

**THIS AGREEMENT** made in triplicate this 26<sup>th</sup> day of April, 2022

**B ETWEEN:**

**VELMA HARRIET MACLACHLAN**

(Hereinafter called the "Owner")

**OF THE FIRST PART**

**AND:**

**DANIEL HOWARD MACLACHLAN AND KIMBERLEY ANNE MACLACHLAN**

(Hereinafter called the "Developer")

**OF THE SECOND PART**

**AND:**

**THE CORPORATION OF THE MUNICIPALITY OF LAMBTON SHORES**

(Hereinafter called the "Municipality")

**OF THE THIRD PART**

**WHEREAS** the Owner has obtained provisional consents from the Committee of Adjustment of the Municipality of Lambton Shores (files B-21/2021 and B-22/2021) pursuant to Section 53 of the *Planning Act, R.S.O. 1990* for the creation of a residential lot on lands described in Schedule 'A' to this Agreement (hereinafter called the "Lands");

**AND WHEREAS** the conditions of approval of the said provisional consents include entering into a development agreement for the construction of infrastructure;

**AND WHEREAS** the Owner and the Developer represent that they have an agreement under which the Developer will satisfy all conditions of approval of the said consent and acquire the Lands;

**AND WHEREAS** the Developer has submitted plans to the Municipality for approval in accordance with said conditions of consent;

**NOW THEREFORE** the parties hereto agree as follows:

**1. SCHEDULES**

The following Schedules are hereby declared to form part of this Agreement and are attached hereto:

Schedules

Description

- "A" - being a legal description of the land affected, hereinafter referred to as the "Lands".
- "B" - being plans and specifications identifying the new facilities, works and matters to be provided on the "Lands", hereinafter referred to as the "Development".

## **2. SERVICING, GRADING AND INSPECTION**

- (a) The Developer shall provide for the construction and maintenance of such roads, site grading, and other matters as designed, certified and shown in Schedule "B", and as per the Municipality of Lambton Shores Engineering Standards and Specifications.
- (b) Specifically, the works required under this agreement include but are not necessarily limited to:
  - (i) the grading and surfacing of the road in the location and to the dimensions and grades shown on Schedule "B" to this agreement; and
  - (ii) the final finished grading and seeding of boulevards.

## **3. STANDARD OF WORK**

- (a) Except as may be specified otherwise in this agreement, all works and services shall be constructed and installed strictly in accordance with the approved plans and specifications, which must conform to the Municipality of Lambton Shores standards or, in the case where Municipal standards do not exist, in accordance with the latest Ontario Provincial Standard Specifications and Drawings.
- (b) Any works or services to be constructed pursuant to this agreement shall be located in accordance with Schedule "B". Should a variation be necessary that conflicts with the standard location of another utility, this variation must be approved by the Municipal Engineer prior to the installation. The Municipal Engineer may require, in writing, such variance from such plans and specifications as may be determined by conditions which may be disclosed as the work progresses, and by sound engineering practice.

## **4. SPECIAL PROVISIONS**

- (a) The Developer agrees that the Municipality may require the Developer to provide and submit written work schedules to the Municipal Engineer for approval of any work required directly or indirectly by this Agreement.
- (b) The Developer agrees to obtain any approvals required by the Ausable Bayfield Conservation Authority under the *Conservation Authorities Act*.

- (c) The Developer agrees that the works required under this Agreement include works within both the Defore Drive road allowance and the Municipally-owned parcel abutting the end of Defore Drive and described as Part 23 on RP 25R225.
- (d) The Developer agrees to fulfil all conditions of consent imposed by the Committee of Adjustment respecting consent files B-21/2021 and B-22/2021. This shall include registering a reference plan consistent with the conditions of approval and identifying a Part or Parts representing lands to be conveyed as a road allowance consistent with Schedule "B".
- (e) Pursuant to the conditions of consent, the Owner agrees to convey to the Municipality, free of any encumbrances, for the purposes of a road allowance, the lands identified for that purpose as a Part or Parts on the reference plan described in Subsection 4 d) of this Agreement.
- (f) The Municipality agrees to pass a by-law to dedicate as a public highway those lands identified for the purpose of a road allowance on the reference plan described in Subsection 4 d) of this Agreement. Said road dedication by-law shall be passed, at the latest, when the Municipality passes a by-law to assume the works completed under this agreement. The Developer agrees the registration of said road dedication by-law shall be at the Developer's cost.

**5. -Omitted-**

**6. COMMENCEMENT AND COMPLETION**

- (a) The Developer agrees that no work shall commence on the lands until:
  - (i) the Developer has paid to the Municipality those monies required as securities and deposits by this Agreement;
  - (ii) the Developer has obtained all necessary permits and approvals of the Work as required (e.g. Ontario Hydro etc.) and copies of such permits and approvals have been given to the Municipality and the Municipal Engineer; and
  - (iii) a pre-construction meeting with the Municipality has been held and final approval to proceed has been received from the Municipal Engineer.
- (b) The Developer shall thereafter wholly at its own expense construct, install and promptly pay for those works and services set out upon the plans and specifications set forth in this Agreement and Schedule "B" hereto annexed.
- (c) The Developer agree that any work required under this agreement shall not commence or, having commenced and subsequently halted, deferred or suspended, shall not commence again without approval of the Municipal Engineer.

## **7. GUARANTEE AND ASSUMPTION**

- (a) The Developer acknowledges that the services provided for in this agreement shall not become the property of the Municipality nor shall the Municipality be deemed to have assumed any works or services until and unless an assumption by-law has been enacted to that effect. The Developer also acknowledges and agrees that the Municipality accepts no liability whatsoever for the said works until such time as they are assumed by by-law and that all subsequent purchasers shall be notified in writing that such unassumed works are not the responsibility of the Municipality.
- (b) The Municipality will pass an assumption by-law when:
  - (i) the Developer advises the Municipal engineer that all the required works and services have been installed as required by this Agreement; and
  - (ii) the Municipal engineer has inspected the works and advised in writing that he is satisfied that the required works have been installed strictly in accordance with the requirements of the Agreement; and
  - (iii) those lands identified for the purpose of a road allowance on the reference plan as described in Subsection 4 d) of this Agreement, have been conveyed to the Municipality; and
  - (iv) any deficiencies or difficulties in the required works or services have been corrected and repaired to the satisfaction of the Municipality.
- (c) If it has not already done so, when the Municipality passes an assumption by-law, it will also pass a by-law to dedicate the following parcels as public highways:
  - (i) the lands that are to be conveyed to the Municipality as a road allowance as a condition of consent application B-21/2021 and B-22/2021 and identified as a Part or Parts on the reference plan described in Subsection 4 d) of this Agreement, and
  - (ii) the Municipally-owned parcel abutting the end of Defore Drive and described as Part 23 on RP25R225.
- (d) When the Municipality has assumed the works and services, and a road dedication by-law has been passed and registered on title, the Municipality will release any money, deposit, or security which the Municipality has to which the Developer is entitled under this Agreement.

## **8. UNDERGROUND SERVICES**

- (a) The Developer shall ensure that the installation of the works will not interfere with or be in conflict with location of any existing underground facilities, whether on road allowances or private rights-of-way. The Developer, or their Consulting Engineer,

shall obtain field locates from the appropriate authority prior to the installation of any services.

**9. GRADING CERTIFICATE**

- (a) The Developer shall be responsible to ensure that the proposed development and final grading of the site do not in any way adversely affect the drainage of adjoining properties. The Developer shall provide the Municipality with a lot grading certificate from an Ontario Land Surveyor, confirming that final grades have been completed to the Municipality's satisfaction. The Developer agrees to indemnify the Municipality, from the time the Developer commences the works until the second anniversary of the date the Municipal engineer provides the confirmation noted in Section 7 b) ii) of this Agreement, against any claims that may arise with respect to alterations in the direction, quantity, or quality of surface drainage or storm water resulting from construction activities undertaken by the Developer.
- (b) No person shall, at any time, add fill to a lot or grade a lot in such a manner that it will cause surface water to flow along the surface from that lot to any adjacent lands.

**10. IMPACT ON DRAINAGE**

The Developer shall ensure that there is no interruption to any surface or subsurface drainage due to the construction on the site, either during or following completion of the development. Should such an interruption occur, the Developer shall carry out any necessary remedial work, at his own expense, as recommended by his Consulting Engineer and approved by the Municipal Engineer.

**11. FILL DISPOSAL**

The Developer agrees that no fill material will be removed or placed without the prior authorization from the Conservation Authority. Fill will not be exported from the site and deposited in any area susceptible to flooding under regional storm conditions as regulated by the Conservation Authorities Act of Ontario.

**12. RIGHT OF INSPECTION AND DIRECTION**

- (a) The Developer agrees that the Municipal Engineer and other persons authorized by him for the purpose shall have the right at any time, to enter upon any part of the said Development lands and other lands upon which any work or service which herein is required to be done and to make such tests and inspections as he may deem necessary and to call for any document which, in his opinion, is required to be obtained in order to facilitate his inspection, and to give direction to the Developer in any matter touching upon the due performance of the work and services herein required to be done.

- (b) In the event that difficulties are encountered in the completion of the works as required by this agreement or it otherwise becomes necessary, in the opinion of the Municipal Engineer, to make modifications or provide items not described in this agreement, such requirements of the Municipal Engineer shall be carried out by the Developer as though they were included in and form a part of this agreement.
- (c) The Municipal Engineer may require that any or all work shall cease until any breach of plans and specifications or his requirements (of which he shall be the sole judge) have been remedied (other than the work required to be done to remedy such breach) and if he shall deem it necessary to engage technical consultants to assist him in the performance of any inspection or supervision, the expense of such technical consultants shall be a debt due to the Municipality by the Developer recoverable upon demand.

### **13. DEFAULT**

The Developer hereby authorizes the Municipality to carry out the completion of any of the provisions of this Agreement and to use any monies held by the Municipality for this purpose, if the Developer fails to complete the said work within the time agreed to in writing between the Municipality and the Developer. Upon completion of the work, any unused balance shall forthwith be returned to the Developer and, should the funds deposited be insufficient, the Developer shall forthwith pay to the Municipality such sum as may be required to make up the total cost of the work. Failure to pay the amount within 30 days after the account has been submitted will result in the cost being added to the tax bill for the "Lands" and collected in like manner as municipal taxes.

### **14. STREET CLEANING**

Until the Municipality has passed an assumption by-law pursuant to Section 7 b) of this agreement, the Developer shall be responsible for cleaning the sidewalk and roadway along the street in the vicinity of the "Lands" to remove all dirt, mud and debris which, in the opinion of the Municipality, has been deposited thereon as a result of the construction activities on the "Lands". Such cleaning shall be done at the end of each day if required or otherwise as determined by the Municipality. If the Developer is unable or unwilling to clean the sidewalk or street to the reasonable satisfaction of the Municipality, the Developer hereby authorizes the Municipality to clean the sidewalk and street as required by the Municipality and the Developer agrees to pay the Municipality all costs associated with the cleaning operation performed by the Municipality.

### **15. DEPOSITS, SECURITIES AND PAYMENTS**

- (a) The Developer shall deposit with the Municipality the sum of \$4,000.00 which sum shall be held in trust by the Municipality and from which any engineering review and supervision fees shall be paid during the development process. The Municipality may call upon the Developer from time to time to replenish the

account. Any sum remaining in the account after the site has been completed in compliance with this Agreement to the satisfaction of the Municipality, shall be refunded to the Developer. The amount invoiced to the Municipality for the above fees in connection with the work required under this Agreement shall include an accounting of the services performed and shall be open to challenge by the Developer in proceedings that may be taken in the name of the Municipality with notice to the Municipality providing that payment in full has been made of the disputed account before such proceedings are taken.

- (b) Prior to the execution of this Agreement the Developer shall pay to the Municipality a legal deposit of \$1000.00 to cover any miscellaneous legal fees incurred by the Municipality and as a security for the registration of this agreement and a road dedication by-law on title.
- (c) Prior to the commencement of any work provided for in this Agreement, the Developer shall pay to the Municipality or provide an irrevocable Letter of Credit from a chartered bank for 100% of the cost of the works required under this agreement to be held as a guarantee for the completion of the works. The cost of the works shall be estimated by the Developer's engineer and subject to the approval of the Municipal engineer.

#### **16. INDEMNIFICATION**

- (a) This Agreement and the provisions thereof do not give to any person acquiring any interest in the "Lands" any rights against the Municipality or the Municipal Engineer with respect to the failure to perform any obligations under this Agreement or the failure of the Municipality to force any such persons to perform any obligations under this Agreement or any negligence of any such persons in the performance of the said obligations. The only duty and responsibility of the Municipal Engineer arising out of this Agreement is to the Municipality and the Agreement and any work or service done or performed by the Municipal Engineer under this Agreement does not in any way create any liability on the part of the Municipal Engineer to the Owner or Developer or any person acquiring any interest in the "Lands".
- (b) The Developer covenants that, until the second anniversary of the date the Municipal engineer provides the confirmation noted in Section 7 b) ii) of this Agreement, the Developer will indemnify and save harmless the Owner and Municipality from any and all claims, demands, actions and causes of action, whether the same shall be successful or unsuccessful and from all costs to which the Owner and Municipality may be at, suffer, or be put to in respect of any such action, cause of action, claim or demand in any way arising out of or alleged to arise out of any work, service, operation or thing constructed, installed, repaired, maintained or done or omitted to be done or negligently done by the Developer, his servants, agents, contractors or subcontractors under them, in respect of the said 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 construction, maintenance or repair of any road.

#### **17. MAINTENANCE OF MUNICIPAL ROAD ALLOWANCES**

The Developer shall ensure that no earth, debris or excavated material shall be deposited within the limits of a Municipal/Provincial road allowance without permission in writing to do so from the Municipality. In the event that earth, debris or excavated material is deposited on the Municipal/Provincial roadway it shall be removed by the Developer immediately upon notification from the Municipality. If, the earth, debris or excavated material has not been removed from the road allowance by the Developer, the Developer acknowledges and agrees that the Municipality may take it upon itself to remove the said earth, debris or excavated material. Notwithstanding this notice to the Developer, the Municipality may at any time remove debris from the Municipal property, and the cost of such removal will be paid for by the Developer and may be deducted from the Developer's deposit fee or other securities held by the Municipality.

#### **18. REGISTRATION**

- (a) The Owner hereby agrees to give such authorization as required to permit the registration of this Agreement against the "Lands". The Developer shall register this Agreement against the "Lands" to which it applies and the Municipality is entitled to enforce the provisions hereof against the Developer upon the Developer taking possession of the vacant residential lot created by the provisional consent, and subject to the provisions of the Registry Act and the Land Titles Act, against any and all subsequent Developers of the land. Prior to the Municipality giving its final certificate of consent for application B-21/2021 and B-22/2021, the Developer must satisfy the Municipality that this agreement has been registered on title.
- (b) The Developer shall be responsible to register, at its cost, a road dedication by-law on title for the lands identified in Section 7 c) of this Agreement.

#### **19. MISCELLANEOUS**

- (a) Notwithstanding any of the provisions of this Agreement, the Developer shall be subject to all of the by-laws of the Municipality and shall construct all work in accordance with the requirements of the Municipality, the County of Lambton, the Ausable Bayfield Conservation Authority, and the Province of Ontario, including any requirement to obtain permits or other approvals.
- (b) This Agreement may be amended at any time with the consent, in writing, of the Municipality and the registered Owner of the "Lands" at the time of such amendment.
- (c) The provisions hereof shall ensure to the benefit of the parties hereto and their heirs, executors, administrators, successors and assigns.



- (d) Any notices required or permitted to be given pursuant to the terms of this agreement shall be addressed to:

In the case of notice given to the Owner:

Velma MacLachlan  
8381 Defore Drive  
RR2  
Grand Bend, ON, N0M 1T0

In the case of notice given to the Developer:

Kim and Dan MacLachlan  
8375 Defore Drive  
RR2  
Grand Bend, ON, N0M 1T0

In the case of notice given to the Municipality:

The Municipality of Lambton Shores  
R.R. #1,  
9575 Port Franks Road  
Thedford, ON, N0M 2N0

**IN WITNESS WHEREOF** the parties hereto have hereunto affixed their signatures and Corporate Seals attested to by the hands of their proper officers, duly authorized in that behalf.

**SIGNED, SEALED AND DELIVERED**

In the presence of:

**VELMA HARRIET MACLACHLAN**

---

Velma Harriet MacLachlan

**DANIEL HOWARD MACLACHLAN &  
KIMBERLEY ANNE MACLACHLAN**

---

Daniel Howard MacLachlan

---

Kimberley Anne MacLachlan

**THE CORPORATION OF THE  
MUNICIPALITY OF LAMBTON SHORES**

Authorized by By-law

---

Bill Weber, Mayor

(SEAL)

---

Stephanie Troyer-Boyd, Clerk

**SCHEDULE "A"****LEGAL DESCRIPTION OF THE LANDS AFFECTED BY THIS AGREEMENT**

CON B PLAN 7 S PT LOT 23 EXC RP25R7081 PART 3, in the Geographic Township of Bosanquet, in the Municipality of Lambton Shores, known Municipally as 8381 Defore Drive.

- and -

CON B PLAN 7 LOT 23 W ½ E ½ LT 23 & S PT W PT LT 23 & PT LOT 27 EXC  
RP25R7081 PT PART 3 N CANADA CO CANAL

**Schedule "B"****PLANS and SPECIFICATIONS**

Schedule "B" consists of the "Defore Drive Road Extension 2022" drawings stamped March 17, 2022 by C.S. Lierman:

- Sheet No. 1 – Defore Drive
- Sheet No. 2 – Miscellaneous Notes and Details



