



# **The Municipal Corporation of the Town of Fort Erie**

**BY-LAW NO. 34-13**

---

**BEING A BY-LAW TO AUTHORIZE THE EXECUTION  
OF A SUBDIVISION AGREEMENT WITH  
2298423 ONTARIO INC. (WILFRED GOLDLUST)  
WILLOW TRAIL SUBDIVISION  
(File No. 350308-0075)**

---

**WHEREAS** Report No. CDS-25-13 was approved at the Council-in-Committee meeting of March 4, 2013 authorizing the entry into a Subdivision Agreement for Willow Trail Subdivision with 2298423 Ontario Inc., and

**WHEREAS** the Municipal Council of the Town of Fort Erie at its meeting of June 21<sup>st</sup>, 2004 passed Resolution No. 25 to establish a practice whereby the Standard Form of Agreement would not be attached to the By-law and circulated to each Member of Council in advance of the particular Council Meeting, although Council has been informed under Report No. CDS-25-13 of the Special Provisions and Financial Schedule in the agreement, with the knowledge that the Clerk of the Town of Fort Erie is in possession of the full agreement at the subject Council Meeting, and

**WHEREAS** it is deemed desirable to enter into a Subdivision Agreement for Willow Trail Subdivision (North & South side of Hibbard Street, West of Prospect Point Road) with 2298423 Ontario Inc. in order to control the development of lands as described in Schedule "A" of the Subdivision Agreement which is attached hereto as Appendix "1" and forms part of this by-law;

**NOW THEREFORE** the Municipal Council of The Corporation of the Town of Fort Erie hereby enacts as follows:

- 1. THAT** provided 2298423 Ontario Inc. first satisfies the requirements mentioned in the Agreement annexed hereto as Appendix "1" and made part of this by-law that are to be satisfied prior to or at the time of execution of the Agreement by 2298423 Ontario Inc., then the Mayor and Clerk be and they are hereby authorized to execute the Subdivision Agreement annexed hereto and once executed by all parties, the Agreement shall be registered upon the title to the lands described in Schedule "A" of the said Agreement.
- 2. THAT** 2298423 Ontario Inc. shall be permitted to pre-service the subdivision prior to the registration of the Agreement subject to receipt by the Town of the security deposit, cash payment, final drawings, approvals, insurance certificate and letter of indemnification to the satisfaction of the Town.

3. **THAT** this by-law shall expire one (1) year from the date of passage should the Developer fail to enter into a Subdivision Agreement with the Town.
4. **THAT** the Mayor and Clerk be and they are hereby authorized and directed to execute any and all documentation necessary to effect the terms and conditions of the Subdivision Agreement annexed hereto as Appendix "1" to this by-law.
5. **THAT** pursuant to the provisions of Sections 23.1 to 23.5 inclusive of the *Municipal Act, 2001*, as amended, the Clerk of the Town of Fort Erie is hereby authorized to effect any minor modifications or corrections solely of an administrative, numerical, grammatical, semantical or descriptive nature or kind to this by-law or its schedules as such may be determined to be necessary after the passage of this by-law.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 18<sup>TH</sup> DAY OF MARCH, 2013.**

\_\_\_\_\_  
**MAYOR**

\_\_\_\_\_  
**CLERK**

I, the Clerk, Carolyn J. Kett, of The Corporation of the Town of Fort Erie hereby certify the foregoing to be a true certified copy of By-law No. 34-13 of the said Town. Given under my hand and the seal of the said Corporation this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

\_\_\_\_\_

**SUBDIVISION AGREEMENT**

**BETWEEN**

**THE CORPORATION OF THE TOWN OF FORT ERIE**

**- and -**

**2298423 ONTARIO INC.**

**Date of this Agreement: \_\_\_\_\_, 2013**

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2013 pursuant to Section 51 (26) of the *Planning Act* and authorized by By-Law No. 34-13 of The Corporation of The Town of Fort Erie (the "Agreement"),

B E T W E E N:

**2298423 ONTARIO INC.**

Hereinafter called the "DEVELOPER"

of the FIRST PART;

- and -

**THE CORPORATION OF THE TOWN OF FORT ERIE,**

Hereinafter called the "TOWN"

of the SECOND PART;

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

- a) it is the registered owner in fee simple in possession of the lands described in Schedule "A" annexed hereto;
- b) as of the date of execution of this Agreement and on the date of registration of this Agreement, 2298423 Ontario Inc. shall be a valid and subsisting corporation in good standing duly incorporated under the laws of the Province of Ontario;
- c) as of the date of execution of this Agreement, registration of this Agreement and registration of the Plan of Subdivision, there will be no outstanding claims, liens or encumbrances registered against the lands described in Schedule "A" annexed hereto save and except those set out in Schedule "H" annexed hereto all of which shall be postponed to this Agreement unless otherwise authorized by the Town in writing; and
- d) this Agreement shall take priority over any subsequent registrations against the Lands;

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

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

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

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the mutual covenants and agreements to be observed and performed by each of the Parties hereto, and in consideration of the sum of ONE (\$1.00) DOLLAR of lawful

money of Canada now paid by the Developer to the Town, the receipt whereof is hereby acknowledged by the Town, the Parties hereto mutually covenant and agree as follows:

# **1. DEFINITIONS**

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

1.1 **Agreement** means this Subdivision Agreement.

1.2 **Assumption By-Law for Primary Services** means a by-law passed by the Council of The Corporation of the Town of Fort Erie forthwith after the Director of Infrastructure Services has approved in writing the Certificate of Final Acceptance for Primary Services, assuming ownership of and responsibility for all Primary Services constructed by the Developer pursuant to the terms of this Agreement and the approved Plans, **SAVE AND EXCEPT** the following Primary Services:

- a) the streets and roadways constructed by the Developer within the Plan of Subdivision;
- b) the noise attenuation requirements; and
- c) the utility services other than the street lights.

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

1.4 **Assumption By-Law for Secondary Services** means a by-law passed by the Council of The Corporation of the Town of Fort Erie forthwith after the Director of Infrastructure Services has approved in writing the Certificate of Final Acceptance for Secondary Services, assuming ownership of and responsibility for:

- a) all Secondary Services constructed by the Developer; and
- b) the streets and roadways constructed by the Developer within the Plan of Subdivisions.

1.5 **Building Permit** means a permit issued by the Chief Building Official of The Corporation of the Town of Fort Erie approving an application for the construction, reconstruction or alteration of any building or structure for which such permit is required pursuant to the provisions of By-Law 129-90 and amendments thereto.

1.6 **Certificate of Final Acceptance for Primary Services** means a certificate prepared by the Developer's Consulting Engineer and approved in writing by the Director of Infrastructure Services at the expiration of the Maintenance Guarantee Period for Primary Services setting out the Primary Services being accepted by the Town and indicating the date of final acceptance of such Works.

1.7 **Certificate of Final Acceptance for Secondary Services** means a certificate prepared by the Developer's Consulting Engineer and approved in writing by the Director of Infrastructure Services issued at the expiration of the Maintenance Guarantee Period for Secondary Services setting out the Secondary Services being accepted by the Town and indicating the date of final acceptance of such Works. The Certificate of Final Acceptance for Secondary Services.

1.8 **Chief Building Official** means the Chief Building Official for the Corporation of the Town of Fort Erie or his designate appointed pursuant to the Building Code Act.

- 1.9 **Completion Certificate for Primary Services** means a certificate prepared by the Developer's Consulting Engineer and approved in writing by the Director of Infrastructure Services upon satisfactory completion of all Primary Services, the approval date of which shall start the Maintenance Guarantee Period for such Primary Services.
- 1.10 **Completion Certificate for Secondary Services** means a certificate prepared by the Developer's Consulting Engineer and approved in writing by the Director of Infrastructure Services upon satisfactory completion of all Secondary Services, the approval date of which shall start the Maintenance Guarantee Period for such Secondary Services.
- 1.11 **Consulting Engineer** shall mean the person or persons registered with the Association of Professional Engineers of the Province of Ontario, who for the time being is or are employed by the Developer to provide engineering services on behalf of the Developer for the Plan of Subdivision.
- 1.12 **Council** means the Council of The Corporation of the Town of Fort Erie.
- 1.13 **Developer** shall mean the applicant for the approval of a Plan of Subdivision and the registered owner or owners in fee simple of the lands for which the Plan of Subdivision is proposed and their respective heirs, executors, administrators, successors and assigns. Wherever the singular is used herein it shall, where the context requires, include the plural.
- 1.14 **Director of Community & Development Services** means the Director of Community & Development Services for The Corporation of the Town of Fort Erie or his designate.
- 1.15 **Director of Infrastructure Services** means the Director of Infrastructure Services for The Corporation of the Town of Fort Erie or his designate.
- 1.16 **Easements** shall mean the easements described in Schedule "C" hereto, which forms part of this Agreement.
- 1.17 **Final Default** means a situation where the Developer fails to remedy a default within such time as provided in the notice given by the Town, as provided in Section 14.1 hereof.
- 1.18 **Front Lot Line** means the lot line that divides a Lot from the street; provided, however, that:
  - a) in the case of a corner lot, the shortest Street Line shall be deemed to be the front lot line and the longest Street Line shall be deemed to be the side lot line; and
  - b) in the case of a corner lot with two Street Lines of equal length, the lot line that abuts the wider street or abuts a Regional Road or highway shall be deemed to be the front lot line, and in the case of both streets being under the same jurisdiction or of the same width, the lot line where the principal access to the lot is provided shall be deemed to be the front lot line.
- 1.19 **Grading Conformance Certificate** means the Certificate identified in Section 9.21 hereof.
- 1.20 **Frontage of Lot** means the horizontal distance between the side lot lines measured along the Front Lot Line, but where the Front Lot Line is not a straight line or where the side lot lines are not parallel, the lot frontage is to be measured by a line 7.5 meters back from and parallel to the chord of the lot frontage, and for the purpose of this paragraph the chord of the

lot frontage is a straight line joining the two points where the side lot lines intersect the Front Lot Line.

- 1.21 **Lands** shall mean the lands described in Schedule "A" annexed hereto and forming part of this Agreement.
- 1.22 **Letter of Credit** shall mean any municipal standby irrevocable Letter of Credit drawn upon a Chartered Bank posted with and in a form acceptable to the Town pursuant to this Agreement. The municipal standby irrevocable Letter of Credit shall contain a provision which automatically renews it from year to year unless the Bank gives thirty (30) days advance written notice of its intention not to renew.
- 1.23 **Letter of Occupancy** means a Letter of Occupancy issued by the Chief Building Official subsequent to final inspection of a dwelling, as required by Section 11.6 hereof.
- 1.24 **Local Improvements** shall include utilities, sanitary sewers, storm sewers, sidewalks, curbs and gutters, pavements and such other local improvements as are defined by the *Local Improvements Act* or the *Municipal Act*.
- 1.25 **Lot** shall mean the whole of a parcel or tract of land created by the Plan of Subdivision.
- 1.26 **Lot Grading Deposit** means a deposit of security as specified in Section 9.21(e) hereof.
- 1.27 **Lot Grading Plan** means a plan for the grading of a Lot as required in Section 9.16(a) hereof.
- 1.28 **Maintenance Guarantee Period** means the period of time during which the Developer is obliged to maintain the Works following approval of the Completion Certificate for Primary Services or Secondary Services, as the case may be, which period is defined in Section 10.6 hereof.
- 1.29 **Party** shall mean a party to the Agreement and the successors or permitted assigns.
- 1.30 **Plan of Subdivision** shall mean the Plan of Subdivision of the Lands described in Schedule "A" hereto ultimately approved for registration by the Town and registered on title pursuant to the provisions of the *Planning Act*.
- 1.31 **Plans** shall mean all drawings, plans, specifications, contracts and other documents providing for the installation, construction and erection of the Works approved by and filed in the office of the Director of Infrastructure Services prior to execution of this Agreement by the Town.
- 1.32 **Pre-Servicing** means the installation of Works prior to registration of this Agreement.
- 1.33 **Primary Services** shall mean the following municipal services required to be constructed by the Developer:
  - a) municipal sanitary sewer system;
  - b) municipal storm sewer system, storm drainage and storm water management facilities sufficient in the opinion of the Director of Infrastructure Services to provide safety and protection from undue inconvenience to the general public;
  - c) municipal water system, including fire hydrants;

- d) municipal streets and roadways of final design width with granular base, base course asphalt and concrete curbs and gutters;
  - e) street signs and traffic control signs and devices;
  - f) rough grading of the Lands;
  - g) Noise berm, wall or fence required to mitigate noise within the lands described in Schedule "A" annexed hereto; and
  - h) all Utility Services.
- 1.34 **Reserve Strip** shall mean a parcel of land conveyed by the Developer to the Town in fee simple, free of encumbrances, abutting a Street Line and separating the street from the next abutting lot or block, for the purpose of preventing legal access from the said street to the said next abutting lot or block.
- 1.35 **Secondary Services** shall mean all municipal services required to be constructed by the Developer not defined as "Primary Services", and without limiting the generality of the foregoing, shall include:
- a) top course roadway asphalt;
  - b) sidewalks;
  - c) paved driveway aprons;
  - d) footpaths;
  - e) fencing;
  - f) sodding of boulevards;
  - g) landscaping; and
  - h) tree plantings.
- 1.36 **Storm Water Management Report** means an approved storm water management report and specifications prepared by the Developer in accordance with Section 9.11 of this Agreement.
- 1.37 **Street Line** means a lot line dividing a Lot from a street and is the limit of the street or road allowance.
- 1.38 **Subdivision** means the division of a parcel of land into lesser parcels by means of a registered Plan of Subdivision.
- 1.39 **Supervision** means the full-time inspection and administration of the Works for the express purpose of enforcing the provisions of this Agreement and providing certification of the Works in accordance with Section 5.1.
- 1.40 **Town** means The Corporation of the Town of Fort Erie.
- 1.41 **Treasurer** means the Director of Corporate Services for The Corporation of the Town of Fort Erie or his designate.
- 1.42 **Utility Services** means:
- a) all electrical distribution and street lighting systems, complete;
  - b) if applicable, all gas services, complete;
  - c) all telephone services, complete; and
  - d) all co-axial services, complete.
- 1.43 **Works** means all Primary Services and Secondary Services, both internal and external, and all construction, erection, installation and engineering required to service the Lands in accordance with the terms of this Agreement and the approved Plans.



**2. LANDS TO BE SUBDIVIDED**

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

**3. GENERAL PROVISIONS**

**3.1 Development at Sole Expense of Developer**

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

**3.2 Other Agreements**

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

**3.3 Indemnification**

The Developer hereby covenants, warrants and agrees to save harmless and keep the Town and its agents, contractors, employees and elected officials indemnified from and against all manner of actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly by reason of the design, installation, construction or operation of any of the Works required under this Agreement, or by reason of the maintenance or lack of maintenance of such Works by the Developer pursuant to the terms of this Agreement or by reason of any defect in workmanship or material.

**3.4 Covenants Run With the Land**

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

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

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

**3.5 Notices**

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

- a) the Town, to Municipal Centre, 1 Municipal Centre Drive, Fort Erie, Ontario L2A 2S6;
- b) the Developer, to , 8 Akron Road, Toronto, Ontario, M8W 1T2

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

**3.6 Binding on Heirs, etc.**

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

**3.7 Schedules**

The Schedules attached hereto, being Schedules "A" to "I" inclusive, form part of this Agreement and are to be interpreted as if the contents thereof were included in this Agreement.

**3.8 Special Provisions**

The Developer covenants, warrants and agrees to fulfill and abide by the Special Provisions set out in Schedule "E" annexed hereto in accordance with the terms thereof.

**3.9 Section 67 Planning Act**

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

**3.10 Applicable Laws**

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

**3.11 Severance of *Ultra Vires* Terms**

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

**3.12 Incontestability**

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

**3.13 Time of the Essence**

Time shall be of the essence of this Agreement.

**3.14 Certificate of Status**

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

**3.15 Mortgagee's Postponement**

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

**3.16 Notice to Purchasers**

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

**4. SERVICING PLANS AND SPECIFICATIONS**

**4.1** All Plans and specifications must be approved in writing by the Director of Infrastructure Services prior to the execution of this Agreement by the Town and the Developer commencing construction of any of the Works.

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

**4.3** It is understood and agreed the Director of Infrastructure Services in his appraisal of the Plans and specifications will be guided by current requirements of the Province of Ontario, established specifications and standards adopted by the Town or existing practices and standards as may from time to time be established or amended by the Town by its officials or agents. The Town may require, in writing, such variances from

the Plans as it may deem appropriate due to conditions which may be disclosed as the work progresses and by sound engineering practices.

4.4 No approval by the Director of Infrastructure Services shall operate as a release by the Town of any liability of the Developer which, but for such approval, might exist or hereafter arise.

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

## 5. **ENGINEERING AND INSPECTION**

### 5.1 Consulting Engineer

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

- a) carry out all necessary soil investigations to the satisfaction of the Director of Infrastructure Services;
- b) design all Works required to be completed by this Agreement;
- c) prepare plans, profiles and specifications for the Works and submit detailed plans, profiles and specifications to the Director of Infrastructure Services for approval prior to installation or construction of such Works;
- d) obtain from the Director of Infrastructure Services details regarding the form and scale of the plans and profiles prior to their preparation;
- e) obtain and provide the Town with all necessary approvals prior to installation or construction of the Works and prior to execution of this Agreement;
- f) prior to execution of this Agreement by the Town, prepare and furnish the Director of Infrastructure Services with estimates of the cost of installation and construction of the said Works;
- g) if required, prepare contract documents and call tenders for installation and construction of the said Works;
- h) prepare and supply the Town with Progress Payment Certificates;
- i) provide full time resident inspection and contract administration of all Works covered by this Agreement;
- j) maintain all records for the installation and construction of the said Works and submit "as constructed" records in electronic form in AutoCad format (NAD 83 coordinates) using Town of Fort Erie Drafting Standards, and "as constructed" records shall be submitted in a reproducible form (i.e. mylars, etc.) to the Director of Infrastructure Services prior to approving the Completion Certificate for the Works;
- k) upon completion of installation and construction of the Works, supply the Town with a certificate verifying that the Works were installed and constructed in accordance with the approved Plans and specifications;
- l) provide the Director of Infrastructure Services with individual record sheets of all sewer and water services location and depth;

- m) when requested by the Director of Infrastructure Services, accompany him on his inspections of the Works;
  - n) supervise construction of all Works on a full time basis, including any remedial work the Director of Infrastructure Services may require;
  - o) test all services and verify to the Director of Infrastructure Services, in writing, that all testing has been completed in accordance with the appropriate requirements;
  - p) provide building levels for construction purposes; and
  - q) certify, in writing, to the Director of Infrastructure Services, as to the actual cost of all Works completed, prior to the Town approving a Completion Certificate for such Works or reducing any Letter of Credit
- 5.2 All Primary, Secondary and Utility Services shall be installed, constructed, inspected and tested under the direct supervision of the Developer's Consulting Engineer at the sole expense of the Developer.
- 5.3 The Developer's Consulting Engineer shall conduct all testing of Works and materials to the complete satisfaction of the Director of Infrastructure Services. All sanitary and storm sewers must be inspected and videoed via closed circuit T.V. prior to final acceptance by the Town.
- 5.4 The Director of Infrastructure Services or his designate shall have the right at any time and from time to time to request an inspection and re-inspection of any of the Works in progress to ensure such Works are being constructed in accordance with the Plans and specifications approved by the Director of Infrastructure Services. Such inspections may include testing and the method and time of testing shall be at the sole discretion of the Director of Infrastructure Services. Town inspections shall be in addition to inspection provided by the Developer's Consulting Engineer and shall in no way relieve the Developer or his Consulting Engineer of any responsibility with regard to design, construction, supervision, inspection, testing or proper completion of the Works.
- 5.5 The Director of Infrastructure Services shall have a discretionary right to order any work-in-progress stopped and such work shall not be recommenced without written authority from the Director of Infrastructure Services.

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

- 6.1 The Council of the Town may authorize Pre-Servicing (installation of Works) upon such terms and conditions it deems appropriate and/or necessary, which terms and conditions shall include, but not be limited to, posting all security set forth in Schedule "F" annexed hereto, obtaining and filing with the Director of Infrastructure Services all necessary and/or required approvals, consents, agreements and certificates, and having all Plans and specifications approved by the Director of Infrastructure Services.
- 6.2 Before this Agreement is executed by the Town, the appropriate authorizing By-law must be enacted by the Council of the Town.
- 6.3 The Town may, at the sole expense of the Developer, request the Developer's solicitor to prepare such further and other documentation as

- may be deemed necessary and/or required by the Town for the preparation, registration and implementation of the agreement.
- 6.4 If required, the Developer's solicitor, at the sole expense of the Developer, shall:
- a) provide and/or prepare all documentation which the Town's Solicitor may require, including all necessary Transfers, Easements and restrictive covenants in registerable form;
  - b) certify title to the Town in a signed Certificate of Title;
  - c) have all documentation signed by the Developer, Chargees, and other necessary parties;
  - d) subsearch title and obtain an Execution Certificate prior to registration and provide copies of same to the Town's Solicitor;
  - e) deliver all executed documentation to the Town; and
  - f) attend to registration of all documentation, at the Developer's expense, required by this Agreement.
- 6.5 Prior to the Town executing this Agreement, the Developer shall provide the Town with two (2) copies each of the draft Plan of Subdivision (M-Plan) for the Lands and the draft Reference Plan (R-Plan) providing legal descriptions for Easements within or outside the Lands.
- 6.6 The Developer covenants and agrees to register an application, signed by the Town, for an order inhibiting any dealings with the Lands to the applicable Land Registrar immediately following the registration of the Agreement. The Developer acknowledges that the Town shall not be obligated to register any documents in compliance with the Inhibiting Order or to apply to have the Inhibiting Order removed from title until the Developer has supplied all documents in compliance with this Agreement in a form satisfactory to the Town for registration and all other documents required to provide discharges, releases and postponements with respect to any charges, mortgages or encumbrances with respect to the Lands have been registered against title to the lands.
- 6.7 Upon the Town being satisfied that all conditions of Draft Plan approval for the Plan of Subdivision have been satisfied by the Developer within the required time, the Town shall register the following documentations at the sole expense of the Developer as soon as practicable:
- a) the approved Plan of Subdivision; and
  - b) all other documentation related thereto, including without limitation, Cessations of Charge.
- 6.8 In the event the Plan of Subdivision is not registered within one (1) year from the date of registration on title of this Agreement, the Town may declare the Developer in Final Default.
- 6.9 The Developer shall not deal in any manner whatsoever with any Lot or Block shown on the Plan of Subdivision until this Agreement, the Plan of Subdivision and all other documentation (including Transfers, Easements, Cessation of Charge, Inhibiting Orders, Reference Plans, and Postponements of Charges) required by this Agreement and by the Town's solicitor have been delivered, approved and registered on title to the complete satisfaction of the Town's solicitor.

**7. LANDS REQUIRED FOR MUNICIPAL PURPOSES**

The Developer shall, at its own expense, convey to the Town such lands as may be required for the development of the Lands in accordance with Schedule "B" annexed hereto.

**8. EASEMENTS FOR MUNICIPAL PURPOSES**

8.1 The Developer covenants and agrees, at its sole expense, to obtain and/or grant to the Town such easements as may be required for the installation and construction of services or development of the Lands in accordance with Schedule "C" annexed hereto.

8.2 The Developer shall convey to the Town or to such public utility company or commission or cable television company as the Town may direct, easements required for utility and/or coaxial purposes in accordance with Schedule "D" annexed hereto. All such easements shall be prepared to the complete satisfaction of the Town, and if required by the Town, any such utility or cable television company.

8.3 The Developer shall undertake and complete all improvements in, over, along and upon such easement lands conveyed to the Town, including Primary Services, Secondary Services and Utility Services, in accordance with the terms of this Agreement and the Plans filed to the complete satisfaction of the Director of Infrastructure Services and shall keep such easement lands in a neat and tidy condition, free of all debris and trash until the Town has passed the Assumption By-Law for Secondary Services.

**9. SERVICES**

**9.1 General**

a) Where the Plan of Subdivision is serviced by a secondary means of egress or emergency access to be constructed by the Developer, an existing road allowance, open or unopened, or any newly dedicated widening thereof, the Developer agrees such secondary means of egress or emergency access, road allowance and any widening thereof shall be deemed to form part of the Lands and be subject to the requirements related thereto specifically indicated in the approved Plans.

b) Where it is necessary to use a secondary means of egress or emergency access to be constructed by the Developer or an unopened road allowance to service all or any part of the Lands, the Developer shall, at its own expense, construct the necessary municipal services in accordance with the approved Plans.

c) The Developer shall not change, or do any work that will prejudicially effect, any natural watercourse or drainage ditch without making full and proper provisions satisfactory to the Director of Infrastructure Services, and the Developer shall be solely responsible for any damage caused thereby and the Developer hereby indemnifies and saves harmless the Town from any claim arising from such damage.

d) The Developer shall keep all portions of the development well, properly and efficiently drained during construction and completion and will be held responsible for all damage which may be caused or results from water backing up or flowing over,

through, from or along any part of the Works, or which any of the Developer's operations may cause to flow elsewhere, and the Developer hereby indemnifies and saves harmless the Town from any claim arising from said damage.

- e) The Developer covenants and agrees to carry out all Works necessary to service the Plan of Subdivision in such a manner as to prevent erosion and earth, debris and other material from being washed or carried in any manner onto any road, road allowance or highway whether opened or unopened, or onto the property of any other person or persons. If such earth, debris or other material is washed or carried onto such road, road allowance, whether opened or unopened, or onto the property of any person or persons, the Town, its servants or agents, may, at the Town's discretion, clean and remove such material, rectify any damage caused, and abate any nuisance created by the Developer in the development of the Plan of Subdivision. The cost of any such work performed by or at the instruction of the Town, shall be paid by the Developer on demand, and without limiting any of its remedies at law or in equity, the Town may enforce any security available to it to recover such costs or may collect such costs in like manner as municipal taxes as provided in *The Municipal Act* and with the same priorities as taxes that are overdue and payable.
- f) The Developer shall be solely responsible for controlling dust nuisance in conjunction with the Works, both within the Plan of Subdivision and elsewhere.
- g) All streets abutting on the Lands or used for access to the Lands during installation or construction of the Works or during construction of dwellings shall, at all times, be kept as dust free as possible and in a good and usable condition, and without restricting the generality of the foregoing, the Developer shall at the end of each day during such construction cause all such streets to be cleaned of all refuse, rubbish, waste, debris and other materials of any kind, whether the same resulted from installation and construction of Works or otherwise, and if such streets are damaged the Developer shall at its own cost restore same immediately to the Town's requirements and to the satisfaction of the Director of Infrastructure Services.
- h) All trucks making deliveries to or taking materials from the Lands shall be adequately covered and not unreasonably loaded so as to scatter refuse, rubbish, dust or debris on abutting streets or properties. If at any time, in the opinion of the Director of Infrastructure Services, damage is being or is likely to be done to any street or any improvement thereon, other than such portions as are part of the Works, by the Developer's or its contractor's vehicles or other equipment, whether licensed or unlicensed, the Developer or its contractor shall on the direction of the Director of Infrastructure Services make changes in or substitutions for such vehicles or other equipment or shall alter loading or shall in some other manner satisfactory to the Director of Infrastructure Services remove the cause of such damage or nuisance. The Developer shall at its own cost repair any such damage immediately to the Town's requirements and to the satisfaction of the Director of Infrastructure Services.
- i) The Developer shall inform all public utility companies having legal authority to install or construct utility systems (including without limitation Bell Canada, Consumer's Gas, Canadian Niagara Power Inc., Regional Cable TV (Central) Inc. of the approximate date of construction of the Works in order that such utility companies may place their work in accordance with their



requirements and to the satisfaction of the Director of Infrastructure Services, and the Developer shall assume complete responsibility and make all necessary arrangements for the moving of hydro-electric, gas, telephone and co-axial cables, pipes, conduits, wires, pipe lines, or any other public utility works as necessary and as approved by the Director of Infrastructure Services, and the Developer shall be solely responsible for any damage caused to the said cables, pipes, conduits, wires, pole lines and other works.

- j) The Town disclaims any responsibility or liability for the support and protection of sewers, drains, pipes, conduits, tracks or other utilities, services and structures owned by the Town or any other public body, by companies, or any other person enjoying special franchises or occupying any portion of the streets or ways on or below or above the surface. The Developer is directed to carefully examine the location of the Works and to make special inquiry of the companies or persons owning, controlling or operating said pipes, conduits, tracks and other utilities, services and structures, and to determine the character, size, position and length of such pipes, conduits, tracks, utilities and structures, and to inspect the public records of the various Town Departments having recognizance and control of pipes, conduits and sewers, and to make such further personal inspection and investigation as is necessary to determine the correctness of the information so obtained. It is the Developer's responsibility to consult the companies concerned as to the exact location of said utilities, services and structures, and, where necessary, the Developer shall protect and support same to maintain their operation. In the event damage is done to a utility, service or structure the Developer thereof shall be notified immediately by the Developer and any costs arising from such damage shall be paid for by the Developer. A copy of such notice shall be sent to the Director of Infrastructure Services.
- k) The Developer agrees to keep boulevards and Easements graded and free and clear of all material and obstructions which might interfere with the construction of telephone, co-axial, gas and hydro-electric installations, and other utility works.
- l) The Developer shall remove from all road allowances in the Plan of Subdivision, any surplus or other material and obstructions and such trees and vines, as necessary and to the satisfaction of the Director of Infrastructure Services, and further, shall remove from the Lands any unkempt, diseased or infested trees, vines or bushes. In the event this clause is not complied with within fourteen (14) days of written notice delivered by the Town to the Developer, the Town may have such material removed and collect the cost thereof from the Developer, and without limiting its remedies at law or equity, the Town may enforce any security held by it to recover costs or may collect the costs in like manner as municipal taxes as provided in *The Municipal Act* and with the same priorities as taxes that are overdue and payable.
- m) The Developer shall not remove any topsoil from the Lands without first obtaining written approval from the Director of Infrastructure Services.
- n) All Works required to be installed or constructed by the Developer shall be installed and constructed in accordance with the Town's specifications therefor at the date of the commencement of the installation or construction of the Works and in accordance with the approved Plans.

- o) The Developer acknowledges and agrees, notwithstanding the complete installation of services in the subdivision as authorized by the Town, that the Town will not be held liable for any stoppage or delay of the registration of the Plan or the issuance of Building Permits for the lots in the Plan.

## 9.2 Survey Monuments to be Preserved

The Developer agrees:

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

## 9.3 Town's Right to Enter and Repair

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

## 9.4 Services to be Co-ordinated

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

#### 9.5 Land Use Sign

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

#### 9.6 Interim Works

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

#### 9.7 Roads

- a) The Developer agrees to perform and complete all road Works required by this Agreement and the approved Plans and specifications to the complete satisfaction of the Director of Infrastructure Services.
- b) any existing road damaged during the development of the Plan of Subdivision shall be restored by the Developer, to the complete satisfaction of the Director of Infrastructure Services, prior to approval of the Certificate of Completion for Primary Services.
- c) The Developer agrees to, unless exemption in writing is obtained from the Town, reconstruct an existing semi-urban road to Town's urban standard for the entire frontage abutting the Lands. Any cost-sharing by the Town of the reconstruction costs shall be identified in the Financial Schedule attached herein. Alternatively, the Developer may provide the Town a cash in lieu of reconstruction of its share of the future road reconstruction cost as required and approved by the Town.

#### 9.8 Sanitary Sewer System

- a) If required by the Town, and prior to execution of this Agreement by the Town, the Developer shall undertake a review of existing downstream sanitary sewer system to ensure the capacity of the system is sufficient for the increase in flows from the Plan of Subdivision. In the event the downstream system is inadequate for the flow increase from this Subdivision, upgrading of those facilities will be the financial responsibility of the Developer and the Work required and/or necessary to upgrade such facilities shall be completed by the Developer as part of development of this Plan of Subdivision to the complete satisfaction of the Director of Infrastructure Services.
- b) The Developer shall construct a sanitary sewer system, including service laterals from the sewer main to the Street Line and other appurtenances, to adequately service the Lands. All sanitary sewers, including upgrading of downstream facilities if deemed necessary by the Town, shall be constructed according to the approved Plans and specifications. Plans must be approved by the

Director of Infrastructure Services, the Region of Niagara Public Works Department and the Ministry of the Environment, and the construction and materials used therein shall be in accordance with the Town's most recent specifications therefor.

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

## 9.9 Storm Drainage System

- a) The Developer agrees to construct a storm drainage and storm water management system to adequately service the Lands and all or any portion of the ultimate drainage area in which the Lands are located. This system shall be constructed in accordance with the Plans approved by the Director of Infrastructure Services, the Region of Niagara Public Works Department, the Region of Niagara Planning & Development Department, the Niagara Peninsula Conservation Authority and the Ministry of the Environment, and construction and materials used therein shall be in accordance with the Town's most recent specifications therefor.
- b) All storm sewer Works shall be flushed and cleaned by high velocity sewer flushing equipment:
  - i) after placement of the base course asphalt upon the streets in the Plan of Subdivision;

- ii) forthwith after final paving of the streets has been completed; and
  - iii) upon receipt of any written notice from the Director of Infrastructure Services.
- c) All storm sewer Works shall be inspected and videoed via closed circuit TV to the satisfaction of, and upon any written notice from, the Director of Infrastructure Services and prior to assumption of the storm sewer Works by the Town. In the event the results are not satisfactory in the sole opinion of the Director of Infrastructure Services, the Developer shall take such remedial steps as may, in the sole opinion of the Director of Infrastructure Services, be required.
  - d) Prior to the Director of Infrastructure Services approving the Completion Certificate for Primary Services, the Developer shall supply the Director of Infrastructure Services with "as constructed drawings" showing the location and depth of the storm sewer lateral constructed to service each Lot.
  - e) The developer agrees to have all flexible pipe sewers mandrel tested before the completion of primary services and before acceptance of primary services. Mandrel test will be as per Town Specifications.

#### 9.10 Stormwater Management System

- a) The Developer agrees that prior to the Town executing this Agreement the Developer shall prepare and provide a Storm Water Management Report which shall be submitted for approval by the Director of Infrastructure Services, the Region of Niagara Planning & Development Department, the Ministry of the Environment, the Niagara Peninsula Conservation Authority and the Region of Niagara Public Works Department, indicating the following:
  - i) the manner in which storm water will be conveyed across the Lands in both major and minor storms, using storm water management techniques that are in accordance with the Provincial guidelines contained in "Stormwater Management Practices Planning & Design Manual - June 1994" (Ministry of Environment) and the latest revision thereof or such more stringent standards as may be applicable;
  - ii) an assessment of downstream and upstream constraints and how these constraints can be addressed (at a minimum the storm water management system must provide Level 1 protection for downstream fisheries and resources); and
  - iii) an Erosion and Sediment Control Plan for the development of the Lands whereby erosion and sediment and their effects will be minimized on site during and after construction in accordance with the "Ontario Guidelines on Erosion and Sediment Control for Urban Construction Sites" May 1987 and the latest revision thereof or such more stringent standards as may be applicable.
- b) The Developer shall prepare and provide a Subdivision Grading Plan in accordance with Section 9.21 hereof indicating the existing and proposed grades as well as the means whereby major system flows will be conveyed across the Lands. The 100-year flood level

shall be plotted on the Plan to ensure that all structural development will be located above this elevation.

- c) The Developer agrees to implement the Niagara Peninsula Conservation Authority's approved Storm Water Management Plan including the approved grading and drainage, any required erosion and flood protection works, and all Niagara Peninsula Conservation Authority approvals.
- d) The Developer agrees to carry out or to have carried out all storm water management techniques and Works necessary and/or required to convey storm water runoff from the Lands in accordance with the approved Subdivision Grading Plan and Storm Water Management Plan to the complete satisfaction of the Director of Infrastructure Services and the Region of Niagara Planning & Development Department.

#### 9.11 Water Distribution System

- a) The Developer shall construct a complete water supply and distribution system, including valves, valve boxes, fire hydrants, service connections, curbstops and boxes, blowoffs and ground hydrants as may be required, for the purpose of servicing the Plan for Subdivision. The water distribution system shall be constructed according to the Plans approved by the Director of Infrastructure Services, the Region of Niagara Public Works Department and the Ministry of the Environment, and the construction and materials used therein shall be in accordance with the Town's most recent specifications therefor.
- b) The Developer shall install, charge, test and maintain fire hydrants as required by the approved Plans and specifications in accordance with this Agreement to the complete satisfaction of the Fort Erie Fire Department and the Director of Infrastructure Services.
- c) The water supply and distribution system shall be designed to accommodate residential and fire flows with the minimum size of 150 mm in diameter.
- d) All water mains shall be flushed, chlorinated, pressure tested and bacterial tested in accordance with Town standards and to the satisfaction of the Director of Infrastructure Services prior to approval of the Completion Certificate for Primary Services.
- e) The Developer shall, prior to the Director of Infrastructure Services approving the Completion Certificate for Primary Services, supply the Director of Infrastructure Services with "as constructed drawings" showing the location and depth of the water connections constructed to service each of the Lots.

#### 9.12 Sidewalks

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

#### 9.13 Fencing

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

#### **9.14 Street and Traffic Signs**

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

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

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

#### **9.16 Utility Services**

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

#### **9.17 Tree Plantings**

- a) In order to maintain a high standard of amenity and appearance, the Developer, its heirs, executors, administrators, successors and assigns hereby undertake and agree to retain the maximum number of trees within the lands consistent with good design and conservation practices and to deposit a Letter of Credit with the Town, to guarantee the total cost of purchasing, planting and maintaining trees within the Plan in accordance with the following:
  - i) One (1) tree per Lot and two (2) trees per sideyard flankage shall be planted in the sodded portion of the street

allowance between the Front Lot Line and the roadway in accordance with the Plans. Trees shall be sound, healthy, vigorous and free from disease with normally healthy root systems.

- ii) Trees shall be 50mm caliper, balled and burlapped at planting and be of such varieties as Red Maple, Red Oak, Redmond or Little Leaf Linden, Redspire or Chantecleer Ornamental Pear, Shademaster Honeylocust, London Planetree and Princeton Sentry Gingko or such other compatible variety, as approved by the Town.
- b) In accordance with Schedule "F" annexed hereto, prior to registration of this Agreement by the Town, the Developer shall provide a security in the form of a Letter of Credit to the Town for Tree Planting within the subdivision, to cover the cost of purchasing, planting and maintaining trees within the Plan.
- c) The Developer shall file with the Town a Tree Preservation Plan prepared by a qualified forester and approved by the Town and the Ministry of Natural Resources. The Developer agrees to implement the approved Tree Preservation & Plant Plan to the complete satisfaction of the Director of Infrastructure Services and the Director of Community and Development Services.

#### 9.18 Driveways

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

#### 9.19 Landscaping

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

#### 9.20 Subdivision Grading and Drainage

- a) Unless otherwise approved or required by the Town, the Developer, its heirs, executors, administrators, successors and assigns hereby irrevocably undertake not to alter the grades or remove trees or other vegetation from the Lands until such time as:



- i) the Town has agreed in writing to such alteration or removal; and
  - ii) the Town has approved the Subdivision Grading Plan pursuant to the terms of this Agreement and the Town's Lot Grading and Drainage Policy By-Law 252-92 and amendments thereto.
- b) Prior to execution of this Agreement by the Town or commencing any phase of development, and in accordance with the Town's Lot Grading and Drainage Policy By-Law No. 252-92 and amendments thereto, the Developer shall prepare and provide the Town, as part of the engineering drawings, a Subdivision Grading Plan for the purpose of controlling the overall drainage pattern in the Plan of Subdivision. The Subdivision Grading Plan shall be prepared in conformance with Part 7 of the Town's Lot Grading and Drainage Policy By-Law 252-92 and amendments thereto.
- c) The following grading works shall be completed prior to the issuance of any Building Permits:
  - i) construction and sodding of all major overland flow drainage swales and other erosion control devices to the satisfaction of the Director of Infrastructure Services for the Plan of Subdivision, subject to weather conditions; and
  - ii) rough grading of all Lots to generally conform to the Subdivision Grading Plan.
- d) If drainage problems arise which are as a result of non-compliance with the requirements of By-Law 252-92 and amendments thereto, the Developer shall within forty-eight (48) hours of receiving notice thereof correct the problems. Without limiting its remedies at law or in equity, the Town may enter upon the Lands to remedy any such problem and may use the Subdivider's Grading Deposit to cover the costs of any remedial works deemed necessary. Any costs of these remedial works in excess of the amount of the Subdivider's Grading Deposit shall be the responsibility of the Developer, and if not reimbursed to the Town forthwith after being incurred by the Town, the Town may collect such costs in like manner as municipal taxes as provided in *The Municipal Act* and with the same priorities as taxes that are overdue and payable.
- e) The Developer shall deposit with the Town as security for carrying out the provisions of the Subdivision Grading Plan, in accordance with Schedule "F" annexed hereto, a Subdivider's Grading Deposit as required by By-Law 252 - 92 and amendments thereto.
- f) Upon completion of the Works and acceptance by the Town of a Subdivision Grading Conformance Certificate prepared and signed by an Ontario Land Surveyor or Professional Engineer, the Developer may apply in writing for release of the Subdivider's Grading Deposit, less any cost for remedial work undertaken by the Town.

#### 9.21 Lot Grading and Drainage

- a) Prior to the issuance of a Building Permit for a Lot, the Owner or the Building Permit applicant shall submit to the Town three copies of a proposed Lot Grading Plan prepared by a Professional Engineer or an Ontario Land Surveyor and shall conform to the Subdivision Grading Plan.

- b) Prior to issuance of a building permit for a Lot, the Developer shall submit to the Town as security for carrying out the provisions of the Lot Grading Plan a Lot Grading Deposit in the amount of \$2,500.00 per Lot.
- c) Upon acceptance of the Grading Conformance Certificate by the Town, the Developer may apply in writing for release of the Lot Grading Deposit, less any cost of remedial work performed by the Town.
- d) The grading of a Lot shall be considered complete when the building has been erected and such lot has been graded and sodded, and/or seeded. Sodding and/or seeding shall be done within two months after occupancy of the dwelling or by the next June 1st following occupancy should occupancy take place after November 1st.
- e) Upon completion of the grading as noted in Clause 9.21 of this Agreement, prior to landscaping or fencing, the Developer shall submit to the Town one copy of the Lot Grading Plan which shall indicate the finished elevation as shown on the proposed Lot Grading Plan. This "as constructed" Lot Grading Plan shall be prepared and certified by a Professional Engineer or Ontario Land Surveyor.
- f) Once the "as constructed" grading of a Lot has been certified and signed by an Ontario Land Surveyor or Professional Engineer to be in conformance with the latest revision of the Subdivision Grading Plan, the Lot Grading Plan if approved by the Town, shall be accepted and dated by the Town, as the "Grading Conformance Certificate."
- g) The Developer, its heirs, executors, administrators, successors and assigns hereby irrevocably undertake to maintain the grading and drainage schemes as established and verified by the Grading Conformance Certificate and not to alter or revise the grading or drainage without the express written consent of the Director of Infrastructure Services or the Chief Building Official.

#### **9.22 Foundation Drains**

The Developer agrees that foundation drains shall be pumped by a sump pump that discharges to the ground surface (to grade) via splash pad. Direct piped gravity connections or pumped connections to the storm sewer are not permitted. Splash pads shall extend a distance at least 1.2 metres away from the structure and must direct the flow away from the building, not onto walks or driveways and not towards adjacent properties.

#### **9.23 Roof Water**

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

#### **9.24 Minimum Basement Elevations**

If required, the Developer agrees to submit a plan for approval to the Director of Infrastructure Services, detailing the basement control elevations for individual dwellings or structures within the Plan of

Subdivision and to ensure compliance with approved basement control elevations.

**10. COMPLETION, MAINTENANCE, ACCEPTANCE AND ASSUMPTION OF WORKS**

**10.1 Condition Precedent**

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

**10.2 Time to Complete Servicing**

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

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

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

**10.3 Roads**

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

#### 10.4 Completion Certificate for Primary Services

- a) Primary Services installation will not be considered complete by the Town until an inspection has been made by the Director of Infrastructure Services or his designate and the Completion Certificate for Primary Services has been issued by the Director of Infrastructure Services. The Director of Infrastructure Services shall be accompanied during his inspection by the Developer's Consulting Engineer. The Works shall be inspected and all deficiencies rectified to the complete satisfaction of the Director of Infrastructure Services, prior to the approval of the Completion Certificate for Primary Services.
- b) The Town may withhold approval of a Completion Certificate if, in the sole opinion of the Director of Infrastructure Services, the Developer is in default of its obligations pursuant to this Agreement or the approved Plans.
- c) Prior to the Director of Infrastructure Services approving the Completion Certificate for Primary Services, the documentation listed in Sections 10.4 (d) and 10.4 (e) must be provided to the Director of Infrastructure Services in a single submission package.
- d) The Developer's Consulting Engineer shall provide to the Director of Infrastructure Services:
  - i) Certificate(s) verifying that all primary services were installed and constructed in accordance with approved plans and specifications;
  - ii) Certificates(s) providing actual costs of works installed;
  - iii) Certificate(s) stating that all watermains have been flushed, chlorinated and pressure tested in accordance with Town standards;
  - iv) Certificate(s) stating that all watermain tracer wires have been tested and the new water distribution system can be traced;
  - v) Certificate(s) stating that all fire hydrants servicing the development have been tested by a qualified hydrant testing agent;
  - vi) Copies of the hydrant test reports and fire flow test reports;
  - vii) Certificate(s) stating that all storm and sanitary sewers have been flushed after placement of base course asphalt, air pressure tested, and inspected and videoed via close circuit T.V.;
  - viii) Copies of the storm and sanitary sewer inspection video tape(s) and documentation;
  - ix) Certificate stating that the approved Tree Preservation Plan has been complied with including a Clearance Letter from the Region;
  - x) Certificate(s) stating that all utility services required to service the Plan of Subdivision are installed & constructed or a letter of commitment to complete the utility services from utility companies;

- xi) Certificate (Overall Grading Certificate) stating that rough grading and major drainage works or swales have been completed in accordance with the Subdivision Grade Control Plan;
  - xii) The original Mylar Drawings showing each of the said works "As Constructed" together with electronic drawing files in AutoCAD format using Town of Fort Erie Drafting Standards; and
  - xiii) Plans (cards) showing the location and depth of each sanitary sewer lateral, storm sewer lateral and water service lateral constructed to service each of the lots.
- e) The Developer shall provide the Director of Infrastructure Services with:
- i) a Statutory Declaration from the Developer in a form satisfactory to the Director of Infrastructure Services setting out the Works completed and verifying:
    1. All such works have been completed in accordance with the terms of this Agreement and the approved plan and specifications;
    2. All accounts have been paid for installation, construction, inspection, repair and maintenance of such Works; and
    3. That there are no outstanding debts, claims or liens in respect of such works.
  - f) Subject to Sections 10.4(d) and 10.4 (e) hereof, upon receipt of the required documentation and the Director of Infrastructure Services' satisfaction that the installation and construction of all Primary Services has been completed in accordance with this Agreement and approved Plans, the Director of Infrastructure Services, shall date and approve the Completion Certificate of Primary Services.

#### 10.5 Completion Certificate for Secondary Services

- a) Secondary Services installation will not be considered complete by the Town until an inspection has been made by the Director of Infrastructure Services or his designate and the Completion Certificate for Secondary Services has been issued by the Director of Infrastructure Services. The Director of Infrastructure Services shall be accompanied during his inspection by the Developer's Consulting Engineer. The Works shall have been inspected and all deficiencies rectified to the complete satisfaction of the Director of Infrastructure Services, prior to the approval of the Completion Certificate for Secondary Services.
- b) The Town may withhold approval of a Completion Certificate if, in the sole opinion of the Director of Infrastructure Services, the Developer is in default of its obligations pursuant to this Agreement or the approved Plans.
- c) Prior to the Director of Infrastructure Services approving the Completion Certificate for Secondary Services, the documentation listed in Sections 10.5 (d) and 10.5 (e) must be provided to the Director of Infrastructure Services in a single submission package.

- d) The Developer's Consulting Engineer shall provide to the Director of Infrastructure Services:
  - i) Certificate(s) verifying that all secondary services have been installed, fully completed, repaired and maintained in accordance with approved plans and specifications; and
  - ii) Certificate(s) providing actual costs of works installed; and
  - ii) If required, the original Mylar Drawings showing each of the said works as constructed together with electronic drawing files in AutoCAD format using Town of Fort Erie Drafting Standards.
- e) The Developer shall provide the Director of Infrastructure Services with a Statutory Declaration from the Developer in a form satisfactory to the Director of Infrastructure Services setting out the Works completed and verifying:
  - i) All such works have been completed in accordance with the terms of this Agreement and the approved plan and specifications;
  - ii) All accounts have been paid for installation, construction, inspection, repair and maintenance of such Works; and
  - iii) that there are no outstanding debts, claims or liens in respect of such works.
- f) Subject to Sections 10.5(d) and 10.5(e) hereof, upon receipt of the required documentation and the Director of Infrastructure Services' satisfaction that the installation and construction of all Secondary Services has been completed in accordance with this Agreement and approved Plans, the Director of Infrastructure Services shall date and approve the Completion Certificate for Secondary Services.

#### 10.6 Maintenance of the Subdivision

- a) The Developer shall be responsible for the general tidy appearance of the entire Lands until completion of all building, and carry out all weed cutting and maintenance on all unsold lands and all unassumed roads to the satisfaction of the Director of Infrastructure Services.
- b) The Developer shall adequately maintain all roads, sidewalks and pedestrian walkways within the Plan of Subdivision free from mud, debris, building materials, and other obstructions, to the satisfaction of the Director of Infrastructure Services until Council passes an Assumption By-Law for Secondary Services.
- c) The Developer shall be responsible to control weeds and to maintain vacant lands free from debris, waste building materials, tree stumps, discarded boulders, and other refuse, and shall notify any purchaser, in writing, to refrain from dumping on such vacant lands, including lands dedicated by it to the Town for municipal purposes.
- d) The Developer shall maintain the Works, and every part thereof, in perfect order and in complete repair for the duration of the Maintenance Guarantee Period and shall repair in a permanent manner satisfactory to the Director of Infrastructure Services any and all damage or injury to the Works, both during construction and during the period of maintenance as aforesaid.

- e) Should the Developer, for any reason, fail to carry out the repairs or maintenance, including weed control, when requested by the Town, the Director of Infrastructure Services, at his sole option, after giving the Developer twelve (12) hours written notice, may perform the repairs or maintenance and all costs, charges and expenses so incurred shall be borne by the Developer. The decision of the Director of Infrastructure Services shall be final as to the necessity of repairs or of any work done or required to be done. Any costs incurred by the Town not reimbursed by the Developer forthwith may be collected by the Town in like manner as municipal taxes as provided in *The Municipal Act* and with the same priorities as taxes that are overdue and payable.
- f) The Developer's obligation to maintain the Works as aforesaid shall commence on the approval date of the Completion Certificate for the Works and extend for a minimum of one (1) year or until the Director of Infrastructure Services approves the Certificate of Final Acceptance for such Works whichever occurs last (this period is herein referred to as the "Maintenance Guarantee Period").
- g) The Maintenance Guarantee Period for Primary Services shall commence on the date the Director of Infrastructure Services approves the Completion Certificate for Primary Services.
- h) The Maintenance Guarantee Period for Secondary Services shall commence on the date the Director of Infrastructure Services approves the Completion Certificate for Secondary Services.

#### 10.7 Certificate of Final Acceptance

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

construct or maintain any of the Works pursuant to this Agreement and the approved Plans.

#### **10.8 Assumption of Municipal Services**

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

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

##### **11.1 Building Permits – Issuance**

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

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



- e) the Town is in receipt of all applicable fees and deposits including, without limiting the generality of the foregoing:
  - i) Development fees at the prevailing rate as prescribed by The Development Charges By-Law 150-99 and amendments thereto;
  - ii) the Lot Grading Deposit;
  - iii) Building Permit application fee;
  - iv) Plumbing Permit application fee;
  - v) Water meter fee;
  - vi) Service Main connection application and fee, if applicable; and
  - vii) Any other fees, deposits or payments required under this Agreement;
- f) the Town's Fire Department has confirmed that an adequate water supply for firefighting operations and satisfactory access for firefighting equipment is available to service the Lands;
- g) the Town is satisfied all terms and conditions of this Agreement have been complied with insofar as they apply at that point in time;
- h) the Developer has paid all development charges required by the Development Charges By-Law of the Regional Municipality of Niagara; and
- i) the Developer has otherwise complied with all applicable law.

#### **11.2 Water Saving Devices**

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

#### **11.3 No Building Permit While In Default**

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

#### **11.4 Service Main Connections**

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

#### **11.5 Development Charges**

- a) Current development charges from time to time may be obtained from the Building Department of the Town of Fort Erie and from the Regional Municipality of Niagara;

- b) The Developer acknowledges and confirms that all charges, payments, Works to be constructed or installed, studies to be carried out and all other obligations contained in this Agreement or the cost thereof (except where a charge is referred to herein as "a development charge" are characterized as:
  - i) services installed or provided at the expense of the Developer within the Plan of Subdivision, as a condition of approval under Section 51 of the *Planning Act*; or
  - ii) services denoted on approved Plans or specifically noted in the Agreement for which the Developer is making no claim for credits under the Development Charge By-law.

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

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

#### **11.6 Occupancy**

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

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

#### **11.7 Model Units**

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

#### **11.8 Water Meters**

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

### **12. SECURITY DEPOSITS AND CASH PAYMENTS**

#### **12.1 General**

- a) The Developer shall be responsible for the full amount of the cost for the design, construction, installation, servicing and maintenance of the Works for the Plan of Subdivision together with all Town inspection charges, engineering, administrative and consulting fees and in order to guarantee compliance with all conditions contained herein, the Developer shall be required to

post security and cash payments on account of aforesaid costs, charges and fees in accordance with Schedule "F" annexed hereto prior to execution of this Agreement by the Town. The security should be in the form of a standby Letter or Letters of Credit with **automatic renewal provision**, in a form approved by the Town. The Developer covenants and agrees that the Letter of Credit shall be kept in full force and effect and that it will pay all premiums as the Letter of Credit becomes due or until such time as the Town returns the Letter of Credit in accordance with the provisions of this agreement.

- b) The Developer acknowledges and agrees that should there be a deficiency in or failure to carry out any work or matter required by any provision of this Agreement, whether or not such work or matter is specifically secured by way of Letter of Credit, and the Developer fails to comply within seven (7) days of being given written notice with a direction to carry out such work or matter, the Town may draw on the Letter of Credit and enter onto the Lands and complete all outstanding works or matters, and pay all costs and expenses incurred thereby from the proceeds so drawn.
- c) The Developer acknowledges and agrees that the Town reserves the right to draw on and use the proceeds from the Letters of Credit to complete any work or matter required to be done by the Developer pursuant to this Agreement. The Developer further acknowledges and agrees that, notwithstanding any provision to the contrary in this Agreement specifying the reduction or release of security, in the event that the Town determines that any reduction in the Letter of Credit would create a shortfall with respect to securing the completion of any work or matter remaining to be carried out by the Developer pursuant to this Agreement, the Town will not be obligated to reduce or release the Letter of Credit as by the particular provision until such time as such work is satisfactorily completed, or the Town has sufficient security to ensure that such work will be completed.
- d) Whenever in this Agreement a Letter of Credit is required to be filed with the Town, the Developer may instead deposit cash or a certified cheque to be cashed in an amount equal to the Letter of Credit and such deposit shall be held by the Town as security in accordance with this Agreement provided that no interest shall be payable on any such deposit.
- e) The Developer acknowledges that upon the transfer of any ownership of the Lands, the Town will not return any Letters of Credit or cash deposit required under this Agreement until the new Developer files a substitute Letter or Letters of Credit or cash or certified cheque in the required amounts with the Town.
- f) The Developer acknowledges that for the purpose of determining the amount of security to be posted prior to execution, the Developer's Engineer shall provide the Town with an estimate of the cost of design, construction, supervision, inspection and maintenance of all Works. Security to be posted for Primary Services and Secondary Services and Town inspection charges, engineering, administrative and consulting fees shall be calculated, in a manner satisfactory to the Director of Infrastructure Services, on the basis of the Developer's Engineer's estimated cost of design, construction, supervision, inspection and maintenance of all Works as set out in Schedule "F" annexed hereto.
- g) From time to time, upon written request, the Developer's Engineer shall be required to certify in writing the actual cost of design,

construction and maintenance of all Works installed and constructed to date, and the estimated cost of all outstanding Works, and the Director of Infrastructure Services may adjust the amount of security required if the actual cost of construction of all Works, installed and constructed to date or the estimated cost of all outstanding Works exceeds the original estimated costs as set out in Schedule "F" annexed hereto and the Developer shall be required to obtain, and the Developer hereby covenants to obtain, an amendment to the security to give effect thereto. In the event the Developer fails to increase the amount of security within seven (7) days of receipt of aforesaid written notice, then the Developer shall be deemed to be in Final Default of the terms and conditions of this Agreement.

## 12.2 Cash Payments

- a) Prior to the execution of this Agreement by the Town, as security for payment of services to be rendered by the Town and its agents as required by this Agreement, and for presently outstanding payments owing to the Town, the Developer shall, in accordance with Schedule "F" annexed hereto, deposit with the Town cash payment and cash security as set out in Schedule "F", which security shall include, but not be limited to the following:
  - 1. all arrears of taxes and all current taxes and local improvement charges assessed against the lands described in Schedule "A" annexed hereto; and
  - 2. the Town's engineering, administrative, consulting, and inspection costs for this Agreement, approval of the Plans, and enactment of By-laws, shall be payable in cash to the Town at the time of signing of this Agreement calculated on the following basis:
    - i. where the costs of construction of all works is less than \$100,000.00, the charge shall be calculated at 4% of such cost up to maximum of \$4,000.00;
    - ii. where the costs of construction of all works is between \$100,000.00 and \$500,000.00, the charge shall be calculated at 3.5% of such cost up to maximum of \$15,000.00; and
    - iii. where the costs of construction of all works is in excess of \$500,000.00, the charge shall be calculated at 3% of such cost.
- b) The Developer shall reimburse the Town, all legal costs incurred by the Town associated with the preparation, administration and registration of this Agreement.

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

- a) The Developer shall deposit with the Treasurer of the Town, prior to execution of this Agreement, a Letter of Credit in the amount of 15% of the estimated cost of the design and construction of all Primary services to be constructed within the boundaries of the Plan of Subdivision (herein referred to as "On-Site Primary Services"). On default by the Developer in providing the On-Site Primary Services in accordance with the provisions of this Agreement and/or the approved Plans, the Town shall be entitled to call upon such security deposit to pay for the completion of such On-Site Primary Services. Upon receipt of Claims for Liens filed pursuant to the provisions of the *Construction Lien Act* with

respect to the construction of On-Site Primary Services, the Town shall also be entitled to call upon the said Letter of Credit.

- b) Prior to execution of this Agreement by the Town, the Developer shall deposit a Letter of Credit to secure the Subdivider's Grading Deposit as required by By-Law 252-95 and amendments thereto.
- c) For On-Site Primary Services, the Treasurer, from time to time, upon written application of the Developer, may reduce or release security deposits, provided that at no time shall the amount retained be less than 15% of the estimated cost of uncompleted On-Site Primary Services plus 10% of the actual cost of completed works. Before reduction or release of any security deposit, the Treasurer, from out of the security deposit, may pay firstly, into court or in settlement, any liens arising pursuant to the provisions of the *Construction Lien Act* with respect to the construction of On-Site Primary Services secured under Section 12.3 of this Agreement; secondly, any engineering, consulting, administrative and legal costs still owing; thirdly, any arrears of taxes; fourthly, taxes for the then current year whether levied or unlevied, based on the assessment applicable; and finally, shall return the balance, if any, to the Developer.
- d) The Treasurer shall retain as security for the Maintenance Guarantee Period an amount equal to 10% of the total actual cost of On-Site Primary Services completed to guarantee the workmanship and materials of the Works until assumption of the On-Site Primary Services by the Town. Upon assumption in accordance with the provisions of this Agreement, the 10% Maintenance Guarantee hereinbefore referred to may be released by the Treasurer to the Developer.

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

- a) The Developer shall deposit with the Treasurer of the Town, prior to execution of this Agreement, a Letter of Credit for 100% of the costs of design and construction of all Primary Services outside the boundaries of the Plan of Subdivision (herein referred to as "Off-Site Primary Services"). On default of the Developer in providing the Off-Site Primary Services in accordance with the provisions of this Agreement and/or the approved Plans, the Town shall be entitled to call upon such security deposit to pay for the completion of such Off-Site Primary Services. The Town shall also have the right to call upon the said security deposit upon receipt of Claims for Liens filed pursuant to the provisions of the *Construction Lien Act* with respect to Off-Site Primary Services.
- b) For Off-Site Primary Services, the Treasurer, from time to time, upon written application of the Developer, may reduce or release security deposits, provided that at no time shall the amount retained be less than 100% of the estimated cost of uncompleted Off-Site Primary Services plus 10% of the actual cost of completed works. Before reduction or release of any security deposit, the Treasurer, from out of the security deposit, may pay firstly, into court or in settlement, any liens arising pursuant to the provisions of the *Construction Lien Act* with respect to the construction of Off-Site Primary Services secured under Section 12.4 a) of this Agreement; secondly, any engineering, consulting, administrative and legal costs still owing; thirdly, any arrears of taxes; fourthly, taxes for the then current year whether levied or unlevied, based on the assessment applicable; and finally, shall return the balance, if any, to the Developer.

- c) The Treasurer shall retain as security for the Maintenance Guarantee Period an amount equal to 10% of the total actual cost of Off-Site Primary Services completed to guarantee the workmanship and materials of the Works until assumption of the Off-Site Primary Services by the Town. Upon assumption in accordance with the provisions of this Agreement, the 10% Maintenance Guarantee hereinbefore referred to may be released by the Treasurer to the Developer.

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

- a) The Developer shall deposit with the Treasurer of the Town, prior to execution of this Agreement, a Letter of Credit in the amount of 120% of the costs of design and construction of all Off-Site and On-Site Secondary Services. On default of the Developer in providing the Secondary Services in accordance with the provisions of this Agreement and/or the approved Plans, the Town shall be entitled to call upon such security deposit in order to pay for the completion of such Secondary Services. The Town shall also have the right to call upon the said security deposit upon receipt of Claims for Lien filed pursuant to the provisions of the *Construction Lien Act* with respect to Secondary Services.
- b) For all Secondary Services, the Treasurer, from time to time, upon written application of the Developer, may reduce or release such security deposits, provided that at no time shall the amount retained be less than 120% of the estimated cost of uncompleted Secondary Services. Before reduction or release of any security deposit, the Treasurer, from out of the security deposit, may pay firstly, into court or in settlement, any liens arising pursuant to the provisions of the *Construction Lien Act* with respect to the construction of Secondary Services secured under Section 12.5 a) of this Agreement; secondly, any engineering, consulting, administrative and legal costs still owing; thirdly, any arrears of taxes; fourthly, taxes for the then current year whether levied or unlevied, based on the assessment applicable; and finally, shall return the balance, if any, to the Developer.
- c) The Treasurer shall retain as security for the Maintenance Guarantee Period an amount equal to 10% of the total actual cost of Secondary Services completed to guarantee the workmanship and materials of the Works until assumption of Secondary services by the Town. Upon assumption in accordance with the provisions of this Agreement, the 10% Maintenance Guarantee hereinbefore referred to may be released by the Treasurer to the Developer.

#### 12.6 Upon written demand by the Director of Public Work and upon the Developer making application for release of security, the Developer shall deliver to the Town, a statutory declaration by or on behalf of the Developer stating:

- a) the date of completion of the subject services;
- b) Works completed to date;
- c) all accounts that have become due and payable in connection with the construction, installation, inspection, repair and maintenance of the subject services have been paid; and
- d) all requirements of the *Construction Lien Act* have been complied with to date and proof of expiration of liens under the *Construction Lien Act*.

### 13. **TENDERS, INSURANCE & BONDING**

13.1 If required by the Town, the Developer shall call for tenders for the Works in accordance with the Town's Tendering Policy (By-law No. 111-95). Where the Town requires the Developer to call for tenders, any tender proposed to be accepted by the Developer shall not be accepted until same has been approved in writing by the Director of Infrastructure Services.

13.2 Prior to commencement of any Works, the Developer shall, at his sole expense, provide the Town with:

- a) a copy of the contractor's Performance and Maintenance Bond and Labour and Material Payment Bond each for One Hundred Percent (100%) of the contract sum, if required. The aforesaid Bonds shall unconditionally guarantee to the Developer and the Town that the Works will be satisfactorily completed and maintained within the terms of the contract, this Agreement and the approved Plans up to the face value of the bond. Without limiting the generality of the foregoing, such Bonds shall cover extensions to the contract, modifications thereof, and the Maintenance Guarantee Period. The bonding company shall not replace a prime contractor or subcontractor without prior written approval of the Director of Infrastructure Services. Bonding companies are subject to acceptance by the Town;
- b) a certified copy of the Developer's third party All Perils and Liability Insurance Policy naming the Town as an additional insured in a form satisfactory to the Town as follows:
  - i) the policy is to be written on the comprehensive form including contractual liability and complete operations with an inclusive limit of two million dollars (\$2,000,000.00) bodily injury (including death) and property damage with a deductible not greater than one thousand dollars (\$1,000.00);
  - ii) the Liability Insurance Policy shall not contain any exclusions for damage to property, support of any property, building or land arising from the removal or weakening of support of any property, building or land whether such support be natural or otherwise and shall not contain an exclusion for blasting;
  - iii) the Standard Automobile Policy shall cover both owned and non-owned vehicles with inclusive limits of not less than two million dollars (\$2,000,000.00) bodily injury (including death) and property damage with a deductible not greater than one thousand dollars (\$1,000.00);
  - iv) excess umbrella liability coverage of four million dollars (\$4,000,000.00) for all risks included in (i) and (ii) above shall be provided with a retained limit up to ten thousand dollars (\$10,000.00);
  - v) "Cross Liability" and "Severability of Interest" clauses or endorsements shall be provided;
  - vi) an endorsement will be provided to the effect that the policy or policies will not be altered, cancelled or allowed to lapse without thirty (30) days prior written notice to the Town from the insurer;

- vii) the premium for the said policies shall be paid initially for a period of two (2) years and the policy shall be renewed for further one-year periods until all Works required under this Agreement are installed and assumed by the Town;
- viii) The policy of insurance shall not be construed as relieving the Developer from responsibility for the deductibles or other or larger claims, if any, for which the Developer or Town may be held responsible;
- c) a certificate from the Worker's Safety Insurance Board certifying the contractor is in good standing with the Board; and
- d) satisfactory evidence the contractor is qualified, experienced and has the equipment to successfully complete the Works.

#### **14. DEFAULT**

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

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

**14.2** Developer shall be deemed to be in Final Default if:

- a) the Town receives written notice from the Bank of its intention to not renew the Letter of Credit;



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

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

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

**SIGNED, SEALED and DELIVERED in  
the Presence of:**

**2298423 ONTARIO INC.**

Per:

Wilf Goldlust, Owner

I have the authority to bind the Corporation.

Date: \_\_\_\_\_

**THE CORPORATION of the TOWN of  
FORT ERIE**

Per:

Douglas Martin, Mayor

Per:

Carolyn Kett, Town Clerk

Date: \_\_\_\_\_

**SCHEDULES**

- A. Description of Lands
- B. Lands Conveyed for Public Purposes
- C. Required Municipal Easements
- D. Required Utility Easements
- E. List of Approved Drawings
- F. Security and Financial Requirements
- G. Draft Plan Conditions
- H. Outstanding Claims, Liens or Encumbrances
- I. Special Provisions

**SCHEDULE "A"**

**Description of Lands**

Part Lot 23, Concession 1 Lake Erie Bertie being Parts 1 & 2 on 59R-14713; subject to an easement in gross over Part Lot 23, Concession 1 Lake Erie Bertie being Part 2 on 59R-14713 as in RO103006, Town of Fort Erie,

Being all of PIN 64191-0352 (LT)

And

Part Lot J, Plan 349 Village of Ridgeway, Part Lot 23, Concession 1 Lake Erie Bertie being Parts 3 & 4 on 59R-14713; subject to easement in gross over Part Lot 23, Concession 1 Lake Erie Bertie being Part 3 on 59R-14713 as in RO277345, Town of Fort Erie,

Being all of PIN 64191-0353 (LT)

**SCHEDULE "B"**

**Lands Conveyed for Public Purposes**

1. The Developer shall transfer title to the Corporation of the Town of Fort Erie, free and clear of all encumbrances and at its own expense, the following:
  - a. Block 7 and Block 8 for 0.30m (1') reserve; and
  - b. Block 5 and Block 6 for Hibbard Street road widening and day lighting triangles

All references to Blocks in this Agreement relate to the undated preliminary Plan of Subdivision (Plan 59M) prepared by Chambers and Associates Surveying Ltd., Drawing No12007-2\_MP\_JAN 31-13 stamp received by Community and Development Services on February 1, 2013.

**SCHEDULE "C"**

**Required Municipal Easements**

The Developer shall convey free and clear of all encumbrances and at its own expense, an easement to The Corporation of the Town of Fort Erie; over, under and through Part 1, Part 2 and Part 3 for storm drainage purposes as laid out on the preliminary Reference Plan (Plan 59R) prepared by Chambers and Associates Surveying Ltd., Drawing No. 12004-2\_RP\_JAN 31-13 stamped received by the Town's Community & Development Services on February 1, 2013.

**SCHEDULE "D"**

**Required Utility Easements**

NONE

**Required Private Easements**

1.0m wide walking easement over Units #3 to 8 and #16 to 11 from Prospect Point Road Allowance.

**SCHEDULE "E"**

**List of Approved Drawings**

1. General Servicing Plan for Willow Trail Subdivision prepared by Asfur Engineering, dated January 19, 2012 as Drawing No. P-01A, last revised December 29, 2012 or the latest revision thereof.
2. Grading Plan for Willow Trail Subdivision prepared by Asfur Engineering, dated September 22, 2011 as Drawing No. P-02, last revised December 29, 2012 or the latest revision thereof.
3. Streetscaping Plan for Willow Trail Subdivision prepared by Asfur Engineering, dated June 10, 2012 as Drawing No. P-04, last revised December 29, 2012 or the latest revision thereof.
4. Hibbard Street Reconstruction for Willow Trail Subdivision prepared by Asfur Engineering, dated October 1, 2011 as Drawing No. R-01, last revised December 29, 2012 or the latest revision thereof.
5. Tree Protection Plan for Willow Trail Subdivision prepared by Donald Martin Landscape Architect, dated April 30, 2012 as Drawing No. TP-1, last revised October 21, 2012 or the latest revision thereof.
6. Hibbard Street Storm Channel for Willow Trail Subdivision prepared by Asfur Engineering, dated May 10, 2012 as Drawing No. R-02, last revised April 12, 2012 or the latest revision thereof.
7. Grading Plan Stormwater Channel for Willow Trail Subdivision prepared by Asfur Engineering, dated May 10, 2012 as Drawing No. P-03, last revised April 10, 2012 or the latest revision thereof.
8. Drainage Plan for Willow Trail Subdivision prepared by Asfur Engineering, dated October 10, 2011 as Drawing No. DP-01, last revised May 10, 2012 or the latest revision thereof.



**SCHEDULE "F"**

Willow Trail Subdivision

February 13, 2013

**Financial Obligations and Cost of Construction**  
**(Includes 10% Engineering, 10% Contingency and 13% HST)**

**OFF-SITE PRIMARY SERVICES**

|  |              |
|--|--------------|
| General Items (bonding, layout, traffic)   | \$47,860.00  |
| Water Distribution System and Services   | \$48,960.00  |
| Sanitary Services  | \$28,710.00  |
| Storm Sewer System and Services including two (2) outlets on Prospect Point Road | \$87,470.00  |
| Hibbard Street Reconstruction  | \$79,990.00  |
|  | <hr/>        |
|  | \$292,990.00 |

**100% of Off-Site Primary Services** **\$292,990.00 (1)**

**ON-SITE PRIMARY SERVICES**

|   |             |
|---|-------------|
| Storm Sewer System and Services   | \$27,210.00 |
| Sodding of Swales   | \$3,420.00  |
| Tree Protection and Removals in accordance with Tree Protection Plan Approved | \$2,050.00  |
|   | <hr/>       |
|   | \$32,680.00 |

**15% of On-Site Primary Services** **\$4,902.00 (2)**

**OFF-SITE SECONDARY SERVICES**

|  |             |
|--|-------------|
| Asphalt Driveway Aprons                | \$2,320.00  |
| Grading and Sodding of Boulevards      | \$13,640.00 |
| Street Trees                           | \$9,020.00  |
| Concrete Sidewalk                      | \$31,990.00 |
| Top Coat of Asphalt for Hibbard Street | \$13,950.00 |
|  | <hr/>       |
|  | \$70,920.00 |

**120% of SECONDARY SERVICES** **\$85,100.00 (3)**

**TOTAL CONSTRUCTION OF SERVICES** **\$396,590.00 (4)**

**SUBDIVIDER'S GRADING DEPOSIT (16 units at \$200/unit)** **\$3,200.00 (5)**

**5% CASH IN LIEU OF PARKLAND DEDICATION** **\$32,000.00 (6)**

**ENGINEERING, ADMINISTRATION and INSPECTION FEES** **\$13,881.00 (7)**  
 [Calculated at 3.5% of (5)]

**REMOVAL OF HOLDING PROVISIONS (2 properties at \$656 each)** **\$1,312.00 (8)**

**DEPOSIT FOR LEGAL EXPENSES** **\$2,500.00 (9)**

**SERVICE CONNECTION PERMIT FEES (16 LOTS at \$159/lot)** **\$2,544.00 (10)**

**COMMISSIONING OF WATER SERVICE LINE** **\$500.00 (11)**

**SUMMARY****A. LETTER OF CREDIT REQUIRED**

**Total of (1) + (2) + (3) + (5)** **\$386,192.00**

**B. CASH PAYMENT REQUIRED**

**Total of (6) + (7) + (8) + (9) + (10) + (11)** **\$52,737.00**

## **SCHEDULE "G"**

### **Draft Plan Conditions**

The conditions of final approval and registration of Willow Trail Draft Plan of Subdivision by Willow Trail Homes Inc., File No. 350308-0075 Town of Fort Erie are as follows:

1. This approval applies to the Willow Trail Draft Plan of Subdivision, being Parts 1,2,3 and 4 on Plan 59R-9564 and Part of Lot "J" on Plan 349, Part of Lot 23, Concession 1 Lake Erie, formerly the Township of Bertie, now in the Town of Fort Erie, Regional Municipality of Niagara prepared by Douglas G. Marr, Ontario Land Surveyor dated May 19<sup>th</sup>, 2005 showing Blocks 1 to 4 intended for 16 street Townhouse dwellings and Blocks 5 and 6 to be dedicated to the Town of Fort Erie as public highway.
2. That the owner agrees in writing to satisfy all the requirements, financial and otherwise, of the Town of Fort Erie concerning the provision of roads, daylight triangles, sidewalks, fire hydrants, streetlighting, lot reserves, the extension and installation of services and drainage including the upgrading of services and the restoration of existing roads damaged during the development of the Plan of Subdivision.
3. That pursuant to Section 51.1(3) of the Planning Act the owner shall pay to the Town of Fort Erie a cash park dedication equal to 5% of the value of the land to be subdivided.
4. That the owner agrees to deed any and all easements that may be required for access, utilities and drainage purposes to the appropriate authorities and utilities.
5. That the subdivision agreement include a clause requiring that each agreement of purchase and sale state that "Roof downspouts shall discharge only to ground surface via splash pads to either side or rear yards, with no direct connection to the storm sewer or discharge directed to the driveway or roadway".
6. That the subdivision agreement include a clause requiring that each agreement of purchase and sale state that "Public sidewalk installation will be in accordance with the terms of the subdivision agreement and as per the approved plans on file at Town Hall".
7. That the subdivision agreement include a clause requiring that each agreement of purchase and sale state that "The owner (developer) shall be responsible for installing paved driveway aprons from curb to property line or from curb to the sidewalk".
8. That the owner submit for review and approval by the Town a Geotechnical Study, prepared by a qualified engineer, that verifies the soil bearing capacity, recommends appropriate sewer pipe design, pipe bedding and backfill and roadway designs.
9. That the owner prepare a detailed Subdivision Grade Control Plan showing both existing and proposed grades and the means whereby major storm flows will be accommodated across the site be submitted to the Town of Fort Erie for review and approval.
10. That the lands within the subdivision be designated in the Official Plan and zoned in accordance with the Town of Fort Erie Zoning By-law to permit the proposed use.

11. That the owner shall co-ordinate the preparation of an Overall Utility Distribution Plan to the satisfaction of all affected authorities.
12. That the Subdivision if phased be to the satisfaction to the Town.
13. That the owner shall enter into any agreement as required by utility companies for installation of services including the provision of street lighting all in accordance with the standards of the Town of Fort Erie. All utilities servicing the subdivision shall be underground.
14. That the owner provide Canadian Niagara Power Company with a construction schedule and a complete set of drawings including the final Plan of Subdivision and servicing plans showing all grading and drainage, all storm and sanitary sewers, all water lines and all road, curb and sidewalk construction including road cross sections.
15. That the owner satisfy the Canadian Niagara Power Company with respect to the design and installation of electrical facilities and street lighting all at the owner's expense.
16. That the Town be provided with a surveyor's certificate showing lot frontages and net lot area for the final Plan of Subdivision.
17. That the design drawings for water, sanitary sewer and storm water drainage systems to service this development be submitted to the Regional Municipality of Niagara Public Works Department and the Town of Fort Erie for review and approval.
18. That prior to final approval for registration of this plan, the owner shall obtain Ministry of the Environment Certificates of Approval to the satisfaction of the Regional Municipality of Niagara Public Works Department and the Town of Fort Erie for the necessary servicing (watermains, storm sewers, and sanitary sewers) for this development.
19. That prior to approval for the final plan or any on-site grading, the owner shall if required submit to the Town of Fort Erie for review and approval two copies of a detailed stormwater management plan for the subdivision and following plans designed and sealed by a suitably qualified professional engineer in accordance with the Ministry of the Environment documents entitled "Stormwater Management Planning and Design Manual", March, 2003, and "Stormwater Quality Guidelines for New Development", May 1991:
  - a) Detailed lot grading and drainage plans, noting both existing and proposed grades and the means whereby overland flows will be accommodated across the site;
  - b) Detailed sediment and erosion control plans.
20. That the subdivision agreement between the owner and the Town of Fort Erie contain provisions whereby the owner agrees to implement the approved stormwater management plan required in accordance with Condition 19 above.
21. That the owner provide a Record of Site Condition (RSC) signed by the owner and the consultant verifying that the site assessment has been completed in accordance with the Ministry of the Environment's procedures be submitted to the Ministry for acknowledgement and that a copy of the Ministry-acknowledged RSC be provided to the Regional Planning Department and the Town of Fort Erie indicating that the site is suitable for residential use prior to final approval.

22. That the owner agrees to provide to the Town acceptable measures to protect the existing trees and vegetation located to the south of the south property line of the development.
23. That the Subdivision Agreement between the owner and the Town be registered by the Municipality against the lands to which it applies in accordance with the Planning Act.
24. That if the final approval is not given to this plan within three (3) years of the approval date and no extensions have been granted, Draft Plan Approval shall lapse. If the owner wishes to request an extension of the Draft Plan Approval, a written explanation with reasons why the extension is required together with the resolution form the Region must be received by the Town prior to the lapsing date.

#### Clearance of Conditions

Prior to granting approval of the final plan, the Town will require written confirmation from the following agencies that their respective conditions have been met satisfactorily:

- ♦ Regional Niagara Planning & Development Department for Condition 21.
- ♦ Regional Niagara Public Works Department for Conditions 17 and 18.
- ♦ Canadian Niagara Power Inc. Company for Conditions 1.

#### 1. THE LANDS REQUIRED TO BE REGISTERED UNDER THE LAND TITLES ACT:

- a) Section 160(1) of the Land Titles Act which requires all new plans to be registered in the Land Titles system.
- b) Section 160(2) allows certain exceptions.

#### 2. WATER AND SEWER SYSTEMS

Inauguration or extension of a piped water supply, a sewage system or a storm drainage system is subject to the approval of the Ministry of Environment under Section 52 and 53 of the Ontario Water Resources Act, R.S.O. 1990.

#### 3. CONVEYING

As the land mentioned above be conveyed to the Municipal Corporation may be more easily described in the conveyance by reference to a registered plan than by "metes and bounds" be it suggested that the description be so worded and be it further suggested the owner give to the Municipality an undertaking to deposit with the Clerk a properly executed copy of the conveyance concurrent with the registration of the plan.

4. In order to assist agencies listed above in clearing the conditions of final approval and registration of the plan, it may be useful to forward executed copies of the agreement between the owner and the Town to these agencies. In this instance this copy should be sent to:

Mr. Richard Berry  
Canadian Niagara Power Company Limited  
1130 Bertie Street, P.O. Box 1218  
Fort Erie, Ontario L2A 5Y2  
Phone: (905) 871-0330

Mr. David Farley  
Regional Niagara Planning & Development Department  
2201 St. David's Road, P.O. Box 1042  
Thorold, Ontario, L2V 4T7  
Phone: 1-800-263-7215

Mr. William Stevens  
Regional Niagara Public Works Department  
2201 St.David's Road, P.O.Box 1042  
Thorold, Ontario, L2V 4T7  
Phone: 1-800-263-7215

5. REVIEW OF CONDITIONS

The applicants are advised that should any of the condition appear unjustified or their resolution appear to be too onerous they are invited to bring their concerns to Council's attention. Council will consider a request to either revise or delete conditions.

6. SUBDIVISION AGREEMENT

Prior to registration, a copy of the executed subdivision agreement for the proposed development should be submitted to the Regional Planning Department for verification that the appropriate clauses pertaining to any of these conditions of approval have been included.

7. NOTE

The owner is advised that Service Connection Permits must be obtained from the Town for connection to existing sewers and watermains.

**SCHEDULE "H"**

**Outstanding Claims, Liens or Encumbrances**

PIN: 64191-0352 (LT)

1. Permit the Easement in favor of the Consumer's Gas Company registered June 10, 1969 as instrument number RO103006; and
2. Supplementary Deed of Trust & Mortgage in favor Canada Permanent Trust Co. registered October 6, 1972 as Instrument Number RO173874; and
3. Supplementary Deed of Trust & Mortgage in favor Montreal Trust Company of Canada registered August 17, 1973 as Instrument Number RO194505; and
4. Supplementary Deed of Trust & Mortgage in favor Montreal Trust Company of Canada registered February 13, 1974 as Instrument Number RO206430; and
5. Supplementary Deed of Trust & Mortgage in favor Montreal Trust Company of Canada registered October 29, 1974 as Instrument Number RO223191; and
6. Supplementary Deed of Trust & Mortgage in favor Montreal Trust Company Canada registered September 30, 1975 as Instrument Number RO244321; and
7. Supplementary Deed of Trust & Mortgage in favor Montreal Trust Company of Canada registered February 23, 1976 as Instrument Number RO254072;

PIN: 64191-0352 (LT)

1. Permit the Easement in favor of Her Majesty the Queen (Ontario) represented by Minister of the Environment registered February 18, 1977 as Instrument Number RO277345; and

## SCHEDULE "I"

### Special Provisions

1. Prior to registration of this Agreement by the Town, the Developer shall file with the Director of Community and Development Services, an Ontario Land Surveyor's Certificate verifying all Lots as laid out on the proposed Plan of Subdivision meet or exceed the minimum Lot area and Lot frontage provisions of the Town Zoning By-Law.
2. The Developer shall carry out or cause to be carried out any on-site grading, all stormwater management techniques and works including re-vegetating all disturbed areas and maintaining erosion and sediment control to the satisfaction of the Town of Fort Erie, in accordance with the Ministry of Environment documents entitled "*Stormwater Management Planning and Design Manual*", March 2003, and "*Stormwater Quality Guidelines for New Development*", May 1991 in accordance with the approved:
  - a) Detailed lot grading and drainage plans, noting both existing and proposed grades and the means whereby overland flows will be accommodated across the site;
  - b) Detailed sediment and erosion control plans.
3. Notwithstanding the requirement of Sub-Paragraph 9.17 of the Subdivision Agreement, the Developer shall be responsible for tree plantings and tree maintenance within the road allowance fronting the lots in the subdivision as guaranteed by the Letter of Credit, in accordance with the agreement and to the satisfaction of the Director of Infrastructure Services. Prior to planting street trees, Developer shall confirm species and location with the Director of Infrastructure Services.
4. The Developer acknowledges and agrees to provide backflow preventors at each sanitary sewer lateral to the satisfaction of the Director of Infrastructure Services.
5. The Developer acknowledges and agrees that all Offers to Purchase and Agreements of Purchase and Sale or Lease negotiated shall contain a clause clearly indicating that *"all building roof downspouts and sump pump discharge within this subdivision shall discharge only to ground surface via splash pads to either side or rear yards, with no direct connection to the storm sewer or discharge directed to the driveway or roadway"*.
6. The Developer acknowledges and agrees that all Offers to Purchase and Agreements of Purchase and Sale or Lease negotiated shall contain a clause clearly indicating that *"public sidewalk construction at the Developer's expense shall be in accordance with the terms of the Subdivision Agreement and the approved plans on file at the Town"*.
7. The Developer acknowledges and agrees that all Offers to Purchase and Agreements of Purchase and Sale or Lease negotiated shall contain a clause clearly indicating that *"the Developer shall be responsible for installing paved driveway aprons (or alternative material approved by the Town) from the curb to the sidewalk and in the absence of a sidewalk, from the curb to the property line"*.
8. The Developer acknowledges and agrees that all Offers to Purchase and Agreements of Purchase and Sale or Lease negotiated for **Block 3 only** shall contain a clause clearly indicating that *"Purchasers/Tenants are advised that the driveway for this property is not adequate to accommodate vehicular parking. Off-street parking shall be provided exclusively within the attached*

*garage. Encroachments by vehicles onto Town lands will not be permitted and parking infractions will be enforced."*

9. The Developer shall provide detailed lot grading and drainage plans noting both existing and proposed grades and the means whereby overland flows will be conveyed across the site to the satisfaction of the Town of Fort Erie and the Regional Niagara Public Works Department.
10. The Developer acknowledges and agrees to co-ordinate the preparation of an Overall Utility Distribution Plan to the satisfaction of all affected authorities.
11. Phasing of the Subdivision as approved by the Town.
12. The Developer shall make arrangements satisfactory to the Town of Fort Erie, Bell Canada, Enbridge Gas and other Public Utilities including Cable TV, for the provision of underground utility services, internal and external to this development.
13. The Developer shall carry out or cause to be carried out the tree protection measures approved on the Tree Protection Plan for Willow Trail Subdivision prepared by Donald Martin Landscape Architect.