

**CORPORATION OF THE TOWN OF AMHERSTBURG**

**BY-LAW NO. 2004-86**

**Being a by-law to authorize the execution of a Subdivision Agreement (Kingsbridge Subdivision – Whelan, Hilton and Wilson).**

**WHEREAS** 1078217 Ontario Limited has proposed the subdivision and servicing of lands owned by it within Part of Lot 15, Concession 1 (formerly Township of Anderdon) now Town of Amherstburg;

**AND WHEREAS** the Corporation of the Town of Amherstburg have settled with 1078217 Ontario Limited, the requirements for the provisions of Municipal Services within the area to be subdivided, which requirements are set out in the agreement hereto annexed, and which agreement is ratified and adopted by 1078217 Ontario Limited;

**NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWN OF AMHERSTBURG ENACTS AS FOLLOWS:**

1. That the Corporation of the Town of Amherstburg enter into a Subdivision Agreement with 1078217 Ontario Limited in the form annexed hereto, and the Mayor and Clerk be and they are hereby authorized to sign the original and copies thereof and affix the Corporate Seal thereto.
2. This By-law shall come into force and effect on the date of final passage hereof.

Read a first, second and third time and finally passed this 29 day of NOVEMBER, 2004.

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Clerk

## SUBDIVISION AGREEMENT

**THIS AGREEMENT** made in triplicate this \_\_\_\_ day of \_\_\_\_\_, 2004.

**BETWEEN:**

1078217 ONTARIO LIMITED  
hereinafter called "the Developer"

OF THE FIRST PART;

- and -

THE CORPORATION OF THE TOWN OF AMHERSTBURG  
hereinafter called "the Town"

OF THE SECOND PART;

**WHEREAS** the Developer proposes the subdivision, development, servicing and sale of lands within Part of Lot 15, Concession 1 (formerly Township of Anderdon), now Town of Amherstburg, County of Essex which lands are more particularly described in Schedule "A" annexed hereto;

**AND WHEREAS** the Minister of Municipal Affairs and Housing granted draft plan approval for subdivision of the lands, subject to conditions imposed including a provision that the owner agrees in writing to satisfy all of the requirements, financial and otherwise, of the Town concerning the provision of roads, installation of services, drainage, the dedication and naming of streets, the granting of easements and parkland and other matters;

**AND WHEREAS** the Developer represents and warrants to the Town that it is now the registered owner of all of the lands described in Schedule "A" annexed hereto and that all of the right, title and interest of its predecessors in title and all the right and authority to complete the subdivision and to develop the lands is vested in it.

**NOW THEREFORE IN CONSIDERATION** of the premises and of the Town certifying to the Minister that the requirements of the Town have been met, the parties hereto agree as follows:

**1. Installation of Services**

The Developer will design, construct and install at its own expense in the lands described in Schedule "A" annexed hereto, all of the services referred to in Schedule "B" including the installation of hydro services in compliance with the requirements (if any) of Hydro One hereto, in accordance with such design criteria, and detailed plans and work schedules to be filed in the office of the Clerk of the Town, with good materials, in a good, workmanlike and timely manner, in accordance with good and accepted engineering practice, and to the satisfaction of the Town, and in all cases the Town engineer.

**2. Certificate of Liability Insurance**

The Developer will provide to the Town, on or before the commencement of any construction and installation of any of the services called for herein, a certificate of liability insurance satisfactory to the Town, evidencing joint and several insurance for the Developer and the Town against any liability that might arise out of the construction or installation of any of the services herein referred to, and the said Developer shall continue such insurance in full force and effect so long as any services are to be constructed or installed, and for a period of two

years after the completion and final acceptance of the last of such services. The limits of liability for public liability and property damage coverage under such insurance shall not be less than \$2,000,000.00. Before commencement of the installation of the works, the Developer's consulting engineer shall provide satisfactory evidence to the Town that the said consulting engineer maintains a policy of public liability insurance and errors and omissions insurance satisfactory to the Town, which policy is to be maintained in full force and effect until the works are completed and formally accepted by the Town.

3. **Save and Hold Harmless**

The Developer covenants and agrees to save the Town harmless from any and all claims, demands, loss, costs, or damages, including legal costs on a solicitor and client basis in any way arising from or related to the subdivision and the proposed development thereof, arising or accruing to anyone up to two years after the completion and final acceptance of the last of the services in the subdivision.

4. **Drawings and Tenders**

The Developer shall submit all plans, design drawings, grading plans and specification lists, all of which shall carry the seal of the professional engineer who is responsible for such design and be signed by him, to the Town for examination by them and the Town engineer. In the case of any services to be constructed on contract, the Developer shall also submit to the Town a copy of each set of "information for tenders" documents and each proposed contract together with the names of the proposed contractors and sub-contractors to be engaged. The Developer shall file with the Town work schedules for the construction and installation of all services, whether by the Developer, the contractors, sub-contractors or others. The Developer shall obtain the approval in writing of the Town to all of the foregoing, except the selection of contractors or sub-contractors before granting any contract or commencing any work. The design criteria contained in Schedule "B" hereto shall constitute the minimum conditions upon which tenders are made, contracts let, or work done. The Developer's consulting engineer, or successor thereto, shall continue to be retained by the Developer until the works are complete and formally accepted by the Town.

5. **Construction of Services by Contractors**

In case of construction of services by contractors, the developer shall comply with all of the holdback provisions of the Construction Lien Act. In the construction of all services the Developer shall indemnify and save the Town harmless from any and all claims, actions and demands for work, materials and incidentals.

6. **Inspection**

The Town, and its authorized agents, including the Town engineer, shall have the right at any time and from time to time to inspect all services during and after construction and to inspect and test all materials proposed to be used in the construction of any of the services. The costs of such inspections and tests shall be paid by the Developer within 15 days of written demand by the Town. If at any time, the construction of any service or material is, in the opinion of the

Town engineer, acting reasonably, not in accordance with the plans and specifications or not in accordance with good engineering practices or any of the provisions of this agreement, the Town engineer may order the materials to be replaced or the work to be placed in satisfactory condition within such time as he may specify, and in the event of the Developer failing to comply or obtain compliance with such order, the Town engineer may stop work upon such services, or in his sole discretion upon all services. The Developer shall at all times provide all information requested by the Town, its authorized agents and the Town engineer in relation to the various materials and services and shall at any time at his expense expose any municipal service for inspection by the Town engineer. Notwithstanding the generality of the foregoing, the rights of the Town and its authorized agents including the Town engineer hereunder shall be limited to a period of one year after the initial acceptance of the last of the services within or required to facilitate the servicing of lots where such inspection, testing or other action is proposed.

7. **Approval for Commencement of Work**

No work shall commence without the approval of the Town and any work requiring the approval or consent of any other governmental authority shall not commence until such approval or consent has also been obtained. No watermain, sanitary sewer, storm sewer or hydro line shall be connected to any existing municipal services without the written approval of whichever of the Town or Hydro One has jurisdiction over such municipal system.

8. **Work Schedule/Quality of Work**

The Developer will prepare and submit to the Town, plans for the installation of services for the development and will request a pre-construction meeting with the Town and its consultants in order to establish a work schedule acceptable to the Town and shall proceed with reasonable speed and in accordance with such work schedule. If the Developer fails to proceed with reasonable speed in accordance with the accepted work schedule or if, in the opinion of the Town engineer, fails or neglects to proceed with reasonable speed and in accordance with an accepted work schedule or if, in the opinion of the Town engineer, the services are not being installed in accordance with the drawings, or specifications approved therefor, or in accordance with good engineering practices in a good, workmanlike manner, using good materials, then in addition to any other remedy the Town may have, and upon the Town giving 30 days notice to the Developer, the Town may, without further notice, enter upon the lands of the Developer and proceed to supply all materials and do all necessary work in connection with the installation of the said services, including the repair or reconstruction of faulty work, and replacement of materials not in accordance with the drawings or specifications and the Town shall charge the cost thereof, including all engineering and other fees to the developer, who shall forthwith pay the same within 30 days of a written demand therefor by the Town.

9. **Developer's Responsibilities Until Final Acceptance**

Until such time as the Town has finally accepted each of the services, including roadways herein referred to, the Developer shall be responsible therefor. The responsibility of the Developer prior to final acceptance by the Town shall include liability for all types of maintenance in connection therewith. If the Developer should in the opinion of the Town or of its agents or employees fail to maintain any service including roadways, prior to the final acceptance by the

Town, the Town may without notice in case of emergency, or in any other case on 30 days notice, if such default is not remedied, maintain the same, but in so doing, the Town shall for all purposes be deemed to have acted as agent for the Developer, without in any way being deemed to have finally accepted such service, or to have incurred any liability for future maintenance, and the Town shall be entitled to reimbursement for the cost of any such maintenance, within 30 days of written demand therefor, and the Town shall further be relieved of liability for damages caused unintentionally, in the course of such maintenance. Snow removal, salting or sanding by the Town shall not constitute acceptance of the roads by maintenance thereof. The Developer shall also be responsible for the cleaning and flushing of sewers throughout the development until such time as the maintenance period for the construction of the works has expired. The Town shall have the right to inspect the said sewers from time to time and, if deemed necessary, may require the Developer to clean and flush same immediately, and the Developer hereby agrees to perform such cleaning and flushing on demand to the entire satisfaction of the Town.

**10.(a) Building Permits**

The Developer covenants and agrees on behalf of itself and its successors in title to any lot, not to apply for any building permit for the construction of any building on any lots covered by this agreement until:

- i) **Initial Acceptance of Services**  
All of the services relating to all of the lots therein have been installed and initially accepted by the Town with the exception of the final asphalt surface course of the roadway.
- ii) **Model Homes**  
The Developer will be allowed to construct four (4) model homes in the subdivision prior to the acceptance of services by the Town provided that occupancy permits will not be issued with respect thereto until all provisions of this Agreement have been complied with to the satisfaction of the Town's engineer and in accordance with the Town's Development Manual.

**10.(b) Tree Provisions/Mailbox Requirements**

The Developer shall:

- i) **Tree Provision**  
Include in all Agreements of Purchase and Sale a requirement for planting a minimum of one (1) tree in the front yard of each lot having a minimum diameter of 60 mm. The subject tree to be planted no closer than one (1) metre to any lot line. The tree shall be planted within 12 months of the initial occupancy of the house. Such tree shall be maintained in perpetuity. A list of the acceptable trees is available at the Public Works Department at the Town of Amherstburg. The Developer shall impose a covenant as to the planting and maintenance of the tree in the transfer of each lot conveyed by it; and
- ii) **Super Mailboxes**  
Contact Canada Post to determine the location of super mailboxes throughout the subdivision and shall notify all purchasers of the exact location thereof. The location of super mailboxes also to be satisfactory to the Town.

**10.(c) Landscaping Requirements**

The front lawn and exterior side yard of each lot shall be sodded, seeded or otherwise landscaped within six months of the construction of a house thereon, and such sodding, seeding or landscaping shall be continued over the unpaved portion of the road allowance, including any lands between a sidewalk and the road, to the back of the curb and gutter in front of such lot. Such sodding, seeding or landscaping shall be maintained in perpetuity. The Developer shall impose a covenant to this effect in the transfer of each lot conveyed by it.

**10.(d) Registration Requirements**

The Developer covenants and agrees to cause the local Land Registrar to register, immediately after registration of the proposed plan of subdivision, as annexed to each lot in the proposed plan of subdivision, a condition of restriction running with the lands, that such lot is not to be built upon unless the provisions of paragraph 10 of this agreement, limiting entitlement to building permits has been complied with.

**11. Financial Security**

The Developer will provide to the Town, before the commencement of any construction or installation of any service, a labour and materials payment bond, in all respects satisfactory to the Town, covering the proposed services, and letters of credit, or a performance bond, or Province of Ontario or Government of Canada securities, satisfactory to the Town, in an amount equal to 100% of the value set by the Town for all services to guarantee satisfactory installation of all services. If the provision of services to the lots requires the construction or installation of any services outside the subdivision, the foregoing provisions as to the labour and materials payment bond and of security equal to 100% of the value for services shall extend to and be required in connection with any service extending outside. The Town will accept a performance bond of a contractor provided the contract which is bonded to be performed is absolute and unconditional in respect to installation of the services for the Town and specifically does not require payment of any sum whatsoever by the Town as a condition of performance.

**12. Maintenance Security**

The Developer shall provide to the Town letters of credit, or a maintenance bond, or Province of Ontario or Government of Canada securities, satisfactory to the Town in an amount equal to 50% of the value set by the Town upon initial acceptance thereof, for all services within or extending outside of the subdivision but required to facilitate the servicing of lots within the subdivision, for a period of one year after completion and initial acceptance by the Town of the last service provided.

**13. Iron Bars**

The Developer will file with the Town a surveyor's certificate dated within 30 days before the application for initial acceptance by the Town of asphalt surfacing on roadways, to the effect that all Standard Iron Bars shown upon the plan of subdivision have been located or replaced.

**14. Staking of Bars Prior to Construction**

Before the sale of any lot or the issue of any building permit within the subdivision the Developer shall stake to the satisfaction of the Town engineer, the locations of all Standard Iron Bars, and shall maintain such staking to the satisfaction of the Town, its respective servants and agents and the Town engineer, in relation to each lot until the home foundation is installed and all services to the proposed home have been provided. The Developer will provide to the Town engineer on request, and to any proposed builder, all usual information as to grades and levels for each lot within the subdivision.

**15. Developers Responsibilities in regard to Damages**

The Developer undertakes and agrees to pay for any damage caused to any existing road, road allowance, structure or plant and any costs involved in the relocation of or repair or connection to any existing services arising in any way from or in connection with this agreement or the provision of services called for herein including the changing of grades of existing adjacent roads, and also any taxes or other charges levied or to be levied upon the lands to be subdivided, until such time as the lands have been assessed and entered on the collector's roll according to the proposed and presently registered plans.

**16.(a) Stormwater Management/Municipal Drain**

The development of the subdivision requires special measures to deal with stormwater management. Condition 9 of the draft plan approval requires that the subdivision agreement contains the following provisions wherein the owner agrees;

- i) that prior to final approval, the Owner shall submit for the review and approval of the Town, the Essex Region Conservation Authority and the Ministry of the Environment a final stormwater management plan;
- ii) conduct regular inspections once every two weeks and after each sizeable storm event of all sediment and erosion control measures recommended in the approved stormwater management plan during the construction phase;
- iii) maintain an inspection log which shall be made available for review by the municipality and the Ministry of Environment and Essex Region Conservation Authority, upon request. The log shall state the name of the inspector, date of inspections and the rectification or replacement measures which were taken to maintain the sediment and erosion control measures. Inspections shall continue until the assumption of services by the municipality or until site construction conditions warrant cessation of the visits;
- iv) any lands required for the stormwater management treatment works are to be conveyed to the municipality;
- v) to seek statutory approval under the Ontario Water Resources Act for the storm water management works associated with this plan of subdivision.
- vi) to convey any easements required for storm water management and for the purpose of providing drainage for the Subdivision lands to the permanent stormwater management facility.

- vii) The Town and Developer acknowledge and agree that the Development Agreement requires the installation of temporary and permanent phased stormwater management facilities. The stormwater management plan for the development requires the construction of a temporary drainage ditch to link the fully serviced lands with the permanent stormwater pond. As subsequent phases of the subdivision are developed the temporary drainage ditch will be replaced by permanent storm sewers and road surfaces. The Developer shall convey to the Town an easement over the lands comprising the temporary drainage ditch. As the permanent storm sewers and roads are constructed the Town will release the easement over the temporary drainage ditch lands.
- viii) Upon the Developer's installation of the permanent stormwater management facility within the road allowances for that phase of the subdivision, and the Town's acceptance thereof, the Town shall then release and transfer to the Developer that portion of the stormwater management easements described in paragraph 16(a)(vi). The Developer shall be responsible for all costs associated with the transfer of the easements.
- ix) The permanent stormwater management pond shall be constructed in phases in accordance with the report titled "Stormwater Management Report for Kingsbridge Residential Community" prepared by Stantec Consulting Ltd. dated November 17, 2004.
- x) The Developer's consultant shall recommend, and upon the Town's approval shall determine on a phase by phase basis that part of the permanent stormwater management pond to be constructed to accommodate the proposed subdivision development. The Developer shall be responsible for completing each phase of the stormwater management facility.

**16.(b) Removal of Clay Debris and Sediment/Temporary Ditch Maintenance**

- i) In order to preserve the integrity of the proposed stormwater management system the Developer shall ensure that all clay debris and sediment tracked onto the road be removed on a routine basis or when directed by the Town to prevent deposition of clay and sediment into the stormwater management system. Should the Developer fail to clean the roads when directed to do so by the Town, the Town will undertake such work at the expense of the Developer.
- ii) Maintenance of the temporary ditch, as determined by the Town, connecting to the permanent stormwater management pond shall be the responsibility of the Developer until such time as the temporary drainage ditch is removed and replaced by the permanent storm sewers and road system and finally accepted by the Town. Should the Developer fail to maintain the temporary ditch when directed to do so by the Town, the Town will undertake such work at the expense of the Developer.

**16.(c) Location of Stormwater Management Pond**

The location of the stormwater management pond shall be in accordance with design drawings prepared by Stantec Consulting Ltd. as approved by the Town.



**16.(d) Engineering Analysis**

Condition 10 of the draft plan approval requires the Developer to undertake an engineering analysis to determine the effect of increased runoff due to the development of the site, and to identify stormwater management measures as necessary to control any increases in flows in downstream watercourses, up to and including the 1:100 year design storm to the satisfaction of the Town and the Essex Region Conservation Authority.

**16.(e) Design Drawings**

For all the works outlined therein and referred to in this section, the Developer shall provide design drawings, specification lists, tender documents, work schedules, all approvals, and security for due completion in the same manner as for services in the subdivision, as detailed in paragraphs 1 through 9 and 11 and 12 hereof, and shall obtain approval of the works as detailed in paragraph 23 hereof.

**16.(f) Environmental Protection Act**

Under Section 46 of the Environmental Protection Act, a Section 46 Approval may be required from the Minister of Environment if future site investigations established that waste is deposited within the boundaries of this subdivision. The Developer therefore agrees to comply with all conditions and/or restrictions which may be imposed by the Minister of the Environment involving the results of soil, groundwater or atmosphere testing with respect to this subdivision.

**17. Additional Work**

If at any time prior to final acceptance of the last of the services by the Town it is of the opinion that additional works are proven necessary to provide adequately any of the public services specified in the schedules hereto, which were not reasonably foreseeable at the date of this Agreement then the Developer shall construct, install or perform such additional work at the request of the Town provided that, if the Developer disagrees that such additional works are necessary, the question shall be resolved by a single arbitrator if the parties can agree on one, otherwise by a panel of three arbitrators proceeding under The Arbitrations Act.

**18. Grading of Topsoil**

The Developer covenants and agrees that topsoil excavated for roadways shall be left and leveled within the subdivision, except as provided in paragraph 19 hereof. Any topsoil that is stockpiled shall be neat and sloped in such a manner that weed cutting can be carried out with mechanical equipment by the Developer to the entire satisfaction of the Town.

**19. Grading/Dumping/Removal of Material**

The Developer shall carry out all grading of all lands, in accordance with the grading plans to be filed in the office of the Clerk of the Town of Amherstburg, and shall forthwith carry out temporary or permanent drainage work that the Town engineer may certify to be necessary to eliminate ponding erosion, channeling of underground water or other drainage problems. The Developer

shall neither dump nor permit to be dumped any fill or debris, or remove or permit the removal of any soil or fill from any of the lands to be subdivided without the written consent of the Town engineer. In seeking consent of the Town engineer to the removal of topsoil the Developer shall establish that when final grades are established for all of the lots and blocks within the subdivision there will be topsoil to a depth of at least four inches (4") over the entire area not covered by buildings, roadways and driveways.

**20. Rear Yard Drainage**

Rear lot drainage shall be installed on each lot, in connection with the construction of a house thereon, and shall be connected to the storm sewer system. The specifications, design and installation of such rear yard drainage shall be acceptable to, and subject to the approval of the Town engineer. On an application for a building permit on any lot within the lands to be subdivided, the builder shall produce a plan or sketch satisfactory to the Chief Building Official of the proposed rear yard drainage, which shall be deemed to be a requirement to meet the Surface Drainage and Drainage Disposal requirements of The Building Code. The installation of such rear yard drainage shall be subject to the same inspections as foundation drains and the Chief Building Official may issue work orders or stop work orders in relation thereto.

**21. Street Signs**

The Developer shall reimburse the Town for material and installation of all required street signs for this development. The design and location to be determined by the Town. The signs to be installed by the Town.

**22. Municipal Numbers**

The Developer shall ascertain from the Town the appropriate municipal numbers for each lot, and shall provide such numbers to prospective purchasers, builders and lenders.

**23. Initial Acceptance of Services**

The Developer shall apply for initial acceptance of each individual service by filing with the Town a certificate under the hand and seal of its project engineer that the construction and/or installation of such services has been completed in accordance with the design criteria and the plans and specifications therefore approved and filed by the Town before construction, and by filing as-built drawings of such service, and a certificate of payment therefor and of compliance with the Construction Lien Act. The Town and its authorized agents, including the Town engineer, shall carry out such inspections as they deem necessary, and such service shall then be initially accepted after the Town engineer certifying that such service has been completed in accordance with the agreement, providing that all the covenants of this agreement have been complied with to the date of such certificate. After initial acceptance and after maintenance securities or bonds have been filed, the labour and materials payment bond and the performance bond or security in lieu thereof relating to such service shall be released.

**24. Final Acceptance of Services**

The Town shall finally accept the services in each phase upon the Town engineer and the Town being satisfied that all covenants under this agreement have been fully complied with and all repairs and replacement required during the maintenance period has been carried out within such phase, and then authorizing release of the maintenance securities or bonds. Immediately prior to requesting final acceptance of the services, the Developer shall flush clean and camera inspect the sanitary and storm sewer system. The Developer's consulting engineer shall certify that the services have been inspected and the camera inspection has been reviewed, and that there are no sumps, cracks, blockages or other deficiencies within the system to the entire satisfaction of the Town.

**25. Town's Fees**

The Developer undertakes, covenants and agrees to pay any planning, engineering, legal, auditing or other fees or disbursements incurred by the Town relating in any way to the proposed subdivision, or the servicing thereof, or to this agreement, including negotiations and preparations prior to its execution and including the entire fees and disbursements of the Town engineer when acting pursuant to the terms of this agreement, and any clerical or administrative expense of the Town relating in any way to or arising from this agreement, forthwith upon being invoiced therefor. The Developer agrees to deposit with the Town on or before the execution of this agreement, the sum of \$2,000.00 to be applied against such fees as may be incurred from time to time, with such deposit to be renewed from time to time as used up, when requested by the Town, any unused balance to be returned to the Developer without interest, on the expiry of the maintenance period.

**26. Reserves for Public Highways**

The Developer covenants and agrees to convey to the Town, at the time of registration of the proposed plan of subdivision 0.30 metre reserves extending across the open end of the adjoining public roadways. Upon acceptance of all of the services except the final asphalt course of any roadway, for which ingress and egress to and from the lots therein would be by passage over one or more of such 0.30 metre reserves, the Town will by by-law dedicate such reserve or reserves as a public highway. Until such dedication the Developer and those claiming under it shall have a mere licence to pass over such reserve or reserves subject to revocation at any time upon the Town deeming that any of the covenants and agreement of the Developer herein have not been fulfilled.

**27. Register Notice of Agreement**

The Developer covenants and agrees to cause the Local Land Registrar to register notice of this agreement against all of the lands affected hereby, immediately after registration of the proposed subdivision, and to obtain acknowledgment, consent and postponement agreements, from any and all encumbrancers registered prior to registration of such notice.

**28. Development Charges**

The Developer acknowledges that the lands subdivided by this agreement are subject to By-law 2004-64 passed August 9, 2004 which established development charges for residential development in the Town, and provided that a development charge of \$7,870.00 be paid for each single detached dwelling to be constructed. The Developer further acknowledges that the by-law provides for an annual inflationary adjustment in accordance with the Section 3(4)(a) of the Development Charges Act, and that the above noted figure may change annually. The said development charge shall be paid prior to the issuance of a building permit for each lot. The Developer undertakes and agrees to provide that all Offers of Purchase and Sale include information that satisfies Subsection 59(4) of the Development Charges Act.

**29. Town Engineer**

Throughout this agreement the term "Town Engineer" shall mean the professional engineer or firm of professional engineers retained by the Town to carry out the duties referred to in this agreement. Notwithstanding the above, the Town may agree to the use of a single engineering firm. However, should any dispute arise as a result of this agreement, the selected engineering firm shall be responsible to the Town, and the Developer shall be required to retain its own professional engineer.

**30. Use of General Terms**

Throughout this agreement the singular shall be deemed to include the plural, and the masculine, feminine and neuter genders shall be interchangeable as the context and applicable situations may require.

**31. Enforcement of Agreement**

The Developer 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 Town to enter into this agreement and to enforce each and every term, covenant and condition thereof and this provision may be pleaded by the Town in any such action or proceeding as a complete and conclusive estoppel of any denial of such right. If any provision of this agreement shall be found to be or deemed illegal or invalid, the remainder of the agreement shall not be affected thereby.

**32. No Waiver of Rights**

No indulgence or forbearance by the Town shall be deemed to constitute a waiver by the Town of its rights to insist on performance in a full and timely manner of all the covenants contained herein, and any such waiver, in order to be binding, must be in writing and duly authorized by the Town Council. No such waiver of any provisions, conditions or covenants shall be deemed to be a waiver of the right to later require full and timely compliance with the same terms, conditions or covenants, or with any other terms, covenants or conditions of this agreement at any time.

**33. Parkland Dedication**

In satisfaction of the requirement of the Minister that the owner convey up to 5% of the land included in the plan to the Town for park purposes, or cash-in-lieu thereof, the Developer agrees to gratuitously convey to the Town, in fee simple and without encumbrances, lands for park purposes in accordance with the provisions of the Planning Act, R.S.O. 1990. The parties agree that these lands shall be located in a future phase of the Kingsbridge development in a location to the satisfaction of the Town on lands currently owned by the Developer, and this agreement shall be registered against the title of those lands until such time as the appropriate conveyance has been made. It is understood that future parkland dedications for subsequent phases of development are being made at this time.

**34. Edgewater Sanitary Sewage Service Area**

This development is located within the Edgewater Sanitary Sewage Service Area and will utilize the existing Edgewater Lagoon Sanitary Treatment System.

**35. Schools**

In accordance with the requirements of the Greater Essex County District School Board and the Windsor Essex Catholic District School Board, the Developer is required to place notice on title for purchasers of the lots to be aware that students may not be able to attend the closest school and could be bused to a distant school with available capacity.

**36. Hard Surface Pad**

In accordance with the requirements of the Greater Essex County District School Board, Windsor Essex Catholic District School Board and Conseil Scolaire de District des Ecoles Catholiques du Sud-Quest, to facilitate bus stops and student safety, the Developer is required to install a hard surface pad acceptable to the Town and to the satisfaction of the Greater Essex County District School Board, Windsor Essex Catholic District School Board and Conseil Scolaire de District des Ecoles Catholiques du Sud-Quest.

**37. Sidewalks**

Sidewalks are to be installed in accordance with the Town's Development Manual.

**38. Grandfathered Servicing Provision - Storm Sanitary Conditions and Concrete Curbs**

Notwithstanding the provisions of the Town's Development Manual this agreement will provide for grandfathering conditions for allowing the use of double storm and double sanitary service connections and V type mountable concrete curbs.

**39. Streetlights**

The Developer shall install streetlights in accordance with the design criteria of and at locations to be approved by the Town of Amherstburg. The streetlighting shall be the decorative lighting similar to the previous phases along Whelan Drive.

**40. Fencing  
Development/Golf Club Agreement**

- (a) The Developer shall, at the Developer's expense, erect a 1.83 metre (6 foot) chain link fence between the existing Pointe West Development and the abutting residential lots in this development, such fence to be of the same nature and kind as that already in place between sections of this property and Pointe West Development, and as to be approved by the Corporation.
- (b) The Developer of the lands covenants with the Town to maintain the existing hedgerow located along the northerly boundary of the lands abutting the Pointe West Golf Club in accordance with the provisions of the Agreement dated October 9<sup>th</sup>, 1996 made between the Developer and Pointe West Golf Club, a copy of which is attached hereto as Schedule "C" to this Agreement (hereinafter the "Development/Golf Club Agreement".)
- (c) The Developer and Owners of each lot within the Plan of Subdivision abutting the Pointe West Golf Club owned by Pointe West Golf Club Corp. shall be bound by the provisions of the Development/Golf Club Agreement.
- (d) The Developer shall ensure that the Owners of each lot within the Plan of Subdivision which abuts the Pointe West Golf Club shall be bound by the provisions of the Development/Golf Club Agreement. Further, each Subdivision Agreement for a Plan of Subdivision with the Owners of the Lands that abut the lands of Pointe West Golf Club, shall contain similar provisions as set out in these subsections 40(a)(b)(c) and (d).

**41. Agreement Binding on Parties**

This agreement shall enure to the benefit of, and be binding upon the parties hereto, and their respective heirs, executors, administrators, successors and assigns.

**IN WITNESS WHEREOF** the Town has hereunto affixed their seals attested by the signatures of their proper signing officers and the Developer has hereunto affixed its seal attested by the signature of its proper signing officer in that regard.

1078217 ONTARIO LIMITED

THE CORPORATION OF THE TOWN  
OF AMHERSTBURG

Per: \_\_\_\_\_  
William G. Docherty – President

Per: \_\_\_\_\_  
Mayor

Per: \_\_\_\_\_  
Michael R. Dunn – Secretary

Per: \_\_\_\_\_  
Clerk

**SCHEDULE "A"**

**LEGAL DESCRIPTION**

**Part Lot 15, Concession 1  
being Part 1 on Plan 12R-21593  
Geographic Township of Anderdon  
now in the Town of Amherstburg,  
County of Essex  
Province of Ontario**

## **SCHEDULE "B"**

### **DESIGN CRITERIA**

#### **FOR SERVICES TO BE PROVIDED IN THE KINGSBRIDGE SUBDIVISION - NORTH WHELAN, HILTON, WILSON TOWN OF AMHERSTBURG**

##### **1. GENERAL**

Sanitary and storm sewers, watermains, curbs and gutters, sidewalks, street lighting and electric service connections shall be constructed in accordance with plans and specifications prepared by a professional engineer, registered to practice in the Province of Ontario, and acceptable to the Town of Amherstburg. Criteria upon which these services are to be designed, are as described in this schedule.

##### **2. STORM DRAINAGE**

- (a) Storm sewers, together with catch waterbasins shall be installed in all streets in the development in accordance with the approved engineering drawings and as approved by the Ministry of the Environment and Energy, E.R.C.A. and the Corporation. A copy of the design calculations shall be submitted to the Corporation.
- (b) Private service connections from the storm sewers to the front property line of each building lot shall be provided and the developer shall have the option of installing one private service connection for each lot or one "Y" connection for each two adjoining lots. The minimum size of service connections shall be 6" diameter. Private storm service connections and clean-outs shall not be constructed under future driveways.

Sewers shall be designed in accordance with the following criteria:

Design Method	-	rational method
Design Frequency	-	2 year storm
Runoff Coefficient	-	0.40
Minimum Pipe Size	-	300 mm.
Manning Coefficient	-	0.013
Minimum Velocity	-	0.75 m/s
Private Drain Connection	-	150 mm.
Minimum Cover	-	1.05 m.
Maximum Manhole Spacing	-	150 m.
Pipe Material	-	PVC or 35 reinforced concrete

Restrictions imposed on the storm sewer outlet by the Town or by the Essex Region Conservation Authority shall be incorporated in the design of the storm sewer system. A stormwater management study shall be completed to the satisfaction of the Town and the Essex Region Conservation Authority. The study shall determine the effect of increased runoff due to development of the site and identify stormwater management measures to control any increases in flows in downstream watercourses up to and including the 100 year design storm. The Developer shall obtain a certificate of approval from the Ministry of the Environment, Design Approval Branch.



**3. SANITARY SEWERS**

Sanitary sewers together with all necessary appurtenances and service connections from the appropriate sewer to the front property line of each building lot shall be constructed to the approved design of the Ministry of the Environment and Energy and the Corporation. Each building lot shall be provided with access to a sanitary sewer service connection for each lot or one “Y” connection for each two adjoining lots. The minimum sanitary service connection size shall be 5” in diameter. The Developer shall be responsible for all costs associated with the construction of the Ontario Ministry of the Environment and Energy and the Provincial sewage works program across the Developer’s property.

Sewers shall be designed in accordance with the following minimum design criteria:

Average Daily Flow	-	450 L/cap/day
Peaking Factor	-	harmon
Population Density	-	3 ppl/lot
Minimum Pipe Size	-	200 mm.
Manning Coefficient	-	0.013
Minimum Cover	-	2.4 m.
Maximum Manhole Spacing	-	130 m.
Private Drain Connection	-	125 mm.
Pipe Material	-	PVC or 35

The Developer shall obtain a certificate of approval from the Ministry of the Environment, Design Approval Branch.

**4. WATERMAINS**

The Developer shall construct and install sufficient watermains including hydrants and valves to service the entire subdivision with connections to all lots in accordance with the approved engineering drawings. Each lot shall be serviced by a single water service connected to the mainline.

Minimum Cover	-	1.5 m.
Maximum Hydrant Spacing	-	150 m.
Maximum Valve Spacing	-	at intersections
Minimum Pipe Size	-	150 mm.
Lot Connection	-	20 mm.
Pipe Material	-	PVC or 18 (CL150)

Design and installation shall be to the satisfaction of the Town of Amherstburg.

The Developer shall obtain a certificate of approval from the Ministry of the Environment, Design Approval Branch.

**5. ROADS**

The Developer shall construct and install roadways and curbs and gutters upon all allowances for roads within the draft plan and upon the detail plans of services, in accordance with the following minimum design criteria:

Width -	Whelan	-	8.5 metres
	Hilton	-	7.3 metres
	Wilson	-	7.3 metres

Curb and Gutter - "V" type mountable type concrete curbs and gutters

"V" type mountable type concrete curbs and gutters shall be constructed on both sides of all roadways including all turning basins. Design and type of curb is shown on the approved engineering drawings. All catch basin grates are to open at the property line and not to the street.

Alignment:

Minimum Turning Radius - 9 m.

Minimum Road Grade - 0.3%

and design parameters recommended by the Ministry of Transportation.

In general, any trenches crossing under pavement shall be backfilled with granular material acceptable to the Town engineer and such trenches shall be mechanically compacted as required by the Town engineer. Boulevards and other unpaved portions of the allowances for roads (except where forming part of the front lawn of residential lots) must be graded and sodded or seeded by the Developer.

**6. SIDEWALKS**

The Developer is required to install sidewalks along both sides of Whelan, Hilton and Wilson Streets within this development.

**7. STREET LIGHTS**

The Developer shall install street lights in accordance with the design criteria of and at locations to be approved by the Town of Amherstburg. The lighting shall be the decorative lighting similar to the previous phases along Whelan Drive.

**8. STREET SIGNS**

The Developer shall reimburse the Town for material and installation of all street signs for this development. The design and location to be determined by the Town. The signs to be installed by the Town.

**9. HYDRO SERVICE**

The Developer shall construct and install a sufficient hydro distribution system to service the entire subdivision with connections to all lots therein and connect the same to the existing hydro distribution system. Individual lot services, where possible, shall be provided on common lot lines so that residential hydro metres face each other. The hydro distribution system within the subdivision shall be grounded to the water distribution system. All hydro service within the subdivision shall be underground and designed and installed in accordance with the requirements and criteria of the Town of Amherstburg and Hydro One.

**10. TELEPHONE**

The Developer shall arrange for Bell Telephone to provide underground telephone service to all of the lots within the subdivision.

11. **GAS**

The Developer shall arrange for Union Gas Company to provide underground gas service to all of the lots within the subdivision.

12. **CABLE T.V. SERVICE**

The Developer shall, at its' own expense, make satisfactory arrangements with the cable company providing cable television service to the municipality to provide for a buried or underground cable television service for this development. The Developer shall provide to the Corporation, upon demand, confirmation from the said cable company that such arrangements have been made.

13. **SERVICE LOCATION**

14. **ADJUSTMENTS**

The grade of any and all water service boxes, valves chambers, hydrants, manholes, drains and transformer boxes shall be adjusted by the Developer when and as may be required by the Town engineer.

15. **TEMPORARY SERVICES**

Upon a connection of any type being made to the hydro or water services, a temporary meter or meters of a type and in a location or locations satisfactory to the Town shall be installed and continuously maintained until all hydro and/or water used within the subdivision, once the same is accepted by the Town, is metered through approved private connections. The Developer shall be responsible for, and will promptly pay or cause to be paid all charges for hydro and water supplied to the subdivision.

16. **DRIVEWAY APPROACHES**

Residential driveways and their approaches shall be constructed to a width that complies with the provisions of the Corporation's Zoning By-Law, as amended from time to time. Residential approaches shall consist of 250 mm. (10") Granular "A" stone base with interlocking paving stone, concrete or asphalt paving from the back of the curb to the property line.

It is understood and agreed that under no circumstances will the Developer herein be permitted to install a new residential driveway approach within the corner radii of a curb constructed along any street in this development.

It is further understood and agreed that under no circumstances will the Developer or any other persons be permitted to install a new residential driveway approach over any private service connections from the storm or sanitary sewers or water system except where such connections cross driveways laterally (over the shortest possible distance) to enter the dwelling.

This provision is to be specifically brought to the attention of purchasers of lots at the time of purchase.

17. **COMMUNITY MAILBOXES**

The Developer will be responsible for negotiating specific locations within the subdivision with Canada Post for the location of community mailboxes.

18. **EASEMENTS**

The Developer agrees that such easements as may be required for utility or drainage purposes shall be granted to the appropriate authority.

19. **ROAD ALLOWANCES**

All road allowances shown on the draft plan shall be dedicated as public highways and shall be not less than 20.00 m. (66') wide and shall be shown on the approved engineering drawings.

20. **REAR YARD DRAINAGE**

(a) Rear yard drainage shall be provided for each building lot in the locations and according to the specifications prescribed by the approved engineering drawings and as approved by the Corporation. Rear yard drainage shall be installed contemporaneously with the construction of dwellings on each building lot. A separate rear yard drainage system, with two (2) 300 mm. diameter pre-fabricated polyethylene catch basins in accordance to the rear yard drainage detail shown on the approved engineering drawings, shall be provided for each building lot.

(b) The Developer shall, at its' own expense, prepare a lot grading and rear yard drainage plan for each individual building lot within this development and shall file same with the Corporation. The final elevations of all dwellings and other buildings, minimum opening elevations, where applicable and the final lot grades relating thereto and the rear yard drainage shall conform to the proposed lot grading and rear yard drainage plan filed for that lot. The consulting engineer, or a certified Ontario Land Surveyor, shall certify upon completion of the construction of the dwelling and building on each lot that the said lot grading and rear yard drainage plan has been complied with, in accordance with the approved engineering drawings, and until such time as the said certification has been received by the Corporation, occupancy of the dwelling on the subject building lot shall not be permitted.

21. **SPECIAL SERVICING REQUIREMENTS**

The construction of structures shall conform to the following requirements:

- (a) Roof or rain water leaders and weeping tile drains from each respective building must be discharged into the storm sewer. A sump pump connected to the storm sewer must be provided for each building.
- (b) Weeping tile drains shall not be connected to the sanitary sewers.
- (c) Basement floor drains shall be connected to the sanitary sewers provided for each dwelling.

- (d) Rear yard drainage, including two (2) 300 mm. diameter pre-fabricated polyethylene catch basins, shall be provided for each building lot in the locations and according to the design and specifications as shown on the approved engineering drawings.
- (e) A lot grading plan shall be included in the final set of plans approved for construction of the works. The consulting engineer or a certified land surveyor shall certify, upon completion of the works, that the lot grades and catch basin elevation are in accordance with the design and that the lands abutting the subdivision are draining adequately. The Developer acknowledges that, until such time as the provisions of this paragraph have been complied with, no occupancy of any building shall be permitted and any and all securities delivered to the Corporation by the Developer herein shall be held to ensure the provisions of this paragraph are complied with.

1078217 ONTARIO LIMITED

*I have the authority to bind the corporation*

Per: \_\_\_\_\_  
William G. Docherty – President

*I have the authority to bind the corporation*

Per: \_\_\_\_\_  
Michael R. Dunn – Secretary

THE CORPORATION OF THE TOWN OF  
AMHERSTBURG

Per: \_\_\_\_\_  
Mayor

Per: \_\_\_\_\_  
Clerk

**SCHEDULE " C "**

**MEMORANDUM OF AGREEMENT made this 9th day of October, 1996**

**B E T W E E N:**

**1078217 ONTARIO LIMITED**

**hereinafter called the "OWNERS"**

**of the FIRST PART;**

**- and -**

**POINTE WEST GOLF CLUB CORP., a  
corporation incorporated under the laws  
of the Province of Ontario**

**hereinafter called "POINTE WEST"**

**of the SECOND PART.**

**WHEREAS:**

1. Owners are the owners of a parcel of land being part of Lot 15, Concession 1, Township of Anderdon more particularly described in Schedule "A" hereto on which they are proposing to erect a subdivision consisting of a number of phases.
2. Pointe West operates a golf club and golf course immediately north of the lands owned by Owners, on lands also in the Township of Anderdon and more particularly described in Schedule "B".

**NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged):**

1. Owners on behalf of themselves and their successors and assigns covenant in favour of Pointe West and its successors and assigns as follows:
  - a) Owners recognize that a golf course is being operated on the lands of Pointe West and that certain proposed residential lots

lands of Pointe West and that certain proposed residential lots will be in close proximity or abutting the Golf Course. Owners specifically forever release Pointe West from any responsibility or liability for any damage or personal injury caused to Owners or any transferee of Owners or any structure of the Owners or of a transferee of the Owners caused thereto by any projectiles, including golf balls and clubs, accidentally launched from the golf course or unintentionally directed onto the Owner's lands from the golf course;

- b) With respect to any proposed lots that will abut the Golf Course the landscaping shall include planting one hardwood tree having a minimum diameter of 1.5 inches in the rear yard of the lot at a location selected by the transferee of such lot;
- c) Owner or each transferee of Owner will at all times maintain a six foot (6') chainlink fence on the lot line separating the golf course from any lots in each proposed phase of the Subdivision for the purposes of restricting ingress and egress by a transferee to and from the golf course. The fence will not contain gates. Where necessary in order to save the hedgerow as described below and also subject to the consent of Pointe West, the fence will be erected on the Pointe West side of the property line. The Owners will permit the growth of foliage on the fence.
- d) The separation between the rear of any residences constructed on a lot abutting the Golf Course and the rear lot lines shall at all times be maintained at no less than fifty feet (50').
- e) Owners recognize that the golf course on the lands of Pointe West may be the source of noise including, without limitation,

noise at early hours and release Pointe West from any responsibility or liability for disturbance caused by the ordinary and usual use of any part of the Pointe West lands as a golf course including use of a service road along the south limit of the Golf Course property.

- f) The parties acknowledge that an existing hedgerow is located on the boundary between the lands of the Owners and the lands of Pointe West. The Owners or any transferee of the Owners from time to time of lots which form part of the subdivisions of the Owners' land which abut the lands of Pointe West will at all times maintain the hedgerow and will not cut down any part of the hedgerow or diminish it to the intent that the hedgerow will continue to operate as a physical buffer between the lands of the Owners and the lands of Pointe West. Specifically the Owners, and the successor owners of such lots, will at all times maintain the species of vegetation which have been identified in a site evaluation dated June 8, 1996 prepared by K. Colhurst, a copy of which is annexed hereto, located within the existing hedgerow. Provided that nothing herein will require the Owners of lots to maintain dangerous, obnoxious or objectionable vegetation on their lands unless identified in the K. Colhurst report.

2. The parties intend that the burden of the foregoing covenants shall run with and bind the lands of the Owners as servient tenement and bind and be enforceable against the Owners and their successors and assigns from time to time having any interest in the Owners' lands, and benefit and run with the lands of Pointe West as the dominant tenement (described in Schedule "B"), and benefit



and be enforceable by Pointe West and its successors and assigns as the Owners from time to time of the freehold interest in the lands of Pointe West for a period of forty (40) years from the date hereof and, if permitted by law, such further period of time as may be available by registration of Notice of Renewal by Pointe West. [REDACTED]

3. The restrictive covenants set out in this Agreement shall be effective and remain in effect for the period expressed and shall run with the lands and be subject to compliance with the provisions of any statute relating to the severance of land or granting of interests in land by conveyance or otherwise as such may from time to time be amended. Owners and Pointe West hereby agree that if consent is requisite to the validity of this Agreement, either party may apply for such consent and neither party will oppose such application and until a final consent is obtained, the term of this Agreement shall not extend beyond the maximum period permitted by statute without consent.

4. Provided that if any one or more of the foregoing covenants and restrictions or the application thereof to any person, corporation or circumstance shall to any extent be invalid or unenforceable, the remainder of the foregoing covenants and restrictions and the application thereof shall not be affected thereby and each covenant and restriction shall be separately valid and enforceable to the fullest extent permitted by law.

5. Pointe West agrees to grant to the Owners an easement for two (2) force mains, each to be approximately five feet deep, running to Wyandotte Street under an existing twenty foot private gravel road on Pointe West lands. The

easement agreement will require the Owners to make good any consequent damage and will contain the covenants usual to a utility easement agreement.

6. The Owners agree that they will consent to a condition attaching to each Ministry or Municipal approval for each Plan of Subdivision of the Owners' lands that abut the Golf Course that the hedgerow be maintained. The Owners further agree that they will consent to a proviso in each Subdivision Agreement with the Township of Anderdon dealing with the Owners' lands that the hedgerow will be maintained.

7. Any notice or other communication required or permitted to be given hereunder from one party to the other shall be made in writing and sent by prepaid registered post, return receipt requested, or hand delivered or sent by telefax during normal business hours of the recipient party, addressed to it as follows:

To Pointe West: c/o President  
200 Golfwood Drive  
Amherstburg, Ontario  
N9V 3T4

Telefax: 519-736-8625

To Owners: c/o R. C. Pruefer Co. Limited  
Box 3130, Tecumseh Postal Station  
Windsor, Ontario, N8N 2M3

Att'n: Mr. William G. Docherty

Telefax: 519-727-5342

8. The parties covenant to and with each other that they will, respectively, upon the reasonable request of the other, execute such further documents or assurances as may be required in order to effect the intent of this Agreement, and this Agreement shall be registered on the title of the lands of the Owners in the Registry and Land Titles Office of Essex No. 12 by the Owners.

9. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

SIGNED, SEALED and DELIVERED )

In the presence of )

) 1078217 ONTARIO LIMITED )

) Per: *M. d. Quinn* )  
President )

) *[Signature]* )  
Secretary )

) POINTE WEST GOLF CLUB CORP. )

) Per: *[Signature]* )  
John Retmer - President )