by the Town of the Works.

- (d) Prior to the issuance by the Town of the Preliminary Certificate of Completion of Primary Services, the Owner shall:
 - (i) Provide the Director of Operations with a Statutory Declaration in a form satisfactory to the Director of Operations, that all accounts for the installation, construction and maintenance of the Primary Services required to be installed or constructed hereunder have been paid and that there are no outstanding debts, claims or liens in respect of the Primary Services; and,
 - (ii) Provide the Director of Operations with a Certificate signed by the Consulting Engineering Firm certifying that the Primary Services have been fully completed, inspected, tested and maintained in accordance with the provisions of this Agreement hereof and the standards and specifications of the Town and in accordance with the approved plans and specifications as approved by the Director of Operations.
- (e) Upon the completion by the Owner, to the satisfaction of the Director of Operations, of the installation or construction of all of the Primary Services and upon the satisfaction by the Owner of all other relevant requirements herein, the Director of Operations shall provide the Owner with a Preliminary Certificate of Completion of Primary Services.

9.2 Secondary Services

- (a) All Secondary Services, except sodding as noted in Sections 8.1 and 8.2, shall be completed within eighteen (18) months after the date of the issuance of the Preliminary Certificate of Completion of Primary Services. Once started, the Owner shall proceed with construction expeditiously until the Secondary Services are completed.
- (b) The Director of Operations may extend the time for completion of the Secondary Services for such length of time, as he may deem expedient upon the written application of the Owner and the written approval by the Director of Operations.

10. MAINTENANCE AND ASSUMPTION OF THE WORKS

- 10.1** The Town agrees to snow plow and sand all paved roads in the Subdivision upon completion by the Owner of the base coat of asphalt and when all frames and covers for the catch basins, manholes and water valves have been set at the same elevation as the base coat of asphalt so that they will not interfere with the Town's snowplowing operations. This service will be provided when the first house in the subdivision is occupied. The Owner agrees that any service provided by the Town, prior to Acceptance of the roads by the Town, shall not be deemed acceptance of the roads.
- 10.2** The Owner shall, at its own expense and to the satisfaction of the Director of Operations, repair and maintain all Works required to be installed or constructed pursuant to this Agreement for the minimum period of one (1) year from the date of completion of Secondary Services.
- 10.3** The Town shall, notwithstanding the obligations of the Owner to maintain all Works set out in this Agreement, have the right to enter on the Lands and carry out the necessary maintenance and repairs:
 - (a) Without notice to the Owner where, in the sole opinion of the Director of Operations, an emergency condition exists or where the streets have not been kept free of mud, dust and building materials, as per the Town's Street Cleaning Policy; and,
 - (b) Where repairs to or maintenance of the Works have not been completed within twenty-four (24) hours after a notice requiring such repairs or maintenance has been forwarded to the Owner.

- 10.4** The cost of any repair to or maintenance of the Works undertaken by the Town pursuant to the provisions hereof shall be borne by the Owner and the amount thereof shall be paid to the Town within thirty (30) days after a statement of account has been forwarded to the Owner. If the Owner fails to pay the amount due to the Town within such thirty (30) day period, then the Town may, and is hereby expressly authorized by the Owner to, deduct the amount owing to it for such repairs or maintenance from any monies or letters of credit deposited by the Owner with the Town pursuant to the provisions hereof, or to add such sum to the assessment roll for the Lands and collect such monies in the same manner and with the same priority and remedies as taxes.
- 10.5** The Owner agrees that the decision of the Director of Operations regarding required repairs or maintenance to the Works or an emergency state requiring immediate repair or maintenance to such Works shall be final, conclusive and incontestable.
- 10.6** Notwithstanding transfer of title to the stormwater management pond by the developer to the municipality, the obligation to maintain the stormwater management pond remains with the developer until assumption of the subdivision, and that this maintenance obligation includes removal of silt from the pond if necessary in the opinion of the Director of Operations.
- 10.7** After expiry of the maintenance period provided for in Section 10.2 herein, and provided that all Works required to be constructed, installed or done by the Owner have been completed to the satisfaction of the Town, the Town will issue a Final Certificate of Completion of Services, upon the application of the Owner, and provided that the following items have been submitted to and approved by the Director of Operations:
- (a) A Statutory Declaration in a form satisfactory to the Director of Operations stating that all accounts for the installation, construction and maintenance of all the Works required to be installed or constructed hereunder have been paid and that there are no outstanding debts, claims or liens in respect of all the Works or any of them;
 - (b) A certificate signed by the Consulting Engineering Firm certifying that all the Works have been fully completed, inspected, tested and maintained in accordance with the provisions hereof and the standards and specifications of the Town and the plans as approved by the Director of Operations;
 - (c) The "as constructed" final AutoCAD format (in PDF) construction drawings showing each of the Works as constructed; and,
 - (d) The certificate of a registered Ontario Land Surveyor certifying that he has currently found and replaced, as necessary, all pins or standard iron bars as shown on the Subdivision.

The Town may withhold the issuance of the Final Certificate of Completion of Services if, in the sole opinion of the Director of Operations, the Owner is in default of his obligations to repair, construct or maintain any of the Works pursuant to this Agreement.

- 10.7** The issuance by the Town of the Final Certificate of Completion of Services may be withheld until eighty percent (80%) of the Lots have been built upon, Occupancy Permits have been issued and Grading Conformance Certificates for the Lots have been approved by the Director of Operations.
- 10.8** The issuance by the Town of the Final Certificate of Completion of Services shall not relieve the Owner, its successors and assigns from the covenants and obligations imposed under this Agreement, which covenants and obligations shall continue to bind the Owner of the Lands for the time being.
- 10.9** Upon the expiry of the minimum maintenance guarantee period referred to in Section 10.2 herein, and so long as the Director of Operations is satisfied that no deficiencies exist which require rectification and the extension of the maintenance guarantee period, the Director of Operations may, following the issuance of the Final Certificate of Completion of Services, present to Council an Assumption By-law for Council's consideration with a recommendation that some or all of the Works be Assumed by

the Town. Upon the Assumption of the Works the same shall vest in the Town and the Owner shall have no right, title or interest therein. Notwithstanding anything else contained in this Agreement, the Town may, at any time, pass any by-law or take whatever steps are necessary to Assume the Works and services and the same shall so vest in the Town as provided for in this paragraph.

11. BUILDING PERMITS AND OCCUPANCY OF BUILDINGS

11.1 No Building Permit shall be issued, nor excavation started on any Lot until:

- (a) The Subdivision has been registered and all registrations on title to the Lands and conveyancing documents and any other documents required by this Agreement have been completed;
- (b) The Primary Services, with the exception of the top course asphalt, have been installed to the satisfaction of the Director of Operations, and the Preliminary Certificate of Completion of Primary Services has been issued. For the purpose of this Section 11.1, the Director of Operations may permit the completion of Primary Services in phases;
- (c) A Plot Plan/Site Plan has been deposited with and approved by the Town;
- (d) A Grading Plan for the subject Lot or block has been deposited with and approved by the Chief Building Official. The Grading Plan shall be prepared in accordance with the Town's Municipal Design Standards Manual.
- (e) A declaration has been provided by the Consulting Engineering Firm certifying that the Lands have been graded in accordance with the Grading Plan deposited with and approved by the Director of Operations;
- (f) Any default pursuant to the provisions of this Agreement has been resolved;
- (g) All required financial deposits and financial guarantees, including maintenance deposits in the amounts and forms satisfactory to the Town, are deposited with the Town to complete all Works specified in this Agreement and shown on the approved drawings;
- (h) Any deposits for any public utility company have been made;
- (i) Any required Works for noise abatement have been effected;
- (j) The applicant for the Building Permit has complied with all other relevant by-laws, regulations and lawful requirements pertaining to the issuance of such permit;
- (k) Development charges have been paid;
- (l) The building for which the Building Permit application is made is located within an approved and registered portion of the Subdivision;
- (m) All regulatory traffic control signs and street name signs have been installed; and,
- (n) That a completed entrance permit application has been submitted to the Towns Operations Department.

11.2 Notwithstanding 11.1 above, a Conditional Building Permit may be issued for the construction of dwellings, constituting not more than 10% of total lots, provided that the dwellings can neither be sold nor occupied as a residence until primary services are provided and all conditions of the permit and this section have been met. Any permissions granted by the Model Home Agreement shall be included in the 10% allotment. It is acknowledged by the Developer that the Conditional Building Permit is issued pursuant to the Building Code Act and to the satisfaction of the Chief Building Official and the Director Planning & Development Services. The Conditional Building Permit deposit required per lot or block shall be at the current applicable rate.

11.3 The owner of a Lot shall, in addition to paying the Building Permit fee:

- (a) Pay the amount of the development charges which are applicable at the time of Building Permit issuance;
- (b) If required, pay the amount of the cash in lieu of lands for parks purposes pursuant to Section 12;
- (c) Deposit with the Town a Lot Grading Deposit per unit which is used to ensure the following:
 - (i) The location of the building is in accordance with the Plot Plan/Site Plan, construction drawings and the Ontario Building Code, and the Town's Zoning By-law; and,
 - (ii) Conformance with building requirements required by other agencies;
 - (iii) To cover costs for damages to Primary or Secondary Services; and,
 - (iv) To ensure that the Lands are kept clean so that refuse, rubbish, dust or debris is not scattered on abutting streets or properties.
 - (v) To ensure that the final grading complies with the approved general Grading Plan.

11.4 The deposit required in Section 11.3(c) is intended as a form of security from the applicant for a Building Permit for due observance and performance of all applicable provisions of this Agreement, and is not to be construed as payment for any work described in this Section 11, nor as imposing any obligation on the Town to undertake such work. The deposit is refundable, without interest to such applicant in accordance with Section 11.5, and may be forfeited in accordance with Section 11.7.

11.5 Prior to the issuance of any Building Permit, the Owner shall provide to the Chief Building Official the following:

- (a) A certificate from the Consulting Engineering Firm indicating which Lots and /or blocks will result in buildings being constructed on fill exceeding 1.5 metres from the original grade;
- (b) For approval, foundation drawings prepared by a Professional Engineer for all buildings to be built on Lots or blocks mentioned in the certificate required by Section 11.4(a); and,
- (c) A certificate from the Consulting Engineering Firm indicating which Lots and/or blocks will require sump pumps.

11.6 The owner of the deposit may, at any time after completion of the Works authorized by the Building Permit and before the deposit is forfeited under, apply for a refund of the deposit and the Town shall refund the deposit, without interest to such owner, provided that the application is accompanied by evidence that the provisions of Section 11.2(c) (i) through (iv) inclusive have been complied with to the satisfaction of the Chief Building Official and that:

- (a) An Occupancy Permit has been issued under Section 11.7 and a Final Inspection has been completed;
- (b) A Grading Conformance Certificate has been issued pursuant to Section 8.13;
- (c) All damage to Primary or Secondary Services incurred during the course of construction of the Works has been repaired, or adequate provision made therefore;
- (d) A legal survey has been submitted showing the building as located on the land; and,
- (e) A Final Inspection has been completed and the Building Permit has been

closed.

- 11.7** Where, for any reason a deposit has not been refunded within two (2) years after being lodged with the Town pursuant to Section 11.2, the Treasurer shall notify the depositor of the fact and warn him that the deposit is subject to forfeiture thirty (30) days after the giving of notice. Notification by the Town will be at the last known address of the depositor. If through no fault of the Town, the deposit remains unrefunded after the expiry of the thirty (30) day period, the Treasurer may, without further notice, declare the deposit as forfeited, whereupon the deposit shall become the property of the Town free of all claims by the Owner hereof or anyone claiming through or under him. After such forfeiture, the deposit may be credited to the Town's general revenues and may be applied for any municipal purposes, which the Treasurer may deem advisable, including but not limited to the performance of any Works or repairs for which the deposit was originally taken as security.
- 11.8** No dwelling on any Lot shall be occupied until:
- (a) A Preliminary Certificate of Completion of Primary Services has been issued by the Director of Operations;
 - (b) All work in connection with such building or structure has been completed in accordance with the conditions of the Building Permit and any applicable Site Plan/Plot Plan;
 - (c) All drainage swales have been constructed and sodded to the satisfaction of the Director of Operations;
 - (d) The lot has been graded in accordance with the Grading Plan;
 - (e) All necessary Public Utilities are completed and installed to such building or structure;
 - (f) An Occupancy Permit has been issued by the Chief Building Official;
 - (g) The Town has installed a water meter and the curb stop has been installed to grade; and,
 - (h) All fencing required by Section **6.10** has been completed to the satisfaction of the Director of Operations.
- 11.9** After the issuance of an Occupancy Permit, the dwelling mentioned herein may be permanently used or occupied.
- 11.10** In any case where, at the time of the application for any Occupancy Permit, it appears that one (1) or more utilities are incomplete or unavailable for reasons beyond the control of the Owner, the Town may, at its discretion, issue an Occupancy Permit notwithstanding failure of compliance with Section 11.7 but subject to the following conditions:
- (a) The building meets the occupancy regulations of the Ontario Building Code and external cladding of the building has been completed;
 - (b) The applicant shall acknowledge and accept in writing the unavailability of the particular utility or utilities, which shall be specified;
 - (c) The applicant shall indemnify the Town from all liability for any loss, costs or damages arising out of the lack of every such unavailable utility; and,
 - (d) The Occupancy Permit and every certificate thereof shall contain a statement to the following effect: "(name of utility _____) service not available at the time of issue of permit; the Town accepts no responsibility for the unavailability of such service or any consequences or damages that may follow from the unavailability of such service".
- 11.11** No Occupancy Permit shall authorize or be deemed to authorize any use or occupancy contrary to the provisions of the Building Permit or any applicable Zoning

By-law.

11.12 The provisions of this Section 11 are intended to be in support of and complementary to the provisions of any applicable Municipal or Provincial Building Code, development control by-law, and other like statutes, regulations and by-laws in force for the time being. In the case of a conflict between any provisions of this Section and the corresponding provisions in any such code, bylaw, statute or regulation, the latter provision shall prevail.

12 PARKLAND DEDICATION/CASH-IN-LIEU/PARKLAND DEVELOPMENT

- (a) Prior to the execution of this Agreement, the Owner agrees to pay a parkland dedication fee. The parkland dedication fee shall be 5% of the value of the land, using a direct comparison approach, less the value of the public use block (Block 24, as shown on Schedule B) which is being dedicated as parkland dedication.
- (b) Prior to the execution of this Agreement, Prior to the execution of this Agreement, the Owner agrees to dedicate Block 24 for parks purposes pursuant to the provisions of the *Planning Act*.

13 URBAN DESIGN

- (a) The Owner agrees that the townhouse units will be subject to review and approval by the Town of Niagara-on-the-Lake Urban Design Committee.
- (b) The Owner agrees not to construct two-storey dwelling units on Blocks 3 and 14, as per schedule "B" of this agreement. One and a half storey dwellings shall be permitted on Blocks 3 and 14, subject to the loft portion of the dwelling unit favouring the street frontage (i.e., a minimum of 75% of the window frontage will face the street frontage). Second-storey balconies shall not be permitted in the rear yards of Blocks 3 and 14.
- (c) Rear yard porches, decks, balconies or patios will not be elevated more than 0.76 metres above the finished grade.

14 ZONING

The Owner agrees to comply with the applicable standards and regulations of Zoning By-law No.4316-09, as amended from time to time, or any successor zoning by-law as it applies to the Lands and the Lots.

15 INSURANCE

Before commencing the construction of any Works, the Owner shall provide to the Town with evidence of a public liability insurance policy in a form satisfactory to the Town, in an amount of no less than five million dollars (\$5,000,000.00) per occurrence, naming the Town as an insured party and indemnifying the Town and all of its employees, contractors, servants, agents, officials and Council members from any liability arising from claims for damage, injury or loss to Persons or property in connection with the work done or materials furnished by the Owner, its contractors, servants or agents under this Agreement and said policy shall not contain an exclusion for blasting. The Owner shall continue such insurance in force continuously throughout the term of this Agreement and shall submit evidence thereof satisfactory to the Town from time to time, as may be required, that all premiums on such policy or policies have been paid and that the insurance is in full force and effect. Furthermore, the Owner shall provide an endorsement to the effect that the policy or policies will not be altered, cancelled or allowed to lapse without thirty (30) days prior written notice being given to the Town. The issuance of such a policy of insurance shall not be construed as relieving the Owner from responsibility for other or larger claims, if any, for which it may be responsible to indemnify the Town pursuant to the terms of this Agreement.

16 LETTER OF CREDIT

16.1 Upon execution of this Agreement and before commencing any of the Works provided for in this Agreement, the Owner shall deposit with the Town a cash deposit or Letter of Credit, as outlined in Schedule "D", in an amount approved by the Director of Operations which cash deposit or Letter of Credit shall be sufficient to guarantee the satisfactory completion of the Works and payments required to be made by this Agreement and will, without restricting the generality of the foregoing, guarantee the following:

- (a) Payment of the costs specifically identified under "Preconditions of the Construction of Services" on Schedule "D" attached hereto, for the following:
 - (i) A security deposit of 20% of the cost of Primary Services
 - (ii) A security deposit of 100% of the cost of Secondary Services;
 - (iii) An security deposit for inspections based on the number of working days to complete the site works;
 - (iv) A cash deposit, representing the actual costs of off-site and on-site inspections;
 - (v) A cash deposit, if required, to erect street name signs and regulatory signs (e.g. stop signs; no exit signs, street signs, unassumed road, etc.) to be installed by the Town Operations Department;
 - (vi) A cash deposit, to ensure that during the construction of the development, the site will be kept in a reasonably tidy condition, so that the raising of dirt and dust is kept to a minimum, and that all roads and sidewalks adjacent to and in the vicinity of the development are kept clean of mud and debris and standing water is eliminated.

The deposit shall be returned to the Owner upon completion of Works set out within this Agreement, and the receipt by the Town of a Grading Conformance Certificate in a form satisfactory to the Director of Operations as well as approval of the final Plot Plan/Site Plan to ensure that the location of the building or structure complies with the provisions of the Town's Zoning By-law.

16.2 A Letter of Credit, drawn upon a chartered bank or credit union in favour of the Town and in the format as outlined in **Appendix** __, shall be in the amount referred to in Schedule "D", shall be provided to the Town at the time of the execution of this Agreement, and shall be held by the Town as security for the obligations of the Owner pursuant to any of the provisions of this Agreement. If in the opinion of the Director of Operations, at any time and from time to time, such amounts are required to be increased, the Owner shall pay such additional sum or provide such additional security as may be required as a result of such increase. In determining the sufficiency of the amount, regard need not be had solely to the particulars outlined in Schedule "D", but to the total cost of satisfying all of the obligations of the Owner pursuant to any of the provisions of the Agreement.

16.3 A Letter of Credit, as referred to in Schedule "D" shall be in a form acceptable to the Treasurer, as outlined in **Appendix** __, and contain the following provisions:

- (a) The Letter of Credit shall be security for any obligations of the Owner pursuant to the provisions of this Agreement, without any limitations whatsoever;
- (b) Drawings on the Letter of Credit shall be permitted upon presentation of a letter from the Town to the credit union or chartered bank claiming default by the Owner under the terms of this Agreement, and such default shall not be limited to the actions of the Owner;
- (c) Partial drawings shall be permitted; and,
- (d) If the Town has not determined the extent of the default or the amount required to rectify the default or compensate the Town or third parties as a result thereof, the Town may draw on the full amount of the Letter of Credit without any requirement to justify the amount of the Letter of Credit.

If the Town is not provided with a renewal of the Letter of Credit at least thirty (30) days prior to its date of expiry, the Town may forthwith draw the full amount secured and hold it upon the same terms that applied to the Letter of Credit.

16.4 The Director of Operations will not consider any application for reduction of any Letter

of Credit unless and until all of the Primary Services required by this Agreement have been fully completed to the satisfaction of the Director of Operations and a Preliminary Certificate of Completion of Primary Services has been issued. The amount of the cash deposit or Letter of Credit may, in the sole discretion of the Director of Operations and subject to the review and approval by the Treasurer, be reduced from time to time to an amount not less than twenty-five percent (25%) of the original estimate plus the current cost of all uncompleted Works and any outstanding payments required by this Agreement (collectively the "Minimum Letter of Credit Amount"). Such modifications by the Director of Operations shall be based on the following:

- (a) Progress certificates from the Consulting Engineering Firm setting forth the cost of the Works completed and paid to date and the cost of unfinished Works;
- (b) A request for modifications in the amount of the cash deposit or Letter of Credit in the form approved by the Director of Operations; and,
- (c) Proof of payment in a form satisfactory to the Director of Operations of the amounts paid on account of the completed Works to the date of the application for reduction.

Notwithstanding anything herein contained, the amount of the cash deposit or Letter of Credit shall at all times be sufficient to cover the balance of the cost of completion of the unfinished Works and one hundred percent (100%) of the requirements of the Grading Plan, including Works deferred for extended periods and the requirements of the *Construction Lien Act*.

- 16.5** The Director of Operations may, at such yearly or other intervals as he or she deems necessary, revise the estimated costs of Primary and Secondary Services and maintenance costs so as to reflect any existing or anticipated increase in costs at the time of such revision.
- 16.6** The Director of Operations shall embody his or her revised estimates in a written report certified by him, which shall be served on the Owner forthwith after its completion, and a copy of the report shall be furnished to Council.
- 16.7** Where the amount of any revised estimate exceeds the amount of the credit as established pursuant to Section 16.1 of this Agreement which is on deposit with the Town for the same purpose, the report under Section 16.6 shall state the amount of the excess and shall require the Owner to deposit such amount with the Town within twenty-one (21) days after the service of the report on the Owner. Such amount when deposited with the Town shall be added to the credit held for the same purpose.
- 16.8** Failure by the Owner to make the deposit required by Section 16.7 within the time limited therefore, shall be deemed to be a failure by the Owner embodied in a written report or notice for the purposes of Section 20 herein, which has not been remedied, and shall, without any further report or notice to the Owner, entitle the Council to resort to the remedies and powers set forth in Section 20 herein.
- 16.9** The Owner expressly agrees that the Town shall have the right to utilize and cash any Letters of Credit for purposes of rectifying any and all defaults in any Works commenced under any provisions of, or in any payments required by this Agreement.

17 MAINTENANCE GUARANTEE

- 17.1** The cash deposit or Letter of Credit deposited by the Owner pursuant to Section 16 herein shall, upon the completion of the Primary Services and upon the issuance of Preliminary Certificate of Completion of Primary Services by the Town, be reduced in accordance with Section 16.4 and the minimum Letter of Credit amount shall be retained by the Town as a maintenance guarantee to guarantee the workmanship and materials of the Works for a minimum period of one (1) year from the date of completion of Secondary Services as established in Section 9.2 herein.
- 17.2** The Owner shall be conclusively deemed to be in default of this Agreement if, in the case of the cost of the Works or materials or the fees of the Consulting Engineering Firm, a lien against the Lands, or any part thereof, is preserved pursuant to the

Construction Lien Act and if, in the case of any other payment required to be made under the Agreement, a notice to that effect is forwarded to the Owner by the Director of Operations.

- 17.3** Upon the passing of the Assumption By-law in accordance with Section 10 herein, the Town shall release all monies and other credits, or the amounts thereof remaining, to the Owner.

18. CAPITAL CONTRIBUTIONS

- 18.1** All development charges shall be paid on the date that an application for a Building Permit for any Lot(s) is made. The amount of the development charges shall be the amount which, at the time of payment, is imposed by the Town and the Region upon such Lot(s) in accordance with the relevant by-laws, as amended from time to time.

19. PAYMENTS TO THE TOWN

- 19.1** The Owner shall pay to the Town a fee for the preparation of this Agreement, and shall pay an administration fee as outlined in Schedule "C" attached hereto. Inspection fees are not included under this paragraph and shall be paid by the Owner in accordance with Section 4.4 herein. The Owner shall pay to the Town all legal fees associated with this Agreement. Legal fees and inspection fees will be billed to the Owner on a quarterly basis where applicable.

20. DEFAULT

- 20.1** Upon breach by the Owner of any covenant, term, condition or requirement of this Agreement, or upon the Owner becoming insolvent or making an assignment for the benefit of creditors, the Town, at its option, may declare that the Owner is in default. Notice of such default shall be given by the Town in writing to the Owner and, if the Owner does not remedy such default within such time, as provided in the notice, the Town may declare that the Owner is in final default under this Agreement and shall then forthwith give notice thereof to the Owner. Provided that if, in his or her sole discretion, the Director of Operations deems that the failure creates an emergency situation, then the Town can effect the remedies available to it in this Section of the Agreement, without notice to the Owner and without complying with any of the provisions of this Agreement regarding notice to the Owner.

Upon notice of default having been given, the Town may require all Works by the Owner, its servants, , independent contractors and subcontractors to cease (other than any Works necessary to remedy such default) until such default has been remedied and, in the event of final default, all Works as aforesaid may be required to cease. Upon final default of the Owner the Town may, at its option, adopt or pursue any or all of, but not be bound by or limited to, the following remedies:

- (a) Have its employees, servants, agents and contractors enter upon the Lands to complete any Works, services, repairs or maintenance wholly or in part required herein to be done by the Owner, and recover the costs thereof from the Owner by action or, in the same manner and with the same priority and remedies as municipal taxes, or draw upon or cash any Letter of Credit or security available to it;
- (b) Make any payment which ought to have been made by the Owner and upon demand recover the amount thereof from the Owner by action or, in the same manner and with the same priority and remedies as municipal taxes, or draw upon or cash, any Letter of Credit or security available to it;
- (c) Retain any sum of money or cash and Letters of Credit heretofore paid or rendered by the Owner to the Town, for any purpose, and apply the same in payment or part payment for any Works which the Town may undertake or to pay off any construction or other liens against the Lands attributable to work and materials supplied by the Town or others, or otherwise;
- (d) Assume any Works at its option, whether the same are completed or not, and thereafter the Owner shall have no claim or title thereto or remuneration thereto;

- (e) Bring action for damages or to compel specific performance of all or any part of this Agreement; and,
- (f) Exercise any other remedy granted to the Town under the terms of this Agreement or available to the Town in law or equity.

21. INDEMNIFICATION

The Owner hereby agrees, for itself, its successors and assigns to indemnify, save harmless and keep indemnified the Town, its successors and assigns from and against any and all manner of actions, suits, accounts, bonds, claims and demands whatsoever for any loss, charges, damages, injuries, expense or other liability whatsoever to any Person or to any property arising, accruing or happening before the issuance of the Final Certificate of Completion of Services under Section 10.6 (or after the issuance of such Final Certificate of Completion under Section 10.6 if such loss, costs, charges, damages, injuries, expenses or other liability is directly or indirectly attributable to the error, nuisance, omission or negligence of the Owner) in connection with or arising out of anything done or omitted to be done by the Owner, his contractors, servants or agents pursuant to the terms of this Agreement.

22. CONSTRUCTION STANDARDS

It is agreed that notwithstanding any other provision of this Agreement, all construction undertaken by the Owner pursuant to the terms of this Agreement shall be in accordance with Town standards as interpreted by the Director of Operations.

23. REGISTRATION AND CLEARANCE LETTER

23.1 Council shall consider enacting a by-law authorizing the execution of this Agreement upon the Owner having satisfied all pre-requisites for execution of this Agreement by the Town, and without limiting the generality of the foregoing, the Owner has:

- (a) Obtained and filed with the Director of Operations all necessary approvals, consents and agreements;
- (b) Obtained written approval from the Director of Operations for all plans and specifications;
- (c) Obtained written approval of the following documentation:
 - (i) Draft of the proposed Subdivision for the Lands;
 - (ii) If required, a draft of the proposed Reference Plan setting out the Lands to be subdivided;
 - (iii) If required, a draft of the proposed Reference Plan providing legal descriptions for easements, transfers or other registerable instruments in, over, along and upon the lands situated outside the boundaries of the proposed Subdivision; and,
 - (iv) If required, a draft of the proposed Reference Plan providing legal descriptions for easements, transfers or other registerable instruments in, over, along and upon the Lands situate within the boundaries of the proposed Subdivision (i.e. rear yard catch basins and leads);
- (d) Posted all securities required by the terms of this Agreement or its Schedules;
- (e) Delivered executed documentation and funds to register documents required by the terms of this Agreement or its Schedules;
- (f) Delivered this Agreement duly executed by the Owner; and,
- (g) Delivered all other required documentation and, without limiting the generality of the foregoing, includes a Certificate of Corporate status for the Owner, if applicable.

23.2 After the completion of the matters set out in Section 23.1 above, and after the passage of a By-law authorizing the execution of this Agreement, the Owner shall register the following documentation:

- (a) The approved Reference Plan setting out the Lands to be subdivided, if required; and,
- (b) The approved Reference Plan providing legal descriptions for easements in, over, along and upon lands situate outside the boundaries of the proposed Subdivision.

Further, the owner shall deliver duplicate registered copies of the same, as outlined above, to the Town and the Town's Solicitor.

23.3 Upon the Owner having satisfied its obligations under Section 23.2 above, the Town shall execute this Agreement.

23.4 Forthwith after execution of this Agreement by the Town, at the sole expense of the Owner, the Town's Solicitor shall register the following concurrently:

- (a) This Agreement;
- (b) All documentation related to the Agreement whether or not expressly required by this Agreement, including all easements situated outside the boundaries of the Subdivision and all documentation related thereto (i.e. postponement of charge, etc.); and,
- (c) An inhibiting order requiring no further dealings on the Lands until the Subdivision has been registered on title.

23.5 After the registrations set out in Section 23.4 have occurred and if all of the conditions have been met, the Town, as the approval authority, may declare that all conditions of the Town, as set out in the draft approval conditions, have been satisfied.

23.6 Within thirty (30) days after the Town has given final approval to the Subdivision, such Subdivision shall be provided to the Town to be registered on title. In the event that the Subdivision is not provided to the Town for registration within the time specified above, or within one (1) year from the date of the registration of this Agreement, whichever date shall first occur, the Town, at its sole discretion, may either:

- (a) Upon receipt of a written application from the Owner including reasons why the extension is required, extend the time allowed for registration of the Subdivision, upon such terms and conditions as the Town may determine; or,
- (b) Declare the Owner in final default.

23.7 Concurrent with the registration of the Subdivision, the Town's Solicitor shall register:

- (a) All deeds/transfer of lands for Lands required to be conveyed to the Town pursuant to the terms of this Agreement;
- (b) All other documentation related thereto (i.e. releases, partial cessations, etc.); and,
- (c) An inhibiting order requiring no further dealings with specified Lots in, over, along or upon which the Town requires easements, transfers or other registerable instruments pursuant to the terms of this Agreement and the approved plans.

23.8 Forthwith after the registrations set out in Section 23.7 have occurred, the Owner or its agent shall finalize and have approved by the Town and then register on title a reference plan(s) required for easements, transfers or other registerable instruments within the Subdivision to be conveyed to the Town.

23.9 Forthwith after receipt by the Town of duplicate registered copies of the reference

plan(s) required by Section 23.8, the Town's Solicitor shall register all easements, transfers or other registerable instruments situated within the Subdivision.

23.10 The Owner shall not deal in any manner whatsoever with any Lot or block shown on the Subdivision until this Agreement, the Subdivision and all other documentation (i.e. transfers, easements, cessations of charge, inhibiting orders, reference plan, etc.) required by this Agreement have been delivered, approved and registered on title to the complete satisfaction of the Town's Solicitor.

24. SCHEDULES

24.1 All Schedules to this Agreement and all documentation referred to in the Agreement and Schedules (whether attached to this Agreement or not) shall form an integral part of this Agreement.

24.2 The Schedules to this Agreement are those marked respectively as Schedule "A" Description of Lands, Schedule "B" Draft 30M Plan of Subdivision, Schedule "C" Easements and Dedications, Schedule "D" Estimated Cost of All Works, Schedule "E" List of Engineering Drawings. The contents of these Schedules are to be read, interpreted and enforced as being part of this Agreement.

25. AMENDMENTS TO THIS AGREEMENT

25.1 Subsequent to the registration of this Agreement on title to the Lands, the Owner and the Town may amend, by mutual agreement, any of the terms of this Agreement, without being required to obtain the acknowledgement or consent thereto of any Person who becomes the heir, successor or assign of the interest of the Owner of the Lands or any part of the Lands described in Schedule "A" herein, provided that such amendment mutually agreed to by the Owner and the Town shall be reduced to writing and shall be registered on title of the Lands described in Schedule "A" herein or some of them, as may be applicable, and the Owner covenants with the Town, that the contents of this Section 25.1 and the contents of any amendment mutually agreed to between the Owner and the Town, pursuant to the contents of this Section 25.1, shall, through the registration of this Agreement, be binding upon anyone who, from time to time, owns or occupies some or all of the Lands described in Schedule "A" attached hereto.

26. MISCELLANEOUS PROVISIONS

26.1 Assignment of Agreement

The Owner shall not assign this Agreement except with the prior written agreement of the Town.

26.2 Notices

(a) Any notice, demand, acceptance or request provided for in this Agreement shall be in writing and shall be deemed to be sufficiently given if personally delivered or sent by certified mail (postage prepaid) as follows:

To the Town at:
 Town Clerk
 The Corporation of the Town of Niagara-on-the-Lake
 1593 Four Mile Creek Road PO Box 100
 Virgil, Ontario L0S 1T0
 To the Owner at:
 Woodcastle Developments. Inc.
 155C Queen Street East
 Mississauga, Ontario L5G 1N2
 Bruce.comie@hotmail.com

Or any other such address that the parties may, from time to time, designate in writing and every such notice shall be deemed to have been given upon the day it was so delivered or on the fifth day after the date upon which it is mailed by certified mail. The Owner agrees that it is the Owner's responsibility to notify the Town of any change in address of the Owner.

- (b) In lieu of mailing such notice as specified in Section 26.2(a), the Town may, at its sole discretion, provide notice to the Owner by way of email or by posting a notice or document on the Lands described in Schedule "A" to this Agreement.
- (c) If notice is intended to be given to any other Person, or to an officer or employee of such Person, it may be done so by way of mail to the last known address or by personal delivery. The date of mailing or delivery, as the case may be, shall be deemed to be the date on which the notice was given or served.

26.3 Street Names and Street Numbers

The Town shall approve all street names, in accordance to the Town's Street Naming Policy, and allocate all street numbers for use within the proposed Subdivision. The Owner shall provide the Chief Building Official with a copy of the Subdivision as approved, upon which the Chief Building Official will designate the proper street name and street number or numbers for each Lot. It shall be the responsibility of the Owner to provide the subsequent purchaser of each Lot with the correct street number.

26.4 Right of Entry

The Owner shall obtain from any purchaser of any of the Lots or blocks shown on the Subdivision, written authorization for the Owner and the Town to enter upon the Lands for a period of three (3) years after the transfer of title thereof in order to ensure compliance with the provisions of this Agreement and shall forthwith forward a copy of said permission to the Town.

26.5 Encumbrancers or Mortgagees

Prior to the registration of this Agreement, the Owner shall provide postponements or discharges, as the Town may direct, of any mortgages, liens or other encumbrances on the Lands in order to ensure that this Agreement is registered on title prior to any such mortgages, liens or other such encumbrances and that it shall have full force and effect in priority to any claims to the said Lands by the said encumbrancers and mortgagees.

26.6 Headings

The headings used in the sections of this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

26.7 Gender, Number

Wherever the singular or masculine is used in this Agreement, if the context so requires, it shall be deemed to include the plural or feminine.

26.8 This Agreement and the provisions hereof do not give to the Owner or any other Person where they acquire any interest in the said Lands any rights against the Town with respect to the failure of the Owner or any such Person to perform or fully perform any obligation under this Agreement, or the failure of the Town to force the Owner or any such Person to perform or fully perform any obligation under this Agreement or any negligence of the Owner or any such Person in the performance of the said obligation.

26.9 The Owner shall not call into question directly or indirectly, in any proceedings whatsoever whether in law or in equity or before any administrative tribunal, the right of the Town to enter in this Agreement and to enforce each and every item, covenant and condition herein contained, and this Agreement may be pleaded as an estoppel against any such Person in any such proceedings. The Owner acknowledges that the Town is entering into this Agreement and approving the Subdivision upon the express representation of the Owner that it, and its successors and assigns, will observe and perform all the provisions of this Agreement and that the Town is of the opinion that the Subdivision would not be in the public interest if the Owner, its successors and assigns and any owner or owners from time to time of the Lands in the Subdivision were not obligated to observe and perform all of the provisions hereof except to the

extend the Town may change them.

26.10 No covenant, condition or obligation in this Agreement may be waived except by the written consent of the Town. The failure on the part of the Town to exercise or enforce any right conferred upon it under this Agreement or the decision to waive any covenant, condition or obligation shall not be deemed to be a waiver of any such right of the Town to compel compliance with any covenant, condition or obligation or to exercise or enforce any right at any time or times thereafter.

27. BINDING ON SUCCESSORS, ETC.

This Agreement and everything herein contained shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns, and to the extent provided herein shall run with the Lands within the Subdivision and be binding upon the Owner or Owners from time to time thereof, and all covenants in this Agreement shall be joint and several.

The Owner agrees that it shall, upon the sale or transfer by it of the Lands included within the Subdivision or any parts or parts thereof, require the purchaser or transferee thereof as a condition of such sale or transfer to execute an agreement satisfactory in form to the Town's Solicitor, agreeing to assume this Agreement and to be bound by and fulfil all of the terms, conditions and covenants herein set forth and containing a like covenant to this effect (the Assumption Agreement). The Assumption Agreement shall be executed by the Town, the Owner and any such purchaser or transferee and may, at the Town's option, be registered on title, provided, however, that such Assumption Agreement shall not be required for the sale or transfer of a Lot or block as shown on the Subdivision for the purpose of construction.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their respective corporate seals under the hands of their respective authorized officers in that behalf.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

THE CORPORATION OF THE TOWN OF
NIAGARA-ON-THE-LAKE
Per:

LORD MAYOR PAT DARTE

TOWN CLERK PETER TODD
We have the authority to bind the corporation.

WOODCASTLE DEVELOPMENTS INC.
Per:

I, Bruce Cromie, have the authority to bind the corporation.

WITNESSED BY:

MORTGAGEE
Per:

MARIA BARTELL

SCHEDULE "A"

**TO SUBDIVISION AGREEMENT BETWEEN
THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE
AND
WOODCASTLE DEVELOPMENTS INC.**

PIN: 46387-0602 (LT)

LEGAL DESCRIPTION:

Part Township Lot 112 Niagara being Part 1 30R-14326; TOWN OF NIAGARA-ON-THE-LAKE

SCHEDULE "B"

**TO SUBDIVISION AGREEMENT BETWEEN
THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE AND
WOODCASTLE DEVELOPMENTS INC.**

Start a new page for Schedule "a" and insert the draft 30M Plan number

SCHEDULE "C"
EASEMENTS AND LAND DEDICATIONS
TO A SUBDIVISION AGREEMENT BETWEEN
WOODCASTLE DEVELOPMENTS INC.
AND
THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE

1. EASEMENTS

All references to easements within Schedule "B" shall mean the draft 30R Plan as prepared by _____ dated _____, 2017, and filed in the office of the Corporate Services Department of the Town.

- (a) Easements in favor of the Town for drainage purposes over Lots 7, 8, 9, 15,16,17,18,19,20 and between Blocks 1,2,10,11, 13, 14, 22, 23 described as Parts 1 to 20, inclusive, on the draft 30R Plan.

2. LAND DEDICATIONS

- (a) **Park Dedication**

Dedication of Blocks 24 of the approved plan to the Town for parkland purposes.

SCHEDULE "D"
ESTIMATED COST OF WORKS
TO A SUBDIVISION AGREEMENT BETWEEN
WOODCASTLE DEVELOPMENTS INC.

AND
THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE

Item	Reference	Subject	Est. Cost	L of C	Cash
Prior to Signature:					
1.	2.1	Tax Arrears			N/A
2.	12(a)	Parkland Dedication	\$1,255,000		\$16,503
Total					\$16,503
Preconditions of the Construction of Services:					
1.	16.1(a)	Primary Services - 20%	\$1,251,724	\$250,345	
2.	16.1(a)	Secondary Services - 100%	\$53,100	\$53,100	
3.	16.1(a)	Inspection (based on 60 working days)			\$36,000
4.	16.1(a)	Signs			\$5,000
5.	16.1(a)	Maintenance of Public Roads during construction			\$5,000
Total					\$46,000
Prior to Issuance of Building Permit					
1.		Lot Grading Deposit			Prevailing Lot Grading Deposit

SCHEDULE "E"
LIST OF ENGINEERING AND SITE PLAN DRAWINGS
TO A SUBDIVISION AGREEMENT BETWEEN
WOODCASTLE DEVELOPMENTS INC.
AND
THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE

The following is a list of the plans identified by drawing numbers and descriptions that are located in the office of the Director of Operations of the Town:

DRAWING NO.	DESCRIPTION	DATE OF PLAN
11729-G	Woodcastle Acres – Grading Plan	Rev. June 26, 2017
11729-SSP	Woodcastle Acres - Streetscape Plan	Rev. July 31, 2017
11729-01	Woodcastle Acres – Street 'B' & 'C' – Plan and Profile	Rev. June 26, 2017
11729-02	Woodcastle Acres – Annmarie Drive – Plan and Profile	Rev. June 26, 2017
11729-SCP	Woodcastle Acres – Site Alteration and Sediment Control Plan	Rev. July 31, 2017

The following is a list of the plans identified by drawing numbers and descriptions that are located in the office of the Director of Community and Development Services of the Town:

DRAWING NO.	DESCRIPTION	DATE OF PLAN
11729-SP1	Woodcastle Acres – Site Plan	Rev. February 15, 2017
11729-LP1	Woodcastle Acres – Tree Planting Plan	Rev. February 19, 2017
11729-LP2	Woodcastle Acres – Streetscape Demonstration Plan	Rev. February 14, 2017
SKA - 2	Building Elevations - BLOCK TYPE 1 & 14	Rev. September 28, 2017
SKA - 3	Building Elevations - BLOCK TYPE 2, 10 & 23	Rev. September 28, 2017
SKA - 4	Building Elevations - BLOCK TYPE 13, 21 & 22	Rev. September 28, 2017
SKA - 5	Building Elevations - BLOCK TYPE 12 & 13 - TRIPLEX	Rev. September 28, 2017