

SUBDIVIDER'S AGREEMENT

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THIS AGREEMENT made the DATE day of MONTH, YEAR

B E T W E E N:

THE CORPORATION OF THE CITY OF WELLAND

hereinafter called "the City"

OF THE FIRST PART

and

«OWNERNAME»

hereinafter called "the Owner(s)"

OF THE SECOND PART

WHEREAS the Owner represents that it is the Owner of the lands described in Schedule "A" hereto attached and that it has applied to the City of Welland for approval of a plan of subdivision thereof in accordance with the plans prepared by «SurveyorName»;

AND WHEREAS the City requires that the Owner enter into an Agreement with the City to construct and install at the Owner's expense certain municipal services to serve the said lands and to make certain financial arrangements with the City and with the Welland Hydro-Electric System Corp. in connection therewith before approval of the said plan by the City of Welland;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and of the covenants and Agreements hereinafter set out and the sum of One Dollar (\$1.00) of lawful money of Canada now in hand paid by the City to each of the other parties hereto (the receipt whereof is hereby by each of them acknowledged), the Parties hereto covenant, promise and agree as follows:

## 1. DEFINITIONS

In this Agreement:

- (a) "City Clerk" means the Clerk of The Corporation of the City of Welland;
- (b) "City Engineer" means the Engineer of The Corporation of the City of Welland;
- (c) "City Treasurer" means the Treasurer of The Corporation of the City of Welland;
- (d) "Commission" means the Welland Hydro-Electric System Corp.;
- (e) "Consultant" means the Engineer or firm of professional engineers of Ontario retained by the Owner;
- (f) "Owner" means any entity which owns the lands described in Schedule "A" to this Agreement and its respective heirs, executors, administrators, successors and assigns of each of the parties to this Agreement and includes its successors in Title to the

subject lands;

- (g) "plan" means the plan of subdivision ultimately approved for registration by The Corporation of the City of Welland upon the lands described in Schedule "A" annexed hereto, in accordance with this Agreement;
- (h) "primary services" means sanitary sewers systems, storm sewers systems, watermains, granular road base, base coarse asphalt and other underground utilities including electrical distribution systems; commissioning of streetlights; installation of street name and traffic control signs owned by the City;
- (i) "secondary services" means curbs, gutters, sidewalks, driveway aprons, top course asphalt, all sod within the right-of-way, sodding of drainage swales, walkways, fencing and any other appurtenances and adjustments to valve boxes, manhole covers, catchbasins and other works described or listed in Appendix I to this Agreement;
- (j) "Water Department" means the department under the jurisdiction of The Corporation of the City of Welland;
- (k) "works" includes all of the constructions, erections, installations and plantings referred to in Appendix I to this Agreement and all drawings, plans specifications, contracts and other documents relating thereto.

## **2. MUNICIPAL SERVICES AND STANDARDS**

The Owner will, at his expense, construct, install, erect and landscape to the satisfaction of the City all of the works set out in Appendix I and in so doing shall adhere strictly to the standards and specifications set out therein; provided that if this Agreement and Appendix I are silent respecting any standards or specifications or design for any of the works, then the standards and specifications normally required for such work by the City shall be followed; provided that whenever any discrepancy and/or conflict arises between the standards and specifications set out in Appendix I and the City of Welland's "Municipal Standards Manual" and "Standards for Water Distribution and Disinfection", the latter shall govern; provided further that if the City has no standards and specifications for any particular portion of the works, the City Engineer shall determine them.

The said standards and specifications set out herein, being Appendix I, are attached hereto.

## **3. CONSULTANT'S DUTIES**

The Owner shall retain a consultant to:

- (a) prepare any further plans, designs and specifications necessary for the execution of the works;
- (b) prepare all documents necessary for the making of any contract for the execution of any of the works;
- (c) prepare, with the co-operation of the City Engineer any application for any necessary

- approval of any of the works;
- (d) prepare tender documents;
  - (e) call for tenders for the works;
  - (f) provide the City Engineer with all tender documents for all bids for any part of the works, together with the names of the contractors and sub-contractors proposed to be used;
  - (g) lay out the construction of the works;
  - (h) provide full-time inspection and supervision during construction of the works;
  - (i) furnish the City with a certificate with respect to each lot or block for which a Building Permit Application is made, certifying that grades have been or will be set prior to commencement of construction in conformity with the overall grading plan;
  - (j) prior to occupancy, prepare and provide the City, for each lot or block within the plan, a certificate of final grade elevation, indicating that the property has been developed in conformity with the overall grading plan;
  - (k) keep and maintain complete records pertaining to the works;
  - (l) advise the Owner in the making of progress payments for the works;
  - (m) inspect the completed works and issue a final completion certificate to the City Engineer in the form set out in paragraph 11(a) of this Agreement;
  - (n) make and deliver to the City Treasurer, where applicable, a statutory declaration respecting payment for the works as required by Section 12; and
  - (o) prepare and deliver to the City Engineer, mylar or equivalent drawings as required by Section 12.

#### **4. CITY ENGINEER'S APPROVAL**

(1) All plans, specifications, design drawings, tender documents and contract document shall comply in all respects with the City of Welland's "Municipal Standards Manual" and the same shall be submitted to the City Engineer and shall not be used for the purpose for which they are intended until he has approved them.

(2) No such approval by the City Engineer shall operate as a release by the City of any liability of the Owner.

**5. CONTRACTORS AND SUB-CONTRACTORS**

No contractor, sub-contractor or supplier of material shall be used without the consent of the City Engineer.

**6. COMMENCEMENT OF CONSTRUCTION**

(1) The Plan shall not be registered, and no construction of any of the works shall be commenced, and no lot in the plan shall be sold unless and until:

- (a) the Owner has delivered to the City a duly executed transfer of, and a discharge of any encumbrance from, the lands to be conveyed for public purposes other than highways;
- (b) the City has been advised in writing by the Welland Hydro-Electric System Corp. that it is satisfied with the design and security requirements relative to the underground electric distribution and streetlighting systems;
- (c) the taxes and local improvement rates have been paid in accordance with the Section entitled "TAXES AND LOCAL IMPROVEMENTS";
- (d) a plan showing proposed elevations of all streets and front and rear yards and garage floors has been presented to the City Engineer and approved by him;
- (e) the easements and other transfers required by this Agreement have been transferred to the City;
- (f) the Owner has delivered to the City the security deposit required by this Agreement and the inspection fees set out in Section 10;

(2) (a) the Owner shall not commence construction of any of the works referred to in Appendix I of this Agreement until he has obtained the written consent of the City;

(b) the Owner shall, prior to commencement of construction of any phase of the works, give to the City at least two (2) working days notice of his intention;

construction of any water facilities may be carried out only after 48 hours notice as above and only in the presence of the Water Department Inspector for the City;

(c) all phases of construction; for example, sewers, waterworks, road construction, etc., once started shall proceed to completion without unreasonable delay or interruption and shall be completed within the time stipulated in the specifications forming a part of Appendix I to this Agreement, subject only to delays arising from inclement weather, strikes, lock-outs and acts of God;

(d) the Owner's Consultant will be responsible for complete supervision of layout and full-time inspection of all construction, but the City shall have the right to

inspect any phase of the work as it deems necessary. The Developer shall notify the City when the Engineer or engineering firm is changed during the course for the development to ensure that the continuity of review of the works in the development is not affected.

(3) The Owner agrees that where construction has not commenced within one (1) year of the date of the execution of this Agreement, the City, at its sole discretion, may refuse to renew any Building Permit or other permit required hereunder until such time as the Owner has executed Agreement reflecting the standards and policies required by the City at that time.

## **7. PROSECUTION OF THE WORKS**

(1) The Owner and his Consultant shall prosecute the works with diligence but shall always obey any written instructions of the City Engineer which call for the commencement or temporary abatement of any part thereof.

(2) The Owner shall test the watermains and water services to the right-of-way limits as required by Ontario Provincial Standards and Ministry of Environment Guidelines.

(3) If at any time and from time to time during the development of the subdivision, the City Engineer is of the opinion that additional works are necessary to provide adequately any of the services herein specified, the Owner shall construct, install or perform such additional works at the request of the City Engineer. The costs of such additional works shall be agreed upon prior to the commencement of the construction of same.

(4) If, in the opinion of the City Engineer, the construction of any portion of the works is being unreasonably or unnecessarily delayed, or if any portion of the works is being improperly constructed, and the Owner, after seven (7) days notice in writing except an emergency as determined by the City Engineer, to commence or to correct the improper work, does not do so forthwith, the City may enter upon the lands and commence and continue the works or remedy the improper work, and the cost thereof shall be deducted from the security held by the City and such entry and any such work done by the City shall not be deemed an acceptance of any of the works by the City nor an assumption by the City of any liability in connection therewith nor a release of the Owner from any of his obligations hereunder. Further, the Owner shall indemnify the City from all loss, costs, damages and claims which the City may suffer by reason of such entry and the performance of any such work.

## **8. FINANCIAL ARRANGEMENTS**

(1) The Owner shall deposit with the City Treasurer security in the amount of 50% of the estimated total cost of all the works, including engineering design and supervision costs plus H.S.T. costs of 1.76%, in the form of:

(a) an irrevocable letter of credit satisfactory to the City Treasurer from any financial institution approved by the City Treasurer in accordance with City Policy upon which the City may draw funds without the consent of the Owner;  
or

(b) cash.

(2) The said security deposit may be reduced from time to time as the works progress by amounts which will leave the amount of the security deposit equal to 10% of the original estimated total cost of the works, not to exceed \$50,000.00; plus the sum of the estimated amounts of the works yet to be completed; plus works completed and not paid for;

(3) Save as otherwise provided herein, the said security shall be realized upon by the City only for the purpose of applying it to pay the cost of any of the works.

(4) When a cash deposit is given, the City Treasurer shall deposit same in a Chartered Bank or subject to Section 286(1) (b) of The Municipal Act, 2001, as amended, in any similar financial institution, and the Owner shall be entitled to any interest or dividends earned thereupon as and when they become payable.

(5) The City Engineer shall, from time to time, review the sums deposited by the Owner in accordance with paragraph 8(1), and the City may, from time to time, demand an increase in the sums deposited in accordance with increases in the actual cost of performing the works required. The Owner shall deposit such further and other sums as the City Engineer deems reasonably necessary to ensure the completion of the outstanding works.

**9. INSPECTIONS BY THE CITY**

The City Engineer or anyone duly authorized by him shall have the right at any time to inspect any of the works in progress, and if the City Engineer or his duly authorized agent informs the Owner or his Consultant or Contractor that an inspection of any particular part of the works is to be made, such part of the works shall not be covered up or otherwise enclosed until such inspection has been made, and in the event that such part of the works is covered or enclosed after the aforesaid notice has been delivered, it shall be uncovered or opened for such inspection upon the demand of the City Engineer at the expense of the Owner.

**10. INSPECTION AND ENGINEERING FEES**

(a) The Owner will be required to pay to the City in advance, a fee based on the actual cost of all the works (except hydro electrical installations) for examination, recommendation and final approval of plans and specifications and for any casual inspection deemed necessary and carried out by the City as follows:

<b>Cost of Works</b>	<b>% Fee</b>
Less than \$100,000.00	4.0%
\$100,000.00 - \$500,000.00	3.5%
More than \$500,000.00	3.0%
PLUS H.S.T.	13%

(b) the Owner will be required to pay to the City, in advance, a fee of 5% of the actual cost of all waterworks for inspection purposes, plus 13% H.S.T.

(c) the Owner will be required to provide two (2) copies, of a video and written report of an internal examination of the sanitary and storm sewer systems by means of a T.V.

camera prior to the issuance of any Building Permits.

**11. COMPLETION CERTIFICATE AND LIABILITY OF OWNER**

- (a) The Consultant shall, whenever requested so to do by the City Engineer and after the completion of the works, give a Completion Certificate to the City Clerk in the following form:

TO: The Corporation of the City of Welland

DATED:

In my opinion the \_\_\_\_\_

(description of works)

\_\_\_\_\_

have been completed in a good and workmanlike manner and in strict accordance with the plans and specifications and other applicable requirements of the City of Welland.

\_\_\_\_\_ P. Eng.  
Consultant to \_\_\_\_\_

- (b) until the City has assumed the subdivision, the Owner shall indemnify the City against all actions, causes of action, suits, claims and demands whatsoever which may arise either directly or indirectly by reason of the Owner undertaking this plan of subdivision, together with any or all of the several works pertaining thereto.

**12. ACCEPTANCE/ASSUMPTION BY THE CITY**

- (1) The performance by the Owner of his obligations under this Agreement to the satisfaction of the City shall be a condition precedent to the acceptance by the City of the works.

(2) Primary Services

(a) Certificate of Completion of Primary Services

Certification shall be provided to the City Engineer by the Owner's Consulting Engineer stating that all Primary Services have been fully completed, inspected, tested and maintained in accordance with the requirements of the Municipality and plans and specifications as approved by the City Engineer. After review of the Consulting Engineer's Certificate of Completion, the City Engineer may provide the Owner with a Certificate of Completion of Primary Services.

(b) Primary Maintenance Period

The Maintenance Period of Primary Services will commence upon the issuance to the Owner of the Certificate of Completion of Primary Services by the City Engineer, and shall extend for a period of three (3) years from that date. The Owner shall at its own expense and to the satisfaction of the City Engineer, repair and maintain all works and other public services required to be installed or constructed during this time. The Owner at all times shall

comply with Section 1.17 – Maintenance Period – of the City of Welland’s “Municipal Standards Manual”;

(c) Security Requirements

Subject to Section 8 hereof, during the Secondary Maintenance Period for the Primary Services the Owner shall provide a security deposit to the City equal to 10% of the total construction estimate for Primary Services, which security shall be held by the City as a maintenance guarantee for the materials and workmanship of the works;

(d) Acceptance of Primary Services

Upon expiry of the primary maintenance period, and prior to acceptance of the primary services the Owner shall video inspect the entire sewage system and provide the City with copies of the inspections in the accepted format. Any deficiencies found at this time shall be corrected to the satisfaction of the Engineer prior to acceptance of the primary servicing. In addition the City Engineer, after having received all documentation from the Owner or his designate in accordance with this Agreement, shall provide the Owner with a notice of acceptance of the Primary Services and shall release the said security deposit for same.

(3) Secondary Services

(a) Completion

All Secondary Services shall be completed within twenty-four (24) months after the date of assumption of Primary Services. The City Engineer may allow the extension of time for completion of the Secondary Services or any part thereof for such length of time as he/she may deem necessary upon the written request of the Owner.

The final asphalt surface coarse shall be completed no sooner than twelve (12) months after the issuance of the Preliminary Certificate of completion of Primary Services or as directed by the City Engineer.

(b) Certificate of Completion of Secondary Services

Certification shall be provided to the City Engineer by the Owner's Consulting Engineer stating that the Secondary Services have been fully completed, inspected, tested and maintained in accordance with the requirements of the Municipality and plan(s) and specifications as approved by the City Engineer. The City Engineer may, subsequent to review the above, provide the Owner with a Certificate of Completion of Secondary Services;

(c) Secondary Maintenance Period

The Owner shall, at its own expense and to the satisfaction of the City Engineer, repair and maintain all works and other public services requires to be installed or constructed for a minimum period of one (1) year from the date of issuance of the Certificate of Completion of Secondary Services. Any such

repair shall be subject to an extended Maintenance Period of one (1) year from date of repair;

(d) Security Requirements

Subject to Section 8 hereof, during the Secondary Maintenance Period for the secondary services provide a security deposit to the City equal to 10% of the total construction estimate for Secondary Services plus the value as estimated by the Consulting Engineer and approved by the City Engineer of any uncompleted works, which security shall be held by the City as a maintenance guarantee for the materials and workmanship of the works.

(4) Assumption of Subdivision

(a) Prior to final assumption of the subdivision by the City Engineer:

- (i) the Owner shall furnish the City Treasurer with a statutory declaration by or on behalf of the Owner that the Owner has paid all accounts that are payable in connection with the supply, construction, installation and maintenance of the said works and that there are no outstanding claims relating to the works;
- (ii) the Owner shall provide City of Welland Engineering Services with one (1) original, reproducible Mylar and one (1) copy in digital format compatible with the latest computer aided drafting software utilized by the City of Welland, showing all as-constructed information. The drawings will utilize the Universal Trans Mercator, North American Datum of 1983 (UTM NAD83, Zone 17, 81dw) or the City of Welland Local Oblique Mercator co-ordinate system. All control points shall be made available to the Owner by City of Welland Engineering Services during normal offices hours;
- (iii) the Owner shall furnish the City with a statement by an Ontario Land Surveyor that he has planted, found or replaced standard iron bars at each corner of every street intersection, easement, footpath and beginning and end of curves;
- (iv) the Owner agrees to provide a Statutory Declaration that 80% of lots have been built on and provide the City with a cash payment for all outstanding works which value is to be determined by the Consulting Engineer and approved by the City Engineer;
- (v) prior to the assumption by the City of the said works, the Owner agrees to discharge any liens on the works, forthwith, upon request by the City;
- (vi) the Owner shall comply with Sections 1.18.1 and 1.18.2 of the City of Welland's "Municipal Standards Manual".

(b) Upon final assumption of the subdivision by the City Engineer, the Owner shall

be entitled to have released to him all security then held by the City under this Agreement, except any bond or Letter-of-Credit for maintenance required by this Agreement.

**13. MAINTENANCE PERIOD AND WARRANTY**

The Owner or his Contractor will remedy promptly and at his own expense any defects in any of the works which become apparent within twelve (12) months after final completion of all of the works set out in Appendix I and as security for payment therefore, the Owner or his Contractor shall provide the City with a Maintenance Bond in the amount of 50% of the actual cost of the works or proof that the Performance Bond in the amount of 100% of the cost of the works hereinafter required covers the Maintenance Period.

**14. LIABILITY INSURANCE**

(1) The Owner shall insure against all damages or claims for damage in an Insurance Company satisfactory to the City Treasurer, by a policy or policies to be issued in the joint names of the Owner, the City and the Consultant which shall remain in the custody of the City Treasurer during the currency of this Agreement.

(2) The minimum limit of such policies shall be in the amount of \$5,000,000.00 for comprehensive public liability and property damage.

(3) The policy shall be in effect for the period of this contract, including the period of guaranteed maintenance, and if it contains an exclusion for blasting, no blasting shall be undertaken without the prior written consent of the City Engineer and without first obtaining insurance coverage therefor.

(4) The issuance of such a policy of insurance shall not be construed as relieving the Owner from responsibility for other or larger claims, if any, for which he may be held responsible to indemnify the City.

(5) The Owner shall prove to the satisfaction of the City from time to time as the City Treasurer may require, that all premiums on such policy or policies of insurance have been paid and that the insurance is in full force and effect.

**15. PERFORMANCE BOND**

The Owner shall secure from his Contractor a Performance Bond and a Labour and Material Payment Bond protecting himself and the City to the full actual cost of the part of the works pertaining to each contract before letting the contract, and all the works shall be covered by a Performance Bond during their construction and afterwards until the expiry of any lien or holdback periods applicable, and a copy of each bond shall be delivered to the City Clerk.

**16. RECORDS**

The Owner or his Consultant shall keep and maintain complete records of all invoices, receipts, vouchers, progress payment certificates and other such records until final acceptance by the City, and

the City shall be allowed to examine the same and shall be provided with duplicates of all or any such records at any time upon the request of the City Engineer or the City Treasurer.

#### **17. EASEMENTS**

The Owner will be required to grant such easements, as listed under Special Conditions, as may be required for hydro, water, telephone, sewer, gas or cable television or other services free of charge.

#### **18. RESERVES AND FOOTPATHS**

The Owner will be required to establish such walkways, and footpaths, and such reserves at the street entrances to the subdivisions and other places, listed under Special Conditions, as may be required by the City or the Region and to convey the same to the City or Region upon demand.

#### **19. LANDS FOR PUBLIC PURPOSES**

The Owner shall transfer to the City Lots LOT NUMBERS on the said plan for public purposes other than highways.

- (a) the Owner will not permit the removal of any topsoil or the placing of any fill upon lands dedicated or to be dedicated to the City for parks or public purposes. Any work to be done on these lands must receive prior approval, in writing, from the Community Services Department.

#### **20. DEVELOPMENT CHARGES**

Development Charges are payable prior to the issuance of each Building Permit. As of the date of this Agreement, the applicable payments (per unit) are as follows:

	<i>CITY</i>	<i>REGIONAL NIAGARA</i>
<b>SINGLE-DETACHED/MODEL HOMES</b>	\$6,515.00	\$9,090.00
<b>SEMI-DETACHED/DUPLEX DWELLINGS/MODEL HOMES</b>	\$6,515.00	\$6,368.00
<b>LOW DENSITY MULTIPLE DWELLINGS</b>	\$5,082.00	\$6,368.00
<b>TWO OR MORE BEDROOM APARTMENTS</b>	\$4,373.00	\$5,356.00
<b>BACHELOR AND ONE BEDROOM APARTMENT</b>	\$2,871.00	\$5,356.00
<b>RETIREMENT HOMES OR LODGE/SPECIAL CARE/SPECIAL NEEDS</b>	\$2,506.00	

#### **21. TAXES AND LOCAL IMPROVEMENTS**

Before commencement of the works, the Owner shall pay all taxes owing on any of the lands and shall commute or prepay any local improvement rates imposed thereon.

**22. ELECTRICAL DISTRIBUTION AND STREET LIGHTS**

Before commencing any of the works, the Owner shall enter into a binding Agreement with the Welland Hydro-Electric System Corp. satisfactory to the City setting out, inter alia,

- (1) the easements required by the Commission;
- (2) the electrical distribution and street lighting systems required by the Commission to be constructed; and
- (3) the type of security to be given by the Owner to the Commission to ensure complete payment by the Owner of all costs in connection with such system.

**23. SIDEWALKS**

- (a) Concrete sidewalks, 1.5 metres in width, are required to be constructed at locations as shown on Schedule "B1";
- (b) the sidewalks may be constructed in stages to be determined, from time to time, by the City Engineer upon consultation with the Owner;
- (c) the sidewalk program for a particular sidewalk stage shall be completed within one (1) year after the date the first Building Permit for that stage is issued, except in front of vacant lots;
- (d) all sidewalks shall be constructed in accordance with all current provincial requirements and City of Welland standards for handicapped accessibility;
- (e) unless otherwise approved by the City Engineer, whenever 80% of the dwellings in a stage have been substantially completed, the sidewalks shall be constructed in front of built-up lots.

**24. BOULEVARDS AND DRIVEWAY ENTRANCES**

(1) The Owner shall sod all street allowances within the plan between the lot line and the curb line in accordance with the City requirements for lands dedicated to the City of Welland.

(2) The Owner shall cut and reconstruct the curb as directed by the City Engineer and shall install, keep and maintain a driveway entrance for each lot from the travelled portion of the roadway to the lot line in good condition until the concrete sidewalk and concrete or asphalt driveway entrance for the lots are constructed.

(3) The Owner shall, upon the construction of the sidewalk, construct, at his own expense, a concrete or asphalt driveway entrance for each lot from the travelled portion of the roadway to the sidewalk or lot line, as applicable, and to the full width of the driveway.

(4) The Owner shall, at the appropriate time, cut and reconstruct the curb, as directed by the City Engineer or designate for each driveway entrance.

(5) The Owner shall prepay to the City, at the execution of the Subdivider's Agreement \$300.00 per lot for the purchase and planting of trees in the boulevard.

**25. VACANT LOTS**

(1) The Owner shall keep all vacant lots, blocks, and lands deeded to the City, free and clear of all rubbish, discarded material, surplus excavated material and standing water. Failure to comply with this condition will result in notification by the City for immediate clean-up within seventy-two (72) hours.

(2) If necessary, topsoil may be stockpiled on vacant lots provided that:

- (a) no topsoil shall be stockpiled on vacant lots situated within forty-five (45) metres from the property line of existing premises either within or outside the plan of subdivision;
- (b) the height of the stockpiled topsoil shall not exceed two (2) metres;
- (c) the affected area shall be graded for the provision of an adequate drainage pattern in order to prevent ponding of surface water.

**26. PRESERVATION OF EXISTING TREES**

The Owner shall protect and preserve as many of the existing trees as practically as possible along the proposed road allowances and on the proposed lots within the subdivision, and to this end, he shall impose a building restriction.

**27. CLEAN UP AND REMOVAL**

The Owner will be required to keep clean and maintain all catch basins, manholes and sewers during all construction and is required to clean all catch basins and manholes and flush all sewers by hydraulic flushers to the satisfaction of the City Engineer or his representative before acceptance by the City and to keep all street allowances free from rubbish and surplus material during development and shall ensure that no dirt is carried to or dropped on other City streets during development.

**28. BUILDING PERMITS**

No person shall apply for a Building Permit until:

- (a) the entire sanitary sewer system has been completed and tested and sanitary services have been installed to the front property line and the conditions of 10 (c) have been met;
- (b) the entire water system has been completed and tested and disinfected and water services have been installed to the front property line;
- (c) the entire storm sewer system has been completed;
- (d) asphalt roadway has been constructed (the stone base and asphalt base);

- (e) all street name and traffic control signs are installed to the satisfaction of the City Engineer;
- (f) the grading requirements and lot grading requirements of the City of Welland's "Municipal Standards Manual" have been met;
- (g) All service sheets for locating the water distribution system have been completed and submitted to the City Engineer by the Developers Engineer of record; and
- (h) the Consultant has informed the City, in writing that Conditions (a), (b), (c), (d), (e), (f) and (g) have been met.

**29. OCCUPANCY**

- (a) The Owner shall not permit the occupancy of any dwelling unit constructed in the subdivision until vehicular traffic can easily reach the dwelling from outside the subdivision over City and subdivision streets and all sewers, water supply and electrical power are connected to the dwelling and are operating adequately, all streetlights are in good working condition and energized by the Welland Hydro-Electric Corp. and to this end, the Owner shall impose a building restriction;
- (b) the Owner shall not permit the occupancy of any dwelling unit until the applicable standards of the City of Welland's "Municipal Standards Manual" in force at the execution of this Agreement concerning lot grading have been met.

**30. SUBDIVISION GRADING**

Grading of the Plan shall be carried out in accordance with the City of Welland's "Municipal Standards Manual" in force at the execution of this Agreement.

**31. BUILDING RESTRICTIONS**

The Owner shall impose building restrictions on all the lots on the plan in order that all subsequent Owners will be made aware of, and shall strictly adhere to, the requirements of the City stipulated under Sections 28 and 29, hereinbefore set out, and attached hereto as Schedule "B".

These restrictions shall be registered on Title to all of the Lots and Blocks on the Plan.

**32. SERVICE LOCATIONS**

The Owner shall cause sewer and water service locations to be staked at the lot line for each lot and shall maintain such stakes until the completion of the services are required for that lot.

**33. MAINTENANCE OF STREETS**

- (1) Prior to the placement of the final asphalt surface upon the streets, the Owner shall maintain the granular base for the roadways in a well graded, dust and mud free condition, fit for normal

traffic at all times; provided that if the Owner, after one (1) day's written notice to do so, does not lay down dust inhibiting material upon the streets, the City may enter upon the streets and lay down dust inhibiting material and pay the cost thereof out of the security held by it, and such entry and such laying down of dust inhibiting material shall not be deemed an acceptance of the streets by the City nor an assumption by the City of any liability in connection therewith nor a release of the Owner from any of its obligations thereunder.

(2) Snow removal shall be a part of roadway maintenance. The Owner shall be responsible and pay for all snow removal (ploughing) for the provision of passable roadway(s) during the course of construction until the completion of curbs and gutters and base course asphalt pavement.

**34. LANDS OUTSIDE THE PLAN**

- (a) The Owner warrants that the draft plan, approved by the City of Welland, and the final plan of subdivision as ultimately registered are the same and accurate and complete and the boundaries and status of any land shown abutting thereon are true and accurate and complete, and the Owner hereby indemnifies and saves harmless the City from any liability arising directly or indirectly out of any inaccuracy or incompleteness of the details of the plan or of any land shown abutting the said plan;
- (b) where, in the opinion of the City Engineer, any of the works required under this Agreement will in any manner benefit or serve lands that are not included in this Agreement, the Owner will observe such order of installation of the works as the City Engineer requires and for that purpose will construct, install or perform such works shown in the said Appendix I;

the City may absorb a portion of the costs of the over-sized services; for example, those services within the boundary of the subdivision which are required to be of size larger than that needed to serve the property in question. Refer to Section 38, entitled SPECIAL CONDITIONS, of this Agreement regarding terms and conditions for over-sized services, if applicable.

**35. DEFAULT**

- (a) Upon breach by the Owner of any covenant, term, condition or requirement of this Agreement, or upon the Owner becoming insolvent or making an assignment for the benefit of creditors, the City, at its option, may declare that the Owner is in default;
- (b) Notice of such default ("Notice of Default") shall be given by the City and if the Owner does not remedy such default within such time as provided in the notice, the City may declare that the Owner is in final default under this Agreement and shall then forthwith give notice of final default ("Notice of Final Default") thereof to the Owner;
- (c) Upon Notice of Default having been given, the City may require all work by the Owner, their servants, agents, independent contractors and sub-contractors to cease (other than any work necessary to remedy such default) until such default has been remedied and in the event of final default, may require all work as aforesaid to cease;
- (d) Upon Notice of Final Default having been given to the Owner, the City may, at its

option, adopt or pursue any or all of the following remedies, but shall not be bound to do so:

- (i) Enter upon the lands by its servants, agents and contractors and complete any work, services, repairs or maintenance wholly or in part required herein to be done by the Owner and collect the cost thereof from the Owner and/or enforce any security available to it;
- (ii) Make any payment which ought to have been made by the Owner and upon demand collect the amount thereof from the Owner and/or enforce any security available to it;
- (iii) Retain any sum of money heretofore paid by the Owner to the City for any purpose and apply the same in payment of part payment for any work which the City may undertake;
- (iv) Assume any work or services at its option, whether the same are completed or not, and thereafter the Owner shall have no claim or title hereto or remuneration therefore;
- (v) Bring action to compel specific performance of all or any part of this Agreement or for damages;
- (vi) Add any costs incurred by the City to the tax roll for the lands and collect such costs by action or in like manner as property taxes; or
- (vii) Exercise any other remedy granted to the City under the terms of this Agreement or available to the City in law.

**36. EXPENSES TO BE PAID BY THE OWNER**

Every provision of this Agreement by which the Owner is obligated in any way shall be deemed to include the words "at the expense of the Owner" unless the context otherwise requires.

**37. ENTRY FOR EMERGENCIES**

In the event of an emergency, the City may enter upon the works without notice and take whatever steps are necessary to abate the emergency at the expense of the Owner, and no such entry shall be deemed to be acceptance of any of the works by the City, nor shall it be deemed an assumption by the City of any liability in connection therewith nor a release of the Owner will indemnify the City from all loss, costs, damages and claims which the City may suffer by reason of such entry and the performance of any such works.

**38. SPECIAL CONDITIONS**

See Page PAGE NUMBER OF SPECIAL CONDITIONS.

**39. REGISTRATION**

The Owner consents to the registration of this Agreement by the City in the Land Titles Office of Niagara South.

**40. SERVICE OF DOCUMENTS**

(1) Wherever any notice, document, money or other thing is required by this Agreement to be delivered to or served upon the City, such delivery or service shall be made to or upon the City Clerk at the Civic Square, 60 East Main Street, Welland, Ontario, L3B 3X4, except as otherwise set out herein.

(2) Wherever any notice, document, money or other thing is required by this Agreement to be delivered to or served upon the Owner, such delivery or service shall be made to the Owner at «OwnerAddress», «OwnerCityProvince». «OwnerPC», except as otherwise set out herein.

**41. SURVIVAL OF TERMS**

The terms and conditions of this Agreement which appear to be intended to survive what would otherwise be the completion of this Agreement, shall survive the completion thereof.

**42. MORTGAGEE(S) AND/OR CHARGE(S)**

In the event that the Mortgagee(s) and/or Chargee(s) realizes upon his mortgage and/or charge security, he agrees on behalf of himself, his heirs, executors, administrators, successors and assigns not to deal with the lands as a subdivision or part thereof unless and until a new Agreement in the same form, mutatis mutandis, as this Agreement has been entered into with respect to the said lands with the City.

**43. GUARANTOR(S) (WHERE APPLICABLE)**

The Guarantor(s) jointly and severally with the Owner hereby guarantees the due performance by the Owner of all his obligations hereunder.

**44. GENDER AND NUMBER (WHERE APPLICABLE)**

Wherever the masculine and the singular are used herein, the same shall be construed to be the feminine and the plural as the context or the parties may require.

**45. ASSIGNMENT**

This Agreement and the covenants, provisos and conditions herein contained shall enure to the benefit of, and be binding upon the respective heirs, executors, administrators, successors and assigns of each of the Parties to it and all subsequent Owners who acquire an interest in the subject lands.

**46. USE OF STREETS**

The Owner will be required to maintain all streets in usable condition for vehicular traffic, including emergency vehicles, until assumed by the City. The Owner shall not apply for Building Permits until the asphalt roadways have been constructed (stone base and asphalt base) and all street name and traffic control signs are installed. As a Condition prior to entering into the Subdivider's Agreement, the Owner/Consultant has to consult with the Parking/Traffic Division of the City of Welland for sign specifications and locations.

**47. STANDARD UTILITY LOCATIONS**

All utility locations shall be installed in accordance with the attached standard utility location drawing (Schedule "D") and shall be staked by the Owner at the time of installation, and shall be maintained by him until the entire services necessary for each structure are installed.

**48. WATERWORKS**

The Owner will be responsible for locating, raising to grade, the repair and replacement of watermain appurtenances until such time as the entire subdivision is accepted by the City.

**49. REGISTERED PLAN/CONSTRUCTION DRAWINGS**

The Owner shall furnish City of Welland Engineering Services with original reproducible Mylar's or equivalent drawings showing all as-constructed information on both CD and electronic form.

As well the Owner will provide City of Welland Engineering Services with one copy of all original drawings in a digital format compatible with the latest computer aided drafting software utilized by the City of Welland (i.e. AutoCAD).

All as built drawings will utilize the Universal Trans Mercator, North American Datum 1983 Zone 17, Metre Control Meridian 81 dw or the City of Welland Local Oblique Mercator co-ordinate system. All control points shall be made available to the Owner by City of Welland Engineering Services during normal office hours.

**50. REQUIREMENTS FOR LANDS TO BE DEDICATED TO THE CITY**

The Owner will be responsible to ensure that all lands which will be transferred to the City for parkland, drainage or boulevard purposes shall be developed in conformity with the City of Welland's "Municipal Standards Manual".

**SPECIAL CONDITIONS**

SPECIAL CONDITIONS



**SCHEDULE "A"**

In the City of Welland in the Regional Municipality of Niagara and being composed of LEGAL DESCRIPTION.

**SCHEDULE "B"**

BUILDING RESTRICTIONS  
(TO BE REGISTERED ON TITLE TO ALL  
LOTS AND BLOCKS IN THE PLAN)

1. According to the nature of the annexed instrument, the words "purchaser" and "land" shall have the following meaning:

"Purchaser" means and includes also any grantee, transferee or buyer of any lots or blocks within the land and the heirs, successors and assigns of the Purchaser.

"Land" means and includes the land included in the Plan of Subdivision and on which these restrictions are registered.

2. These restrictions shall run with and be binding upon the land.

3. No person shall apply for a Building Permit from The Corporation of the City of Welland (the "City") for a lot on the plan until;

(a) the sanitary sewer system has been completed and tested and sanitary service has been installed to the front property line and the conditions of 10 (c) of the Subdivision Agreement have been met.

(b) the water system has been completed, tested and disinfected, in accordance with the City Operational Procedures for all watermain distribution repair and installation and water service has been installed to the front property line;

(c) the storm system has been completed;

(d) asphalt roadway has been constructed in stone base and asphalt base;

(e) all street name and traffic control signs are installed to the satisfaction of the City Engineer;

(f) the grading requirements and lot grading requirements of the City's Land Development Policy have been met.

4. There shall be no occupancy of any dwelling unit constructed in the subdivision until vehicular traffic can easily reach the dwelling from outside the subdivision over City and subdivision streets and all sewers, water supply and electric power are connected to the dwelling and are operating adequately, and all streetlights are in good working condition and energized by the Welland Hydro-Electric Corp.

5. The purchaser shall, in respect to any lands owned by him, adhere to and comply with the lot grading and drainage plan (Plan DRAWING NUMBER) forming part of the Subdivider's Agreement registered in the Land Titles Office for Niagara South as Instrument No. \_\_\_\_\_ and, in particular, shall adhere to and comply with the grades and levels shown thereon and shall keep and maintain a good graded cover in the swales shown thereon and shall do nothing (i.e. alter grade, erect structures/any fence, wall, pad or the like, construct gardens) to interfere with or impede drainage patterns as shown thereon.

6. The Purchaser shall maintain the sodded portion of the street allowance between his lot line and the curb nearest thereto in good condition and free from weeds and shall cut the grass thereon at frequent intervals.

- 7. The Purchaser shall protect and preserve all the existing trees on the subject land which do not interfere with the construction of the building.
- 8. (1) The Purchaser agrees to ensure that a variety of building designs and finishes be used in the area of the proposed subdivision. The exact design and finish shall not be repeated within five (5) consecutive lots and the same design shall not be used on adjacent lots;
- (2) The Purchaser agrees to submit grade elevations of the houses to be constructed on the lots to the City, which elevations shall be approved by the City, in accordance with the City of Welland's "Municipal Standards Manual" and Plan DRAWING NUMBER forming part of the Subdivider's Agreement registered in the Land Titles Office for Niagara South as Instrument No. \_\_\_\_\_, prior to the issuance of Building Permits;
- (3) The issuance of a Building Permit by the City shall constitute satisfaction of this Condition.
- 9. The purchaser acknowledges that sidewalks shall be located in accordance with Schedule "B1" of the aforementioned Subdivider's Agreement.
- 10. A water meter, to City of Welland specifications, must be installed in all residential dwelling units (single, semi-detached, duplex, four-plex, townhouse).
- 11. If a Purchaser is in default of any provision contained herein, the City shall be permitted to enforce said default in accordance with the provisions of Section 35 of the aforementioned Subdivider's Agreement.
- 12. Wherever the masculine and singular are used herein, the same shall be construed to be the feminine and the plural as the context or the parties may require.

PURCHASER \_\_\_\_\_  
PURCHASER \_\_\_\_\_

**SCHEDULE "B1"**

**SCHEDULE "C"**

(sketch indicating municipal address and postal box locations)

**SCHEDULE "D"**

**SCHEDULE "E"**

**APPENDIX I**  
TO A  
CONTRACT BETWEEN  
«OWNERNAME»  
AND  
THE CORPORATION OF THE CITY OF WELLAND  
  
RE: «SUBDIVISIONNAME»

LIST OF DRAWINGS

**ADDENDUM NO. II TO APPENDIX I OF AN AGREEMENT**

BETWEEN

AND

THE CORPORATION OF THE CITY OF WELLAND

RE:

**1. LETTER-OF-CREDIT**

Total Estimated Cost of Works based on Report submitted by dated

Estimated Cost of Works	\$0.00	
Street Lighting and Electrical Servicing	\$0.00	
Sub-Total	<u>\$0.00</u>	
+10% Engineering and Contingency	<u>\$0.00</u>	
	\$0.00	
<b>TOTAL ESTIMATED COST</b>		<b>\$0.00</b>

Security Deposit (i.e. Letter-of-Credit) required is (50% of Total Estimated Cost) (rounded to nearest \$1,000.00)	<u><u>\$0.00</u></u>
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**2. ENGINEERING FEE**

Engineering Fee in accordance with the City of Welland's "Municipal Standards Manual" is:	\$0.00	
+13% H.S.T.	<u>\$0.00</u>	
<b>TOTAL</b>		<u><u>\$0.00</u></u>

[i.e. % of \$ = \$ + H.S.T. (13%) \$]

**3. WATERWORKS INSPECTION FEE (ESTIMATE)**

The current waterworks inspection fee in accordance with the City of Welland's "Municipal Standards Manual" is \$ based on the following calculations:

5% of the Estimated Water Works Cost (\$ x 5%)	\$0.00	
+13% H.S.T.	<u>\$0.00</u>	
<b>TOTAL</b>		<u><u>\$0.00</u></u>

**4. TREE PLANTING FEE**

lots @ \$300.00 per tree	<u><u>\$0.00</u></u>
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**5. LOT GRADING AND DRAINAGE DEPOSITS**

The Developer shall deposit the sum of \$ being \$1,000/lot x lots in accordance with the City of Welland's "Municipal Standards Manual" (Maximum \$50,000.00)	<u><u>\$0.00</u></u>
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**LETTER-OF-CREDIT** **\$0.00**

**CASH PAYMENTS**

**\$0.00**

**DEPOSIT**

**\$0.00**