

ALLANBURG ESTATES
SUBDIVISION AGREEMENT

BETWEEN

THE CORPORATION OF THE CITY OF THOROLD

-AND-

ALLANBURG ESTATES LTD.

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THIS AGREEMENT made this __15__ day of February , 2023.

BETWEEN:

THE CORPORATION OF THE CITY OF THOROLD

Hereinafter called the “City”

OF THE FIRST PART

-and-

ALLANBURG ESTATES LTD.

Hereinafter called the “Developer”

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, the Developer 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 unless otherwise authorized by the City in writing;
- d) This Agreement shall take priority over any subsequent registrations against the Lands;

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

AND WHEREAS the City’s “Conditions of Final Subdivision Approval” require that before the aforesaid Plan of Subdivision is given final approval, the Developer must enter into a Subdivision Agreement with the City to satisfy all its requirements, financial and otherwise, relating to the Lands being subdivided;

AND WHEREAS this Agreement is made to satisfy the said Conditions of Final Subdivision Approval;

AND WHEREAS this Agreement is an Agreement executed under the authority of Section 51 (26) of The Planning Act, R.S.O, 1990, c.P.13, as amended, and as such may be registered against title in the Land Titles Office for Niagara South;

AND WHEREAS the City agrees it will release the Final Plan of Subdivision for registration subject to the terms and conditions of this Agreement and the Conditions of Final Subdivision Approval;

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

1. DEFINITIONS

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

- 1.1 **Agreement** means this Subdivision Agreement.
- 1.2 **Arbitrator** means an independent person or body.
- 1.3 **Architect** means a licensed or registered Architect with the Ontario Association of Architects.
- 1.4 **Architectural Technologist** means an accredited Architectural Technologist with the Association of Architectural Technologists of Ontario.
- 1.5 **Assumption By-law for Primary Services** means a by-law passed by the Council of The Corporation of the City of Thorold forthwith after the City 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 and 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 Street Lighting.
- 1.6 **Assumption By-law for Secondary Services** means a by-law passed by the Council of The Corporation of the City of Thorold forthwith after the City has approved in writing the Certificate of Final Acceptance for Secondary Services, assuming ownership of and responsibility for Secondary Services constructed by the Developer and pursuant to the terms of this Agreement and the approved Plans the following:
 - a) All Secondary Services constructed by the Developer; and,
 - b) The Streets and Roadways constructed by the Developer within the Plan of Subdivision.
- 1.7 **Block** means the whole of a parcel or tract of land created by the Plan of Subdivision.
- 1.8 **Builder** means the person or persons engaged by the Developer or subsequent Owner to construct a Building or any other work on the Lot or Block.
- 1.9 **Building** means any structure which is used or intended to be used for the shelter, accommodation, or enclosure of persons, animals or chattels, and includes any structure as defined as a Building in the Building Code Act.
- 1.10 **Building Permit** means a permit issued by the Chief Building Official approving an application for the construction, reconstruction or alteration of any Building or structure for which such permit is required.
- 1.11 **Certificate of Final Acceptance for Primary Services** means the certificate prepared by the Developer's Consulting Engineer and approved in writing by the City at the expiration of the Maintenance Guarantee Period for Primary Services setting out the Primary Services being accepted by the City and indicating the date of final acceptance of such Works.

- 1.12 **Certificate of Final Acceptance for Secondary Services** means the certificate prepared by the Developer's Consulting Engineer and approved in writing by the City at the expiration of the Maintenance Guarantee Period for Secondary Services setting out the Secondary Services being accepted by the City and indicating the date of final acceptance of such Works.
- 1.13 **Chief Building Official** means the Chief Building Official for The Corporation of the City of Thorold, or designate, appointed pursuant to the Building Code Act.
- 1.14 **City** means The Corporation of the City of Thorold.
- 1.15 **Clerk** means the Clerk for The Corporation of the City or Thorold, or designate.
- 1.16 **Completion Certificate for Primary Services means** a certificate prepared by the Developer's Consulting Engineer and approved in writing by the City upon satisfactory completion of all Primary Services, the approval date of which shall start the Maintenance Guarantee Period for such Primary Services.
- 1.17 **Completion Certificate for Secondary Services means** a certificate prepared by the Developer's Consulting Engineer and approved in writing by the City upon satisfactory completion of all Secondary Services, the approval date of which shall start the Maintenance Guarantee Period for such Secondary Services.
- 1.18 **Conditions of Final Subdivision Approval** means the conditions of final approval for the Plan of Subdivision imposed by the City in accordance with the requirements of The Planning Act.
- 1.19 **Consulting Engineer** means 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.
- 1.20 **Cost of Construction** means the cost of construction for the Works and may include engineering fees ancillary thereto as approved by the City.
- 1.21 **Council** means the Council of The Corporation of the City of Thorold.
- 1.22 **Developer** means 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.
- 1.23 **Development Charges** means the development charges imposed under the City's and Niagara Region's Development Charge By-laws as prescribed by The Development Charges Act.
- 1.24 **Draft Plan** means a Draft Plan of Subdivision, as approved by the City, in accordance with the requirements of the Planning Act.
- 1.25 **Easements** mean the Easements that are to be conveyed to the City, Niagara Region, or Utilities to service the lands.
- 1.26 **Final approval** means final approval of the Plan for registration given by the City in accordance with the requirements of The Planning Act.
- 1.27 **Final Certificate of Approval** means the certificate issued by the City, acting reasonably, upon being satisfied with the completion of the Primary

and Secondary Services and the completion of the Maintenance Guarantee Period.

- 1.28 **Final Plan** means the Final Plan of Subdivision, as approved by the City, that is suitable for registration in the Land Titles Office for Niagara North. Upon registration, the registered plan shall be the Final Plan for the purposes of this Agreement.
- 1.29 **Final Default** means a situation where the Developer fails to remedy a default within such time as provided in the notice given by the City.
- 1.30 **Fire Chief** means the Fire Chief for The Corporation of the City or Thorold, or designate.
- 1.31 **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.
- 1.32 **Grading Conformance Certificate** means that an Ontario Land Surveyor or Professional Engineer has certified and signed the “as constructed” Lot Grading Plan of a Lot as being in conformance with the latest revision of the Subdivision Grading Plan, approved by the City.
- 1.33 **Highway or Roadway or Road or Street** means land dedicated as a public Highway by the Plan.
- 1.34 **Inspector** means the Inspector appointed by The Corporation of the City of Thorold who provides inspection services for the Subdivision.
- 1.35 **Install** shall also mean reinstall, provide, construct, or reconstruct.
- 1.36 **Lands** shall mean the lands described in Schedule “A” annexed hereto and forming part of this Agreement.
- 1.37 **Letter of Credit** shall mean any municipal standby irrevocable Letter of Credit drawn upon a Chartered Bank posted with and in a form acceptable to the City pursuant to this Agreement. The municipal standby irrevocable Letter of Credit shall contain a provision which automatically renews it from year to year unless the Bank gives thirty (30) days advance written notice of its intention not to renew.
- 1.38 **Letter of Occupancy or Occupancy** means a Letter of Occupancy issued by the Chief Building Official subsequent to final inspection of a dwelling or Building.
- 1.39 **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.
- 1.40 **Lot** shall mean the whole of a parcel or tract of land created by the Plan of Subdivision.

- 1.41 **Lot Grading Deposit** means a deposit of security held for conformity to the approved Lot Grading Plan.
- 1.42 **Lot Grading Plan** means a plan for the grading of a Lot or Block prepared by an Ontario Land Surveyor or Professional Engineer.
- 1.43 **Maintenance Guarantee** means an undertaking by the Developer to the City that all Works constructed under this Agreement will function as designed and will not fail in any manner whatsoever so as to cause a risk to public safety or private lands, Building or structures within the Plan of Subdivision or immediately adjacent boundary lands, and that should the Works, or any of them, fail or not perform their intended function within the specified Maintenance Guarantee Period, they will be replaced or repaired to the satisfaction of the City by the Developer at its cost.
- 1.44 **Maintenance Guarantee Period** means the period of time during which the Developer is obliged to maintain the Works following approval of the Certificate of Completion.
- 1.45 **MECP** means Ministry of Environment, Conservation and Parks and Ministry of Environment will have the same meaning.
- 1.46 **Model Home** means a Building constructed in accordance with the terms of this Agreement that may be used for the sole purpose of an office and/or show room and/or sales centre to promote the sale of residential units on the lands of the Draft Plan and shall not be occupied as a dwelling unit until the terms of this Agreement are met.
- 1.47 **Niagara Peninsula Conservation Authority** means the Niagara Peninsula Conservation Authority established under The Conservation Authorities Act, and Conservation Authority shall have the same meaning.
- 1.48 **Owner** means the owner of a Lot or Block who has, or on whose behalf, an application for a Building Permit is made.
- 1.49 **Party** shall mean a party to the Agreement and the successors or permitted assigns.
- 1.50 **Plan of Subdivision or Plan** shall mean the Plan of Subdivision of the Lands described in Schedule "A" annexed hereto ultimately approved for registration by the City and registered on title pursuant to the provisions of The Planning Act.
- 1.51 **Plans** means all drawings, plans, specifications, contracts and other documents, including the documents included in the List of Approved Drawings in Schedule "D", providing for the installation, construction and erection of Works prepared by the Developer and approved by the City, Niagara Region (when required), and the Niagara Peninsula Conservation Authority (when required), and filed in the office of the Department of Planning and Development Services prior to execution of this Agreement by the City.
- 1.52 **Planning and Development Services** means the City of Thorold's planning department, and Planning Department shall have the same meaning.
- 1.53 **Pre-Servicing** means the installation of Works prior to registration of this agreement.
- 1.54 **Primary Services** shall mean the following municipal services required to be constructed by the Developer:
- a) water system;

- b) fire hydrants
- c) sanitary sewer system;
- d) storm sewer system, storm drainage and stormwater management facilities;
- e) rough grading of subdivision lands;
- f) base road including base asphalt, curbs and gutters;
- g) road signs;
- h) Street Lighting;
- i) noise berm, wall or fence required to mitigate noise with the lands;
- j) all Utility Services; and
- k) community mail box pads.

1.55 **Region** means the Regional Municipality of Niagara.

1.56 **Registered Professional Planner** means a professional planner who is a full member of the Ontario Professional Planners Institute.

1.57 **Reserve Strip** shall mean a parcel of land conveyed by the Developer to the City or Region in fee simple, free of encumbrances, abutting a Highway and separating the Highway from the next abutting Lot or Block, for the purpose of preventing legal access from said Highway to the said next abutting Lot or Block.

1.58 **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 coat asphalt;
- b) curb cuts;
- c) driveway paving on the road allowance;
- d) sidewalks and off-road trails;
- e) final lot grading and sodding of boulevards;
- f) fencing; and,
- g) tree plantings and landscaping.

1.59 **Storm Water Management Facility** means a system of physical works including but not necessarily only such things as storm water structures or ponds and infiltration trenches or pits located at the downstream end of a storm sewer conveyance system (including roof rain water leaders) that are designed to treat storm water and control pollution and control storm water runoff to predetermined levels prior to discharge to receiving surface water courses and subsurface ground water regimens.

1.60 **Storm Water Management Report** means an approved storm water management report and specifications prepared by the Developer in accordance with this Agreement.

1.61 **Street Lighting** means Street Lighting, park, or walkway lighting systems which includes all poles, standards, arms, lights, fixtures, wires, ducts and

related equipment(s) that are necessary for the safe illumination of the Roadway, boulevard, park, and walkway to City requirements.

- 1.62 **Street Line** means a lot line dividing a Lot from a Street and is the limit of the Street or road allowance.
- 1.63 **Subdivision** means the division of a parcel of land into lesser parcels by means of a registered Plan of Subdivision.
- 1.64 **Subdivision Grade Control Plan** shall mean a plan for the purpose of controlling the overall drainage pattern through the establishment of relative surface elevations in accordance with good engineering and drainage practices.
- 1.65 **Supervision** means the full-time inspection and scrutiny of every phase of the Works for the express purpose of enforcing the provisions of this Agreement and certifying that the Works have been performed and completed to City and Region (where needed) standards in the form prescribed for this purpose.
- 1.66 **Supervise** means to carry out such Supervision.
- 1.67 **Surveyor** means an Ontario Land Surveyor commissioned by the Province of Ontario and qualified to establish monuments that define the boundaries of a parcel or parcels of land and to prepare all necessary reference plans, plans, and surveys for the purpose of this Agreement.
- 1.68 **Utility Services or Utilities** means:
- a) all electrical distribution and Street Lighting systems, complete;
 - b) all gas services, complete;
 - c) all telephone services, complete; and,
 - d) all co-axial services, complete.
- 1.69 **Works** means all Primary 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 Region, the City, or any other authority having jurisdiction shall impose any further condition or requirement which is not contained herein, the Developer shall forthwith, upon written demand, enter into such further agreement or agreements and give such further assurances as may be required and the Developer

shall not contravene any condition or requirement of such authority notwithstanding the same is not contained herein. Any deposit made for other agreements will be transfer to the subdivision agreement.

3.3 Covenants Run With the Land

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

- a) shall run with the Lands; and,
- b) shall be binding upon the Developer, its heirs, executors, administrators, assigns and successors in title, from time to time; and,
- c) that the benefits of the said covenants shall enure to the City, its successors and assigns in title of all roads, Streets and public lands forming part of or abutting on the Lands.

3.4 Notices

Any notices required or permitted to be given pursuant to the terms of this Agreement shall be given in the manner set out in Section 40.

3.5 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.

3.6 Schedules

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

3.7 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, as amended.

3.8 Applicable Laws

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

to draw upon any security filed by the Developer under this Agreement.

3.9 Severance of Ultra Vires Terms

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

3.10 Incontestability

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

3.11 Time of the Essence

Time shall be of the essence of this Agreement.

3.12 Certificate of Status

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

3.13 Mortgagee's Postponement

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

3.14 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.

3.15 Obligations

Any and all of the Developer's obligations under this Agreement shall be joint and several.

4. SERVICING PLANS AND SPECIFICATIONS

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

4.2 The Developer shall submit to the Department of Planning and Development 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 that the City in their appraisal of the Plans and specifications will be guided by current requirements of the Province of Ontario, established specifications and standards adopted by the City, or existing practices and standards as may from time to time be established or amended by the City by its officials or agents. The City may require, in writing, such variances from the Plans as it may deem appropriate due to conditions which may be disclosed as the Work progresses and by sound engineering practices.
- 4.4 No approval by the City shall operate as a release by the City of any liability of the Developer which, but for such approval, might exist or hereafter arise.
- 4.5 All Plans shall be prepared and stamped by a Consulting Engineer licensed to practice in the Province of Ontario.

5. ENGINEERING AND INSPECTION

5.1 Consulting Engineer

The Developer shall employ a Consulting Engineer, approved by the City.

The Consulting Engineer shall:

- a) Design all the Works covered by this Agreement;
- b) File with the City a written undertaking:
 - i. That she/he has been engaged by the Developers to supervise the Work and will complete the Work as required by this Agreement;
 - ii. That the Work will be done in accordance with the approved contract drawings and specifications and all other provisions of this Agreement; and,
 - iii. That all phases of the Work are subject to the approval of the City;
- c) Complete a pre-construction survey of all abutting properties;
- d) Conduct such soil tests as may be required by the City;
- e) Complete and submit a Ministry of Environment Conservation and Parks (MECP) Form 1 Record of Watermains Authorized as a Future Alteration, or other forms required by the Ministry, Region, or City prior to any construction occurring;
- f) Prepare a Storm Water Management Plan and a General Grading Plan for surface drainage of all lands in the Plan of Subdivision, the said plans to clearly indicate the existing drainage pattern on all adjacent lands and to provide for the direction of all surface drainage, including water from adjacent lands originally flowing through, into or over the area of the proposed Subdivision, to the Street storm sewer systems or any other outlet approved by the City;
- g) Prepare an Operations, Maintenance and Monitoring Best Practices Report, as per Chapter 6 of the Stormwater Management Practices Planning and Design Manual—2003 (Ministry of Environment), said report to include recommended activities including future cost estimates to the City;

- h) Prepare Plans, profiles and specifications for the said Works to City design criteria and standards using the following guidelines:
 - i. Title block 13 cm x 8 cm to be placed in lower right hand corner and shall indicate nature of work.
 - ii. A complete copy of design details and calculations of storm and sanitary sewer designs which shall be based on design formula provided by the City.
 - iii. Plan-profiles shall be fully detailed and where reference is made to other construction drawings, specific reference to those drawing numbers shall be made and shall be 60 cm x 84 cm.
 - iv. Horizontal ties shall be made to the property lines.
 - v. Levels shall be to datum and all field surveys shall be tied into geodetic benchmarks;
- i) The plans, profiles and specifications must be approved by the City prior to the installation or construction of such Works.
- j) Prior to execution of this Agreement by the City, prepare and furnish the Department of Planning and Development Services with estimates of the cost of installation and construction of the Works;
- k) Prepare applications to the necessary authorities and obtain approvals prior to the installation or construction of the Works;
- l) Supervise and inspect the construction of the Works on a full-time basis including the setting and checking of all lines and grades and quantity control, prior to, during, and after construction, and any remedial work the City may require;
- m) If required, prepare contract documents and call tenders for installation and construction of said Works;
- n) Arrange a pre-construction meeting and site meetings as required (at least once per month) to which the City shall be invited and for which the City shall receive forthwith a copy of the minutes;
- o) Arrange for the inspection of Works at all stages of construction so that as built construction Plans can be prepared;
- p) When requested by the City, accompany City staff on inspections of the Works;
- q) Arrange for the testing of all municipal Works in accordance with the appropriate requirements;
- r) Provide Building levels for construction purposes;
- s) Provide the Department of Planning and Development Services with the Completion Certificate for Primary Services, Completion Certificate for Secondary Services, Certificate of Final Acceptance for Primary Services, and Certificate of Final Acceptance for Secondary Services;

- t) Certify, in writing, to the City as to the actual cost of all Works completed prior to the City approving a Completion Certificate for such Works or reducing any Letter of Credit.
 - u) Provide “as built” construction plans in paper and electronic format (AutoCAD.dwg), to the satisfaction of the City;
 - v) Provide “as built” individual record sheets of all sewer and water services locations and depths, to the satisfaction of the City; and,
 - w) From time to time, provide the City upon request with verification that the Lot Grading is in conformity with the Subdivision Grading Plan.
- 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. All materials supplied shall meet City specifications and underground infrastructure and public road construction shall be constructed to City standards and inspected by the City at the Developer’s cost.
- 5.3 The Developer’s Consulting Engineer shall conduct all testing of Works and materials to the complete satisfaction of the City. All sanitary and storm sewers must be inspected and videoed via closed circuit T.V. prior to final acceptance by the City.
- 5.4 The Developer’s Consulting Engineer shall conduct all cleaning, disinfection, hydrostatic testing and sampling activities for water mains. The Workforce, carrying out the cleaning and disinfection in conjunction with the Developer’s Consulting Engineer, shall take and record measurements for the City’s acceptance.
- 5.5 The City 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 City. Such inspections may include testing and the method and time of testing shall be at the sole discretion of the City. City inspections shall be in addition to inspection provided by the Developer’s Consulting Engineer and shall in no way relieve the Developer or their Consulting Engineer of any responsibility with regard to design, construction, supervision, inspection, testing or proper completion of the Works.
- 5.6 The Developer agrees that the City, at its discretion, may retain the services of an independent Professional Engineer for the purposes of reviewing or approving or inspecting any of the Works required pursuant to this Agreement. Payment for the independent Professional Engineer shall be paid out of and deducted from the monies held as security. Fees shall be set in accordance with the Schedule of Fees for Consulting Engineering Services recommended by the Professional Engineers of Ontario.
- 5.7 Where the City has reason to believe that any of the Works are not being constructed in accordance with the Plans or other provisions of this Agreement, the City shall have a discretionary right to order any work-in-progress stopped and such work shall not be recommenced without written authority from the City.

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

- 6.1 City Council 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 "E" annexed hereto, obtaining and filing with the Department of Planning and Development Services all necessary and/or required approvals, consents, agreements and certificates, and having all Plans and specifications approved by the City.

- 6.2 Before this Agreement is executed by the City, the appropriate authorizing By-law must be enacted by City Council.
- 6.3 Before this Agreement is executed by the City, the Lands within the Subdivision must be zoned in accordance with the City's Zoning By-law to permit the proposed use.
- 6.4 The City may, at the sole expense of the Developer, request the Developer's Solicitor to prepare such further and other documentation as may be deemed necessary and/or required by the City for the preparation, registration and implementation of the Agreement.
- 6.5 If required, the Developer's Solicitor, at the sole expense of the Developer, shall:
 - a) Provide and/or prepare all documentation which the City's Solicitor may require, including all necessary Transfers, Easements and restrictive covenants in registerable form;
 - b) Certify title to the City in a signed Certificate of Title;
 - c) Have all documentation signed by the Developer, Chargees, and other necessary Parties;
 - d) Subsearch title and obtain an Execution Certificate prior to registration and provide copies of same to the City's Solicitor;
 - e) Deliver all executed documentation to the City; and,
 - f) Attend to registration of all documentation, at the Developer's expense, required by this Agreement.
- 6.6 Prior to the City executing this Agreement, the Developer shall provide the City with two (2) copies each of the draft Plan of Subdivision (M-Plan) for the Lands and with two (2) copies each of the draft Reference Plan (R-Plan) providing legal descriptions for Easements within or outside the Lands.
- 6.7 Prior to the City executing this Agreement, the Developer shall provide the City with an Ontario Land Surveyor's Certificate verifying all Lots and/or Blocks as laid out on the proposed Plan of Subdivision meet or exceed the minimum Lot area and Lot frontage provisions of the City's Zoning By-law.
- 6.8 The Developer covenants and agrees to register an application, if required by the City, signed by the City, for an order inhibiting any dealings with the Lands to the applicable Land Registrar immediately following the registration of the Agreement. The Developer acknowledges that the City shall not be obligated to register any documents in compliance with the Inhibiting Order or to apply to have the Inhibiting Order removed from title until the Developer has supplied all documents in compliance with this Agreement in a form satisfactory to the City for registration and all other documents required to provide discharges, releases and postponements with respect to any charges, mortgages or encumbrances to the Lands have been registered against title to the Lands.
- 6.9 Upon the City being satisfied that all Conditions of Final Approval for the Plan of Subdivision have been satisfied by the Developer within the required time, the City shall register the following documentations at the sole expense of the Developer as soon as practicable:

- a) The approved Plan of Subdivision; and
 - b) All other documentation related thereto, including without limitation, Cessations of Charge, Transfers, and Easements.
- 6.10 The Developer covenants and agrees to provide to the City a copy of the registered 59M plan and any registered 59R plans for the Plan of Subdivision (in paper or mylar and in pdf format). Until such time that the plans are delivered to the City in the requested format, 5% of the security held will not be released.
- 6.11 In the event the Plan of Subdivision is not registered within one (1) year from the date of registration on title of this Agreement, the City may declare the Developer in Final Default.
- 6.12 The Developer shall not deal in any manner whatsoever with any Lot or Block shown on the Plan of Subdivision until this Agreement, the Plan of Subdivision and all other documentation (including Transfers, Easements, Cessation of Charge, Inhibiting Orders, Reference Plans, and Postponements of Charges) required by this Agreement and by the City's Solicitor have been delivered, approved and registered on title to the complete satisfaction of the City's Solicitor.

7. LAND FOR MUNICIPAL PURPOSES

- 7.1 The Developer shall, at its own expense, convey to the City and all appropriate authorities, such lands as may be required for the development of the Lands in accordance with Schedule "B" annexed hereto.
- 7.2 All of the road allowances and road widenings shown on the Plan of Subdivision shall be dedicated by the Developer as public Highways.
- 7.3 All road allowances shown on the Plan of Subdivision shall be named to the satisfaction of the City.
- 7.4 Any dead ends and open sides of Road allowances created by this Plan of Subdivision shall be terminated in one foot (0.3 metres) reserves to be conveyed to the City and all appropriate authorities and held until required for future Road allowances or the development of adjacent lands.

8. EASEMENTS FOR MUNICIPAL PURPOSES

- 8.1 The Developer covenants and agrees, at its sole expense, to obtain and/or grant to the City and all appropriate authorities 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 undertake and complete all improvements in, over, along and upon such Easement lands conveyed to the City and all appropriate agencies, 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 City and shall keep such Easement lands in a neat and tidy condition, free of all debris and trash until the City has passed the Assumption By-law for Primary Services and the Assumption By-law for Secondary Services for the Subdivision.

9. GENERAL DEVELOPMENT CONDITIONS

- 9.1 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.

- 9.2 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.
- 9.3 Where it is necessary to temporary close municipal Highways for the purposes of the Plan of Subdivision, the Developer shall submit a Highway closure plan that depicts public means of travel routes, emergency response routes, and the location of all temporary signage for the approval of the City.
- 9.4 The Developer understands and agrees that the City will provide snow removal on the Developer's behalf on any Road which has been granted initial approval by the City and where buildings have been constructed and are being permanently occupied.

An Authorization to Commence shall not be issued unless the Developer has paid the City a flat rate based on an annual cost, payable in advance, subject to CPI adjustment, of \$5,000.00 per kilometer to cover the City's cost for providing such service.

After the Road is assumed by the City, winter maintenance services and cost shall be the responsibility of the City.

Notwithstanding the above, the Developer shall be responsible for any extraordinary costs or repair costs (including vehicle and equipment repair) incurred as a result of improper or deficient construction of the roads or materials or debris on the roads.

- 9.5 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 City, and the Developer shall be solely responsible for any damage caused thereby and the Developer hereby indemnifies and saves harmless the City from any claim arising from such damage.
- 9.6 The Developer shall keep all portions of the development well, properly and efficiently drained during construction and completion and will be held responsible for all damage which may be caused or results from water backing up or flowing over, through, from or along any part of the Works, or which any of the Developer's operations may cause to flow elsewhere, and the Developer hereby indemnifies and saves harmless the City from any claim arising from said damage.
- 9.7 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 for the duration of construction until all disturbed surfaces have been stabilized.

If such earth, debris or other material is washed or carried onto such road, road allowance, whether opened or unopened, or onto the property of any person or persons, the City, its servants or agents, may, at the City's discretion, clean and remove such material, rectify any damage caused, and abate any nuisance created by the Developer in the development of the Plan of Subdivision. Muddy water shall not be allowed to leave the site and any standing water is to be eliminated.

The cost of any such work performed by or at the instruction of the City, shall be paid by the Developer on demand, and without limiting any of its remedies at law or in equity, the City may enforce any security available to it to recover such costs or may collect such costs in like manner as municipal taxes as provided in The Municipal Act and with the same priorities as taxes that are overdue and payable.

- 9.8 The Developer shall be solely responsible for controlling dust nuisance in conjunction with the Works, both within the Plan of Subdivision and elsewhere.
- 9.9 All Highways abutting on the Lands or used for access to the Lands during installation or construction of the Works or during construction of Buildings shall, at all times, be kept as dust free as possible and in a good and usable condition, and without restricting the generality of the foregoing, the Developer shall at the end of each day during such construction cause all such Streets to be cleaned of all refuse, rubbish, waste, debris and other materials of any kind, whether the same resulted from installation and construction of Works or otherwise, and if such Streets are damaged the Developer shall at its own cost restore same immediately to the City's requirements and to the satisfaction of the City.
- 9.10 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 Highways or properties. If at any time, in the opinion of the City, damage is being or is likely to be done to any Highway 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 City make changes in or substitutions for such vehicles or other equipment or shall alter loading or shall in some other manner satisfactory to the City remove the cause of such damage or nuisance. The Developer shall at its own cost repair any such damage immediately to the City's requirements and to the satisfaction of the City.
- 9.11 The Developer shall inform all public utility companies having legal authority to install or construct utility systems (including without limitation Bell Canada, Enbridge Gas, Hydro One Networks Inc. Cogeco Cable) 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 City, 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 City, and the Developer shall be solely responsible for any damage caused to the said cables, pipes, conduits, wires, pole lines and other Works.
- 9.12 The City disclaims any responsibility or liability for the support and protection of sewers, drains, pipes, conduits, tracks or other utilities, services and structures owned by the City or any other public body, by companies, or any other person enjoying special franchises or occupying any portion of the Highways or ways on or below or above the surface. The Developer is directed to carefully examine the location of the Works and to make special inquiry of the companies or persons owning, controlling or operating said pipes, conduits, tracks and other utilities, services and structures, and to determine the character, size, position and length of such pipes, conduits, tracks, utilities and structures, and to inspect the public records of the various City Departments having recognizance and control of pipes, conduits and sewers, and to make such further personal inspection and investigation as is necessary to determine the correctness of the information so obtained. It is the Developer's responsibility to consult the companies concerned as to the exact location

of said utilities, services and structures, and, where necessary, the Developer shall protect and support same to maintain their operation. In the event damage is done to a utility, service or structure the owner of the Works and/or Utility Services 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 Department of Planning and Development Services.

- 9.13 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.
- 9.14 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 City, and further, shall remove from the Lands any unkempt, diseased or infested trees, vines or bushes. In the event this clause is not complied with within fourteen (14) days of written notice delivered by the City to the Developer, the City may have such material removed and collect the cost thereof from the Developer, and without limiting its remedies at law or equity, the City may enforce any security held by it to recover costs or may collect the costs in like manner as municipal taxes as provided in the Municipal Act and with the same priorities as taxes that are overdue and payable.
- 9.15 The Developer acknowledges and agrees that in the event that the Lands are not maintained in an acceptable standard to the City in regards to refuse, rubbish, dust or debris, or if refuse, rubbish, dust or debris from the Lands are found on abutting Streets or properties, and if the Lands and any abutting Streets or properties affected are not maintained in an acceptable standard within fourteen (14) days of written notice delivered by the City to the Developer that the City may have such material removed and collect the cost thereof from the Developer, and without limiting its remedies at law or equity, the City may enforce any security held by it to recover costs or may collect the costs in like manner as municipal taxes as provided in the Municipal Act and with the same priorities as taxes that are overdue and payable.
- 9.16 The Developer shall not add any fill to the Lands without first obtaining written approval from the City.
- 9.17 The Developer shall not remove any topsoil from the Lands without first obtaining written approval from the City.
- 9.18 All Works required to be installed or constructed by the Developer shall be installed and constructed in accordance with the City's specifications and in accordance with the approved Plans.
- 9.19 The Developer acknowledges and agrees, notwithstanding the complete installation of services as authorized by the City, that the City will not be held liable for any stoppage or delay of the registration of the Plan or the issuance of Building Permits for the Lots or Blocks in the Plan.
- 9.20 The Developer acknowledges and agrees that there shall be no open burning of waste construction materials or vegetation on the Lands.

10. SURVEY MONUMENTS TO BE PRESERVED

- 10.1 The Developer agrees that all survey monuments or related markings established in connection with the installation of public utility and municipal services are to be preserved.
- 10.2 The Developer agrees if any survey monument or related marking is accidentally or deliberately damaged, destroyed or removed, to

immediately repair or replace such monuments or related markings under the direction of the person or persons responsible for establishing said survey monuments or related markings.

- 10.3 The Developer agrees to obtain a certificate from an Ontario Land Surveyor stating that all existing and new evidence is in place at the completion of the development.

11. CITY'S RIGHT TO ENTER AND REPAIR

- 11.1 The City shall have the right to enter on the Lands at all times and from time to time and to carry out maintenance and repair of the Works:

- a) Without notice to the Developer where, in the sole opinion of the City, 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,
- b) Where repairs to or maintenance of the said Works has not been completed within twenty-four (24) hours after written notice requiring such repairs or maintenance has been delivered to the Developer.

- 11.2 The decision of the City that repairs, remedial work or maintenance to the said Works is required or that an emergency state exists requiring immediate repair or maintenance shall be final, conclusive and incontestable. Such repairs, remedial works or maintenance shall not be deemed acceptance of the Works by the City or an assumption by the city of any liability in connection therewith and shall not release the Developer from any of its obligations under this Agreement.

- 11.3 The cost of any repair or maintenance work (including professional fees) undertaken by the City pursuant to the provisions of this Agreement shall be borne by the Developer and the amount thereof shall be paid to the City within thirty (30) days after a statement of account therefor has been delivered to the Developer. If the Developer fails to pay the amount due to the City within such thirty (30) day period, the City may and is hereby expressly authorized by the Developer to deduct the amount owing to the City for such repairs or maintenance from any monies or Letters of Credit deposited with the City.

- 11.4 Repairs or maintenance undertaken by the Developer pursuant to this subsection, shall be completed in the presence of City staff, or representative.

- 11.5 The City shall not be held responsible for the restoration (i.e. fences, landscaping, tree plantings) of the Lands should the City carry out maintenance and repair of the Works.

12. SERVICES TO BE COORDINATED

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

13. INTERIM WORKS

The Developer agrees and acknowledges that, until the City formally gives 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.

14. ROADS

- 14.1 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 City.
- 14.2 The Developer shall maintain and repair temporary Roads until trench settlement has ceased and adequate compaction of road sub-grade has taken place to permit commencement of permanent pavement construction.
- 14.3 All roads dedicated as public Highways shall be constructed to the following urban design standards, to the satisfaction of the City and all in accordance with the engineering Plans approved by the City:
- a) The pavement width being 7.5 metres from curb face to curb face;
 - b) A granular depth of 450 mm and 50 mm HL8 HS asphalt;
 - c) Concrete curb and gutter of standard type O.P.S.D. 600.04; and,
 - d) 40 mm HL3 HS top coat of asphalt.
- 14.4 Emergency access for fire protection purposes, turning radii and dead end Roadways shall comply with the requirements of Section 3.2.5.6 of the Ontario Building Code.
- For all Highways:
- a) A minimum radius of 12.8 metres pavement area at any cul-de-sac bulb; and,
 - b) At least 12 metres centerline turning radius at all intersections .
- 14.5 All manhole tops shall be originally set level with the base course of asphalt and raised to finished elevation prior to topcoat of asphalt.
- 14.6 Identify Centralized Mail Box concrete pads on the Plans and install pads in accordance with the requirements of, and in locations approved by Canada Post. The pads are to be poured at the time of the sidewalk and/or curb installation within each phase of the Plan of Subdivision.
- 14.7 Any existing Road damaged during the development of the Plan of Subdivision shall be restored by the Developer, to the complete satisfaction of the City, prior to approval of the Completion Certificate for Primary Services.

15. SANITARY SEWER SYSTEM

- 15.1 If required by the City, and prior to execution of this Agreement by the City, the Developer shall undertake a review of existing downstream sanitary sewer system to ensure the capacity of the system is sufficient for the increase in flows from the Plan of Subdivision. In the event the downstream system is inadequate for the flow increase from this Subdivision, upgrading of those facilities will be the 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 City.
- 15.2 The pipe sizes selected shall have sufficient capacity to serve the ultimate drainage area in which the Subdivision is located and as designed and approved by the City.

- 15.3 The Developer shall provide detailed calculations to the City to confirm that there is adequate sanitary sewer capacity to service the Lands.
- 15.4 Prior to the registration of the Plan, Niagara Region shall confirm that adequate sanitary sewage allotment is available.
- 15.5 The Developer shall construct a sanitary sewer system, including service laterals from the sewer main to the Street line and other appurtenances, to adequately service the Lands. All sanitary sewers, including upgrading of downstream facilities if deemed necessary by the City, shall be constructed in accordance with the approved Plans and specifications, to City and Provincial Construction Standards. Plans must be approved by the City, the Niagara Region and the Ministry of Environment Conservation and Parks (MECP) (inauguration or extension of a sanitary sewer system is subject to approval of the MECP under Sections 52 and 53 of The Ontario Water Resources Act), and the construction and materials used therein shall be in accordance with the City's most recent specification therefor.
- 15.6 All sanitary sewer system Works shall be flushed and cleaned by high velocity sewer flushing equipment:
- a) After placement of the base course asphalt upon the streets in the Development;
 - b) Forthwith after final paving of the streets has been completed; and,
 - c) Upon receipt of any written notice from the City.
- 15.7 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 City.
- 15.8 All sanitary sewer Works shall be inspected and videoed via close circuit TV to the satisfaction, and upon any written notice from the City and prior to assumption of the sanitary sewer Works by the City. In the event the results are not satisfactory, in the sole opinion of the City, the Developer shall take such remedial steps as may be required, in the sole opinion of the City.
- 15.9 The Developer shall install a flow monitoring system and will monitor sanitary sewer flows for a minimum of one (1) year. If flows are deemed excessive by the City, due to inflow and infiltration, the Developer shall make the necessary corrections at their cost. Should the Developer not make the necessary corrections, securities can be utilized.

15.10 Sanitary Sewer Laterals

The Developer shall construct an individual sanitary sewer lateral to service each Lot or Block from the Street sewer main to the Street property line.

The sanitary sewer lateral shall be a minimum 100 mm diameter green colour PVC DR28 with proper waterproof plug fittings approved by the City.

The ends of the sanitary sewer laterals shall be marked with a wooden stake painted green.

15.11 Maintenance Holes

Materials and installation shall be in accordance with OPSS 407 and any other specifications referenced therein.

A 20MPa concrete cradle shall be provided from and around the MH to the first joint of rigid inlet and outlet pipes (OPSD 708.020).

MH frames and covers shall be adjustable, as manufactured by Bibby-Ste-Croix Model C-50-ONT, CIP (Cedar Infrastructure Products Inc.) or equivalent. Follow manufacturer's installation recommendations. MH top elevation shall be set to blend with the surrounding grades.

- 15.12 Prior to the City approving the Completion Certificate for Primary Services, the Developer shall supply the Department of Planning and Development Services with "as constructed Plans" showing the location and depth of the sanitary sewer and lateral constructed to service each Lot or Block.

16. STORM SEWER AND STORM WATER MANAGEMENT SYSTEM

- 16.1 The Developer agrees to construct a storm sewer and storm water management system to accommodate the runoff from the total catchment area and development drainage area, all roof water, all drainage from basement weeping tile, and surface runoff from all roads and abutting properties 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 the Plans approved by the City, the Region, the Niagara Peninsula Conservation Authority, and the Ministry of the Environment Conservation and Parks (MECP) (inauguration or extension of a storm drainage system is subject to approval of the MECP under Sections 52 and 53 of the Ontario Water Resources Act, R.S.O.1990).

The minor system is to be designed to the 5 year storm event and the stormwater management facilities shall at a minimum accommodate for, up to, and including the 100 year storm event.

- 16.2 The construction and materials used therein shall be in accordance with the City's most recent specifications or as approved by the City:
- a) Existing road ditches may be used as outlets. The proposed flows must not exceed pre-development levels and storm sewer quality must be addressed.
 - b) Concrete storm sewer pipe, or other approved type, shall be used.
 - c) MH frames and covers shall be adjustable, as manufactured by Bibby-Ste-Croix Model C-50-ONT, CIP (Cedar Infrastructure Products Inc.) or equivalent. Follow manufacturer's installation recommendations. MH top elevation shall be set to blend with the surrounding grades.
 - d) Minimum pipe size for storm sewer shall be 300 mm diameter, except where otherwise specified by the City.
 - e) Surface drainage shall be collected by means of catch basins.
 - f) Maximum length of gutter flow shall be 100 meters.
- 16.3 All storm sewer system Works shall be flushed and cleaned by high velocity sewer flushing equipment:
- a) After placement of the base course asphalt upon the streets in the Development;
 - b) Forthwith after final paving of the streets has been completed; and,

c) Upon receipt of any written notice from the City.

16.4 All storm sewer Works shall be inspected and videoed via close circuit TV to the satisfaction, and upon any written notice from the City and prior to assumption of the sanitary sewer Works by the City. In the event the results are not satisfactory, in the sole opinion of the City, the Developer shall take such remedial steps as may be required, in the sole opinion of the City.

16.5 Roof water and Sump Pump Discharge

Roof water and discharge from a sump pump for any Building constructed on any Lot or Block must be discharged at grade directed away from all Buildings.

16.6 Prior to the City approving the Assumption of Primary Services and release of security, the Developer shall supply the Department of Planning and Development Services with “as constructed Plans” showing the location and depth of the storm sewer.

16.7 The Developer shall be responsible for testing, removal and disposal of sediments within all catch basins as per the Ministry of Environment and Climate Change Regulations or Guidelines prior to the Assumption of Secondary Services by the City. The Developer shall provide a Certificate of Analysis for the sediments prior to removal and disposal.

16.8 Storm Water Management System

The Developer agrees that prior to the City executing this Agreement the Developer shall prepare and provide a Storm Water Management Plan and Report which shall be submitted for approval by the City, the Region, the Ministry of the Environment, the Niagara Peninsula Conservation Authority and the, indicating the following:

- a) 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 – March 2003” (Ministry of Environment Conservation and Parks), or the latest revision thereof, or such more stringent standards as may be applicable;
- b) 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,
- c) 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 “Environmental Guide for Erosion and Sediment Control During Construction of Highway Projects, February 2007” (Ministry of Transportation), or the latest revision thereof or such more stringent standards as may be applicable.

16.9 The Developer shall prepare and provide a Subdivision Grading Plan 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.

16.10 The Developer shall prepare and provide an Operations, Maintenance and Monitoring Best Practices Report, as per Chapter 6 of the Stormwater

Management Practices Planning and Design Manual—2003 (Ministry of Environment), said report to include recommended activities including future cost estimates to the City.

- 16.11 The Developer agrees to implement the Niagara Peninsula Conservation Authority 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.
- 16.12 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 City and the Region.

17. WATER DISTRIBUTION SYSTEM

- 17.1 The Developer shall submit to the City a Ministry of Environment Conservation and Parks Form 1-Record of Watermains Authorized as a Future Alteration, or any other form required, completed by the Consulting Engineer, with the watermain design plans and calculations for approval by the City prior to construction.
- 17.2 If required by the City, 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 Lands. The water distribution system shall be constructed in accordance with the Plans approved by the City, and the construction and materials used therein shall be in accordance with the City's most recent specifications therefor.

The watermain system shall meet the design criteria of the Region and the Ministry of Environment Conservation and Parks (MECP) (inauguration or extension of a water system is subject to approval of the MECP under Sections 52 and 53 of The Ontario Water Resources Act).

All alterations, relocations or connections to the existing water distribution system will be the responsibility of the Developer and shall be approved by the City.

- 17.3 The Developer shall construct a complete watermain system(s) and all necessary appurtenances, including hydrants, cathode protection and a metered minimum 19 mm diameter copper water service connections from the watermain to each Lot or Block. The design shall be as approved by the City and constructed in accordance with City specifications. All watermains shall be a minimum 150 mm diameter or of a sufficient size to service the Subdivision.
- 17.4 The Developer shall ensure that all connections to the existing drinking water system be scheduled with the Department of Operations and Community Services and that no person shall operate hydrants or appurtenances of the City's existing municipal drinking water system unless the person holds a valid operator's certificate as per Section 12 (1) Safe Drinking Water Act and has been given approval in writing by the City.
- 17.5 The Developer shall be responsible for any damage caused to existing watermains and appurtenances that may occur during construction of buildings and appurtenances that may occur during construction of Buildings and during the Lot or Block grading.
- 17.6 The Developer shall submit supporting documentation to the City's Department of Operations and Community Services and Fire Department that the proposed water system design will deliver adequate fire flows.

17.7 The Developer shall have the water distribution system Works flushed, chlorinated, pressure tested and bacterial tested in accordance with City standards and to the satisfaction of the City prior to Completion Certificate for Primary Services.

17.8 The Developer shall confirm that the tracer wire for the water system is functioning properly.

17.9 Fire Hydrants

The Developer's Consulting Engineer shall indicate the style and locations of fire hydrants on the watermain design plans and provide specifications that indicate the required fire flows required to service the Lands for approval by the Fire Department. All hydrants and water flow must meet National Fire Protection Association (NFPA) standards.

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 City.

Where hydrants have been installed but are not yet functional or are out of service they shall be clearly identified (bagged) to indicate as to be not in service.

All hydrants shall be free of obstructions after being activated.

17.10 Prior to the City approving the Assumption of Primary Services and release of security, the Developer shall supply the Department of Planning and Development Services with "as constructed Plans" showing the location and depth of the watermains and water connections constructed to service each Lot or Block.

18. SIDEWALKS

18.1 Unless the approved Plans indicate otherwise, the Developer shall at its expense and to the satisfaction of the City construct a minimum 1.5 meter wide concrete sidewalk along one side of all Streets in the Subdivision.

18.2 All sidewalks shall be completed within six (6) months of occupancy of each Building, except between November 15th and April 15th, at which time the sidewalks must be installed as soon as possible, at the locations shown on the Plans, and in accordance with the approved Subdivision Grading Plan. The sidewalks are to be constructed in their entirety in block sections.

19. DRIVEWAY APPROACHES

19.1 Each Lot or Block shall be serviced with a driveway approach constructed in accordance with the Plans filed to the complete satisfaction of the City.

19.2 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 asphalt paved, or other material approved by the City, by the Developer in accordance with the approved Plans and specifications within six (6) months from the date of Occupancy of the Building is granted prior to the City approving the Assumption of Secondary Services and the release of securities.

20. FENCING

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

21. STREET AND TRAFFIC SIGNS

- 21.1 The Developer shall erect and maintain temporary traffic signs and such other traffic control devices, i.e. barricades, to the satisfaction of the City.
- 21.2 The Developer shall pay for and install all permanent Street and traffic signs and other traffic control devices required by the approved Plans to the satisfaction of the City, and security shall be taken in accordance with Schedule "E" annexed hereto.

22. ELECTRICAL DISTRIBUTION SYSTEM AND STREET LIGHTING

- 22.1 The Developer shall enter into a separate agreement with Hydro One Networks Inc. whereby the Developer agrees to pay all necessary capital contributions towards the supply to the electrical system.
- 22.2 The Developer shall arrange with Hydro One Networks Inc. for the design, provision and installation of all electrical transmission and distribution systems and Street Lighting system required to service all of the Lots and Blocks shown on the Plan with electrical power in accordance with the Plans and specifications therefor approved by Hydro One Networks Inc. and the City. All such facilities shall be installed underground unless specific external systems are approved by Hydro One Networks Inc. and the City. The cost of providing such facilities shall be borne by the Developer.
- 22.3 The Developer shall arrange with Hydro One Networks Inc. 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 Hydro One Networks Inc. upon receipt of a statement of account therefor.
- 22.4 The Developer shall submit a Street Lighting plan for approval by the City. The Street lighting plan will consist of the design and installation of all lighting facilities, including lamp standards, conduits, lamps and control mechanisms in accordance with current City and Hydro One Networks Inc. standards.
- 22.5 The Streetlights selected shall be LED with the design and quality to be approved by the City.

23. 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 City approving the Assumption of Primary Services and release of security.

24. TREE PLANTINGS

- 24.1 The Developer agrees to retain the maximum number of existing trees within the Lands consistent with good design and conservation practices.
- 24.2 The Developer accommodate the provision of one boulevard tree per lot and two boulevard trees per corner lot and pay to the City \$500 per tree for this provision.
- 24.3 In accordance with Schedule "E", annexed hereto, prior to registration of this Agreement by the City, the Developer shall provide full amount to the City for Tree Planting within the Subdivision.

- 24.4 In accordance with Schedule “E”, annexed hereto, prior to registration of this Agreement by the City, the Developer shall pay costs for any future trees to be planted by the City, as indicated in the approved Landscape Plan and/or as indicated in a clause contained in Schedule “G”, annexed hereto.

25. LANDSCAPING

25.1 Boulevards

The Developer shall grade and place a minimum of 100 mm of topsoil and seed, hydro-seed or 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 seeding or 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 City approving the Completion Certificate for Secondary Services and the release of securities.

25.2 Lands Conveyed to the City

The Developer shall grade and place a minimum of 100 mm of topsoil and seed or hydroseed and landscape all lands to be conveyed to the City including but not limited to parks, channels, and stormwater management facilities in accordance with the approved Plans.

25.3 Ditches, Drainage Swales, and Depressions

All drainage ditches, major overland flow drainage swales and depressions within the Plan of Subdivision shall be fine graded and seeded.

Prior to and during construction, silt traps are to be put in place until vegetation is established to prevent erosion and sedimentation to the satisfaction of the City.

25.4 Grass Maintenance

The Developer shall maintain all sod and seeded areas in good condition and in an acceptable height until Council passes the Assumption By-law for Secondary Services.

26. SUBDIVISION GRADING AND DRAINAGE

- 26.1 Unless otherwise approved or required by the City, the Developer agrees not to alter the grades or remove trees or other vegetation from the Lands until such time as:

- a) The City has agreed in writing to such alteration or removal; and,
- b) The City has approved the Subdivision Grading Plan pursuant to the terms of this Agreement and the City's Lot Grading and Drainage Policy.

- 26.2 Prior to the execution of this Agreement by the City, or commencing any phase of development, the Developer shall prepare and provide the City, as part of the engineering Plans, a Subdivision Grading Plan for the purpose of controlling the overall drainage pattern in the Plan of Subdivision for approval by the City, the Region, and the Niagara Peninsula Conservation Authority.

- 26.3 The following grading works shall be completed prior to the issuance of any Building Permits:

- a) Construction and sodding of all major overland flow drainage swales and other erosion control devices to the satisfaction of the City; and,
 - b) Rough grading of all Lots/Blocks to generally conform to the Subdivision Grading Plan.
- 26.4 If drainage problems arise which are a result of non-compliance with the approved Subdivision Grading Plan, the Developer shall within forty-eight (48) hours of receiving notice thereof correct the problems. Without limiting its remedies at law or in equity, the City may enter upon the Lands to remedy any such problem and may use the Subdivider's Grading Deposit to cover the costs of any remedial works deemed necessary. Any costs of these remedial works in excess of the amount of the Subdivider's Grading Deposit shall be the responsibility of the Developer, and if not reimbursed to the City forthwith after being incurred by the City, the City may collect such costs in like manner as municipal taxes as provided in The Municipal Act and with the same priorities as taxes that are overdue and payable.
- 26.5 The Developer shall deposit with the City as security for carrying out the provisions of the Subdivision Grading Plan, in accordance with Schedule "E" annexed hereto.
- 26.6 Upon completion of the Works and acceptance by the City of a Subdivision Grading Conformance Certificate prepared and signed by an Ontario Land Surveyor or Professional Engineer, the Developer may apply in writing for release of the Subdivider's Grading Deposit, less any cost for remedial work undertaken by the City.

27. LOT GRADING AND DRAINAGE

- 27.1 Prior to the issuance of a Building Permit for a Lot or Block, the Owner shall submit to the City three (3) copies of a proposed Lot Grading Plan noting both existing and proposed grades and the means where by overland flows will be conveyed across the site to accommodate the specific Building design and site topography prepared by a Professional Engineer or an Ontario Land Surveyor. The Lot Grading Plan shall conform to the Subdivision Grading Plan, to the satisfaction of the City, and the Region, where applicable.
- 27.2 The Lot Grading Plan will have regard for all adjacent property elevations and drainage and provide elevations and notes for the following:
- a) Lot corners
 - b) Apron elevations
 - c) Sump pump discharge locations
 - d) Roof leader discharge locations
 - e) Note that the maximum height of the concrete showing on the foundation wall shall not be more than 30.48 cm (12 inches) above the final approved grade elevation.
- 27.3 Prior to the issuance of a Building Permit for a Lot or Block, the Developer/Owner shall submit to the City security for carrying out the provisions of the Lot Grading Plan.
- 27.4 Upon acceptance of the Lot Grading Conformance Certificate by the City, the Developer/Owner may apply in writing for release of the Lot Grading Deposit, less any cost of remedial work performed by the City.

- 27.5 The grading of a Lot or Block shall be considered complete when the Building has been erected and such Lot or Block, including swales, has been graded and sodded and/or seeded. Sodding and/or seeding shall be done within two months after occupancy of the Building or by the next June 1st following occupancy should occupancy take place after November 1st.
- 27.6 Upon completion of grading of the Lot or Block prior to landscaping or fencing, the Owner, shall submit to the City one copy of the "as constructed" Lot Grading Plan indicating the finished elevations. This "as constructed" Lot Grading Plan shall be prepared and certified by a Professional Engineer or Ontario Land Surveyor.
- 27.7 Once the "as constructed" Lot Grading Plan has been certified and signed by a Professional Engineer or Ontario Land Surveyor, if approved by the City, it shall be accepted as the Lot Grading Conformance Certificate.
- 27.8 The Developer/Owner, its heirs, executors, administrators, successors and assigns hereby irrevocably undertake to maintain the grading and drainage schemes as established and verified by the Lot Grading Conformance Certificate and not to alter or revise the grading or drainage without the express written consent of the City.

27.9 Foundation Drains

The Developer/Owner agrees that foundation drains shall be pumped by a sump pump in each Building discharging via splash pads (concrete or other suitable material) or other means which shall extend a distance at least 1.2 metres away from the structure and must direct flow away from the Building, not onto walks or driveways, and not towards adjacent property. The Developer/Owner covenants and warrants that foundation drains will not be connected to the sanitary sewer system.

27.10 Roof Water

The Developer/Owner agrees that roof water drainage from any 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 Building and must direct flow away from the Building, not onto walks or driveways, and not towards adjacent property.

27.11 Minimum Basement Elevations

If required, the Developer/Owner agrees to submit a plan for approval to the City, detailing the basement control elevations for individual Buildings or structures within the Plan of Subdivision and to ensure compliance with approved basement control elevations.

28. REGION OF NIAGARA REQUIREMENTS

- 28.1 That the owner agrees to include the following warning clauses in all Agreements of Purchase and Sale or Lease or Occupancy for all Units:

"The lands in the plan of subdivision may be exposed to noise, reduced air quality, odour, dust or vibrations from nearby and future industrial operations and associated operations (i.e. traffic) that may interfere with some activities of the Owners/tenants who occupy these lands."

"These lands in the plan of subdivision are in proximity to lands currently in agricultural production. The lands may be subject to noise, odour, and/or dust from nearby agricultural operations, which may interfere with some activities of the dwelling occupants."

- 28.2 Insofar as the *Environmental Noise Feasibility Study* completed by Valcoustincs Canada Ltd. dated October 9 2020, requires the implementation of warning clauses related to Canadian National Railway (CN) Stamford Subdivision and spur lines adjacent to the site, the following clauses shall include the applicable warning clauses in the Agreements of Purchase and Sale or Lease or Occupancy for Units:

Transportation Sources

MECP Type A Warning Clause (All Units)

“Purchasers/tenants are advised that sound levels due to increasing road traffic and rail traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels exceed the sound level limits of the Municipality and the Ministry of the Environment.”

MECP Type B Warning Clause (All Units)

“This dwelling unit has been supplied with an air conditioning system which will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the sound level limits of the Municipality and the Ministry of the Environment, Conservation and Parks.”

MECP Type C Warning Clause (All Units)

“Canadian National Railways or their affiliated railway companies has or have a railway right-of-way within 300 m from this dwelling unit. There may be alterations to or expansions of the railway facilities of such right-of-way in the future, including the possibility that Canadian National Railways or their affiliated railway companies as aforesaid, or their assigns or successors may expand their business operations. Such expansion may affect the living and business environment of the residents, tenants and their visitors, employees, customers and patients in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating features in the design of the development. Canadian National Railways or their affiliated railway companies and their successors and assigns will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid right-of-way. ”

- 28.3 That the owner agrees to implement the the recommendation of the approved *Railway Vibration Study* completed by Valcoustincs Canada Ltd. dated October 9 2020.

- 28.4 The Owner acknowledges and agrees that:

“Should deeply buried archaeological remains/resources be found during construction activities, all activities impacting archaeological resources must cease immediately, and the proponent must notify the Archaeology Programs Unit of the Ministry of Citizenship and Multiculturalism (416-212-8886) and contact a licensed archaeologist to carry out an archaeological assessment in accordance with the Ontario Heritage Act and the Standards and Guidelines for Consultant Archaeologists.”

“In the event that human remains are encountered during construction, all activities must cease immediately and the local police as well as the Cemeteries Regulation Unit of the Ministry of Government and Consumer Services (416-326-8800) must be contacted. In situations where human remains are associated with archaeological resources, MHSTCI should

also be notified to ensure that the site is not subject to unlicensed alterations which would be a contravention of the Ontario Heritage Act.”

- 28.5 That the owner agrees to implement the following mitigation measures and recommendations found in Section 5.0 of the Environmental Impact Study, prepared by Beacon Environmental Ltd., dated December 9, 2020:
- a. That vegetation removals be undertaken between October 1st and March 14th, outside of both the breeding bird nesting period and active bat season. A survey for active bird nests should be conducted prior to any vegetation removal or site alteration planned to occur during this window.
 - b. That any security lighting to be installed on buildings should be downward facing and directed away from natural areas to minimize ambient light exposure to the adjacent natural areas.
 - c. That permanent rear-lot fencing be provided adjacent to the natural heritage features, along the rear of lots 1 through 12, to the satisfaction of the Niagara Region. A no-gate bylaw is recommended to reduce human encroachment and limit the movement of pets into the adjacent natural areas.
 - d. That the Application/Owner follow any recommendations made in the Grading Plan prepared by Upper Canada Consultants (dated July 6, 2022).
 - e. That the Application/Owner follow any recommendations made in the Arborist Report and Tree Preservation/Savings Plan, prepared by Beacon Environmental, (dated June 2, 2022).

29. COMPLETION OF WORKS

28.1 Condition Precedent

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

28.2 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 (1) year after the date of registration of the Plan of Subdivision; and,
- b) All required Secondary Services not later than three (3) years after the completion of the Primary Services or forthwith after 80% of the Building construction has been completed whichever occurs earlier unless otherwise approved by the City.

The City may extend the time for completion of Primary and Secondary Services or any of them for such length of time as they may deem expedient upon written application of the Developer with reasons why the extension is needed.

30. COMPLETION CERTIFICATE FOR PRIMARY SERVICES

- 29.1 Primary Services installation will not be considered complete by the City until an inspection has been made by the City and the Completion Certificate for Primary Services has been issued by the City. The Works

shall be inspected and all deficiencies rectified to the complete satisfaction of the City, prior to the approval of the Completion Certificate for Primary Services.

29.2 The City may withhold approval of a Completion Certificate if, in the sole opinion of the City, the Developer is in default of its obligations pursuant to this Agreement or the approved Plans.

29.3 Prior to the City approving the Completion Certificate for Primary Services, the following must be provided to the Department of Planning and Development Services in a single submission package:

- a) The Developer's Consulting Engineer shall provide to the Department of Planning and Development Services the following:
 - i) Certificate(s) verifying that all Primary Services were installed and constructed in accordance with approved Plans and specifications;
 - ii) Certificate(s) stating that all watermains have been flushed, chlorinated and pressure and bacterial tested in accordance with City standards;
 - iii) Certificate(s) stating that all watermain tracer wires have been tested and the new water distribution system can be traced;
 - iv) Certificate(s) stating that all watermains have passed applicable leakage and bacterial testing;
 - 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 sanitary sewers have been tested for infiltration and exfiltration in accordance with City standards;
 - viii) Copies of the flow monitoring documents collected for infiltration and exfiltration tests in accordance with City standards;
 - ix) Certificate(s) stating that all sanitary sewers have been mandrel tested in accordance with City standards;
 - x) Certificate(s) stating that all storm and sanitary sewers have been constructed to all applicable Provincial and City Standards and have been flushed after placement of base course asphalt, air pressure tested, and inspected and videoed via close circuit T.V.;
 - xi) Copies of the storm and sanitary sewer inspection video recordings and documentation;
 - xii) Certificate stating that the approved Tree Preservation Plan, if required, has been complied with including a Clearance Letter from the Region;

- xiii) Certificate(s) stating that all Utility Services required to service the Plan of Subdivision are installed and constructed or a letter of commitment to complete the utility services from utility companies;
 - xiv) Certificate (Subdivision Grading Conformance Certificate) stating that rough grading and major drainage works or swales have been completed in accordance with the Subdivision Grading Plan;
 - xv) Certificate stating that all storm sewers and storm water management controls have been constructed in general conformity to the approved Plan and specifications. Copies of the certification shall be circulated to the Niagara Peninsula Conservation Authority;
 - xvi) The original Plans showing each of the said Works "As Constructed" together with electronic drawing files in AutoCAD format using City of Thorold Drafting Standards, to the satisfaction of the City; and,
 - xvii) 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 or Blocks, to the satisfaction of the City.
- b) The Developer shall provide the Department of Planning and Development Services with a Statutory Declaration from the Developer in a form satisfactory to the City 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 Plans 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.
- c) Subject to Sections 29.3 a) and 29.3 b) hereof, upon receipt of the required documentation and the City's satisfaction that the installation and construction of all Primary Services have been completed in accordance with this Agreement and approved Plans, the City shall date and approve the Completion Certificate of Primary Services.

31. COMPLETION CERTIFICATE FOR SECONDARY SERVICES

- 30.1 Secondary Services installation will not be considered complete by the City until an inspection has been made by the City and the Completion Certificate for Secondary Services has been issued by the City. The Works shall have been inspected and all deficiencies rectified to the complete satisfaction of the City, prior to the approval of the Completion Certificate for Secondary Services.
- 30.2 The City may withhold approval of a Completion Certificate if, in the sole opinion of the City, the Developer is in default of its obligations pursuant to this Agreement or the approved Plans.

- 30.3 Prior to the City approving the Completion Certificate for Secondary Services, the following must be provided to the Department of Planning and Development Services in a single submission package:
- a) The Developer's Consulting Engineer shall provide to the Department of Planning and Development 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) Drawings showing each of the said Works "as constructed" together with electronic drawing files in AutoCAD format using City of Thorold Drafting Standards.
 - b) The Developer shall provide the City with a Statutory Declaration from the Developer in a form satisfactory to the City 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 Plans 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.
 - c) Subject to Sections 30.3 a) and 30.3 b) hereof, upon receipt of the required documentation and the City's satisfaction that the installation and construction of all Secondary Services has been completed in accordance with this Agreement and approved Plans, the City shall date and approve the Completion Certificate for Secondary Services.

32. MAINTENANCE OF THE SUBDIVISION

- 31.1 The Developer shall be responsible for the general tidy appearance of the entire Lands until completion of all Works and Buildings and carry out all weed cutting and maintenance of all unsold Lands and all unassumed Roads to the satisfaction of the City.
- 31.2 The Developer shall adequately maintain all Roads, sidewalks and pedestrian walkways within the Plan of Subdivision free from mud, dust, debris, building materials, and other obstructions, to the satisfaction of the City until Council passes the Assumption By-law for Secondary Services.
- 31.3 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 Owner, in writing, to refrain from dumping on such vacant Lands, including Lands dedicated by the Developer to the City for municipal purposes.
- 31.4 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 City any and all damage or injury to the Works, both during construction and during the period of maintenance as aforesaid.

- 31.5 Should the Developer, for any reason, fail to carry out the repairs or maintenance, including weed control, when requested by the City, the City, at its sole opinion, 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 City shall be final as to the necessity of repairs or of any work done or required to be done. Any costs incurred by the City not reimbursed by the Developer forthwith may be collected by the City in like manner as municipal taxes as provided in The Municipal Act and with the same priority as taxes that are overdue and payable.
- 31.6 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 City approves the Certificate of Final Acceptance for such Works whichever occurs last (this period is herein referred to as the Maintenance Guarantee Period).
- 31.7 The Maintenance Guarantee Period for Primary Services shall commence on the date the City approves the Completion Certificate for Primary Services.
- 31.8 The Maintenance Guarantee Period for Secondary Services shall commence on the date the City approves the Completion Certificate for Secondary Services.

33. CERTIFICATE OF FINAL ACCEPTANCE

- 32.1 Upon expiration of the minimum one (1) 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 City, and provided all deficiencies have been rectified to their satisfaction and the Developer is not in default of the terms of this Agreement, the subject Works shall be accepted by the City and the City shall approve the Certificate of Final Acceptance prepared by the Developer's Consulting Engineer provided the requirements for the Certificate of Final Acceptance have been met.
- 32.2 The Developer is required to submit a certificate from a registered Ontario Land Surveyor certifying that all standard iron bars (SIB's) as shown on the registered Plan have been found and/or replaced as of a date not earlier than seven (7) days prior to the City approving the Certificate of Final Acceptance for Secondary Services.
- 32.3 If upon inspection of the applicable Works all deficiencies have not been rectified to the complete satisfaction of the City 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 City.
- 32.4 The City may withhold approval of a Certificate of Final Acceptance for Primary or Secondary Services, if, in the sole opinion of the City, 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.
- 32.5 Prior to the City approving the Certificate of Final Acceptance for Primary Services, the Developer shall deliver to the City satisfactory proof of installation and construction of the aforesaid electrical transmission and distribution systems and the Street Lighting system, which shall have been approved and/or accepted by a utility supplier satisfactory to the City, and upon Council passing the Assumption By-law for Primary Services, the City will assume the Street Lighting system into the City's Street light inventory.

34. ASSUMPTION OF MUNICIPAL SERVICES

33.1 Conditions for the Assumption of Primary Services

- a) The issuance of a Certificate of Final Acceptance for Primary Services by the City.
- b) Written application for the Assumption of Primary Services to the City.

33.2 Conditions for the Assumption of Secondary Services

- a) The issuance of a Certificate of Final Acceptance for Secondary Services by the City.
- b) Written application for the Assumption of Secondary Services to the City.

33.3 The Developer hereby acknowledges that upon assumption by the City of the municipal services required to be installed and constructed by this Agreement and the approved Plans, all such municipal services shall wholly vest in the City without payment therefor, free and clear of all claims and liens and the Developer shall have no right, title or interest therein. Municipal services shall be assumed by the City passing:

- a) An Assumption By-law for Primary Services after the City approves the Certificate of Final Acceptance for Primary Services. 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.
- b) An Assumption By-law for Secondary Services after the City approves the Certificate of Final Acceptance for Secondary Services. 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.

35. BUILDING PERMIT FEES, DEPOSITS AND OCCUPANCY

34.1 Building Permits – Issuance

The Developer/Owner 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 City;
- b) The City has on file the approved Subdivision Grading Plan;
- c) The Developer has completed the following grading works:
 - i. Rough grading of all Lots to generally conform to the Subdivision Grading Plan;

- ii. Construction and sodding of all major overland flow drainage swales and other erosion control devices deemed necessary by the City for the Lands;
- d) The City has on file an approved Proposed Lot Grading Plan for the subject Lot (s) or Block (s);
- e) Confirmation from the City's Fire Department that there is adequate water supply for firefighting operations and satisfactory access for firefighting equipment to service the Lands;
- f) Activation of fire hydrants for the relevant phase of development;
- g) Installation of temporary traffic signs (including Private Road-Use at Your Own Risk) and such other traffic control devices to the satisfaction of the City.
- h) The City is satisfied that all terms and conditions of this Agreement have been complied with insofar as they apply at that point in time;
- i) The Developer/Owner has otherwise complied with all applicable law.

34.2 Urban Design Guidelines

The Developer/Owner agrees to comply with the Plan of Subdivision's Urban Design Guidelines and Architectural Design Guidelines, as approved the City, if applicable.

A Registered Professional Planner, Architect or Architectural Technologist shall provide their stamp and a statement on the submitted Building Permit plans that indicates that the Building complies with the Plan of Subdivision's Urban Design Guidelines and Architectural Design Guidelines.

34.3 No Building Permit While in Default

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

34.4 Service Main Connections

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

34.5 Utility Services Connections

Utility Services shall be installed for each Lot or Block within sixty (60) days of completion of the Building upon the said Lot or Block or the occupancy of the Building upon the said Lot or Block, whichever comes first

34.6 Development Charges

- a) Current development charges rates from time to time may be obtained from the Building Department of the City of Thorold and from the Regional Municipality of Niagara;

- b) The Developer acknowledges and confirms that all charges, payments, Works to be constructed to 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-laws; and,
 - iii. Are not charges related to development within the meaning of The Development Charges Act.
- c) The Developer hereby releases and forever discharges the City from any and all claims for credit against Development Charges payable hereunder or payable at the issuance of a Building Permit or permits for construction within the Plan of Subdivision and the Developer hereby waives all such claims for credits except for the credits that may be specified in any schedule forming part of this Agreement. Any such credits so specified herein and the calculation therein shall be deemed to be conclusive and binding on the Developer.

34.7 Occupancy

Unless otherwise determined by the Chief Building Official, no Building, including Model Homes, shall be occupied:

- a) Until the City has approved the Certificate of Completion for Primary Services; and,
- b) Until noise attenuation walls have been constructed, if required, and the Developer’s Consulting Engineer has provided to the Department of Planning and Development Services a certificate that the noise berm, wall or fence required to mitigate noise was installed and constructed in accordance with the approved Noise Feasibility Study; and,
- c) Until a final inspection has been completed and a Letter of Occupancy is issued by the Chief Building Official.

34.8 Model Homes

- a) The Developer may construct Model Homes, constituting not more than a total of eight (8) Model Homes, on the lands of the Draft Plan prior to registration of a Plan of Subdivision over all or a Stage of the Draft Plan in accordance with the provisions of the applicable Zoning By-law and all applicable law, provided that:
 - i. The Developer receives a Building Permit from the City’s Chief Building Official for each Model Home to be constructed; and,
 - ii. The Developer confirms that there is adequate water supply and pressure with fully operational hydrants to within ninety (90) metres of any Building erected on the lands of the Draft Plan for fire protection; and,

- iii. The Developer agrees to maintain at all times a clear access for emergency services and conduct appropriate seasonal maintenance on all unassumed Roads and secondary means of egress; and,
- iv. The Developer acknowledges that every sixth Lot shall serve as a firebreak Lot and agrees that:
 - (a) No construction will commence on a designated firebreak Lot or Block without the written approval of the Fire Chief;
 - (b) Notwithstanding that a Building Permit has been issued for Lots or Blocks designated as firebreak Lots, no construction shall proceed until the exterior finish cladding, roofing and windows on the unit abutting each side Lot line has been completed, unless otherwise approved by the Fire Chief; and,
- v. The Developer confirms that there is Road access, acceptable to the City, with a minimum base coat asphalt on top of a suitable road base to support the expected loads imposed by firefighting equipment. A portion of a roadway or yard provided as a required access route for Fire department use shall:
 - (a) Have a clear width not less than 6 m;
 - (b) Have a centerline radius not less than 12 m;
 - (c) Have an overhead clearance not less than 5 m;
 - (d) Have a change of gradient not more than 1 in 12.5 over a minimum distance of 15 m;
 - (e) Be designed to support the expected loads imposed by firefighting equipment and be surfaced with concrete, asphalt or other material designed to permit accessibility under all climatic conditions; and,
- vi. The Developer agrees that an operable fire hydrant is to be available within ninety (90) metres of any Model Home with sufficient flows as deemed necessary by the City of Thorold; and,
- vii. The Developer agrees that the model homes are connected to the municipal water and waste water system; and,
- viii. The Developer agrees that access for emergency services and water supply availability for fire fighting shall be approved by the Fire Department prior to issuance of Building Permits for the Model Home; and,

- ix. The Developer certifies to the City that Lots designated for Model Home construction have been pre-graded to the elevation shown on the Final Grading Plan for the Land, making due allowance for the final application of top soil and sod and for material to be excavated for foundations and basements of the Model Homes to be constructed.
- b) In order to guarantee compliance with all the terms and conditions contained within this section, the Developer covenants and agrees to place security with the Chief Building Official in an amount of \$30,000.00 for each and every Model Home in a form satisfactory to the City, prior to issuance of a Building Permit for construction of any Model Home permitted by this Agreement.

The City may adjust the amount of security required if the actual cost exceeds the original security amount 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.

- c) The security deposit is required to secure, but is not limited to:
 - i. Demolition of any number of Model Homes beyond that which is permitted by the relevant Zoning By-law for the lands of the Draft Plan in the event a Plan of Subdivision for such Land is not registered in accordance with the terms of this Section; and/or,
 - ii. Maintenance and/or clean-up of the City's Roads in the event that they become damaged or soiled with earth and debris as a result of Model Home construction.
- d) The City shall release the security deposit required under this Section, or remaining balance thereof, without interest, to the Developer provided:
 - i. A Plan of Subdivision has been registered on the Lands of the Draft Plan; and,
 - ii. There are no outstanding obligations required of the Developer with respect to the security held under this Section.
- e) All Model Homes constructed under the provisions of this Section shall be used for the sole purpose of showcasing the residential units on the Lands of the Draft Plan, shall not be occupied by a commercial use, and shall not be occupied as a dwelling unit until:
 - i. A Plan of Subdivision has been registered against all or a stage of the Lands of the Draft Plan; and,
 - ii. The City has received from the Developer a Surveyor's Real Property Report prepared by an Ontario Land Surveyor showing the location of the constructed Building on the Lot and the City has determined that the location of such Building complies with the requirements of the Building and

Zoning By-laws of the City, and any other By-law of the City that may apply; and,

- iii. The Building has passed an inspection for Occupancy to the satisfaction of the Chief Building Official, or designate, pursuant to the conditions for occupancy in the Building Code Act and Regulations thereunder.
- f) The Developer shall register a Plan of Subdivision on the Land of the Draft Plan, within twelve (12) months of issuance of a building permit for the first Model Home.
- g) In the event that the Developer cannot register the Plan of Subdivision within twelve (12) months of the date of issuance of a Building Permit for the first Model Home, the Developer may upon written request to the City, apply for an extension, provided the request for such extension is received by the City within twelve (12) months of the date of issuance of a Building Permit for the first Model Home.
- h) Where the Developer has not registered a Plan of Subdivision on the Lands of the Draft Plan and no written request for extension to register a Plan of Subdivision has been received by the City within twelve (12) months of the date of issuance of a Building Permit of the first Model Home, then the City may, upon written notification to the Developer, require the Developer to immediately:
 - i. Demolish any number of Model Homes, which are beyond the maximum number permitted by the relevant Zoning By-law on the lands of the Draft Plan; and,
 - ii. To restore the Land to its original state to the reasonable satisfaction of the City.
- i) In the event that no action is taken by the Developer, satisfactory to the City, to remove such Model Homes within thirty (30) days after the mailing of such Notice, the City has, and is hereby given, the right of entry by the Developer to the Land and may do and perform any and all actions, matters and things that may be required to demolish any number of Model Homes which are beyond the maximum number permitted by the relevant Zoning By-law on the land of the Draft Plan and in pursuance thereof, may hire labour, equipment and purchase such materials as the City considers necessary. Costs incurred by the City pursuant to this subsection may be charged against the security deposit required under this Section.

34.9 Water Meters

All new Buildings shall be constructed with water meters, to City specifications, at the sole expense of the Developer.

34.10 Back Water Valve

A back water valve shall be provided at each sanitary sewer lateral.

36. SECURITY DEPOSITS AND CASH PAYMENTS

35.1 General

- a) The Developer shall be responsible for the full amount of the cost for the design, construction, installation, servicing and maintenance of the Works for the Plan of Subdivision together with all City inspection charges, engineering, administration 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 "E" annexed hereto prior to execution of this Agreement by the City, less any security in accordance with Schedule "E" annexed hereto for the Lands provided by the Developer to the City as outlined in an executed Pre-Servicing Agreement.

The security shall be in the form of a standby irrevocable Letter or Letters of Credit with **automatic renewal provision**, in a form approved by the City. The Developer covenants and agrees that the Letter of Credit shall be kept in full force and effect and that it will pay all premiums as the Letter of Credit becomes due or until such time as the City returns the Letter of Credit in accordance with the provisions of this Agreement.

- b) The Developer acknowledges and agrees that should there be a deficiency in or failure to carry out any Work or matter required by any provision of this Agreement, whether or not such Work or matter is specifically secured by way of Letter of Credit, and the Developer fails to comply within seven (7) days of being given written notice with a direction to carry out such Work or matter, the City may draw on the Letter of Credit and enter onto the Lands and complete all outstanding Works or matters, and pay all costs and expenses incurred thereby from the proceeds so drawn.
- c) The Developer acknowledges and agrees that the City reserves the right to draw on and use the proceeds from the Letters of Credit to complete any work or matter required to be done by the Developer pursuant to this Agreement. The Developer further acknowledges and agrees that, notwithstanding any provision to the contrary in this Agreement specifying the reduction or release of security, in the event that the City determines that any reduction in the Letter of Credit would create a shortfall with respect to securing the completion of any work or matter remaining to be carried out by the Developer pursuant to this Agreement, the City will not be obligated to reduce or release the Letter of Credit as by the particular provision until such time as such work is satisfactorily completed, or the City has sufficient security to ensure that such work will be completed.
- d) Whenever in this Agreement a Letter of Credit is required to be filed with the City, the Developer may instead deposit cash or a certified cheque to be cashed in an amount equal to the Letter of Credit and such deposit shall be held by the City as security in accordance with this Agreement provided that no interest shall be payable on any such deposit.
- e) The Developer acknowledges that upon the transfer of any ownership of the Lands, the City will not return any Letters of Credit or cash deposit required under this Agreement until the new Developer files a substitute Letter or Letters of Credit or cash or certified cheque in the required amounts with the City.
- f) The Developer acknowledges that for the purpose of determining the amount of security to be posted prior to

execution, the Consulting Engineer shall provide the City with an estimate of the cost of design, construction, supervision, inspection and maintenance of all Works.

Security to be posted for Primary Services and Secondary Services and City inspection charges, engineering, administrative and consulting fees shall be calculated, in a manner satisfactory to the City, on the basis of the Consulting Engineer's estimated cost of design, construction, supervision, inspection and maintenance of all Works as set out in Schedule "E" 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 and estimated date of completion of all outstanding Works, and the City 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 and estimated date of completion of all outstanding Works exceeds the original estimated costs as set out in Schedule "E" 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.

35.2 Cash Payments

- a) Prior to the execution of this Agreement by the City, as security for payment of services to be rendered by the City and its agents as required by this Agreement, and for presently outstanding payments owing to the City, the Developer shall, in accordance with Schedule "E" annexed hereto, deposit with the City cash payment and credit security as set out in Schedule "E", cash payments which shall include but not be limited to the following:
 - i. All arrears of taxes and all current taxes and local improvement charges assessed against the Lands described in Schedule "A" annexed hereto; and
 - ii. All levies upon the Land, including but not limited to levies under the Local Improvement Act, Ontario Water Resources Act, Public Utilities Act, Drainage Act, and the Municipal Act, and any other special levies or charge against the property, save and except development charges; and
 - iii. The City's engineering, administrative, consulting, and inspection costs for this Agreement, approval of the Plans, and enactment of By-laws, shall be payable in cash to the City at the time of signing of this Agreement calculated on the following basis:
 - (a) 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;

- (b) 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,
 - (c) 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.
 - iv. Legal Costs- The Developer is responsible for paying all legal fees and disbursements.

A cash deposit is outlined in Schedule "E" annexed hereto.
 - v. Cash-in-Lieu of Parkland, if required- Where Council has decided that cash will be accepted in lieu of parkland dedication or when the land to be dedicated for parkland purposes is less than as outlined in section 51.1 of The Planning Act, the Developer shall pay the sum as outlined in Schedule "E" herein, representing payment of cash in lieu of parkland dedication; and,
 - vi. Off-Site Costs—Cash payment to be determined based on costs associated with engineering, installation, inspection, and maintenance of off-site Works, if applicable. Where the off-site costs will be shared by the Developer and the City, the cost allotments will be outlined in Schedule "E" annexed hereto.
 - vii. Tree Planting Contribution, if required- Where Council has decided that cash will be accepted for future tree plantings (i.e. following the removal of temporary turning bulbs), The Developer shall reimburse the City all legal costs incurred by the City associated with the preparation, administration and registration of this Agreement.
- b) The Developer agrees that it is liable for all the costs and expenditures referred to in Section 35.2 a) and consents to the application of the cash deposit as therein set forth.

35.3 Letter of Credit for On-Site Primary Services

- a) The Developer shall deposit with the City, prior to the 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 City shall be entitled to call upon such security deposit to pay for the completion of such On-Site Primary Services.

Upon receipt of Claims for Liens filed pursuant to the provisions of the Construction Lien Act with respect to the construction of On-Site Primary Services, the City shall also be entitled to call upon the said Letter of Credit.

- b) For On-Site Primary Services, the City, 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 5% of the actual cost of completed Works.

Before reduction or release of any security deposit, the City, 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 the Letter of Credit for On-Site Primary Services of this Agreement; secondly, any engineering, consulting, administrative and legal costs still owing; thirdly, any arrears of taxes; fourthly, taxes for the current year whether levied or unlevied, based on the assessment applicable; and finally, shall return the balance, if any, to the Developer.

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

35.4 Letter of Credit for Off-Site Primary Services

- a) The Developer shall deposit with the City, 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 City shall be entitled to call upon such security deposit to pay for the completion of such Off-Site Primary Services. The City shall also have the right to call upon the said security deposit upon receipt of Claims for Liens filed pursuant to the provisions of the Construction Lien Act with respect to Off-Site Primary Services.

- b) For Off-Site Primary Services, the City, 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 City, from out of the security deposit, may pay firstly into court or in any 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 the Letter of Credit for Off-Site Primary Services of this Agreement; secondly, any engineering, consulting, administrative and legal costs still owing; thirdly, any arrears of taxes; fourthly, taxes for the current year whether levied or unlevied, based on the assessment applicable; and finally, shall return the balance, if any, to the Developer.
- c) The City 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 City. Upon assumption in accordance with the provisions of this Agreement, the 10% Maintenance Guarantee hereinbefore referred to may be released by the City to the Developer.

35.5 Letter of Credit for Off-Site and On-Site Secondary Services

- a) The Developer shall deposit with the City, prior to the execution of this Agreement, a Letter of Credit in the amount of 120% of the estimated cost of the design and construction of all Off-Site and On-Site Secondary Services.

On default by the Developer in providing the Secondary Services in accordance with the provisions of this Agreement and/or the approved Plans, the City shall be entitled to call upon such security deposit to pay for the completion of such Secondary Services.

The City shall also have the right to call upon the said security deposit upon receipt of Claims for Liens filed pursuant to the provisions of the Construction Lien Act with respect to the construction of Secondary Services.

- b) For all Secondary Services, the City, 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 Secondary Services security deposit, the City, from out of the Secondary Services 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 the Letter of Credit for Secondary Services of this Agreement; secondly, any engineering, consulting, administrative and legal costs still owing; thirdly, any arrears of taxes; fourthly, taxes for the current year whether levied or unlevied, based on the assessment applicable; and finally, shall return the balance, if any, to the Developer.

- c) The City 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 Work until the Assumption of Secondary Services by the City. Upon assumption in accordance with the provisions of this Agreement, the 10% Maintenance Guarantee herein before referred to may be released by the City to the Developer.

- d) Upon written demand by the City, and upon the Developer making application for release of security, the Developer shall deliver to the City, a statutory declaration by or on behalf of the Developer stating:

- i. The date of completion of the subject services;
- ii. Works completed to date;
- iii. All accounts that have become due and payable in connection with the construction, installation,

inspection, repair and maintenance of the subject services have been paid; and,

- iv. All requirements of the Construction Lien Act have been complied with to date and proof of expiration of liens under the Construction Lien Act.

37. TENDERS AND INSURANCE

36.1 Prior to commencement of any Works, the Developer shall, at their sole expense, provide the City with:

- a) A copy of the contractor's Performance and Maintenance Bond and Labour and Material Payment bond each for one hundred percent (100%) of the contract sum, plus applicable sales taxes, if required.

The aforesaid Bonds shall unconditionally guarantee to the Developer and the City that the Works will be satisfactorily completed and maintained within the terms of the contract, this Agreement and the approved Plans up to the face value of the bond.

Without limiting the generality of the foregoing, such Bonds shall cover extensions to the contract, modifications thereof, and the Maintenance Guarantee Period.

The bonding company shall not replace a prime contractor or subcontractor without written approval of the City. Bonding companies are subject to acceptance by the City;

- b) A certified copy of the Developer's All Perils and Liability Insurance Policy naming the City as an additional insured in a form satisfactory to the City as follows:
 - i. The policy is to be written on the comprehensive form including contractual liability and complete operations with an inclusive limit of five million dollars (\$5, 000, 000.00) bodily injury (including death) and property damage with a deductible not greater than one thousand dollars (\$1, 000.00) that indemnifies the City from any loss arising from claims or damages, injury or otherwise in connection with the Work done by or on behalf of the Developer for Work done in the Plan of Subdivision and on public road allowances;
 - ii. The policy shall be maintained in full force and effect until the City assumes all Primary and Secondary Services in the Plan of Subdivision. In the event any renewal premium is not paid, the City, in order to prevent the lapse of such liability insurance policy, may pay the renewal premium or premiums and the Developer agrees to pay the cost of such renewal or renewals within fourteen (14) days of the account therefore being rendered by the City. The Developer covenants and agrees that the City reserves the right to draw on and use the proceeds from the Letter of Credit to make such payment if payment is not provided as requested;
 - iii. 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;

- iv. The Standard Automobile Policy shall cover both owned and not-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);
 - v. 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);
 - vi. Cross Liability and Severability of Interest clauses or endorsements shall be provided;
 - vii. An endorsement will be provided to the effect that the policy or policies will not be altered, cancelled or allowed to lapse without thirty (30) days prior written notice to the City from the insurer;
 - viii. 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 on (1) year periods until all Works required under this Agreement are installed and assumed by the City; and,
 - ix. The policy of insurance shall not be construed as relieving the Developer from responsibility for the deductibles or other or larger claims, if any, for which the Developer or City may be held responsible;
- c) A certificate from the Worker's Safety Insurance Board certifying the contractor is in good standing with the Board; and,
 - d) Satisfactory evidence the contractor is qualified, experienced and has the equipment to successfully complete the Works.

38. DEFAULT

- 37.1 Upon breach by the Developer of any covenant, term, condition or requirement of this Agreement, any contract awarded for the Works or the approved Plans, or upon the Developer becoming insolvent or making any assignment for the benefit of creditors, the City, at its option, may declare the Developer to be in default.
- 37.2 Notice of such default shall be given by the City, and if the Developer shall not remedy such default within such time as provided in the notice, the City may declare the Developer to be in Final Default under this Agreement and shall then forthwith give notice thereof to the Developer.
- 37.3 Upon notice of default having been given, the City may require all Work by the Developer, its servants, agents, independent contractors and sub-contractors to cease (other than any Work necessary to remedy such default) until such default shall have been remedied, and in the event of final default, may require all Work as aforesaid to cease. Provided that the Developer is making all reasonable efforts to remedy the default, the City will not require the Developer to cease work on the Works.

37.4 Upon Final Default of the Developer, the City may, at its option, adopt or pursue any or all of the following remedies, but shall not be bound to do so:

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

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

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

37.6 Arbitration

If a dispute arises between the Parties prior to Notice of Final Default involving a material breach of covenant liability for any payment or other amounts claimed to be owing, by one Party against the other, in substitution of any other remedy available to each party at law in equity or pursuant to this Agreement either Party may submit the dispute to arbitration in the matter hereinafter set forth:

- a) The Party seeking arbitration shall give the other party written notice of the issue to be arbitrated, and the relief or remedy desired.
- b) The Party receiving notice as above shall within three (3) working days thereof agree to the relief or remedy desired or failing such agreement and within the three (3) working day period, respond in writing by naming an Arbitrator.
- c) Within three (3) working days, the Party seeking arbitration shall name its Arbitrator. Both Arbitrators shall choose a third Arbitrator within three (3) working days. If one party fails to appoint an Arbitrator in time, a single Arbitrator shall conduct the arbitration.
- d) The hearing to take place within three (3) working days of the appointment of the third Arbitrator, or a single Arbitrator becoming empowered by Clause c). The Arbitrators shall bring down their report within (10) working days of the hearing.
- e) The costs of arbitration shall be borne equally by the parties unless the Arbitrators specifically award costs to either Party.
- f) The award or decision of the Arbitrators shall be binding upon the Parties hereto.

39. INDEMNIFICATION

Until the City passes an Assumption By-law assuming all the Roads constructed, the Developer, on behalf of itself, its successors and assigns, including its successors in title to the Lands in the Plan of Subdivision, hereby releases, discharges and agrees to indemnify and save harmless the City from and against all actions, causes of action, suits, claims and demands whatsoever and howsoever arising, and without limiting the generality of the foregoing, which may arise by reason of:

- a) 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 City;
- b) 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,
- c) 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.

40. INTERPRETATION

It is hereby agreed that in construing this Agreement the words Developer and Owner and the personal pronouns (he, it, his, him, her, they, them, their, its, hers) and 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.

41. NOTICE

All notices required or permitted to be given by one party to the other shall be given in writing either by prepaid registered mail or delivered personally addressed,

In the case of the City to:

City of Thorold

PO Box 1044, 3540 Schmon Parkway
Thorold, ON L2V 4A7

In the case of the Developer to:

Allanburg Estates Ltd.
3705 Ninth Street, RR#3
St. Catharines, ON L2R 6P9

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 or other electronic format of the notice, on the day that the transmission of the written notice is completed.

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:	)	THE CORPORATION OF THE
	)	CITY OF THOROLD
)	
	)	Per: _____
	)	Terry Ugulini, Mayor
)	
	)	Per: _____
	)	Matthew Trennum, City Clerk
)	
	)	DEVELOPER:
	)	ALLANBURG ESTATES LTD.
)	
	)	Per: _____
	)	Allanburg Estates Ltd.
	)	c/o Callum Shedden
	)	I have the authority to bind the corporation
)	
	)	Date: _____

SCHEDULE “A” DESCRIPTION OF LANDS

Legal Description

PART OF UNIT 15, PLAN D-5, CITY OF THOROLD, REGIONAL MUNICIPALITY OF
NIAGARA

DESIGNATED AS PART 1 ON 59R – 17189

SCHEDULE “B” LANDS CONVEYED FOR PUBLIC PURPOSES

All references to Blocks and Lots relate to 59M-_____.

The Developer shall convey free and clear of all encumbrances and at its own expense, the following land to The Corporation of the City of Thorold:

- 1) Anchor Road – Road Allowance
- 2) Block 23 – 0.3 m Reserve

Notes:

The Developer shall provide the deeds of conveyance along with confirmation of the partial discharge of any mortgagee or other encumbrance affecting the lands being conveyed to the City.

Conveying

As the land mentioned above to 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 Developer 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.

Land 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.

SCHEDULE “C” REQUIRED EASEMENTS

The Developer shall convey free and clear of all encumbrances and at its own expense, Easements to The Corporation of the City of Thorold and all other appropriate and relevant entities or agencies; over, under and through:

- | | |
|-------------------------|--------------------------------------------------------------------------|
| Part 2 – Plan 59R-17189 | to the City of Thorold and Region of Niagara for a temporary turn-around |
| Part – Plan 59R-XXX | to the City of Thorold for stormwater managemet |

SCHEDULE “D” LIST OF APPROVED DRAWINGS

<u>Dwg. No.</u>	<u>Title</u>
	Cover Page
0589-GSP	General Servicing Plan
0589-PP1	Plan and Profile 1
0589-PP2	Plan and Profile 2
0589-GP	Grading Plan
0589-GND1	General Notes and Details 1
0589-GND2	General Notes and Details 2
0589-STMDA	Storm Drainage Area Plan
0589-SANDA	Sanitary Drainage Area Plan
0589-STR	Streetscape Plan
0589-PRK	Parking and Signage Plan
SL-1	Street Lighting System
TP-1	Tree Inventory and Preservation Plan

SCHEDULE “E” FINANCIAL REQUIREMENTS

The Owner shall deposit the following amounts at the time of execution of this Agreement:

Financial Obligations and Cost of Construction			
(Includes 10% Contingency and Provision for 13% HST)			
<u>SECURITY DEPOSITS & CASH PAYMENTS</u>			
On-Site Primary Services			
	Estimated Cost	Security Required	Security Amount
General / Earthworks	\$99,280.00	15%	\$14,892.00
Sanitary System	\$99,886.65	15%	\$14,983.00
Storm System	\$281,446.40	15%	\$42,216.96
Water Distribution System	\$120,570.00	15%	\$18,085.50
Preliminary Roads	\$204,598.50	15%	\$30,689.78
Street Sinage	\$1,500.00	15%	\$225.00
Subtotal			\$121,092.24
+10% Contingency			\$12,109.22
Subtotal			\$133,201.46
+13% HST			\$17,316.19
Total Primary Services			\$150,517.65 (1)
<u>SECONDARY SERVICES</u>			
	Estimated Cost	Security Required	Security Amount
Final Roads	\$146,825.00	120%	\$176,190.00
Subtotal			\$176,190.00
+10% Contingency			\$17,619.00
Subtotal			\$193,809.00
+13% HST			\$25,195.17
Total Secondary Services			\$219,004.17 (2)

<u>CASH PAYMENTS</u>			
			Payment Amount
Arrears of Taxes			\$0.00
Local Improvement Charges			\$0.00
Engineering, Administration, Consulting, Inspection Cost (\$19,000.00 for the first \$500,000, cost + 3% above \$500,000)			\$32,623.20
Cash-in-Lieu of Parkland Dedication			\$135,550.00
Boulevard Trees (to be planted in future by City – 25 x \$ 500.00))			\$12,500.00
Snow Plowing (\$5,000.00/km x 0.27)			\$1,350.00
Subtotal			\$182,023.20
13% HST			\$23,663.02
Total Required Payments			\$205,682.22 (3)
LETTER OF CREDIT REQUIRED (1) + (2)			\$369,521.82
CASH PAYMENT REQUIRED (3)			\$205,682.22

The Owner shall deposit the following amounts in cash at the time of issue of building permits:

Expansion and Development Charges

The Owner shall pay to the City of Thorold any and all relevant development charges in force at the time of any application for a building permit and such charges shall be paid to the City before the issuance of such permit.

SCHEDULE “F” CONDITIONS OF FINAL SUBDIVISION APPROVAL

Allanburg Estates Plan of Subdivision (File No. D12-02-2020)

The conditions of final approval and registration of the Allanburg Estates Plan of Subdivision by Allanburg Estates Ltd. (File no. D12-02-2020) City of Thorold are as follows:

DRAFT PLAN

1. This approval applies to the Allanburg Estates Draft Plan of Subdivision, PART OF UNIT 15, PLAN D-5, CITY OF THOROLD, REGIONAL MUNICIPALITY OF NIAGARA designed by Upper Canada Consultants on survey plans prepared by J.D. Barnes Ltd., dated July 27, 2020, proposing:
 - Lots 1-22 for single detached dwelling units;
 - Block 23 for a 0.3 m reserve; and
 - ‘Anchor Road’ for a public roadway
2. The headings inserted in these draft plan conditions are inserted for convenience only and shall not be used as a means of interpreting these draft plan conditions.

AGREEMENTS AND FINANCIAL REQUIREMENTS

3. The Owner shall provide three (3) paper copies and an electronic copy of the pre-registration plans (59M and 59R), prepared by an Ontario Land Surveyor.
4. The Owner shall provide a letter to the Department of Public Works and Community Services stating how all the conditions imposed have been or are to be fulfilled.
5. The Owner shall agree to pay to the City of Thorold all required processing and administration fees and any outstanding taxes or fees associated with the subject lands.
6. The Owner shall submit a Solicitor’s Certificate of Ownership for the Plan of Subdivision land to the Department of Planning and Development Services prior to the preparation of the Subdivision Agreement.
7. That the Subdivision Agreement between the Owner and the City of Thorold be registered by the Municipality against the lands to which it applies in accordance with the Planning Act R.S.O. 1990, c. P.13.
8. That the Owner shall pay the applicable City of Thorold, Niagara Region, District School Board of Niagara, and Niagara District Catholic School Board development charges in place at the time of the Building Permit issuance.
9. That the Owner agrees in writing to satisfy all of the requirements, financial and otherwise, of the City of Thorold concerning the provision of roads, daylight triangles, lot reserves, road widenings, sidewalks, fencing, fire hydrants, street lighting, the extension and installation of services (sanitary sewers, watermain, and storm sewers), stormwater management, and drainage, including the upgrading of services, and the restoration of existing roads damaged during the development of the Plan of Subdivision.
10. That the Subdivision, if phased, be to the satisfaction of the City. The Plan of Subdivision may be registered in phases with appropriate subdivision agreements, provided all applicable conditions have been satisfied for each phase.

11. That the Owner shall provide a 0.3 m wide reserve to the City, shown as Block 23 on the Draft Plan. These must be free and clear of any mortgages, liens and encumbrances.
12. Prior to any site alteration, or final approval, the Owner shall submit all supporting materials, prepared by a qualified professional, as required by the City or any applicable authority, and shall agree to implement the recommendations of the reports, studies and plans to the satisfaction of the City, and any other applicable authority.
13. This approval is for a period of three (3) years. Approval may be extended pursuant to Section 51 (33) of the Planning Act R.S.O. 1990, c. P.13 but no extension can be granted once the approval has lapsed. If the Owner wishes to request an extension to the approval, a written explanation on why the extension is required, together with the resolution from the Region must be submitted for City Council's consideration, prior to the lapsing date.
14. If final approval is not given to this draft plan within three (3) years of the approval date, and no extensions have been granted, approval will lapse under Section 51 (32) of the Planning Act R.S.O. 1990, c. P.13.
15. It is the Owner's responsibility to fulfill the conditions of draft plan approval and to ensure that the required clearance letters are forwarded by the appropriate agencies to the City, quoting file number D12-02-2020 and referencing the conditions that are cleared.

LAND TRANSFERS AND EASEMENTS

16. That the Developer agrees to deed any and all easements that may be required for access for utility and drainage purposes be granted to the appropriate authorities and utilities.

ZONING

17. That prior to final approval, the zoning by-law amendment application (File No. D14-10-2020), which reflects the layout of the Draft Plan of Subdivision has come into effect in accordance with the provisions of Section 34 of the *Planning Act R.S.O. 1990, c. P.13*.
18. The Owner shall submit to the Department of Planning and Development Services two (2) paper copies and an electronic copy of the proposed draft plan and a letter prepared by an Ontario Land Surveyor to confirm zoning compliance.

ROADS

19. That all roads within the subdivision be conveyed to the City of Thorold as public highways.
20. That the streets be named to the satisfaction of the City of Thorold.
21. That the Owner provides detailed engineering design drawings for the roads, sidewalks and street lighting facilities required to service the subject lands to the City for review and approval.
22. That sidewalks be provided to the satisfaction of the Department of Planning and Development Services and the Department of Public Works and Community Services.
23. The Owner shall be responsible for the construction of all primary and secondary services, including sidewalks, boulevard plantings and sod.

24. That the Owner agrees to provide decorative street lighting to the satisfaction of the Department of Planning and Development Services and the Department of Public Works and Community Services.
25. That the Owner agrees to provide a detailed streetscape plan the satisfaction of the Department of Planning and Development Services and the Department of Public Works and Community Services.
26. That the Owner agrees to install sidewalk and grade/sod boulevards within one month of occupancy or the closing date for individual homes on a per lot basis. Should the Developer wish to defer sidewalk installation and the grading/sodding of boulevards due to weather conditions or other circumstances, approval for the deferral must be obtained from the City.
27. That the Owner agrees to provide curbside parking to the satisfaction of the City.
28. That prior to any construction taking place within the City road allowance the Owner shall obtain a City of Thorold Occupancy Permit. Applications must be made through the Department of Public Works and Community Services.

MUNICIPAL SERVICES

29. That a Servicing Study Report indicating that the accepting servicing infrastructure (storm sewers, sanitary sewers and water mains) can accommodate the additional flows and adequate fire flows are provided to the development be submitted to the City for review and to the satisfaction of the Department of Public Works and Community Services and the Fire Chief.
30. That the Owner will provide the City with the proposed site servicing plans for the subject property. The Department of Public Works and Community Services shall approve the plans prior to construction.
31. That the Owner submit for review and approval by the Department of Public Works and Community Services a Geotechnical Study, prepared by a qualified engineer that verifies the soil bearing capacity, recommends appropriate sewer pipe design, pipe bedding, backfill and roadway designs.
32. That the design of all municipal and public utility services for the Subdivision be coordinated with adjacent development.
33. That the design drawings for the sanitary sewer and stormwater drainage systems to service this development be submitted to the Department of Public Works and Community Services for review and approval. (Note: Any stormwater management facility that may be proposed for this development would require the direct approval of the Ministry of the Environment, Conservation and Parks, Toronto). The City of Thorold is responsible for the review and approval of watermains under the MOE Water License Program.
34. That prior to registration of this plan, the Owner must obtain Environmental Compliance Approval from the Ministry of Environment for sewer and storm water management works needed to service the proposed development. Prior to installing the watermain to service the proposed development, the Developer must submit Ministry of Environment 'Form 1' Record of Watermain.
35. At the end of the project, the design engineer shall certify that all grading, storm sewers and stormwater management controls have been constructed in general conformity to the approved drawing. Copies of the certification shall be circulated to the Department of Public Works and Community Services.
36. That all foundation drainage be directed to a sump that will have a pump discharge to grade. Direct gravity or piped connections with sump pump to the storm sewer system are not permitted.

STORMWATER MANAGEMENT, GRADING AND SEDIMENT AND EROSION CONTROL

37. That the Subdivision Agreement between the Owner and the City of Thorold contain provisions whereby the Owner agrees to implement the approved stormwater management plan.
38. 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 Department of Public Works and Community Services for review and approval. The Owner will ensure that the Plan of Subdivision land will remain in a natural state until such time as the detailed subdivision grade control plan is approved.
39. That prior to approval of the final plan or any on-site grading, the Developer submit to the Department of Public Works and Community Services for review and approval two copies of a detailed stormwater management plan for the subdivision and the following plans designed and sealed by a suitably qualified professional engineer in accordance with the Ministry of the Environment, Conservation & Parks documents entitled "Stormwater Management Practices Planning & Design Manual – March 2003" (Ministry of Environment and Climate Change), or the latest revision, and "Environmental Guide for Erosion and Sediment Control During Construction of Highway Projects, February 2007" (Ministry of Environment and Climate Change), or the latest revision, and in accordance with the City of Thorold's Lot Grading and Drainage Policy, and the City of Thorold's Stormwater Management Facility Standards:
 - 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.
40. That detailed sedimentation and erosion control plans be prepared for review and approval by the Department of Public Works and Community Services. All sediment and erosion control measures shall be maintained in good condition for the duration of construction until all disturbed surfaces have been stabilized. Muddy water shall not be allowed to leave the site.
41. That detailed lot grading and drainage plans, noting both existing and proposed grades and the means whereby overland flows will be accommodated across the site, be submitted to the Department of Public Works and Community Services for review and approval.
42. That prior to final approval, the Owner submit to the Department of Public Works and Community Services a detailed stormwater management plan for the development completed by a qualified engineer and prepared in accordance with the "Stormwater Management Practices Planning & Design Manual – March 2003" (Ministry of Environment, Conservation and Parks), or the latest revision.

COMMUNITY BENEFITS AND PUBLIC PARK

43. That the Developer confirm satisfaction of Community Benefits and Parkland Dedication Requirements as permitted in Sections 37 and 51.1 of the *Planning Act R.S.O. 1990, c. P.13*.
44. That as the Owner is not conveying land in the amount of 5% of the land included in the plan to the City of Thorold for park purposes as permitted in

Section 51.1 of the *Planning Act R.S.O. 1990, c. P.13*, the City will accept cash in lieu of the conveyance under the provisions of Section 51.1(3) of the *Planning Act R.S.O. 1990, c. P.13*.

45. The Owner agrees to pay cash in lieu to the City of Thorold for the value of the land otherwise required to be conveyed (5% of the land included in the plan).

UTILITIES

46. That the Owner shall co-ordinate the preparation of an overall utility distribution plan to the satisfaction of all affected authorities.
47. That the Owner shall enter into any agreement as required by utility companies for installation of services, including street lighting, all in accordance with the standards of the City of Thorold. All utilities servicing the subdivision shall be underground. Upon installation and acceptance by the City, streetlights and streetlight electrical supply system will be added to the City's inventory.
48. That the Owner agrees to grant easements as may be required for utility purposes to the appropriate authority.

DEPARTMENT OF PLANNING AND DEVELOPMENT SERVICES

49. The Owner shall be responsible for the urbanization of Barron Road adjacent to the subject lands, to the satisfaction of the Department of Public Works and Community Services.

DEPARTMENT OF PLANNING AND DEVELOPMENT SERVICES

50. The Owner shall be responsible for the installation of permanent fencing in accordance with the recommendations of the Environmental Impact Study. The fencing shall be designed as privacy fencing, shall not include gates, and shall be installed on private property. Details of the fencing shall be submitted to the City for approval.

BELL CANADA

51. The Owner shall indicate in the Agreement, in words satisfactory to Bell Canada, that it will grant to Bell Canada any easements that may be required, which may include a blanket easement, for communication/telecommunication infrastructure. In the event of any conflict with existing Bell Canada facilities or easements, the Owner shall be responsible for the relocation of such facilities or easements.
52. The Owner agrees to contact Bell Canada during detailed design to confirm the provision of communication/telecommunication infrastructure needed to service the development.
53. The Owner agrees that prior to commencing any work, the Owner must confirm that sufficient wire-line communication/telecommunication infrastructure is available. In the event that such infrastructure is unavailable, the Owner shall be required to pay for the connection to and/or extension of the existing communication/telecommunication infrastructure. If the Owner elects not to pay for the above noted connection, then the Owner will be required to demonstrate to the satisfaction of the Municipality that sufficient alternative communication/telecommunication will be provided to enable, at a minimum, the effective delivery of communication/telecommunication services for emergency management services (i.e. 911 Emergency Services).

CANADA POST

54. The Owner shall complete to the satisfaction of the Department of Public Works and Canada Post:
- a) Include in all offers of purchase and sale, a statement that advises the prospective purchaser:
 - i) That the home/business mail delivery will be from a designated Centralized Mail Box.
 - ii) That the Owner be responsible for officially notifying the purchasers of the exact Central Mail Box locations prior to the closing of any home sales.
 - b) The Owner further agrees to:
 - i) Work with Canada Post to determine and provide temporary suitable Centralized Mail Box locations which may be utilized by Canada Post until the curbs, boulevards and sidewalks are in place in the remainder of the subdivision.
 - ii) Install a concrete pad in accordance with the requirements of and in locations to be approved by Canada Post to facilitate the placement of Community Mail Boxes.
 - iii) Identify the pads above on the engineering servicing drawings. Said pads are to be poured at the time of the sidewalk and/or curb installation within each phase of the plan of subdivision.
 - iv) Determine the location of all centralized mail receiving facilities in co-operation with Canada Post and to indicate the location of the centralized mail facilities on appropriate maps, information boards and plans. Maps are also to be prominently displayed in the sales office(s) showing specific Centralized Mail Facility locations.
 - c) Canada's Post's multi-unit policy, which requires that the Developer provide the centralized mail facility (front loading lockbox assembly or rear-loading mailroom [mandatory for 100 units or more]), at their own expense, will be in effect for buildings and complexes with a common lobby, common indoor or sheltered space.

CN RAIL

55. Safety setback of habitable buildings from the railway rights-of-way to be a minimum of 15 metres in conjunction with a safety berm. The safety berm shall be adjoining and parallel to the railway rights-of-way with returns at the ends, 2.0 metres above grade at the property line, with side slopes not steeper than 2.5 to 1. A site plan clearly indicating the positioning and the height of the berm along the property line shared with CN Rail shall be submitted.
56. The Owner shall install and maintain a chain link fence of minimum 1.83 metre height along the mutual property line. The fencing is to be included on the aforementioned site plan.
57. Any proposed alterations to the existing drainage pattern affecting railway property must receive prior concurrence from the Railway and be substantiated by a drainage report to the satisfaction of the CN Railway.

58. The mitigation measures with regards to noise and vibration report must be to the satisfaction of the CN Railway.
59. The Owner shall through restrictive covenants to be registered on title and all agreements of purchase and sale or lease provide notice to the public that the safety berm, fencing and vibration isolation measures implemented are not to be tampered with or altered and further that the Owner shall have sole responsibility for and shall maintain these measures to the satisfaction of CN.
60. The Owner shall enter into a Development Agreement with CN.
61. An environmental easement shall be registered on title to the satisfaction of CN.
62. Warning clauses should be inserted in all development agreements, offers to purchase, and agreements of Purchase and Sale or Lease of each dwelling unit within 300 m of the railway right-of-way.

DISTRICT SCHOOL BOARD OF NIAGARA

63. That sidewalks be constructed within the subdivision to facilitate student travel to the school/bus stop locations.

HYDRO ONE

64. Prior to HONI providing its final approval, the Owner must make arrangements satisfactory to HONI for lot grading and drainage. Digital PDF copies of the lot grading and drainage plans (true scale), showing existing and proposed final grades, must be submitted to HONI for review and approval. The drawings must identify the transmission corridor, location of towers within the corridor and any proposed uses within the transmission corridor. Drainage must be controlled and directed away from the transmission corridor.
65. Any development in conjunction with the site plan must not block vehicular access to any HONI facilities located on the transmission corridor. During construction, there must be no storage of materials or mounding of earth, snow or other debris on the transmission corridor.
66. At the Owner's expense, temporary fencing must be placed along the transmission corridor prior to construction, and permanent fencing must be erected along the common property line after construction is completed.
67. The costs of any relocations or revisions to HONI facilities which are necessary to accommodate this site plan will be borne by the Owner. The Owner will be responsible for restoration of any damage to the transmission corridor or HONI facilities thereon resulting from construction of the site plan.
68. The transmission lines abutting the subject lands operate at either 500,000, 230,000 or 115,000 volts. Section 188 of Regulation 213/91 pursuant to the Occupational Health and Safety Act, require that no object be brought closer than 6 metres (20 feet) to an energized 500 kV conductor. The distance for 230 kV conductors is 4.5 metres (15 feet), and for 115 kV conductors it is 3 metres (10 feet). It is the Owner's responsibility to be aware, and to make all personnel on site aware, that all equipment and personnel must come no closer than the distance specified in the Act. They should also be aware that the conductors can raise and lower without warning, depending on the electrical demand placed on the line.

NIAGARA REGION PLANNING AND DEVELOPMENT SERVICES DEPARTMENT

69. That the Owner agrees to include the following warning clauses in all Agreements of Purchase and Sale or Lease or Occupancy for all Units, and

that they also be included in the Subdivision Agreement between the Owner and the City of Thorold:

“The lands in the plan of subdivision may be exposed to noise, reduced air quality, odour, dust or vibrations from nearby and future industrial operations and associated operations (i.e. traffic) that may interfere with some activities of the Owners/tenants who occupy these lands.”

“These lands in the plan of subdivision are in proximity to lands currently in agricultural production. The lands may be subject to noise, odour, and/or dust from nearby agricultural operations, which may interfere with some activities of the dwelling occupants.”

70. That the Subdivision Agreement contain provisions whereby the Owner agrees to implement the recommendations of the approved Environmental Noise Feasibility Study by Valcoustics Canada Ltd. (dated October 9, 2020).
71. That the Subdivision Agreement contain provisions whereby the Owner agrees to implement the recommendations of the approved Railway Vibration Study by Valcoustics Canada Ltd. (dated October 9, 2020).
72. That the following clauses shall be included in the Subdivision Agreement between the Owner and the City of Thorold:

“Should deeply buried archaeological remains/resources be found during construction activities, all activities impacting archaeological resources must cease immediately, and the proponent must notify the Archaeology Programs Unit of the Ministry of Citizenship and Multiculturalism (416-212-8886) and contact a licensed archaeologist to carry out an archaeological assessment in accordance with the Ontario Heritage Act and the Standards and Guidelines for Consultant Archaeologists.”

“In the event that human remains are encountered during construction, all activities must cease immediately and the local police as well as the Cemeteries Regulation Unit of the Ministry of Government and Consumer Services (416-326-8800) must be contacted. In situations where human remains are associated with archaeological resources, MHSTCI should also be notified to ensure that the site is not subject to unlicensed alterations which would be a contravention of the Ontario Heritage Act.”

73. That the Subdivision Agreement contain wording wherein the Owner agrees to implement the mitigation measures and recommendations found in Section 5.0 of the Environmental Impact Study, prepared by Beacon Environmental Ltd., (dated December 9, 2020), including but not limited to:
 - a. That vegetation removals be undertaken between October 1st and March 14th, outside of both the breeding bird nesting period and active bat season. A survey for active bird nests should be conducted prior to any vegetation removal or site alteration planned to occur during this window.
 - b. That any security lighting to be installed on buildings should be downward facing and directed away from natural areas to minimize ambient light exposure to the adjacent natural areas.
 - c. That permanent rear-lot fencing be provided adjacent to the natural heritage features, along the rear of lots 1 through 12, to the satisfaction of the Niagara Region. A no-gate bylaw is recommended to reduce human encroachment and limit the movement of pets into the adjacent natural areas.

- d. That the Application/Owner follow any recommendations made in the Grading Plan prepared by Upper Canada Consultants (dated July 6, 2022).
 - e. That the Application/Owner follow any recommendations made in the Arborist Report and Tree Preservation/Savings Plan, prepared by Beacon Environmental, (date June 2, 2022).
74. That the Owner provides a written acknowledgement to the Niagara Region stating that draft approval of this subdivision does not include a commitment of servicing allocation by the Niagara Region as servicing allocation will not be assigned until the plan is registered and that any pre-servicing will be at the sole risk and responsibility of the Owner.
75. That the Owner provides a written undertaking to the Niagara Region stating that all Offers and Agreements of Purchase and Sale or Lease, which may be negotiated prior to registration of this subdivision, shall contain a clause indicating that servicing allocation for the subdivision will not be assigned until the plan is registered, and a similar clause be inserted in the Subdivision Agreement between the Owner and the City.
76. That prior to final approval for registration of this plan of subdivision, the Owner shall submit the design drawings [with calculations] for the sanitary and storm drainage systems required to service this development and obtain the Ministry of the Environment, Conservation and Parks Environmental Compliance Approval under the Transfer of Review Program.
77. That prior to approval of the final plan or any on-site grading, the Owner shall submit a detailed stormwater management plan for the subdivision and the following plans designed and sealed by a qualified professional engineer in accordance with the Ministry of the Environment, Conservation and Parks documents entitled Stormwater Management Planning and Design Manual March 2003 and Stormwater Quality Guidelines for New Development, May 1991, or their successors to Niagara Region for review and approval:
- a. Detailed lot grading, servicing and drainage plans, noting both existing and proposed grades and the means whereby overland flows will be accommodated across the site;
 - b. Detailed erosion and sedimentation control plans; and
 - c. That prior to final approval for registration of this plan of subdivision, the Owner shall submit the design drawings [with calculations] for the stormwater management facility required to service this development and obtain the necessary Ministry of the Environment Compliance Approval.
78. That the Subdivision Agreement between the Owner and the City contain provisions whereby the Owner agrees to implement the approved plan(s) required in accordance with the condition above.
79. That the Owner ensure that all streets and development blocks can provide an access in accordance with the Niagara Region's Corporate Waste Collection Policy, and by-laws relating to the curbside collection of waste.
80. That in order to accommodate Regional Waste Collection service, a temporary easement will be required on the abutting lands for the construction of the proposed road for waste collection.

FINAL APPROVAL

Subject to the conditions set forth herein, this Draft Plan is approved under Section 51 (31) of the *Planning Act R.S.O. 1990, c. P.13*. Final approval shall be granted by the City.

CLEARANCE OF CONDITIONS

Prior to granting final plan approval, the City of Thorold requires written notice from the following agencies indicating that their respective conditions have been satisfied:

<u>Agency</u>	<u>Conditions</u>
Bell Canada	51-53
Canada Post	54
CN Rail	55-62
District School Board of Niagara	63
Hyrdo One	64-68
Niagara Region Planning and Development Services Department	69-80

Agency Contacts

<u>Agency</u>	<u>Contact</u>	<u>Address</u>	<u>Email/Phone</u>
Bell Canada	Meaghan Palynchuk	-	planninganddevelopment@bell.ca 905-540-7254
Canada Post	Andrew Carrigan	955 Highbury Avenue London, ON N5Y 1A3	Andrew.Carrigan@canadapost.ca 226-268-5914
CN Rail	-	-	proximity@cn.ca
District School Board of Niagara	Sue Mabee, MCIP, RPP	191 Carlton Street St. Catharines, ON L2R 7P4	sue.mabee@dsbn.org 905-641-1550 ext. 54225
Hydro One	Dennis De Rango	P.O. Box 4300 Markham, ON L3R 5Z5	dennis.derango@hydroone.com 905-946-6237
Niagara Region Planning and Development Services Department	Lindsay Earl, MCIP, RPP	1815 Sir Isaac Brock Way, P.O. Box 1042 Thorold, ON L2V 4T7	lindsay.earl@niagararegion.ca 905-685-4225 ext. 3387

SCHEDULE "G" SPECIAL PROVISIONS

1. All references to Lots and Blocks in this Agreement are to be the Plan of Subdivision (Plan 59M-_____) for Allanburg Estates prepared by J.D. Barnes showing:
 - Lots 1-22 for single detached dwelling units;
 - Block 23 for a 0.3 m reserve; and
 - 'Anchor Road' for a public roadway
2. The Developer acknowledges and agrees that all lots and blocks are subject to the Architectural Design Guidelines, as approved by the Council of the City of Thorold.
3. The Developer acknowledges and agrees that all Offers to Purchase and Agreements of Purchase and Sale shall contain a clause clearly indicating that

"All Works within the Subdivision, including but not limited to storm sewers, sanitary sewers, water main, Roads, curbs and gutters, Street Lighting and drainage works and swales are contracted by the Developer. The Developer is obligated to maintain the Works in accordance with the Subdivision Agreement and Plans registered on title."
4. The Developer acknowledges and agrees that all Offers to Purchase and Agreements of Purchase and Sale shall contain a clause clearly indicating that

"The Lands in the Plan of Subdivision are subject to the payment of development charges which are payable prior to the issuance of a building permit."
5. The Developer acknowledges and agrees that all Offers to Purchase and Agreements of Purchase and Sale for a Lot or Block that abuts where a sidewalk location has been approved 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 approved plans on file at the City. The Purchaser agrees to keep the sidewalk directly adjacent to their Lot or Block clear from snow."
6. The Developer acknowledges and agrees that all Offers to Purchase and Agreements of Purchase and Sale shall contain a clause clearly indicating that

"The Developer shall be responsible for installing paved driveway aprons from curb to the property line or from the curb to the sidewalk within municipal road allowances."
7. The Developer acknowledges and agrees that all Offers to Purchase and Agreements of Purchase and Sale shall contain a clause clearly indicating that

"The Purchaser agrees to maintain the grassed boulevard including turning circles islands and/or medians."
8. The Developer acknowledges and agrees that all Offers to Purchase and Agreements of Purchase and Sale shall contain a clause clearly indicating that

"The general tidy appearance and maintenance of an individual Lot or Block is the responsibility of the Owner upon purchase of said Lot or Block."
9. The Developer acknowledges and agrees that all Offers to Purchase and Agreements of Purchase and Sale 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."

10. The Developer acknowledges and agrees that all Offers to Purchase and Agreements of Purchase and Sale shall contain a clause clearly indicating that

“No one shall interfere with the drainage swales or surface drainage pattern on a Lot or Block without explicit written permission from the City. All swales are for storm water management purposes and it shall be the responsibility of the Owner to maintain the drainage across the Lot or Block in accordance with the approved Subdivision Grading Plan and Lot Grading Plan. Should the City find it necessary to enter upon the Lands to undertake any inspection of or any Works with regard to any drainage or stormwater management Works, the City shall have the same rights as are prescribed by the Subdivision Agreement.”
11. The Developer shall make arrangements satisfactory to the City of Thorold, Canada Post, Bell Canada, Enbridge Gas and other Public Utilities including Cable TV, for the provision of underground utility services internal and external to this development.
12. The subdivision will receive mail service to centralized mail facilities through Canada Post’s Community Mailbox Program. The Developer shall:
 - a) Include in all offers of purchase and sale, a statement that advises the prospective purchaser:
 - i) That the home/business mail delivery will be from a designated Centralized Mail Box.
 - ii) That the Developer be responsible for officially notifying the purchasers of the exact Central Mail Box locations prior to the closing of any home sales.
 - b) The Developer further agrees to:
 - i) Work with Canada Post to determine and provide temporary suitable Centralized Mail Box locations which may be utilized by Canada Post until the curbs, boulevards and sidewalks are in place in the remainder of the subdivision.
 - ii) Install a concrete pad in accordance with the requirements of and in locations to be approved by Canada Post to facilitate the placement of Community Mail Boxes.
 - iii) Identify the pads above on the engineering servicing drawings. Said pads are to be poured at the time of the sidewalk and/or curb installation within each phase of the plan of subdivision.
 - iv) Determine the location of all centralized mail receiving facilities in co-operation with Canada Post and to indicate the location of the centralized mail facilities on appropriate maps, information boards and plans. Maps are also to be prominently displayed in the sales office(s) showing specific Centralized Mail Facility locations.
13. The Developer agrees to implement the approved storm water management, erosion and sediment control measures.
14. The Developer agrees to obtain a certificate from an Ontario Land Surveyor stating that all existing and new survey evidence is in place at the completion of the development.
15. The Developer acknowledges and agrees that all Offers to Purchase and Agreements of Purchase and Sale shall contain a clause clearly indicating that:

“Servicing allocation for this subdivision will not be assigned until the plan is registered.”

16. The subdivision agreement between the Developer and City contain the following clause:

“Should deeply buried archaeological remains/resources be found on the property during construction activities, all activities impacting archaeological resources must cease immediately, the Archaeology Programs Unit of the Ontario Ministry of Tourism, Culture and Sport (416-212-8886) shall be notified, and a licensed archaeologist, who is required to carry out an archaeological assessment in accordance with the Ontario Heritage Act and the Standards and Guidelines for Consultant Archaeologists.

In the event that human remains are encountered during construction, all activities must cease immediately and the local police as well as the Cemeteries Regulation Unit of the Ministry of Government and Consumer Services in Toronto (416-326-8800) must be contacted. In situations where human remains are associated with archaeological resources, MTCS should also be notified to ensure that the site is not subject to unlicensed alterations which would be a contravention of the Ontario Heritage Act.”
17. The Developer acknowledges and agrees to ensure that all streets and development blocks can provide an access in accordance with the Regional Municipality of Niagara Corporate Policy and By-laws relating to the curbside collection of waste and recycling throughout all phases of development. Where a through street is not maintained, the Owner shall provide a revised draft plan to reflect a proposed temporary turnaround/cul-de-sac with a minimum curb radius of 12.8 metres.
18. The Developer agrees to pay \$135,550.00 as cash-in-lieu of parkland in accordance with the approved Appraisal Report prepared by Colliers International, dated September 14, 2021.
19. The Developer agrees that all buildings within the Plan of Subdivision shall achieve a minimum performance level that is equal to an ENERGY STAR® standard.