

**SUBDIVISION PRE-SERVICING AGREEMENT  
HODGKIN**

**THIS AGREEMENT** dated the 8<sup>th</sup> day of April, 2021

**BETWEEN:**

**5009835 ONTARIO INC**

(Hereinafter called the Owner)

-and-

**THE CORPORATION OF THE CITY OF THOROLD**

(Hereinafter called the Municipality)

**WHEREAS:**

1. The Owner is the registered owner of lands described in Schedule A (the Lands);
2. The Owner proposes to develop the Lands pursuant to a Plan of Subdivision and has made application to the Municipality for approval of a Draft Plan of Subdivision which was granted by the Municipality on the 8<sup>th</sup> day of April 2021; Furthermore, the Owner has agreed to enter into a Subdivision Agreement for the Hodgkin Subdivision which agreement will be registered as soon as ready.

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3. The Owner desires to commence the installation, construction and provision of certain works on the Lands within the subdivision prior to the execution of the Subdivision Agreement with the Municipality and such works are more particularly set out in Schedule B (the Works);
4. The Municipality has agreed to permit the Owner to install, construct and provide the Works as requested on the following terms and conditions;
5. This Agreement will be registered on title to the Lands;
6. The parties to this Agreement declare that the recitals herein are true.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of other good and valuable consideration and the sum of **TWO DOLLARS (\$2.00)** of lawful money of Canada now paid by each of the parties hereto to each of the other parties hereto, the receipt whereof is hereby acknowledged, the parties hereto hereby covenant, promise and agree with each other as follows:

#### **1. PERMISSION TO CONSTRUCT**

The Municipality grants permission to the Owner to commence construction and installation of the Works as more particularly set out in Schedule "B" on the Lands in advance of the Subdivision Agreement between the Owner and the Municipality for the purposes of the Hodgkin (40 Lot Allanburg development) of the Plan of the Subdivision

#### **2. CONSTRUCTION OF WORKS**

The Owner covenants and agrees to:

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- (a) Retain a professional consulting engineer experienced in the municipal engineering field who will carry out all necessary engineering requirements associated with the construction and installation of the Works;
- (b) Construct and install the Works in a good and workmanlike manner and in accordance with all of the Municipality's standards and practices and only in accordance with the approved plans for the Works;
- (c) Not undertake any construction or installation of the Works beyond the hours of 7:00 am to 7:00 pm, Monday through Friday, or such other dates and times as may be established by the Municipality from time to time;
- (d) Not undertake work on any proposed public right-of-way, which includes any public highways, easements, or reserves, **without first obtaining the express written consent of the municipality and any other relevant governmental authority.**

### 3. OWNER'S ACKNOWLEDGEMENTS

The Owner acknowledges and agrees that:

- (a) It is being given permission to commence construction and installation of the Works prior to the execution of the Subdivision Agreement for the purposes of development of Hodgkin Subdivision (40 Lot Allanburg development) and that any work it undertakes in furtherance thereof will be at its sole and absolute risk;
- (b) It will be bound by the terms and conditions of the Subdivision Agreement for the purposes of development of Hodgkin Subdivision and that nothing contained in this Agreement or in the Municipality's grant of the permission to proceed with the installation and construction of the Works will stop the Municipality from

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imposing any of its standard conditions and requirements pertaining to the installation of public works or from enforcing its authority to require the Owner to fully comply with all applicable Conditions of Approval of the Plan of Subdivision;

- (c) It may be required to modify, alter, relocate, and reconstruct certain of the Works based on the final drawings and plans approved by the Municipality;
- (d) It will comply with every direction issued or given by the Municipality during the course of pre-servicing including but not limited to the cessation of work, the installation or carrying out of additional work, the phasing of Works construction and installation or any other matter the Municipality deems to be in the interest of the proper development of the Lands and surrounding areas;
- (e) That it is not being given any permission to carry out any works or to enter upon any lands not owned by it, except for lands owned by the Municipality, without the written consent of the Owner and that such consent shall be filed with the Municipality;
- (f) That it cannot connect any Works to any public services on any municipal right-of-way;
- (g) The Municipality will be under no obligation whatsoever to complete all or any portion of the Works if the Owner fails to complete them, but that, notwithstanding the foregoing, the Municipality shall, at its sole and absolute discretion, be entitled to enter onto the Lands and complete any Works or portion of the Works and to take any action it deems necessary to safeguard the health and safety of its residents, all at the Owner's expense;

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- (h) That its proceeding with the Works in advance of execution of the Subdivision Agreement for the purposes of development of Hodgkin Subdivision is not based upon any representation from the Municipality as to when any remaining site servicing for the development may be provided;
- (i) That by granting this permission, the Municipality makes no representation that the Municipality is not able to impose further conditions of subdivision prior to final approval.
- (ii) In the case of conflict or disagreement between this agreement and the Tri-Party the Tri-Party agreement takes presidents.

#### **4. INSPECTION AND RIGHT OF ENTRY**

- (a) The Owner covenants and agrees that the Municipality and any of its employees or agents may enter onto the Lands at any time upon reasonable notice being provided to the Owner in accordance with paragraph 11 in order to make all necessary inspections and to correct any deficiencies or remedy any other defects arising from or relating to the construction and installation of the Works.
- (b) The Owner shall forthwith upon demand pay the Municipality for all costs incurred by the Municipality in undertaking any of the foresaid actions.
- (c) For further particularity, the Owner agrees to allow the Municipality, its employees, servants and agents the right to enter the Lands at all reasonable time and for all reasonable purposes, including but not limiting the generality of the foregoing, for all necessary inspections to correct any drainage problems or to correct or eliminate any other nuisance such as dust, garbage and debris and excavations, etc., and the costs incurred by the Municipality in so doing shall be a charge to the Owner.

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## 5. COMPLIANCE WITH ALL LAWS AND REGULATIONS

The Owner covenants and agrees to comply with all federal, provincial and municipal laws, rules, by-laws and regulations in constructing, installing or otherwise providing the Works.

## 6. INSURANCE

Before commencing any of the Works, the Owner shall supply the Municipality with a liability insurance policy or a certificate of insurance evidencing liability insurance coverage in the amount of Five Million Dollars CAD (\$5,000,000.00) in a form satisfactory to the Municipality, indemnifying the Municipality from any loss arising from claims or damages, injury or otherwise in connection with the work done by or on behalf of the Owner and naming the Municipality as an additional insured. The policy shall be maintained in full force and effect until the subdivision is assumed by the Municipality. In the event any renewal premium is not paid, the Municipality, in order to prevent the lapse of such liability insurance policy, may pay the renewal premium or premiums and the Owner agrees to pay the cost of such renewal or renewals within **forty-five (45)** days of the account being rendered by the Municipality.

## 7. INDEMNIFICATION, RELEASE AND LIENS

- (a) The Owner covenants and agrees to indemnify and save the Municipality completely harmless from and against all actions, suits, claims or demands which may arise either directly or indirectly by reason of the permission granted hereunder and the construction and installation of the Works on the Lands, or by reason of the maintenance or lack of maintenance of the Works, or by reason of any defect in workmanship or material. The Owner further covenants and agrees to release and forever discharge the Municipality from and against any and all actions, suits, claims or demands which may arise either directly or indirectly by reason of the permission granted hereunder and the construction and installation of the Works on the Lands in advance of the execution of the Amending

Subdivision Agreement to the Main Agreement for the purposes of development of Hodgkin Subdivision.

- (b) Furthermore, the Owner shall indemnify and hold the Municipality harmless from and against liability claims, damages, or expenses due to or arising from, any claim made against the Lands and adjacent municipal lands where services are installed therein pursuant to this Agreement for all liens related to all work done by or on behalf of the Owner. Any such liability, claims, damages, or expenses incurred by the Municipality shall be paid by the Owner to the Municipality forthwith upon demand. The Owner shall further cause all registration of claims for construction liens or certificates of action under the Construction Lien Act, R.S.O. 1990, c. C30, as amended, and relating to any such work done by or on behalf of the Owner to be discharged or vacated, as the case may be, within **ten (10) days** of such registration **or within ten (10) days** after notice from the Municipality.

## 8. SECURITY

- (a) In order to guarantee compliance with all conditions contained herein, the Owner covenants and agrees to file with the Municipality, upon execution of this Agreement, security in the cash amount of \$ 49,415.62 in accordance with the estimated costs of the Works set out in Schedule "C". The Owner acknowledges and agrees that should there be a deficiency in or a failure to carry out any work or matter required by any clause of this Agreement and the Owner fails to comply within **forty five (45) days** written notice with a direction to carry out such work or matter, the Municipality may draw on the security in whole or in part and enter onto the Lands and complete all outstanding Works or associated matters, and pay all costs and expenses incurred thereby from the proceeds so drawn. The Owner acknowledges that the Municipality reserves the right to draw on the security to complete any Works or associated matters required to be done by the Owner

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pursuant to this Agreement. This deposit shall also be used to cover any Engineering, Inspection, and/or Legal costs incurred by the City in accordance with Section 4 of this Agreement.

- (b) Security required shall be a cash deposit only and such deposit shall be held by the Municipality as security in accordance with this Agreement, provided that no interest shall be payable on any such deposit. The Owner acknowledges that upon the transfer of ownership of any of the subject Lands, the Municipality will not return any security required under this Agreement until the new owners file substitute security in the required amounts.

## **9. WITHDRAWAL OF PERMISSION**

The Owner acknowledges and agrees that the Municipality is entitled to withdraw its permission granted herein for the installation and construction of the Works if it is determined, in the sole and absolute discretion of the Municipality that such withdrawal is in the best interests of the Municipality. Upon notification of such withdrawal of permission, the Owner covenants and agrees to immediately cease any further construction, installation or other work in respect of the Works. The Owner acknowledges that it shall have no claim against the Municipality if it exercises its right to withdraw the permission granted under this Agreement and it specifically waives and disclaims its rights to make any claim in connection therewith.

## **10. TRANSFER OF LANDS**

The Owner covenants and agrees that in the event it transfers or conveys the Lands to a third party prior to the execution of the Subdivision Agreement, that it shall, prior to completing the transfer, provide the Municipality with an executed Agreement from the third party in a form satisfactory to the Municipality whereby the third party agrees to a complete assumption of the terms of this Agreement and to be bound by this Agreement as if it had been the original signatory.

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## 11. NOTICE

- (a) If any notice is required to be given by the Municipality to the Owner with respect to this Agreement, such notice shall be mailed, delivered or sent by facsimile transmission:

Michael Colosimo, M.E.T

CAPITAL CONTRACTING GROUP

1872283 Ontario Inc.

3976 Portage Road, Unit 2

Niagara Falls, ON, L2J 2K9

905-348-6453 or such other address of which the Owner has notified the Clerk, in writing, and any such notice mailed or delivered shall be deemed good and sufficient notice under the terms of this Agreement.

- (b) If any notice is required to be given by the Owner to the Municipality with respect to this Agreement, such notice shall be mailed, delivered or sent by facsimile transmission:

City of Thorold,

c/o Mr. S. Dunsmore, P. Eng., Manager of Engineering

3540 Schmon Parkway,

Thorold, ON., L2V 4A7

Fax ; 905.227.5590

or such other address of which the Municipality has notified the Owner, in writing, and any such notice mailed or delivered shall be deemed good and sufficient notice under the terms of this Agreement.

## 12. TERMINATION OF AGREEMENT

If the Works proposed to be installed or constructed pursuant to this Agreement are not commenced or the Subdivision Agreement for the purposes of development of Hodgkin

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Subdivision relating to the Lands has not been executed between the Owner and the Municipality within **two (2)** years from the date of execution of this Agreement, the Municipality may, at its option and on **thirty (30)** days written notice to the Owner in accordance with paragraph 11, declare this Agreement to be null and void and of no further effect.

### **13. REGISTRATION OF AGREEMENT**

The Owner covenants and agrees that this Agreement and any Schedules attached hereto, may be registered upon the title to the Lands and that such registration shall be at the instance of the Municipality and at its sole and absolute discretion. The Owner further covenants and agrees to pay all costs associated with the preparation and registration of this Agreement, as well as all other costs incurred by the Municipality as a result of the registration of any other documents pertaining to this Agreement, including but not limited to, any amendment thereto.

### **14. NO FETTERING OF DISCRETION**

Notwithstanding any other provision of this Agreement, the Owner expressly acknowledges and agrees that none of the provisions of this Agreement (including a provision stating the parties intention) is intended to operate, nor shall have the effect of operating, in any way to fetter the discretion of the Municipality and its Council in the exercise of any of its discretionary power, duties or authorities, including without limitation, the authority to approve, approve with conditions, or deny, draft plan approval of the application for approval of a Draft Plan of Subdivision filed by the Owner or to provide final approval therefor. The Owner expressly acknowledges and agrees that it will not obtain any advantageous planning or other consideration or treatment, including approval of a Draft Plan of Subdivision for the Lands by virtue of it having entered into this Agreement.

### **15. APPLICABLE LAW**

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This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.

Furthermore, it is acknowledged and agreed by the parties that this Agreement shall be interpreted without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

## **16. SUCCESSORS AND ASSIGNS**

It is hereby agreed by and between the parties hereto that this Agreement shall be enforceable by and against the parties hereto, their heirs, executors, administrators, successors and assigns and that the Agreement and all the covenants by the Owner herein contained shall run with the Lands.

## **17. SEVERABILITY**

If any clause or clauses, or part or parts of clauses, in this Agreement are determined to be illegal or unenforceable, they shall be considered separate and severable from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties to this Agreement as though the said clause or clauses, or part or parts of clauses, have never been included in this Agreement.

**IT IS HEREBY DECLARED** that this Agreement and the covenants, provisions, conditions and Schedules herein contained shall be binding upon the parties hereto, their successors and assigns.

**WITNESS WHEREOF** the parties hereto have hereunto affixed their corporate seals duly attested to by their proper signing officers in that behalf.

**SIGNED, SEALED AND DELIVERED ]**

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in the presence of

[illegible]

**[NAME OF OWNER]**

Name: Michael Colosimo

Title: OWNER

**I/We have authority to bind the Corporation**

**THE CORPORATION OF THE CITY  
OF THOROLD**

**Terry Ugilini, Mayor**

City Clerk

**SCHEDULE "A"**

**DESCRIPTION OF LANDS**

PART TOWNSHIP LOT 71 THOROLD BEING PART 1 ON PLAN 59R16301; CITY  
OF THOROLD

**SCHEDULE "B"**  
**WORKS TO BE CONSTRUCTED**

<b>Dwg. No.</b>	<b>Title</b>
PP02	General Notes and Typ. Details
PP03	Typical Details
PP04	Site Layout Plan
PP05	Site Servicing Plan
PP06	Storm Drainage Plan 1
PP07	Sanitary Catchment Plan
PP08	Site Drainage Plan 2
PP09	Sediment and Erosion Plan



**SCHEDULE "C"**  
**ESTIMATED COST OF WORKS**

## **Pre-Servicing Agreement- On-Site Primary Services Schedule**

**(note: no by-law accompanied agreement executed April XX, 2021)**

### **Financial Obligations and Cost of Construction- Primary Services (Includes 10% Contingency and provision for 13% HST)**

#### **SECURITY DEPOSITS**

##### **PRIMARY SERVICES**

##### **OFF-SITE PRIMARY SERVICES**

Storm Sewer	\$0.00	
Total Off-Site Secondary Services	\$0.00	
<b>100 % of Off-Site Primary Services</b>	<b>\$0.00</b>	<b>(1)</b>

##### **ON-SITE PRIMARY SERVICES**

General and Earthworks	\$239,759.00	
Sanitary Sewer System and Services	\$136,714.50	
Storm Sewer System	\$327,785.50	
Water Distribution System and Services	\$140,603.00	
Preliminary Roads	\$278,162.50	
<b>Total On-Site Primary Services</b>	<b>\$1,123,024.50</b>	
<b>15% of On-Site Primary Services</b>	<b>\$168,453.68</b>	<b>(2)</b>

##### **CASH DEPOSIT FOR LEGAL EXPENSES**

\$5,000.00 (3)

\*\* In the event Legal Expenses exceed the Deposit Received,  
Additional Funds will be Required

#### **REQUIRED CASH PAYMENTS**

Engineering, Administration, Consulting, Inspection Cost (3.5 % of the costs of construction of all Secondary Works)	\$39,305.86	
<b>Subtotal</b>	<b>\$39,305.86</b>	
<b>13% HST</b>	<b>\$5,109.76</b>	
<b>Total Required Payments</b>	<b>\$44,415.62</b>	<b>(4)</b>

##### **LETTER OF CREDIT REQUIRED (1) + (2)**

\$168,453.68

\*\* PRIMARY WORKS ONLY

##### **CASH DEPOSIT REQUIRED (3)**

\$5,000.00

##### **CASH PAYMENT REQUIRED (4)**

\$44,415.62

\*\* PRIMARY SERVICES PORTION

#### **Notes:**

If Works are not substantially complete within 5 years of execution of this agreement,  
revised cost estimates will be required and additional securities may be required

Separate Security Deposits and Required Payments may be required with other  
government bodies and agencies and utilities.