

Subdivision Development Agreement

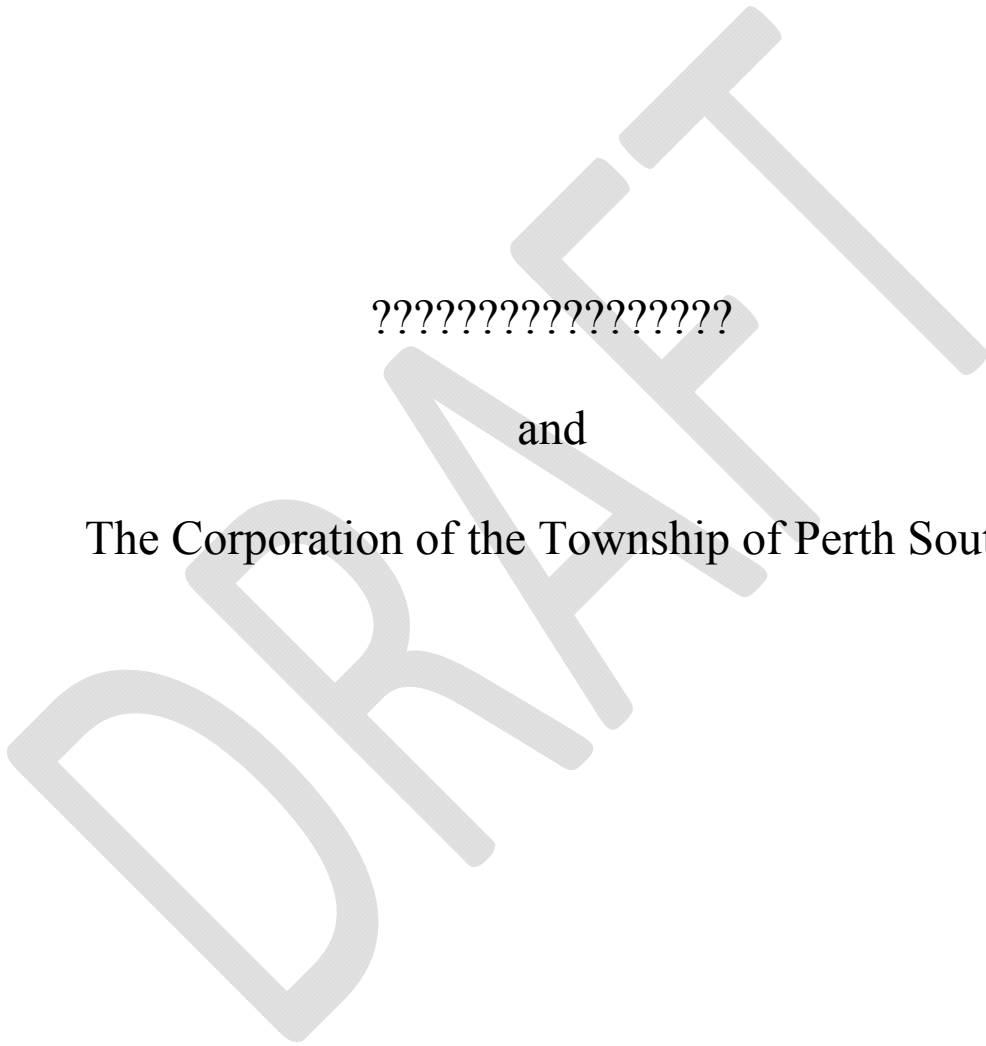
The Corporation of the Township of Perth South

????- Subdivision

????????????????????

and

The Corporation of the Township of Perth South



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This Subdivision Agreement is entered into as of ??????????, 2012 (the “Agreement”)

B E T W E E N:

????????????, incorporated under the laws of the Province of Ontario

herein called the “Owner”

-and-

The Corporation of the Township of Perth South,
a municipal corporation, incorporated under the laws of the Province of Ontario,

herein called the “Township”

WHEREAS the Owner represents that it is seized of those lands situated in the _____ of _____, County of Middlesex, more particularly described in Schedule “A” attached hereto (the “Lands”), and desires to obtain the approval of the Township to the draft plan of subdivision of the said lands now produced and marked as Schedule “B” this Agreement, and initialled for the purposes of identification by the signing officers of the parties hereto;

AND WHEREAS the said plan of subdivision would be premature, would not be in the public interest and would not be lands for which municipal services are or would be available unless assurances were given by the Owner that the matters, services, works and things referred to in this Agreement were done in the manner and order set out in this Agreement;

AND WHEREAS it is a condition precedent of the approval of the plan of subdivision that the Owner enter into this Agreement with the Township;

Now therefore this Agreement Witnesseth that in consideration of other good and valuable consideration and of the sum of one dollar (\$1.00) 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 hereby covenant, promises and agree with each other to comply with, keep, perform and be bound by each and every term, condition, and covenant herein set out to the extent that the same are expressed to be respectively binding upon them, and the same shall enure to the benefit of and shall be binding upon their respective heirs, executors, administrators, successors, and assigns.

DEFINITIONS

The words and phrases defined in this paragraph shall for all purposes of this Agreement and of any subsequent agreement supplemental hereto have the meanings herein specified unless the context expressly or by necessary implication otherwise requires.

“**Builder**” shall mean the person or entity that is engaged or commissioned to construct a dwelling on any part of the Lands.

“**Development Charges**” shall mean the charges imposed by the Township bylaws.

“**Engineering Drawings**” shall mean plans, specifications, engineering calculations, contours, site and lot grading plans and other special information prepared by a Professional Engineer or the Township Engineer.

“**Professional Engineer**” or “**Engineer**” shall mean a licensed Professional Engineer who, holds a current certificate of authorization issued by the Association of Professional Engineers of Ontario, or is employed by a partnership or corporation authorized by the Association to offer Professional Engineering services to the public.

“**Township Engineer**” shall mean that person, who for the time being, is employed by the Township as its Engineer.

“**Plan**” shall mean the plan of subdivision attached to this Agreement and marked Schedule “B”

1. Notification of Approval to Minister

- (a) The Township shall upon receipt of:
- (i) the security referred to in Section 51; or under a pre-servicing agreement;
 - (ii) the security referred to in Section 55.(a); or under a pre-servicing agreement;
 - (iii) the engineering and other drawings referred to in Section 6.(e);
 - (iv) the liability insurance policy referred to in Section 32;
 - (v) the insurance deductible referred to in Section 32.(c);
 - (vi) two copies of this Agreement in registerable form signed by the Owner; and
 - (vii) proof of registration of Notice of Absolute Title, with the draft plan attached;

notify the Minister that the Minister’s conditions have been fulfilled, as they relate to the Township, and that the approval for the registration of the Plan may be given. The Township shall further pass the necessary by-laws to permit the Plan registration.

2. Incontestibility

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

3. Inhibiting Order

(a) Notwithstanding the registration of the Plan, the Owner covenants that there shall be no conveyance, encumbrance or any dealing with any lands on the Plan until an inhibiting order is registered against the lands pursuant to the Land Titles Act, s. 23.

(b) Immediately upon being advised of the registration of the Plan, the Township may apply for an inhibiting order pursuant to the Land Titles Act, s. 23, and may register the inhibiting order on title to the Lands on the Plan, save and except those Lands which are to be conveyed to the Township in fee simple or the grant of easements to the Township. The conditions of the inhibiting order shall be:

- (i) the fulfilment of the provisions of Section 2.(a) of this Agreement, with the exception that securities shall be required pursuant to ss. 51 and 55 of this Agreement; and
- (ii) registration of the deeds and easements referred to in Section 57.(a);

(c) Such inhibiting orders may be lifted at the request of the Owner, and at the discretion of the Township, provided securities, as required by Sections 51 and 55.(a) of this Agreement have been posted to the satisfaction of the Township and the deeds and easements referred to in Section 57.(a) have been registered. The inhibiting order shall be lifted in respect of the lands for which security has been so posted.

4. Works and Services to be constructed

(a) The Owner, at its own expense, shall construct and/or install the following services summarized as follows:

- (i) All underground services, including sanitary sewers, storm sewers, watermain and relevant laterals;
- (ii) Sidewalks in accordance with Schedule "B2" and "C";
- (iii) All internal fire hydrants in accordance with Township specifications;
- (iv) An underground electric system and street lights pursuant to plans approved by Hydro One and the Township's Engineer;
- (v) The storm water management system approved by the Township's Engineer and the Upper Thames River Conservation Authority;
- (vi) An underground telephone wiring system approved by Bell Telephone Company of Canada;
- (vii) An underground cable television wiring system approved by the Township's Engineer;
- (viii) Landscaping, trees and sodding or seeding in accordance with the plans provided in Schedule "B2";
- (ix) External works and services including off-site recreational trail and tree planting as set out in Schedules "B2" and "G";
- (x) An underground gas system approved by the Union Gas and the Township's Engineer.

(b) All of the works and services shall be done pursuant to the plans and specifications referred to in this Agreement or, in the absence of such plans and specifications, to the Ontario Provincial Standards as established by the Municipal Engineers Association.

(c) If the plans and specifications show that works and services not mentioned in Sections 4.(a) are to be supplied and installed, such additional works and services shall be supplied and installed at the Owner's expense notwithstanding such omission, provided, however that any capacity of the said works and services required by the Township, other than to service the lands herein and other lands currently owned by the Owner, shall be supplied and installed at the Township's expense.

5. Compliance with Approval Conditions

The Owner shall comply with the Approval Conditions, as set out in Schedules "I", "J" and "K".

6. Plans and Specifications

(a) The Owner shall prepare, at its expense, all Engineering Drawings that are required by the Township.

(b) The Owner shall also prepare, at its expense, estimates of the cost of construction of all such works and services.

(c) The examination and acceptance of the Engineering Drawings by the Township shall not constitute an acceptance by the Township of the correctness or adequacy of the said Engineering Drawings and shall not be taken as limiting the amount of work necessary for the provision of a satisfactory engineering design in accordance with good engineering practice.

(d) The Owner shall supply all plans and specifications for all works and services herein required to be completed by the Owner to the Township Engineer in a form satisfactory to him

and such work shall not be commenced until the Township Engineer has received such plans and specifications and has expressly authorized such work to commence. The Owner shall submit the following to the Township for approval and/or comment:

- (i) 2 copies of the registered Plan;
 - (ii) 2 copies of the approved detailed Engineering Drawings including all servicing plans;
 - (iii) one mylar copy and one set of computer files (AutoCAD format) on disk of the record drawings upon completion of the public services/works for all the public services/works constructed within or outside the Plan. This set of drawings shall be accompanied by a certificate from the Owner's Engineer certifying that all the services have been installed under his supervision and that the work conforms to the approved plans and specifications; and
 - (iv) Any additional contracts, estimates, changes order or other special information that may be required by the Township Engineer.
- (e) All works and services shall be constructed and installed strictly in accordance with the plans and specifications provided to the Township Engineer, and in accordance with any changes provided by the Township Engineer, all to the satisfaction of the Township Engineer. The Township Engineer may require, in writing, such variance from such plans and specifications as may be required by conditions which may be disclosed as the work progresses, and by sound engineering practice. The works and services required to be done by the Owner shall be wholly at the expense of the Owner except as may be otherwise herein expressly provided.
- (f) The location of services or works within or upon lands and road allowances under the jurisdiction or control of the Township shall be solely at the discretion of the Township. If the Township requires that any services or works be relocated, after the Engineering Drawings have been approved, the Township shall pay all resulting costs incurred by the Owner arising out of such relocation.
- (g) The approved Engineering Drawings are listed in Schedule "C" to this Agreement. They form part of this Agreement although they are not attached to it. The estimate of the costs of the construction forms Schedule "D" to this Agreement.

7. Opinion of Township Engineer

With respect to the construction, installation, repair and maintenance of any work of service required herein to be done by the Owner, and as to whether or not any works or services, in whole or in part, are being or have been constructed, installed, repaired or maintained strictly in accordance with the terms of this Agreement, and which applicable, with the specifications of the Township Engineer, as required, and as to whether any breach of plans, specifications, or requirements of the Township Engineer has occurred or has been remedied, the decision of the Township Engineer shall be final, conclusive, and binding upon the parties hereto and shall not be subject to review in any Court of Law or equity, or before any administrative or other tribunal upon any ground whatsoever, other than upon the ground that the Township Engineer has not acted in good faith in forming or giving his decision, the proof of which shall be and remain upon the party seeking to attack the decision of the Township Engineer, and wherever in this Agreement work or services are required to be constructed, installed, repaired, or maintained within a certain time or in a certain order or in a certain manner, or in conformity with any plans, specifications, or other terms, such requirement shall be conclusively deemed to mean so constructed, installed, repaired, or maintained as determined and as required and approved by the Township Engineer.

8. Calls for Tender

- (a) In regard to works and services eventually to be assumed by the Township, the Owner shall submit all calls for tender and all contracts to the Township's Engineer for comment. No work on works and services eventually to be assumed by the Township shall be commenced under any contract until the Township approves the contract. Approval hereunder is to be

deemed to be solely for the benefit of the Owner and there shall be no liability on the Township or its Engineer to the Owner for the sufficiency, validity or correctness of any contract.

9. Inspection and Supervision

- (a) It shall be the responsibility of the Owner and its Engineers to provide full-time supervision to ensure that the works and services contemplated by this Agreement and the Engineering Drawings are installed in a good and workmanlike manner.
- (b) The Owner's engineer shall provide full time on-site inspection of the work being done pursuant to this Agreement.
- (c) The Township shall have the right at any time and at all times:
 - (i) to enter onto the Lands to make whatever inspections or tests it may deem necessary.
 - (ii) to order the stop to any work that it reasonably believes is not being done properly;
 - (iii) to require that any work that has not been done properly be redone; and
 - (iv) if the Township deems it necessary to engage technical consultants to assist in the performance of any inspection or supervision, the expense of such technical consultants, if engaged, shall be a debt due to the Township by the Owner recoverable upon demand

Spot inspections of any connections to any main shall be under the supervision of the Township Engineer or the Township Director of Public Works.

- (d) The Owner shall not fill in any underground service trenches without giving reasonable notice to the Township that it intends to fill them in. Such notice shall be given at least one working day before it is intended to fill them in.
- (e) The Owner acknowledges that the role of an inspector working on behalf of the Township does not entail any activity of a supervisory nature. The Township's inspector shall not, by his presence or action, be deemed to have assumed or accepted any work performed by the Owner, or the Owner's agents, employees, or contractors, and has no authority to do so.
- (f) Any matters herein which are made subject to the inspection or approval of the Township Engineer may at the option of the Township be carried out by the Township's Director of Public Works, or any other staff or person designated by the Township Council. [*Note to draft: at whose expense?*]

10. Construction Procedure

- (a) The Owner shall construct all of the works and services described in this Agreement and in the Engineering Drawings at the Owner's expense and to commence the construction of the services not later than twelve months from the date of registration of the Plan. All services or works are required to be completed within twenty-four months from the date when the services are commenced except the top course of asphalt, or once building permits have been issued for seventy percent of the lots in this Plan, whichever shall be earlier. The Owner may, on written notice to the Township, request an extension of each of the periods herein by an additional period of up to twelve months. The Township may, in the Township's sole and absolute discretion, grant an extension to the Owner of up to twelve months for each period.
- (b) If, for any reason, the works and services of any stage of development have not been completed within the time limit required by this Agreement and the Township does not wish to extend the time for completion, the Township shall have the right to declare this Agreement terminated and at the option of the Township, the Owner shall be required to enter into a new Agreement with the Township to complete the services that have not been completed. The new Agreement shall embrace any new requirements and specifications required by the Township upon subdividing owners. [*does the Township wish to impose any penalty if the development is not completed on time?*]
- (c) The Owner shall not commence any construction until the Township Engineer has accepted the detailed drawings for the services or part thereof, and in the event that such engineering drawings lack requirements which, in the opinion of the Township Engineer, ought to have been included therein, the same shall be carried out by the Owner as though they were

included in and form a part of this Agreement, and the Owner has provided seven days' prior written notice to the Township of its intention to commence such construction.

(d) The Owner hereby covenants and agrees that any work required under this Agreement shall not commence, or having commenced and subsequently halted, deferred or suspended (except overnight or over a weekend) shall not commence again without written notification to the Township Engineer.

(e) The Owner further covenants and agrees that the Township may require the Owner to provide and submit written work schedules for approval to the Township Engineer for any work required directly or indirectly by this Agreement. All work for which a schedule is required shall be carried out in accordance with the approved work schedules.

(f) The Owner shall construct all roads and services in accordance with Schedule "E" to this Agreement. If the Owner fails to do so or having commenced to construct the roads and services fails or neglects to proceed with reasonable speed the Township may, upon giving seven days' notice to the Owner of its intention to do so, enter upon the Lands and proceed to construct or complete the construction of the services including the repair or reconstruction of faulty work at the Owner's expense. If the security is not sufficient to reimburse the Township for such work the balance shall be paid within thirty days after demand on the Owner. Such entry shall be as agent for the Owner and shall not be deemed as acceptance or assumption of the services by the Township.

(g) Upon any breach of this Agreement, the determination of which shall be within the sole reasonable discretion of the Township, the Township may upon giving four days' notice in writing to the Owner stop all work in progress until such breach has been rectified.

(h) If for any reason there is a cessation or interruption of construction the Owner shall provide forty-eight hours' prior written notification to the Township before the construction is resumed.

(i) No blasting shall be undertaken without the written consent of the Township. The giving of consent by the Township does not relieve the Owner from any liability for damage caused by such blasting.

(j) If it becomes necessary to operate valves on existing municipal services, such valves shall be operated by employees of the Township only.

11. Maintenance of Land, Roads and Services

(a) All work done under this Agreement or incidental thereto shall be performed in such a way as to cause as little damage or inconvenience to neighbouring or abutting properties as is possible in the circumstances.

(b) All access roads shall be maintained by the Owner in good repair and kept free of mud, dust and obstructions during the construction of the services and any buildings.

(c) During construction access to the site will be as designated by the Township.

(d) The Owner shall submit proposed truck routes for all service vehicles to and from its development for approval of the Township's Director of Public Works and the Owner shall use its best efforts to ensure that vehicles servicing its development adhere to the routes so approved.

(e) If work is performed on existing roads outside the Plan these roads shall be reinstated to the complete satisfaction of the Township's Director of Public Works and/or the Township Engineer. Access shall be maintained at all times to properties abutting these roads and traffic is to be maintained and regulated and the public protected at all times.

(f) Any damage done to existing works or truck routes shall be repaired by the Owner.

(g) Until the roads are reconstructed and Final Acceptance issued by the Township, the Owner shall:

(i) maintain reasonable access at all times for residents and for Township services such as garbage collections, fire fighting, etc;

- (ii) use such methods as the Township deems necessary to prevent debris, mud and dust creating a nuisance to both vehicular traffic and to occupants of buildings;
 - (iii) not use any portion of the road allowance as a storage area for goods and materials.
- (h) The Owner, and any purchaser from him, shall comply with the provisions of the *Weed Control Act*, R.S.O. 1990, c. W.5, as amended, throughout all stages of development and to maintain vacant lands free from debris, waste building materials, tree stumps, discharged boulders, etc, and shall notify any purchaser from him in writing to refrain from dumping on lands dedicated by the Owner to the Township for municipal purposes. The Owner shall be held responsible for the general tidy appearance of the Lands until assumption by the Township and shall carry out all weed cutting and maintenance on all unsold Lands and all unassumed road allowances, to the satisfaction of the Township Engineer. The Owner shall adequately maintain all roads, sidewalks, and pedestrian walks within the subdivision free from mud, debris, building materials, and other obstructions to the satisfaction of the Township Engineer.
- (i) All excess fill from the development shall be stockpiled on the site or on a site approved by the Township.
- (j) The Owner shall apply a tack coat to the base course of asphalt prior to the placement of the top course if deemed necessary by the Director of Public Works and Township Engineer.
- (k) Immediately upon the completion of the base course asphalt on the roads and prior to the issuance of building permits the Owner shall post 1.2m x 1.2m signs with 100 mm lettering, at each entrance to the Lands, reading as follows:

“ROAD UNASSUMED BY THE TOWNSHIP OF PERTH SOUTH
USE AT OWN RISK”

12. Underground Services

- (a) The Owner shall construct sanitary sewers, storm sewers, and watermains in a manner and in the locations set out in the approved Engineering Drawings.
- (b) Sanitary sewers shall not be connected and put in use until sewer mains and laterals have been cleaned, flushed and tested to the satisfaction of the Township Engineer and the Director of Public Works.
- (c) Storm sewers shall not be put into use until the construction of sewers and connections is complete and the sewers have been cleaned to the satisfaction of the Township Engineer and the Director of Public Works.
- (d) To ensure that there is no cross connection between the storm and sanitary sewers, the Township, at its option, may require a test to be made of individual properties by a dye test and on blocks of vacant land by a smoke test at the expense of the Owner.
- (e) All catch basins and storm sewers shall be flushed and cleaned by the Owner, to the satisfaction of the Township prior to the preliminary acceptance of the services by the Township, annually and again prior to Final Acceptance, at the discretion of the Township Engineer and the Director of Public Works.
- (f) The Owner shall use its best efforts to pre-service all Lands which will eventually be developed so as to eliminate the future necessity for tunneling under or cutting roads, drainage ditches, etc. for the installation of services. If any such tunneling or cutting is done prior to Final Acceptance, the Owner shall restore the road or drainage ditch to its prior condition.

13. Roadways, Sidewalks and Walkways

- (a) The roadways, curbs, gutters, sidewalks and walkways shall be constructed or reconstructed and installed in a manner and in the locations set out in the approved Engineering Drawings.
- (b) No pavement shall be applied on the roads nor shall any sod be laid until Final Approval has been given by the Township Engineer.
- (c) If the inspections of the works referred to in Section 4.(a) show any deficiencies, no pavement shall be applied nor sod laid until such deficiencies have been rectified by the Owner and at the expense of the Owner.

(d) The Owner acknowledges that winter maintenance of unassumed sidewalks is the responsibility of the Owner.

14. Sodding

(a) The Owner shall sod the entire lot, boulevard and all easements on the Plan.

15. Driveways

(a) Prior to Final Acceptance the Owner shall apply asphalt or interlocking brick on the driveways in front of each house on each lot the full width of the garage from the curb to the garage.

(b) Driveways shall not be constructed nor curb depressions formed that are wider than the garage door plus 0.6m, and shall be subject to a maximum limit of 6m in width.

16. Traffic Control and Street Name Signs

(a) The Owner shall erect and maintain traffic control and street name signs at its expense in accordance with the requirements of the Township Engineer and the Director of Public Works subject to the following:

(i) the Manual of Uniform Traffic Control Devices for Canada, and

(ii) the current municipal servicing requirements of the Township.

The traffic control and street name signs shall be maintained at all times in a condition satisfactory to the Township, and will not be removed until the dwellings are occupied.

(b) The Owner shall erect, at his expense, subdivision identification signs. The signs will be maintained at all times in a condition satisfactory to the Township, and will not be removed until 95% of the subdivision has been built and occupied.

17. Electrical Distribution System

(a) Underground electrical distribution service shall be provided for all lots and blocks within the Plan, according to standards and specifications approved by Hydro One. The Owner shall be responsible for the design and installation and or repair of all hydro services required to service the Plan and notification from Hydro One that it has approved the design shall be received by the Township prior to execution of this Agreement between the Owner and the Township.

(b) The Owner shall use its best efforts to ensure that the electrical distribution, gas, telephone and cable television facilities are located in a common trench, and to use its best efforts with the companies responsible to achieve a satisfactory arrangement of such facilities. All utility plans are subject to approval by the Township.

(c) The Owner shall use its best efforts to ensure that the electrical distribution facilities to be installed within the development shall be coordinated with the plans for underground and surface works and the house siting plans. The Township reserves the right to approve the location of all hydro transformers and switching boxes that are placed above ground.

(d) Street lighting shall be supplied and erected by the Owner to the Township's specifications. All street lighting shall be erected and installed under the supervision and inspection of Hydro One to the approval of the Township.

18. Drainage Engineering Submission

(a) Prior to the registration of the Plan the Owner shall prepare a detailed drainage engineering submission for the approval of the Township. The engineering submission and Plan shall provide that the Owner shall maintain the sediment ponds to the extent required by the Township and permitted by the Upper Thames River Conservation Authority until Final Acceptance of all works and services. Prior to Final Acceptance and to the extent required by

the Township, all sediment ponds no longer required shall be filled and topsoiled and erosion control devices removed.

- (b) It shall be the Owner's responsibility to obtain all approvals from the regulatory authorities for the construction of any drainage works incorporated within the Plan.
- (c) The Owner acknowledges the Upper Thames River Conservation Authority requirement to provide a detailed engineering submission to the satisfaction of the Upper Thames River Conservation Authority which will include:
 - (i) A means whereby stormwater shall be conducted from the site to the receiving body, including a stormwater detention pond if deemed necessary by the Upper Thames River Conservation Authority; and
 - (ii) A means whereby erosion, siltation and their effects will be contained and minimized on site both during and after the construction period.

19. Fencing

- (a) The Owner shall provide fencing as follows:
 - (i) A 1.5 m (5 foot) high chain link fence along the rear of Lots ??? to ???. Such fencing shall be provided as per the Township's standards to the satisfaction of the Township and its location may be such that it is located beyond the rear of lot lines to preserve existing trees and vegetation.
 - (ii) A 1.5 m (5 foot) high chain link fence along the side lot lines of lots ??, and ??? where they abut the walkways.

20. Walkways

- (a) The Owner shall provide walkways as shown on Schedule "B1" through the conveyance of Blocks ?? and ?. The walkways shall be provided in accordance with Township standards and to the satisfaction of the Township.

21. Geodetic Benchmark

- (a) The Owner shall establish a monument as a permanent Geodetic Benchmark within the plan in a location and in such a manner as approved by the Township Engineer. Such monument shall be preserved and maintained by the Owner.

22. Canada Post Compliance

- (a) The Owner shall obtain the approval of Canada Post with respect to the location of group mailboxes, comply with their required conditions and provide proof of same to the Township in accordance with the requirements of Schedule "J".

23. Lot Grading

- (a) All lots within the Plan shall be suitably graded and drained in accordance with the lot grading and drainage plans to be provided by the Owner and as approved by the Township Engineer. Lot drainage and flow of water from adjacent lands originally flowing through, into or over the Lands shall be carried to an approved outlet. The Owner shall be responsible for the supervision of any lot grading carried out by the builders and shall be responsible for compliance with the above mentioned lot grading and drainage plan.

24. Drainage Easements

- (a) The Township shall designate, and the Owner shall grant, when necessary, easements upon the Lands herein described to provide for drainage work that may be required to furnish an outlet for storm water or natural courses across the Lands, as specified in Schedule "F".

25. Ditches

(a) Where the use of open roadside ditches has been specifically approved by the Township Engineer, ditches shall be constructed at the expense of the Owner

26. Parks

(a) The Owner shall provide a parkland dedication pursuant to the *Planning Act* which shall be monies paid in lieu of a conveyance of land for park or other recreational purposes to the prevailing value of the land otherwise required to be conveyed. [Note to draft: what rate will be used?] The parkland dedication shall be designated by the Township.

27. Landscaping

(a) The Owner shall at its expense, plant one tree in the front of each lot and additional trees as set out in the current Township of Perth South Design Criteria Document within 24 months of Preliminary Acceptance of the Plan, or within 6 months of building occupancy on the lot, whichever is earlier. All trees shall be warranted to Final Acceptance or for a minimum period of one year, whichever is greater.

(b) All trees shall be a minimum of seventy-five millimeters in diameter and 2.25 to 4.0 metres in height.

(c) The Owner shall provide landscaping in accordance with the Schedule "B2" which shall provide for the location of trees to be preserved and additional areas of tree plantings.

The Owner shall provide a tree preservation plan as set out in Schedule "B2" which illustrates all trees to be preserved and additional plantings to the satisfaction of the Township.

28. Service Easements - Reserved**29. Construction Liens**

In the event, from time to time, that any construction lien including a claim for lien by a lien claimant and any certificate of action, all within the meaning of the *Construction Lien Act*, R.S.O. 1990, shall be registered and shall be preserved or perfected in respect of any works or services constructed, installed, repaired or maintained by or on behalf of the Owner, the Owner after having been given notice by any person or of becoming aware of the existence of any such preserved or perfected construction lien, within the time provided for, and following the procedures set out and prescribed in the *Construction Lien Act*, and any related regulations, shall forthwith discharge, or have vacated, any preserved or perfected claim for lien made in respect of the works and services constructed by the Owner under this Agreement.

Should any preserved or perfected claim for lien remain outstanding for more than 20 calendar days, the Township may, without notice and without making a declaration that the Owner is in default, utilize any remedy which would be available to it upon default of the Owner. This right shall continue until the Township has been served with evidence satisfactory to it, that all liens have been discharged or vacated.

The Owner shall not be entitled to a release or reconveyance of any security until any preserved or perfected claim for lien be discharged and the registration of a claim for lien or a certificate of action, or both, be vacated, to the satisfaction of the Township, and any statutory appeal period has expired.

30. Preliminary Acceptance of the Plan

(a) The following procedure shall be adopted to obtain preliminary acceptance of the Plan ("Preliminary Acceptance"):

(i) The Owner shall notify the Township that the required work has been completed and shall deliver to the Township the declarations referred to in Section 28.(b) and (c).

(ii) The Township shall inspect the services and make such tests as it deems necessary within two weeks after receiving notice from the Owner that the work has been completed.

- (iii) The Township shall deliver to the Owner a list of deficiencies within one week thereafter. The Owner shall promptly correct such deficiencies.
 - (iv) When the deficiencies referred to in the list have been corrected, the procedures referred to in Sections (i), (ii) and (iii) shall be repeated until the Township Engineer and the Director of Public Works are satisfied that all deficiencies have been corrected. The Township shall then notify the Owner that it is satisfied.
 - (v) When the Owner has received the notice from the Township Engineer, the Owner's Engineer shall certify to the Township that the work has been completed pursuant to the Engineering Drawings and request Preliminary Acceptance of the works.
 - (vi) On receipt of the certificate from the Owner's Engineer the Clerk of the Township, on being satisfied that all other terms of this Agreement have been satisfied to that time, shall issue a Certificate of Preliminary Acceptance. For the purpose of the maintenance period the date of the Certificate shall be retroactive to the date of the notice from the Township Engineer and the Director of Public Works to the Owner, referred to in Section 28.(b)(iv).
- (b) Upon applying for Preliminary Acceptance the Owner shall supply the Township with a Statutory Declaration sworn by an officer of the Owner that all accounts for which the Owner is responsible that have been rendered for services and for materials for such services that have been certified for payment by its engineers have been paid, except the normal holdbacks, and that there are no registered claims for liens in connection with such services done or materials supplied for or on behalf of the Owner in connection with this Agreement.
- (c) Upon applying for Preliminary Acceptance the Owner shall supply to the Township a statutory declaration from each contractor sworn by an officer if the contractor is a corporation that all payments required by the *Workplace Safety and Insurance Act*, S.O. 1997, c. 16, as amended, have been made which shall be satisfactory to the Township in its sole and absolute discretion.
- (d) The Township shall require the following work to be completed to the satisfaction of the Township prior to issuing Preliminary Acceptance:
- (i) The underground services, including sanitary sewers, forcemains, storm sewers, watermains and hydrants have been installed, cleaned and approved;
 - (ii) The roadways have been constructed including curbs and gutters except for the final asphalt coat;
 - (iii) The electrical distribution system has been constructed, but street lights need not have been installed;
 - (iv) The storm water management work has been completed; and
 - (iv) The "Unassumed Road" signs have been placed at each entrance to the subdivision.

When the items set out in section 28 (a) to (d), inclusive, have been completed to the satisfaction of the Township, Preliminary Acceptance shall be issued.

- (e) When a Certificate of Preliminary Acceptance has been issued, the security given to the Township pursuant to Section 51 shall be reduced to an amount equal to 110% of the value of unfinished work plus 15% of completed work.

31. Maintenance of Services

- (a) The maintenance period for all services shall run for a period of two years from the date of the Certificate of Preliminary Acceptance, and thereafter until the Township has issued a Certificate of Final Acceptance.
- (b) During the maintenance period the Owner is responsible for the repair and maintenance of all services constructed by it, including responsibility for snow ploughing, other winter maintenance, annual cleaning of the storm sewer system, annual cleaning of the sanitary sewer system and controlling mud and dust until Final Acceptance.

- (c) Winter maintenance of roads within the Lands that have received Preliminary Acceptance shall be undertaken by the Township and the costs of such maintenance shall be charged back to the Owner at the cost of labour and material plus 20%. The equipment used in conjunction with the maintenance shall also be charged back to the Owner in accordance with the Ontario Ministry of Transportation schedule for equipment rates.
- (d) On or before the 10th date of October in each year the Township's Director of Public Works shall give in writing to the Owner such direction and instructions as he deems necessary for bringing the roads to a satisfactory condition for the winter months, including installation of base asphalt and curb and gutter, construction of any necessary turnarounds or road connections, installation of maintenance hole covers and any other items required by the Township Engineer. The requirements in this respect shall be that the roads shall be sufficiently graded and manhole covers and watermain valve boxes are installed in such a manner as to minimize the chances of damage to snow ploughs. All work required in this connection shall be completed before the 1st day of November.
- (e) Regardless of any approvals given by the Township Engineer and/or Director of Public Works under Section 29.(d) if any damage occurs to the Township's snow ploughs that is attributable to the projection of valve boxes, manhole covers or catch basins, the Owner shall be responsible for the cost of repairing such damage in accordance with section 29(h) herein.
- (f) If the Owner's contractor does not perform the works set out in Section 29.(d) above to the satisfaction of the Township's Director of Public Works upon 14 days written notice to the Owner, the Township may order this work done at the Owner's expense.
- (g) If the Owner fails to carry out maintenance work within seventy-two hours after receiving a request from the Township to do so, the Township may, without further notice, undertake such maintenance work at the Owner's expense.
- (h) The Owner shall repair any damage caused by it to any existing Township service after receiving notice of such damage from the Township, but within seven days in any event.
- (i) The Owner agrees that:
- (i) Those services which are not already owned by the Township may be used prior to Final Acceptance by the Township or any other persons authorized by the Township for the purpose for which such services were designed; and
 - (ii) The employees or agents of the Township may at any time or from time to time make emergency repairs to any of the services not owned by the Township, at the expense of the Owner.
- The exercise of these powers shall not be deemed an acceptance of the services by the Township or an assumption by the Township of any liability in connection therewith or a release of the Owner from any of its obligations under this Agreement.

32. Final Acceptance of the Plan

- (a) The following is the procedure to be adopted in order to obtain a certificate of final acceptance of the Plan ("Final Acceptance"):
- (i) The Owner shall make a written request to the Township for Final Acceptance and deliver to the Township the declarations and certificate referred to this Section.
 - (ii) The Township shall inspect the services and make such tests as it deems necessary within two weeks after receiving the Owner's written request.
 - (iii) The Township shall deliver to the Owner a deficiency list within one week of making the inspection and tests.
 - (iv) The Owner shall correct the deficiencies as soon as is practicable after receiving the list.
 - (v) When the deficiencies are corrected the procedures in Sections 32(a)(i), (ii), (iii), and (iv) will be repeated until the Township Engineer is satisfied that all deficiencies have been corrected.
 - (vi) When the Township Engineer is satisfied that all deficiencies have been corrected he shall notify the Owner stating that he is so satisfied. The Owner's Engineer shall then

certify to the Township that the roads and all works and services have been constructed and completed pursuant to the Engineering Drawings and that all deficiencies have been corrected.

(b) In addition to the foregoing, the Township shall not grant its Final Acceptance of any of the works and services until the following conditions are satisfied:

- (i) The minimum maintenance period has ended.
 - (ii) The Owner has completed all works and services that it is required to construct or install and has paid all money that it is required to pay by this Agreement.
 - (iii) All services for which Preliminary Acceptance was not given have been installed for at least one year. This does include the final course of asphalt on the roadways, but does not include the sodding of lots on which houses have not yet been constructed.
 - (iv) The Owner has delivered to the Township a statutory declaration declaring that all accounts that are payable in connection with the engineering, installation and maintenance of the road, services and all other matters referred to in this Agreement have been paid except the normal holdbacks and that there are no outstanding claims in connection therewith.
 - (v) The Owner has delivered to the Township a statutory declaration from each contractor that all payments required by the *Workplace Safety and Insurance Act*, S.O. 1997, c. 16, as amended, have been made which statutory declaration shall be satisfactory to the Township in its sole and absolute discretion.
 - (vi) The Owner has supplied a certificate from an Ontario Land Surveyor that he has found or replaced the survey monuments and standard iron bars as shown on the Reference Plan, and that all monuments as shown on the final registered Plan are in fact physically located as indicated on the Plan.
 - (vii) The Owner has delivered to the Township final "as constructed" hardcopies and computer disk files (AutoCAD, and pdf formats) of plans of all services.
 - (viii) The Owner has delivered to the Township a video of the result of a TV inspection of the existing sanitary sewer lines and storm sewer lines, if requested. The video is to be checked by the Owner's Engineer in advance and is to identify the deficiencies, with an explanation as to how the deficiencies were corrected.
 - (ix) The Township has issued Grading Releases for 85% of the lots
 - (x) The Owner has provided copies of all transfer documentation for all land transfers/dedications and easements being conveyed to the Township.
 - (xi) The Owner has provided a reference plan of sewer easements over the Lands.
- (i) The Owner has entered into a supplementary agreement with the Township to cover damage and engineering costs for those lots that have not been built on or have not received a Grading Release [*define?*] from the Township and any other incomplete items at the sole discretion of the Township.
- (c) The Owner is aware that the Township may not give Final Acceptance for any road on the basis of an inspection made by the Township Engineer between October 31st, of any year and May 1st, of the following year.
- (d) If the Township Clerk and Engineer are satisfied that all terms of this Agreement are satisfied, and the foregoing is complete, a Certificate of Final Acceptance shall be issued.
- (e) The effect of the Certificate of Final Acceptance is that the Owner is released from all obligations imposed by this Agreement except for those reserved by the Certificate of Final Acceptance. If this Agreement is registered on title, the effect of registration of the Certificate of Final Acceptance is to release the Lands against which it is registered from any burdens placed upon the Lands by this Agreement except for those reserved by the said Certificate of Final Acceptance including those relating to restrictive covenants.
- (f) The Owner shall guarantee each and every one of the works and services in good condition and repair, consistent with what is, in the opinion of the Township Engineer, or on the certification of an independent Professional Engineer, sound engineering practice, for the period

of one year after the same are assumed by by-law of the Township. Provided however, that the Township, may at its option, assume any or all of the said works and services at any time, but the Township shall not be deemed to have assumed any work or service unless such assumption is evidenced by an assumption certificate and the enactment of a by-law to that effect.

(g) Prior to assumption of any works or services by the Township, the Owner shall have its Engineer certify to the Township, regarding each and every lot in the Plan that is fully developed or still vacant, bearing the signature and seal of an Ontario Professional Engineer authorized by the Association of Professional Engineers of Ontario, that the actual finished elevations and grading of each lot generally conforms to the accepted subdivision grading plan. Further, the Owner's Engineer's certification must identify all lots under construction at the time of assumption and that they will be final graded in general conformity to the accepted subdivision grading plan upon completion.

(h) Upon the assumption of any of the works or services, the same shall wholly vest in the Township without payment therefor, and the Owner shall have no right, title or interest therein. Notwithstanding that the services, or any of them, have been so assumed by the Township, the Owner undertakes and guarantees that the work, labour and materials are in compliance with the specifications therein provided and the requirements of the Township Engineer. If the Owner is in default, the Township may carry out any required reconstruction to repair and in default of repayment by the Owner, the Township shall be entitled to resort to the security as provided for in this Agreement. If pursuant to this Agreement and in the opinion of the Township Engineer, the Township finds it necessary to enter upon the Lands to perform any work, including maintenance, which the Owner should have completed, the Township shall be deemed to be acting as agent of the Owner and shall not be deemed to have assumed any work or service by so doing and the cost of such work shall be borne by the Owner, provided, however, that the Township may, at its option assume any or all of the said works or services at any time, but the Township shall not be deemed to have assumed any work or services unless such assumption is evidenced by an assumption certificate and the enactment of a specific bylaw as set out in this section.

- (i) When the Certificate of Final Acceptance is issued the Township shall:
- (i) pass a by-law assuming responsibility for the roads and incorporating them into the road system of the Township;
 - (ii) shall pass a by-law assuming responsibility for all other services; and
 - (iii) release the balance of all security that it holds pursuant to Section 51.

The final Plan which receives Final Acceptance shall be lodged for registration with the Land Registrar by the Owner within thirty (30) days of its approval by the Approval Authority and the Owner shall thereafter wholly at its own expense construct, install and promptly pay for these works and services set out upon the lists, plans and specifications contained within, or attached to, this Agreement. Failure on the part of the Owner to promptly pay for works and services required by this Agreement to be constructed and installed, shall be deemed to be in final default under this Agreement.

33. Arbitration

- (a) If a dispute develops between the Township and the Owner as to whether an item is or is not a deficiency, whether or not the Township Engineer should notify the Owner that the services have been properly constructed or installed, whether or not the Township should grant a Certificate of Preliminary or Final Acceptance of the services, or as to the amount of reduction of security, such dispute or disputes shall be resolved by arbitration.
- (b) For the purpose of this part of the Agreement the Owner and the Township are collectively called the "Parties". Each of them is called the "Party" as the context requires.
- (c) Any arbitration shall be resolved in the following manner:
- (i) If the parties cannot agree on a single arbitrator, then each shall appoint an arbitrator and the two so appointed shall appoint a third arbitrator who shall be chairman. If either party appoints an arbitrator and gives notice of the appointment to the other, the other must appoint an arbitrator within five business days. If such appointment is not made within such period, the arbitrator appointed by the first party shall be deemed to be

a single arbitrator approved by the both of them. The two arbitrators shall appoint a third arbitrator within one week.

- (ii) The arbitrator or arbitrators are to be consulting engineers registered as such with the Association of Professional Engineers of Ontario.
- (iii) The arbitrator or arbitrators shall set a date for the hearing of the matters in dispute not later than two months from the date of appointment of the last arbitrator to be appointed.
- (iv) The party seeking the arbitration shall deliver to the arbitrator or arbitrators and the other party, at least four weeks before the hearing, a statement of the matters the party is complaining about.
- (v) The time limits referred to above may be waived by the party who has not received any documents it should have received and the arbitration may proceed in the absence of any document if failure to deliver it is waived. If a document is not delivered and any party is taken by surprise as a result, the arbitration may be adjourned at any stage and the unnecessary costs incurred may be assessed against the party failing to deliver it.
- (vi) At the hearing each party may adduce whatever evidence it deems advisable. In addition the arbitrator or arbitrators may view the site in his or their consideration of the matters complained about.
- (vii) The arbitrator or arbitrators shall make their decision as soon as possible after completion of the hearing and viewing the site. The decision (or the majority decision as the case may be) is final and is not to be subject to review or appeal by any Court or other body.
- (viii) If the result of the arbitration is in favour, or largely in favour of one party, the cost of the arbitration, including the expenses of that party, shall be paid by the other. If the result is mixed, each party shall pay its own expenses and the fees of the arbitrators shall be divided equally between them. The arbitrator or arbitrators shall make the decision as to whether the result is in favour or largely in favour of one party, or if the result is mixed.

34. Insurance [note to draft: *this provision to be reviewed by your insurance consultant*]

- (a) The Owner shall obtain and maintain and provide the Township with evidence of third party general liability insurance covering the ownership of the Lands and construction, installation, repair or maintenance of all works and services required herein to be done, and against all damage or claims for damage, with a policy or policies from an insurance company satisfactory to the Treasurer of the Township. Such policy or policies shall include the Township and the Township's Engineer as additional insured with respect to all the Owner's responsibilities relating to this Agreement and shall remain in the custody of the Township Engineer and shall be retained in full effect during the life of this Agreement including the period of guaranteed maintenance.
- (b) This policy shall comply include the following:
 - (i) Non owned automobile liability, personal injury, broad form property damage, contractual liability, Owners and contractors protective, contingent employers liability, cross liability and severability of interest.
 - (ii) The minimum limits shall be \$ 5,000,000.00 all inclusive for each incident.
 - (iii) The minimum period of insurance policy coverage shall be three (3) years or as otherwise approved.
 - (iv) The policy shall specify that the policy will not be cancelled or allowed to expire unless prior notice by registered letter has been received by the Township from the insurance company, or its agent, thirty (30) days in advance of the expiry date.
- (c) The Owner is responsible for all adjustment service costs and shall maintain on deposit with the Township throughout the term of this Agreement the amount of the deductible.
- (d) The policy may contain an exclusion for blasting. If it does, and blasting is found to be necessary, no blasting shall be done until a blasting insurance endorsement is added.

- (e) The issuance of such a policy of insurance shall not be construed as relieving the Owner from responsibility for other or larger claims, if any, for which it may be held.
- (f) Should the Owner fail to maintain the proper insurance coverage for the term of this Agreement shall be considered a default under this Agreement, and the Township shall have the authority to draw on the security posted by the Owner to pay any and all costs related to maintaining the proper insurance coverage.
- (g) The Owner shall prove to the satisfaction of the Township from time to time as the Township's Treasurer may require, that all premiums on such policy or policies of insurance have been paid and that the insurance is in full force and effect.

35. Liability

(a) The Owner shall indemnify and save harmless the Township of and from all loss, costs, charges, and expenses of every nature and kind whatsoever which the Township may incur, be put to, or have to pay, by reason or on account of the ownership, construction, use, existence or maintenance of the Lands or by the exercise of the Owners powers under this Agreement or by reason of the neglect of the Owner or its employees, servants, agents, contractors, subcontractors or others the Owner is responsible for at law in exercising its said powers, or by reason of the works and services whether or not the same shall be required to be done under the terms of this Agreement and including, without limiting the generality of the foregoing, the alteration of any grade or existing level of construction, maintenance or repair of any street, or by reason of failure, neglect or omission of the Owner to do anything herein agreed to be done or by reason of any act or commission or default or omission of the Owner save and except for any claims, demands, actions and causes of action arising as a result of a negligent act or omission of the Township or those for whom the Township is in law responsible.

(b) Further, the Owner shall indemnify and save harmless the Township from all actions, causes of action, suits, claims and demands whatsoever which may arise either directly or indirectly by reason of its or the contractors, agents, or employees under its supervision, performing, failing to perform or performing incorrectly any work set out in this Agreement in any portion of the said Plan, or on lands and/or streets adjacent to the said Plan, and all costs incurred in respect thereto.

36. New Home Warranty Program

(a) The Owner undertakes to ensure that any dwelling unit built within the development shall be included in and benefit from the then current new home warranty plan of the Tarion Warranty Corporation Program, unless the dwelling unit built is not registerable under the Ontario New Homes Warranties Plan Act.

37. Design and Siting

(a) The Owner agrees that no person shall in any block (defined by a maximum of 10 adjoining homes) erect dwellings more than 40% of which are alike in external design. External design elements to be considered include brick or cladding, colour and texture, placement and types of windows, placement and types of trim features, garage projection and size, and building height. Buildings alike in external design shall not be erected on adjacent lots fronting on the same street unless the floor plan is reversed, and in any case, shall not be erected on more than two successive adjoining lots fronting on the same street. All buildings shall conform to the zoning by-law re irregular setbacks. Notwithstanding the foregoing the Owner shall use its best efforts to arrange a formula acceptable to the Township's Planner and Chief Building Official, which ensures that an appropriate variety of house plans, elevations, materials, colours and setbacks are produced within the Plan. Accordingly, prior to issuing building permits, the Owner shall provide the Township with the elevations of the models, proposed to be built. Prior to issuing a building permit for a particular lot, the Owner shall provide particulars of the model that is proposed to be built on the lot, and shall make appropriate changes to the proposed model, or select another model, to make sure that the intent of these provisions is observed.

- (b) The Owner shall use its best efforts to ensure that the siting of residential units on lots or blocks within the Plan is supervised in such a manner as to avoid conflicts with underground services and work within road allowances.
- (c) No hedge, fence or other structure on any corner lot shall be permitted within a sight triangle of 6 metres measured along each property line from the corner adjacent to the intersection but nothing in this section prevents the erection of any building that complies with the setback requirements of the relevant by-laws.
- (d) All development shall be in conformity with the Township's approved zoning for the site, and all applicable By-laws.

38. Building Permits

- (a) Building permits may be issued when the following works and services have been constructed and approved for use:
 - (i) underground services, watermains, sanitary sewers and storm sewers;
 - (ii) the roadway except the final surface coat of asphalt; and
 - (iii) the electrical distribution system is substantially installed but not the installation of street lights.
- (b) No building permit will be issued for any lot until the following conditions have been met:
 - (i) the services referred to in Section 4.(a) have been completed or the Township has given special permission deleting specific services from the building permit requirements in Section 4.(a);
 - (ii) the building permit application complies with all applicable laws and by-laws;
 - (iii) an individual site grading and elevation plan prepared by the Owner has been submitted and approved by the Township Engineer which plan shows sufficient detail to prove that the lot will drain satisfactorily and will conform to the drainage scheme of the subdivision;
 - (iv) the damage and grading deposit referred to in Section 38.(a) has been paid for the lot;
 - (v) the levies referred to in Section 54 have been paid for the lot;
 - (vi) a sample copy of the Offer to Purchase containing all the information set forth in Section 42.(b) of this Agreement has been filed with the Township;
 - (vii) the Owner has complied with all of the provisions of this Agreement to the date of such application; and
 - (viii) all other financial requirements outlined in this Agreement to the date of application for the permit have been fulfilled.

and provided that the Owner has complied with the security requirements of this Agreement, and provided also that the Owner shall not then be in default under any term of this Agreement.

The Owner covenants and agrees to notify in writing any purchaser of a lot on the Plan from him that the Township may refuse any application for a building permit if made before the foregoing has been completed, and no proceedings to compel the Township or its officers or employees to issue any building permit shall be taken until the foregoing have been completed. Failure on the part of the Owner to notify, in writing, any purchaser from him, shall be deemed to be a default of the Owner under this Agreement.

The issuance of a building permit with respect to any particular lot shall not be deemed to be an admission by the Township that the services to such lot have been satisfactorily completed.

39. Model Homes

- (a) A maximum of 10 Model homes may be constructed, which shall be on adjoining lots when the following conditions have been met:
 - (i) The Plan is registered;

- (ii) The construction of the models complies with all applicable laws including any building and zoning by-laws;
 - (iii) The conditions referred to in Sections 34, 36.(b)(viii), 36.(b)(ix), 37.(a)(viii) of this Agreement have been complied with;
 - (iv) The approval of the Township Engineer has been obtained with respect to the following:
 - (1) location and construction of builder's road and parking lot if deemed necessary by the Township; and
 - (2) detailed site plans showing location and construction of builder's road and proposed models;
 - (v) No occupancy of any model shall be permitted until all of the other applicable provisions to this Agreement with respect to building permits and occupancy permits have been complied with;
 - (vi) The grading and damage security listed in Section 38.(a) has been paid; and
 - (vii) the levies referred to in Section 54 have been paid for.
- (b) The requirement of Section 37.(a)(i) shall be waived in respect of not more than 3 model homes, provided that they front on ??? Street, but all the other provisions relating to model homes shall apply to them.
- (c) The Owner shall not be entitled to an occupancy permit for model homes, except in full compliance with the requirements for occupancy permits applicable to all other homes.

40. Deposits for Grading and Damage

- (a) An application for a building permit shall be accompanied by a deposit of \$2,000.00 ("Grading Deposit") as (a) security for repair of works and services that may be damaged by the building of the unit for which the permit was sought, (b) to ensure that lot grading is completed according to the Engineering Drawings, and (c) to ensure compliance with the occupancy permit provisions.
- (b) At the option of the Owner, the grading deposit may be in the form of an irrevocable Letter of Credit from a Chartered Bank, issued in accordance with the requirements of the Township Solicitor.
- (c) The grading deposit for each lot for which the Owner has applied for a building permit, shall be retained by the Township until such time as the final grading, sodding and landscaping surrounding such lot as provided for in this Agreement and the agreement of purchase and sale with the house purchaser have been completed and until all work on the lot to which it applies and until the Township Engineer or his nominee has inspected the work to ensure that no damage has been done to the works and services installed by the Owner or anyone else or to existing works and services owned by the Township.
- (d) When the work referred to in Section 38.(a) has been completed it shall be inspected by the Township Engineer or his nominee and if he is satisfied that the work complies with the drainage scheme, and no claims have been made against the grading deposit, it shall be repaid to the Owner without interest.
- (e) If the person responsible for improper grading and/or damage fails to rectify the grading after seven days written notice from the Township, the Township may draw on the lot grading deposit for those purposes. If the cost of such correction exceeds the deposit, the Owner shall be responsible in the first instance for the excess and the Township may have recourse to the other securities deposited pursuant to the Agreement. Nothing herein shall prevent the Owner or the Township or both taking court action against the responsible person, or builder or against any purchaser of a unit for any deficiency.
- (f) Should any house be constructed at an elevation that does not allow for completion of grading to Township standards, the grading deposit shall be forfeited to the Township and the grading shall be rectified forthwith at the Owner's expense.

41. House Construction

- (a) The Owner shall construct all buildings in a manner satisfactory to the Township Chief Building Official.
- (b) The Owner shall provide each foundation with footing drains, where private gravity storm sewer laterals are not provided, which discharge to a sump with a sump pump of sufficient capacity to lift the subsurface ground water to the finished elevation of the ground at the exterior of the basement and discharge it in such a manner as not to cause erosion or flooding of any adjacent lands or buildings. The Owner shall construct all sump pumps so that they shall discharge at the front building line of the house and flow shall be directed towards the street line.
- (c) The Owner shall not proceed with the construction of any building past the basement stage until it has delivered to the Township Chief Building Official certification of the following:
- (1) That the basement elevation complies with the levels shown on the approved lot grading plan;
 - (2) Certification shall be provided by a Registered Professional Engineer and/or Ontario Land Surveyor of the location of the foundation on the site
- (d) In the event that the location of the foundation and the elevation of the basement do not conform to the approved plans, no construction shall proceed until such time as the Township Engineer approves the elevation of the basement and location of the foundation.
- (e) The Owner shall ensure that no unoccupied lot becomes unsightly by the accumulation of garbage, debris or building waste. All construction refuse and debris shall be disposed of in an orderly and sanitary fashion and in a manner approved by the Township; and the Owner shall obtain a similar covenant from each purchaser of lands within the Plan. As security that this obligation shall be fulfilled, the Town may use the deposits required under Section 38.(a).

42. Numbering of Lots

- (a) So that each lot may be identified from the street the Owner or Builder shall adopt a system of lot identification for each lot from the time the basement is completed until such time as the house number is affixed to the house. The number may, at the option of the Owner or Builder, be painted on the basement wall or wall of the house facing the street on which it fronts.
- (b) The Owner shall obtain street numbering from the Township once the Plan has been registered.

43. Occupancy Permits

- (a) No dwelling may be occupied until an occupancy permit has first been obtained from the Township Chief Building Inspector.
- (b) No occupancy permit shall be issued unless the house has been completed to the satisfaction of the Chief Building Official and the following services have been constructed or installed:
- (i) all services required for the issuing of a building permit;
 - (ii) all public utilities including telephone and street lighting have been installed;
 - (iii) the building has been constructed in accordance with the plans approved by the Chief Building Official, and the construction of the building is in compliance with the Ontario Building Code;
 - (iv) permanent street name and traffic signs have been erected on the street on which the lot or block fronts;
 - (v) the foundation survey and floor elevation certificate is in accordance with the approved plans, or the variance is approved in writing by the Township Engineer or the Director of Public Works;

- (vi) the cellar, weeping tile and roof water drainage connections to the storm sewers are completed and operating to the satisfaction of the Works Superintendent;
- (vii) street lighting has been installed and is operational;
- (viii) the signs as detailed in paragraph 10.(k) have been installed and are in good repair;
- (ix) approved water meter has been installed. The specifications for water meters are as follows: 5/8 " x 5/8" x 3/4 " Sensus SR II Type ECR complete with TouchRead System, or approved equal;
- (x) The water meters shall be installed according to the manufacturer's instructions and shall be accessible by municipal staff for inspection purposes. The touch pad shall be mounted on the exterior wall of the house within 1.5 m of the front of the house and shall be accessible by municipal staff for meter reading purposes; and
- (xi) The Owner is not in default of any terms of this Agreement.

A bona fide purchaser for value shall be subject to the restrictions and conditions of this paragraph limiting the right to obtain a building permit or the right to compel the issuance therefore.

- (c) In the event that an occupancy permit is requested and not all of the provisions of this Section have been complied with, the Chief Building Official may, at his absolute discretion, nevertheless authorize the issuance of such occupancy permit provided he is satisfied that the grading still to be completed will not substantially alter the contour of the lot and providing further that the applicant for the permit agrees to complete such grading and to supply such certificate as soon as weather conditions permit.
- (d) Notwithstanding the issuance of an occupancy permit, if the provisions of this Section shall not have been complied with and no authorization has been given by the Chief Building Official in accordance with Section 41.(c), the Owner, or his agent or assign, shall be deemed to be in breach of the provisions of this Section.
- (e) Commencing with the issuance of the first building permit, the Owner, or his agent or assign shall provide weekly schedules of expected occupancy dates. Forthwith upon obtaining an occupancy permit, the Owner, or his agent or assign shall provide a copy of it to the Township.
- (f) The Owner acknowledges that any and all costs and expenses incurred by the Township in the event of a breach of the provisions of this Section through the occupancy of a dwelling without an occupancy permit being issued or other breaches of this Section, are difficult to calculate. Notwithstanding this, the Owner agrees that a reasonable estimate of the Township's damages in the event of such a breach is not less than \$5,000.00 for each lot where such breach occurred, and that in the event of breach the Township may draw upon but shall not be limited to the security provided for in this Agreement.
- (g) The Owner shall be notified by the Chief Building Official of any violation of the occupancy provisions of this Agreement and, in the event that such violation is not rectified within twenty four (24) hours of such notification, the Township may draw upon the security provided for in this Agreement, including the grading and damage deposit, pertaining to the lot or lots in question and retain the proceeds as liquidated damages and not as penalty. When the violation is, in the opinion of the Chief Building Official, an emergency such that the occupancy may pose a risk to the health or safety of any person, the Owner hereby agrees that the said notice shall be waived and the Township may take such action as is necessary, in the opinion of the Chief Building Official, to remedy the violation. Such action required to be taken by the Township shall be at the Owner's expense and the Owner hereby agrees that any of the security provided under this Agreement may be used for the purposes of remedying the said violation.
- (h) An application by the Owner, or its agent or assigns, or Builder for an occupancy permit entitles him to one inspection only. All other inspections shall be charged for at the rate of the current inspection charge per inspection which must be paid before the inspection will take place.
- (i) Reserved.
- (j) The obligations of the Owner in this section shall be only in its capacity as Builder, and where the Owner is not the Builder, then the Owner's agents or assigns taking on the role of builder shall be subject to the obligations of the Owner.

44. General Provisions Relating to the Sale of Lots by an Owner or a Builder to Prospective Homeowners

- (a) The Owner covenants and agrees with the Township that no offer to purchase relating to the sale of any Lands on the Plan by the Owner or by a Builder, shall be entered into until the Agreement relating to this development has been executed by the parties hereto. The execution of the Agreement is not required where conditional purchase and sale agreements are being entered into provided the purchase and sale agreement indicates that such agreement is subject to all other matters being resolved with the Township including the execution of the Agreement and the registration of the Plan.
- (b) The Owner covenants and agrees with the Township that prior to entering into an offer to purchase relating to the sale of any Lands on the Plan by the Owner or by a Builder, as vendor, to a prospective homeowner, the vendor shall:
- (i) Advise the purchaser in writing of any sodding or other landscaping provisions, including the planting of trees to be completed on such lot and that the conveyance to the purchaser reserves a license to the Owner to enter on the said lot for the purpose of completing, maintaining or repairing such projects.
 - (ii) Advise the purchaser in writing that it may be necessary for the Owner, in order to comply with the grading requirements of the Township, to enter upon the subject lot in order to complete or alter the grading of the subject lot and that the conveyance to the purchaser reserves a license to the Owner to enter upon the subject lot in order to complete or alter any of the grades on the subject lot as may be required by the Township in order to provide proper drainage to any of the Lands on the Plan. The purchaser shall also be advised that the proposed lot grading may require the use of retaining walls and/or sloping. Where retaining walls are constructed on the lot being sold, the purchaser shall be advised that such retaining walls will be maintained in good condition and repair for a period of 2 years from completion of the same, after which time the maintenance and repair of such walls shall be the responsibility of the purchaser.
 - (iii) Where sidewalks are to be installed in front of the lot being sold, the Owner shall advise the purchaser in writing, that the Owner will be paving the entire driveway and indicating to the purchaser the approximate date of the completion of such paving.
 - (iv) Provide the purchaser with a map showing the zoning of all areas within the Plan and within 400 feet of the external boundaries of the Plan. In addition, the purchaser is to be provided with any secondary plans, development plans or planning studies which are available to the public having regard to the future land use of the Lands within the Plan and external to the Plan, 400 feet. Any additional inquiries with respect to future development of the adjacent lands may be referred to the County of Perth Planning Department.
 - (v) The Offer to Purchase made between the vendor and the purchaser relating to the sale of any such lots shall contain a covenant on the part of the vendor that prior to closing he will also provide the purchaser with an occupancy permit referred to in this Agreement.
 - (vi) Provide the purchaser with a copy of Schedule "B2" showing the location of the various sidewalks to be constructed by the Owner, and also provide the purchaser with particulars of the location and the type of fencing that will be erected by the Owner.
 - (vii) The Offer to Purchase made between the vendor and the purchaser relating to the sale of any lots, shall contain the following provisions, if applicable:
 - (1) Despite the inclusion of noise control features within the development area, noise levels may continue to be of concern, occasionally interfering with the activities of the dwelling occupants;
 - (2) The restrictive covenants set out in Schedule "H";

- (3) A statement which advises the prospective purchaser that mail delivery will be from a designated Community Mailbox and to include the exact locations (list of lot numbers) of each of the Community Mailbox locations.
- (viii) Provide the purchaser within fifteen (15) days prior to closing with a plan of survey prepared by an Ontario Land Surveyor, showing the size and location of the lot and the location of the dwelling erected thereon in relation to the various lot boundaries.
- (ix) Clearly indicate the location of any public park and public walkways on any plans that may be used by the Owner, the builder or their real estate agent so that the purchaser is clearly aware of the location of such public parks and public walkways in respect to the lot being purchased by such person.
- (x) The Offer to Purchase made between the vendor and the purchaser shall contain a clause indicating that the parkland may not be developed for a substantial period of time after residential dwellings have been completed as the timing of the development of the park is dependent upon the financial ability of the Township to fund same provided it has received sufficient contributions for park development purposes through the Development Charges Act, S.O. 1997, c. 21, as amended, and the Planning Act, R.S.O. 1990, c. P. 13, as amended

The Owner covenants and agrees that all Offers of Purchase shall contain the items set out above and shall, on request, provide proof of the same to the Township.

(c) In order that the Township may be satisfied that all of the provisions of this Agreement are being carried out to the satisfaction of the Township, the Owner or the Builder, as the case may be, shall provide the Township Chief Building Official with a copy of the following documentation that will be used in the sale of such lots:

- (i) The documents referred to in Subsection 42.(b)(iv)
- (ii) A draft copy of the offer to purchase containing the information referred to in this Section.

The documentation referred to above shall be submitted to the Township Chief Building Official prior to the Owner or the Builder entering into an offer to purchase relating to the sale of any lots on the Plan.

(d) The Owner acknowledges that any and all costs and expenses incurred by the Township in the event of a breach of the provisions of this section, are difficult to calculate. Notwithstanding this, the Owner agrees that a reasonable estimate of the Township's damages in the event of such a breach is not less than \$5,000.00 for each lot where such breach occurred, and that in the event of breach the Township may draw upon but shall not be limited to the security provided for in this Agreement.

(e) The sale of any lots to a Builder shall not relieve the Owner from its obligations to see that the provisions of this Section are carried out by the Builder or any of the Builder's agents, contractors, or assigns. Notwithstanding the provisions of this section, the Owner shall be relieved of its obligations under Subsections 42.(a) and 42.(b) in regard to any lots that are conveyed directly to a Builder and the Builder executes and delivers to the Township a covenant in the form approved by the Township.

(f) Reserved.

45. Specific Provisions Relating to the Sale of Lots to a Prospective Homeowner

(a) The Owner covenants and agrees with the Township not to complete the sale of any lots on the Plan upon which a dwelling has been erected or is to be erected by the Owner or a Builder under the provisions of the Agreement for Sale between the Owner or the Builder and a prospective homeowner, unless and until:

- (i) The Owner or the Builder has obtained and delivered to the purchaser an Occupancy Permit under the provisions of Section 41.

- (ii) The Owner has provided the purchaser, within 15 days prior to closing, with a plan of survey prepared by an Ontario Land Surveyor, showing the size and location of the dwelling erected thereon in relation to the various lot boundaries.
- (b) The Owner acknowledges that any and all costs and expenses incurred by the Township in the event of a breach of the provisions of this section, are difficult to calculate. Notwithstanding this, the Owner agrees that a reasonable estimate of the Township's damages in the event of such a breach is not less than \$5,000.00 for each lot where such breach occurred, and that in the event of breach the Township may draw upon but shall not be limited to the security provided for in this Agreement.
- (c) The obligations of the Owner in this section shall be only in its capacity as Builder, and where the Owner is not the Builder, the Builder shall be subject to the obligations of the Owner.

46. Garbage Collection

- (a) The Owner shall work with the Township to coordinate efforts towards a satisfactory and reasonable garbage collection system during early occupancy stages of the development.

47. Pre-Servicing

- (a) The Owner may pre-service the Lands by installing underground municipal services and base roads under the following conditions:
 - (i) Any works undertaken are at the volition of the Owner and in no way impose any financial or other obligation on the Township;
 - (ii) The requisite Provincial and Conservation Authority approvals are in place;
 - (iii) The Township technical approval of the design of the works is in place;
 - (iv) Liability Insurance as provided in this Agreement is in place;
 - (v) No building permits shall be granted, nor shall the Township issue its consent to any part lot severances prior to the remaining Agreement securities having been deposited with the Township;
 - (vi) The Owner providing its written consent giving the Township rights of entry in accordance with this Agreement, and agreeing to pay inspection costs associated with the pre-servicing; and
 - (vii) The Owner has supplied to the Township a cash deposit or letter of credit in the amount of 10% of the estimated cost of construction, as shown in Schedule "D".
- (b) Upon the deposit of the securities as provided in section 51, the unused portion of the cash deposit or the balance of the letter of credit shall be returned to the Owner.

48. Professional Engineer

- (a) The Owner agrees to retain a professional Engineer who holds a certificate of authorization as required by the Professional Engineers' Act of the Province of Ontario, as the Owner's Engineer to carry out all the necessary engineering, including design, contract administration and resident supervision of the work required for the development of the Plan, including but not limited to the following:
 - (i) to prepare designs;
 - (ii) to prepare and furnish all required drawings;
 - (iii) to prepare the necessary contract(s);
 - (iv) to obtain the necessary approvals in conjunction with the Township;
 - (v) to provide the field layout, the contract administration and the resident supervision of construction. "Resident Supervision" shall mean and imply a degree of service much greater than that provided under contract administration (which normally includes periodic visits to the site by senior personnel during

construction, attending job meetings, approval of construction schedules and progress reports) and is provided to supplement contract administration. Resident Supervision implies the placement of competent supervision, inspection and layout staff on the project to provide continuous service during all phases of construction of the services and roadways and shall include the following functions:

- (1) Provide line and grade to the contractors and re-staking where necessary.
- (2) Carry out inspections of construction, field testing of materials and equipment installed. The testing shall include but not necessarily be limited to the following:
 - (a) Roads:
 - (i) Subgrade compacting tests shall be carried out; in trenches or the weakest areas to depths specified by the Township Engineer, or 600 mm. below subgrade elevation. Tests shall be taken 1 per each 30.0 metres of road, but at least 1 per street, or more often if conditions dictate.
 - (ii) Granular materials shall be tested according to M.T.O. procedures. Prior to the placing of any Granular "B" or Granular "A" materials, the source shall be designated and checked for quality, supply and reliability. Samples shall be taken on the job and tested to ensure compliance with specifications and uniformity.
 - (iii) Asphalt shall be tested in accordance with M.T.O. procedures. Prior to commencement of construction, samples of the aggregate and materials shall be submitted and a trial mix designed by an approved testing company. On the job testing shall be completed when necessary. Any change in source must be approved by the Owner's Engineer.
 - (iv) Concrete - The source and mixes shall be approved by the Owner's Engineer prior to commencement of any work. Testing shall be carried out if required.
 - (b) Storm Sewers:
 - Tests shall be carried out in accordance with the contract documents and in accordance with the standards and requirements of the Township.
- (3) Investigate, report and advise on unusual circumstances which may arise during construction.
- (4) Carry out periodic inspections as required, including inspections at the conclusion of construction contracts and at the end of the maintenance period as part of the acceptance program of the Township.
- (5) Obtain field information during and upon completion of construction necessary for the modification of the Engineering Drawings to show the work "as-built". The drawings and storm sewer design sheets shall be modified and submitted to the Director of Public Works for his permanent records.
- (6) The Resident Supervisor and staff shall be qualified to carry out all the aforementioned functions, namely the resident supervision, inspection and layout. A detailed resume of the experience, back-ground and qualifications of the Resident Supervisor, together with the Resident Supervisor's direct undertaking to the Township to provide Resident Services, shall be submitted to the Director of Public Works of the Township, for his approval. When approved, the Resident Supervisor shall be retained on this project until the work provided for in this

Agreement is completed, unless subsequently approval or direction to the contrary is obtained from the Township.

- (vi) To provide floor elevation certificates to the Township within 14 days of pouring basement walls.
 - (vii) To provide engineering drawings showing finally constructed services and all of the approved revisions to the original engineering drawings. Said drawings are to be provided in the following formats, hardcopy, CAD, and pdf, to Township requirements, prior to issuance of the Final Certificate of Acceptance
 - (viii) To act as the Owner's representative in all matters pertaining to the construction.
 - (ix) To provide co-ordination and scheduling to comply with the timing provisions of this Agreement and the requirements of the Township's Engineer for all the works specified in this Agreement.
 - (x) To furnish the Township with a certificate of final grade elevation with respect to each lot or building block for which a building permit application is made, certifying that the proposed construction is in conformity with the overall grading plan. In particular, retaining walls used to accommodate individual lot or block grading will be certified by the Owner's Engineer as being constructed with proper material and to standards and specifications of the Public Works Department of the Township, as part of the standard lot grading certificate.
- (b) The Engineer employed by the Owner shall be approved by the Township and he shall file with the Township, a written acknowledgment that he has been engaged by the Owner and an undertaking to the Township to provide all of the aforementioned engineering functions on behalf of the Owner, including the resident supervision and inspection of the construction.
- (c) The Engineer employed by the Owner shall be retained by the Owner until the works provided in this Agreement are completed and formally accepted in writing by the Township, as applicable, unless replaced by another Engineer who has the qualifications as provided for in this Section.
- (d) The Township shall approve all contractors employed by the Owner to construct the public services under this Agreement. The said approval shall be in writing and shall be obtained prior to the signing of any contract between the Owner and any such contractor.

49. Use of Public Services by the Township

- (a) The Owner agrees that the various public services constructed by the Owner on the Plan may be used by the Township or other authorized persons for the purpose for which such services are designed.
- (b) It is further agreed that the use of such services by the Township shall not be construed as acceptance of the services by the Township.
- (c) It is further agreed that the use of such services by the Township shall not in any way relieve the Owner of its obligations in respect to the construction and maintenance of the public services so used.

50. Existing Services

- (a) The Owner covenants and agrees that where, in the opinion of the Township Engineer, any or all of the various services which the Owner is required to construct under the provisions of this Agreement should be connected to or joined into existing municipal services outside the plan, then the Owner shall join into the same, including the adjustment of any grades where necessary, in a good and workmanlike manner, in accordance with plans and specifications to be submitted to and approved by the Township Engineer.
- (b) The Owner covenants and agrees to pay the cost of relocating any existing services and utilities (including telephone, cable T.V. and gas lines) whether located within, or outside, the Plan and which, in the opinion of the Township Engineer, is required to be relocated either as a

51. Removal of Debris

- (a) The Owner covenants and agrees to neither dump nor permit to be dumped any fill or debris on, nor to remove or permit to be removed any fill or existing materials from any public lands other than the actual construction of roads in or abutting the Plan without the written consent of the authority responsible for such lands. The Owner shall, on request, supply the Township with an acknowledgment from such authority of the Owner's compliance with the terms of this clause. If the Owner fails to dispose of refuse or debris within 48 hrs. after having received a written request from the Township to do so, the Township may, without further notice, undertake such removal and disposal and the cost thereof shall be a charge against the security provided for in this Agreement, and the Owner shall replace such security forthwith.
- (b) The Owner covenants and agrees that no topsoil shall be removed from any of the lots or blocks shown on the Plan without the written approval of the Township. Where it becomes necessary for the Owner, during the process of grading operations or during the process of constructing any buildings on any lots or blocks on the Plan, to temporarily remove any topsoil, the said topsoil shall be stockpiled and as each building is completed shall be replaced on the said block to a depth of at least 6 inches over the entire surface of the said lot or block not covered by buildings, driveways or paved areas. Any surplus topsoil shall be distributed over various other areas of the Plan in accordance with the instructions of the Director of Public Works.

52. Repairs to Services Resulting from Construction Operations

- (a) The Owner further covenants and agrees with the Township that it will repair any damage that may be caused to any existing public services (including any damage that may be inflicted on any of the streets adjoining the Plan or of any of the services installed on said adjoining streets) that may be caused to any services by any person or corporation during the period hereinafter referred to, resulting from the construction of any dwellings or other buildings within the Plan, including grading and landscaping, or resulting from the construction of any of the services or other matters which the Owner is obligated to perform under this Agreement. It is further understood and agreed that if damages should occur to any of the existing public services during the period hereinafter referred to, it shall be assumed that such damages were caused by the above mentioned construction operations and the onus shall, therefore, be upon the Owner to prove otherwise.
- (b) The obligations of the Owner under the provisions of this Section shall continue in full force and effect until the following matters have been complied with:
- (i) A Certificate of Final Acceptance has been issued;
 - (ii) Until buildings have been erected on all of the lots and blocks on the Plan (including all grading operations), except those lots or blocks which have been conveyed to the Township for parks or other public purposes or any lots or blocks conveyed or set aside for school purposes.
- (c) It is further agreed between the parties hereto that if the Owner defaults in any of its obligations under this Section, then its default shall be considered a default in the performance of its work under this Agreement and the Township may pursue all available remedies.

53. Security

- (a) The Owner shall deposit with the Township 30 days prior to commencing construction in any stage of development cash or security in a form satisfactory to the Township Treasurer in the amount of 110% of the estimated cost specified in Schedule "D" attached hereto (the "Security")

- (b) The Security may at the option of the Owner, be in the form of a letter of credit from a chartered bank that has been approved by the Township.
- (c) Where pre-servicing has taken place, the value of the Security will be computed as:
 - (i) fifteen percent (15%) of the value of the completed services, plus
 - (ii) one hundred and ten percent (110%) of the estimated cost of completion of all remaining obligations under this Agreement, including all related engineering costs,

notwithstanding that sufficient services may not have been constructed to allow the Township to issue preliminary acceptance in accordance with the provisions of this Agreement.

54. Reduction and Cancellation of Security

- (a) The security may be reduced from time to time at the sole discretion of the Township upon the confirmation by the Township Engineer that the services have been satisfactorily constructed. Notwithstanding anything contained in the preceding sentence, the security shall never be reduced below one hundred and ten percent (110%) of the estimated cost of completion of works and services contemplated by this Agreement plus fifteen percent (15%) of the value of completed work, and if reduced, shall immediately be replenished by the Owner
- (b) When Preliminary Acceptance has been issued the Township shall reduce the security to an amount that is equal to the sum of:
 - (i) fifteen percent (15%) of the value of the completed services, plus
 - (ii) one hundred and ten percent (110%) of the estimated cost of completion of all remaining obligations under this Agreement including all related engineering costs.
- (c) The security shall not be released until such time as the Township is satisfied that all accounts for the works have been paid and any claim under the *Construction Lien Act*, R.S.O. 1990, c. C. 30, as amended, has been satisfied. Delivery of the documents contemplated by Sections 30.(a)(iv), 30.(a)(v), 30.(a)(vi) are deemed to be satisfactory evidence of payment unless the Township has actual notice that they are not true.
- (d) Except as otherwise provided, the security shall remain in effect for the full duration of this Agreement. The security certificate shall be in effect for a minimum period of one (1) year and shall contain a clause providing that the security deposit shall be automatically renewed from year to year, unless forty five (45) clear days prior written notice is given by the financial institution issuing the security certificate to the Township that the security certificate shall not be renewed upon its expiry date, in which event the Owner shall provide new security as required by section 51 no later than forty five (45) clear days prior to the expiry date of the existing security. Failure to provide the security certificate or to provide written notice to the Township of the renewal or replacement of the security deposit no later than forty five (45) clear days before its expiry shall constitute default under this Agreement by the Owner and entitle the Township to demand payment without notice under the existing security certificate in force of the estimated cost of completion of the Owner's remaining obligation and the Township's estimate of such cost shall be final and binding on all parties to the Agreement.
- (e) When the Certificate of Final Acceptance for each stage of development is issued by the Township, the Township shall deliver up the security in respect of that stage for cancellation.

55. Drawing Upon Security

- (a) Upon the failure of the Owner to repair or maintain a specific part of the work as requested by the Township, and in the time requested, the Township may at any time authorize the use of part of the Security to pay the cost of any part of the work the Township may deem necessary. In the case of emergency repairs or clean-up of roads the Township may undertake the works at the expense of the Owner and may also draw on the Security for this purpose.
- (b) Upon the failure by the Owner to complete all or part of the works in the time or times stipulated, the Township may draw the appropriate amount from the Security and use the funds to arrange for the completion of the said works, or in part thereof.

- (c) The failure of the Owner to pay any deposit and demand pursuant to Section 55.(a) or to pay to the Township the costs of all outside technical and professional expenses referred to in Section 55.(a) shall constitute default under this Agreement and shall entitle the Township to draw the appropriate amount from the Security deposited with the Township pursuant to Section 51 and Section 55.(a). Upon the failure of the Owner to pay the deposit demanded from time to time, or to pay to the Township the costs of all outside technical and professional expenses that the Township has incurred with respect to the Plan, the Township may draw the appropriate amount from the Security and use the funds to pay the deposit or the costs owing as stated above.
- (d) In addition to the foregoing provisions, the Township may draw upon the Security as specifically provided elsewhere in this Agreement.

56. Development Charges

- (a) The Owner shall pay or cause to be paid by the Builder to the Treasurer of the Township Development Charges as they apply to the Lands. The amount and conditions related to those payments will be in accordance with the Township by-laws, and any amendments thereto.
- (b) The Owner hereby charges each lot on the Plan with the payment of the Development Charges associated with the construction of each residential unit located on that lot. Payment of the Development Charges for the unit or units on the lot for which the levy was paid discharges that lot from payment of any levy on any other lot that must be paid under the terms of this Agreement. Payment of the Development Charges is due at the time of the application for a building permit.

57. Outside Professional Assistance

- (a) The Owner shall pay to the Township the costs for all outside technical and professional expenses that it has incurred to date and which it shall incur in the future arising out of the proposed development, and in this regard the Owner shall deposit with the Township the sum of \$20,000.00 upon the execution of this Agreement to be applied on account of such expenses. These expenses do not include internal administrative technical or professional services rendered by full-time employed staff. The deposit paid by the Owner shall be credited to these expenses as they are invoiced to the Owner. If the deposit is too large, the unused portion shall be refunded when the Plan is complete. If the deposit is too small, an additional deposit shall be requested by the Township from time to time by notice in writing to the Owner given pursuant to section 62 in this Agreement and any such additional deposit requested shall be paid forthwith by the Owner to the Township. Any additional deposit demanded and not paid shall bear interest from the date of demand at the same rate as is provided for post-judgment interest in the Courts of Justice Act R.S.O. 1990, Chapter C.43.

58. Taxes

- (a) The Owner shall pay the current year's taxes (if levied), or all advance instalments payable thereon, and all arrears of taxes outstanding against the property herein described before the signing of this Agreement. Where local improvements are outstanding a cash payment sufficient to commute the balance owing shall be made by the Owner.
- (b) The Owner covenants and agrees to keep all property taxes pertaining to the Lands in good standing at all time.
- (c) The Owner hereby covenants and agrees that the provisions of all by-laws as amended from time to time, including those pertaining to development charges and other levies, shall continue to apply to the Owner and the subject lands and shall not be affected by any subdivision requirements respecting services.

59. Land Required for Municipal Purposes

- (a) The Owner shall convey, or shall cause to be conveyed, at its expense, absolutely unto the Township, in fee simple, free from encumbrances and without condition, the land and easements set forth in Schedule "F" other than the roads on the Plan. The benefiting lands for easements shall be the public streets in the Plan. Upon being conveyed to the Township, the

Owner shall at its sole risk and expense clear the said lands of all debris and trash leaving the same in a state satisfactory to the Township Engineer. Upon such conveyance, the Owner shall cease to have any right, title, claim or obligation in respect of such lands. Any use of the lands by the Owner shall be upon the consent of the Township Engineer and subject to any condition he might impose in his sole condition.

(b) All permanent easements granted to the Township (except those for hydro purposes) shall be to enter on the land to inspect, maintain and repair and renew all municipal services, provided that the Township shall restore the surface and make good any damage it does whenever it enters under the easement. There shall be no buildings, no fences, no structures and no live landscaping material placed by the owners on the lands covered by the easement. The Township shall not be required to make good any damage caused to buildings, fences, live landscaping materials and structures that are located on the easement.

60. Restrictive Covenants

(a) The following restrictive covenant shall enure to the benefit of the lands of the Township being the streets on the Plan. The burden of the following restrictive covenants shall run with the residential lots on the Plan and are binding upon the Owner and its successors and assigns. The restrictions shall be in the form attached as Schedule "H".

(b) The Owner shall, on the sale of each lot or parcel in the subdivision, reserve the right of entry thereon for carrying out drainage works over 1.2 metres on each side and the rear lot line for the purpose of completing all drainage works as required under this Agreement until such time as the Township assumes for all purposes the works required under this Agreement by the Owner, and the Owner herein shall provide to the Township, if required, access to each lot or parcel if entry thereon is required by the Township to complete any drainage work as provided in this Agreement.

(c) The Owner covenants that it shall comply with the provisions of Sections 58.(a),58.(b), insofar as it lies within its power to do so, and will co-operate with the Township in any action taken by the Township to enforce them.

61. Registration of Agreement

(a) This Agreement shall be registered upon title of the land within the Plan. Such registration shall be at the instance of the Township and at its sole discretion and at the expense of the Owner. Schedules that may not be registerable or otherwise omitted to reduce the length of the registered document shall be replaced and identified in the registered document with the additional wording: "Original documents on file and may be viewed at the offices of the Township of Perth South, 3191 Road 122, St. Pauls, Ontario, N0K 1V0."

(b) This Agreement shall be deemed to no longer affect the title to any lot on the Plan against which a Certificate of Final Acceptance is registered except for such matters as may be reserved in the Certificate of Final Acceptance and Covenants.

62. Schedules to Agreement

(a) The following list of schedules shall form part of this Agreement and shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns:

Schedule "A"	Legal description
Schedule "B1"	Reduced copy of proposed plan
Schedule "B2"	Reduced copy of tree preservation and landscaping plans
Schedule "C"	Approved engineering drawings
Schedule "D"	Estimated cost of construction
Schedule "E"	Schedule of progress and completion
Schedule "F"	Land and easements to be conveyed to the Township
Schedule "G"	External Services
Schedule "H"	Restrictive Covenants
Schedule "I"	Minister's Conditions
Schedule "J"	Canada Post Conditions
Schedule "K"	Upper Thames River Conservation Authority Conditions

63. Default

Time shall be of the essence in this Agreement. Upon breach by the Owner of any covenant, term, condition or requirement of this Agreement, or upon the Owner becoming insolvent or making an assignment for the benefit of creditors, the Township at its option, may declare that the Owner is in default. Notice of such default shall be given as provided for in this Agreement

Upon notice of default having been given, the Township may require all work by the Owner, its servants, agents, independent contractors, and subcontractors 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.

64. Remedies on Default

Upon default of the Owner, the Township 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 Lands by its servants, agent, and contractors and complete any work, services, repair or maintenance wholly or in part required herein to be done by the Owner and collect the cost thereof from the Owner and/or enforce any security available to it;
- (b) make any payment which ought to have been made by the Owner and upon demand collect the amount thereof from the Owner and/or enforce any security available to it;
- (c) retain any sum of money heretofore paid by the Owner, to the Township, for any purpose, and apply the same in payment or part payment for any work which the Township may undertake;
- (d) assume any work or services at its option whether the same are completed or not, and therefore the Owner 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;
- (f) exercise any other remedy granted to the Township under the terms of this Agreement or available to the Township in law.

65. Severability of Ultra Vires Terms

(a) If any provision, terminology, covenant or condition of this Agreement, or the application thereof to any person or circumstances, is to an extent held or rendered invalid, unenforceable or illegal, then such provision, terminology, covenant or condition is deemed to be independent of the remainder of the Agreement and to be severable and divisible therefrom. Such invalidity or

unenforceability shall not affect, impair or invalidate the remainder of the Agreement or any part thereof. This Agreement shall continue to be applicable to and enforceable to the fullest extent permitted by law against any person in circumstances other than those as to which it has been held or rendered invalid, unenforceable or illegal.

66. Payment of Solicitor Costs

The Owner consents to the registration of this Agreement upon the title of the Lands within the Plan, and agrees to pay forthwith, on demand, all solicitors' fees and disbursements incurred by the Township in any way arising out of this Agreement, including the preparation thereof and of other deeds, conveyances, registrations and agreements.

67. Assignment

The Owner shall not assign this Agreement without the consent of the Township.

68. Notices

(a) Any notice required or permitted to be given under this Agreement shall be in writing and may be served either personally or by mailing such notice by registered mail postage prepaid, or by fax. If the postal service has been disrupted for any reason, by delivering such notice by a prepaid courier service.

[•][•][•]Fax: [•]

The Corporation of the Township of Perth South
3191 Road 122
St. Pauls, Ont. N0K 1V0
Fax: (519) 271-0647

If any notice is mailed by registered mail, postage prepaid or sent by prepaid courier service as aforesaid, it shall be deemed to have been received by the party to whom it was mailed or sent on the second day following the day upon which it was received in one of Her Majesty's post offices or delivered to the courier service unless the second day ends on a Saturday, Sunday or legal holiday, in which case those days are not included in computing the two day period. Either party may, by notice to the other, designate another address in Canada to which notices mailed or delivered more than (10) days thereafter shall be addressed.

Notwithstanding the foregoing, notice shall conclusively be deemed to have been given on the day that the same is posted. Wherein this Agreement the Township Engineer is permitted or required to give direction, exercise supervision, or to require work to be done or work to cease in respect of the construction, installation, repair and maintenance of works and services, he shall be deemed to have done so if he communicates such direction, supervision or requirement, orally or in writing, to any person purporting or appearing to be a foreman, superintendent or other servant of the Owner, and if the Township Engineer shall have made such communication orally he shall confirm such communication in writing as soon as conveniently possible.

69. Agreement Runs With Land

(a) This Agreement shall enure to the benefit of the Township, its successors and assigns. The benefits and the burden of the covenants, Agreements, conditions and undertakings herein

contained shall run with the land and are binding upon the land and upon the Owner and its successors and assigns.

70. Gender and Number

(a) In this Agreement, words importing the singular number include the plural and vice versa and words importing one gender include the other gender as well.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS AGREEMENT AS OF THE DATE ABOVE MENTIONED

[•]

per:

[•] Authorised Signing Officer

I have authority to bind the Corporation

THE CORPORATION OF THE TOWNSHIP OF
PERTH SOUTH

Per:

[•], Mayor

[•]Clerk

We have authority to bind the Corporation

SCHEDULE "A"

Subdivision

Legal Description

ALL AND SINGULAR that certain parcel or tract of land and premises, situate lying and being in the Township of Perth South in the County of Perth and Province of Ontario and being composed of

Schedule "B-1"

Subdivision
Reduced Copy of Proposed Plan

???????????????? Surveying Ltd. drawing No. ????????, ??????????, 2012

Original document on file and may be viewed at the offices of the Township of Perth South,
3191 Road 122, St. Pauls, Ontario.

Schedule "B-2"

Subdivision

Reduced copies of tree preservation and landscaping plans

Landscape Plan -

Tree Preservation Plan -

Street Tree Planting Plan -

Original document on file and may be viewed at the offices of the Township of Perth South, 3191 Road 122, St. Pauls, Ontario.

Schedule "C"

Subdivision

Approved engineering drawings

<u>Drawing Number</u>	<u>Description</u>

Original documents on file and may be viewed at the offices of the Township of Perth South, 3191 Road 122, St. Pauls, Ontario

MUNICIPAL STANDARDS:

As of the execution date of this Agreement, all current Township of Perth South and Ontario Provincial Standard Drawings and Specifications, including all current amendments, shall constitute part of this Agreement.

Schedule "D"

Subdivision

Estimated cost of construction

ITEM	DESCRIPTION	COST ESTIMATE
A	Site Grading	
B	Storm Sewers and Appurtenances	
C	Foundation Drain Collector	
D	Sanitary Sewers and Appurtenances	
E	Watermain and Appurtenances	
F	Roads and Surface Works (up to Base Asphalt)	
G	Road and Surface Works (Top Asphalt)	
H	Pond	
I	Miscellaneous	
J	Street Tree Planting	
K	Landscaping: SWM Pond	
TOTAL		

Schedule "E"

Subdivision

Schedule of progress and completion

The Owner shall complete the following works on or before the associated listed dates.

Should the Owner feel that an extension to any of these dates is required, the Owner agrees to petition the Township Council through the Township Clerk.

- A: Underground services to be completed on or before
- B: Curb base and base asphalt to be completed on or before
- C: Sidewalks, curb and gutter and boulevard sodding to be completed the earlier of 9 months after occupancy or on or before
- D: Top course asphalt to be completed on or before
- E: Streetlighting to be completed prior to occupancy on or before

Schedule "F"

Subdivision

Land and easements to be conveyed to the Township and otherwise

Lands to be conveyed to the Town free and clear of all encumbrances:

- Block ??? - Stormwater Management Pond
- Block ??? - Conservation
- Block ??? - Park
- Block ??? - Walkway

Reserves to be conveyed to the Township free and clear of all encumbrances:

???

Easements to be conveyed to the Township free and clear of all encumbrances:

???

Other conveyances free and clear of all encumbrances:

???

All references are to lands identified on a drawing marked "????????"

Schedule "G"

Subdivision

External Services

Schedule "H"

Subdivision

Restrictive Covenants

1. The Corporation of the Township of Perth South

The following clauses shall be inserted in all offers of purchase and sale and all conveyances from the Owner of residential lots:

The Owner shall

- (a) not make any claim against The Corporation of the Township of Perth South with respect to storm water drainage, it being understood that all drainage requirements for the lot are the responsibility of the transferee and the transferee's successors in title;
- (b) not clog, fill, alter, obstruct or remove any drain, channel, ditch or swale established for the purpose of drainage of the transferee's lot or other lots including interior drainage within lot lines;
- (c) not take any act to prevent the Township after ten days notice has been given of any breach of these restrictions from entering onto the lot to remove any obstructions or to re-establish any drain, channel, ditch or swale;
- (d) not fill, cut or encumber the lot in such a way that its drainage or the drainage of any other lot is interfered with, it being understood that changes of grade, levels, etc. may be made if done pursuant to a revised site, grade and elevation plan approved by the Township.

2. ???????????? Catholic District School Board

The following clauses shall be included in all offers of purchase and sale of the residential lots until the permanent school for the area has been completed.

3. ???????????? District School Board

The following clause shall be inserted in all offers of purchase and sale until such time as a permanent school for the area has been constructed.

Schedule "I"

Subdivision

Minister's Conditions

Minister of Municipal Affairs and Housing Notice of Decision [●], dated
[●]

Original documents on file and may be viewed at the offices of the Township of Perth South,
3191 Road 122, St. Pauls, Ontario

Schedule "J"

Subdivision

Canada Post Conditions

Canada Post Standard Conditions

Original documents on file and may be viewed at the offices of the Township of Perth South,
3191 Road 122, St. Pauls, Ontario

Schedule "K"

Subdivision

Upper Thames River Conservation Authority Conditions

Upper Thames River Conservation Authority conditions, dated ??????????????

Original documents on file and may be viewed at the offices of the Township of Perth South,
3191 Road 122, St. Pauls, Ontario