

THE CORPORATION OF THE TOWN OF ESSEX

BY-LAW # 726

BEING A BY-LAW TO ENTER INTO A SUBDIVISION AGREEMENT BETWEEN:

THE CORPORATION OF THE TOWN OF ESSEX

AND

KIMBALL ESTATES INC.

WHEREAS pursuant to Section 51(26) of the Planning Act, R.S.O. 1990 and Amendments thereto, Essex 143 Joint Venture Ltd. is desirous of developing a residential subdivision and as such require a subdivision agreement;


AND WHEREAS pursuant to Section 51(26) of the Planning Act, R.S.O. 1990 and Amendments thereto, municipalities may enter into such agreements;

NOW THEREFORE BE IT RESOLVED THAT THE COUNCIL OF THE CORPORATION OF THE TOWN OF ESSEX ENACTS AS FOLLOWS:

That the Mayor and Clerk be directed to affix their signatures, on behalf of the Corporation of the Town of Essex, to Schedule "1" attached hereto and forming part of this By-law, for the purpose of executing the subdivision agreement.

READ A FIRST AND SECOND TIME THIS 10TH DAY OF APRIL, 2006.

READ A THIRD TIME AND FINALLY PASSED THIS 10TH DAY OF APRIL, 2006.


MAYOR


CLERK

LRO # 12 Notice Under S.71 Of The Land Titles Act

Received as CE211209 on 2006 05 01 at 09:00

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 17

Properties

PIN 75218 - 0128 LT
Description PT LT 282 CON SOUTH TALBOT RD COLCHESTER DESIGNATED AS PT 1 12R21939;
ESSEX; S/T EASE OVER PT 3 AND 4 PL 12R-21950 AS IN CE140518 ESSEX
Address ESSEX

Consideration**Consideration** \$ 0.00**Applicant(s)**

The notice is based on or affects a valid and existing estate, right, interest or equity in land

Name THE CORPORATION OF THE TOWN OF ESSEX
Address for Service 33 Talbot Street South
Essex, Ontario
N8M 1A8

This document is not authorized under Power of Attorney by this party.

This document is being authorized by a municipal corporation Ronald Mc Dermott, Mayor and Jerry Marion, Clerk.

Party To(s)**Capacity****Share**

Name KIMBALL ESTATES INC.
Address for Service c/o Paul Mullins
691 Ouellette Avenue
Windsor, Ontario
N9A 4J4

I, Mary Ellen Mullins, Authorized Officer and Ben Klundert, Authorized Officer, have the authority to bind the corporation

This document is not authorized under Power of Attorney by this party.

Statements

This notice is for an indeterminate period

Schedule: See Schedules

Signed By

Elvey Bernard Marshall	22 Queens Ave Leamington N8H 3G8	acting for Applicant(s)	Signed	2006 05 01
Tel	519-326-4415			
Fax	5193261844			

Submitted By

E B MARSHALL LAW OFFICE	22 Queens Ave Leamington N8H 3G8			2006 05 01
Tel	519-326-4415			
Fax	5193261844			

Fees/Taxes/Payment

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

File Number**Applicant Client File Number :** 06-359

SCHEDULE "1"

THIS AGREEMENT made this day of 2006

BETWEEN:

KIMBALL ESTATES INC.

of the Town of Essex, County of Essex

Hereinafter called the "Owner"

OF THE FIRST PART

and

THE CORPORATION OF THE TOWN OF ESSEX

Hereinafter called the "Town"

OF THE SECOND PART

WHEREAS an application has been made by the Owner for approval of a Plan of Subdivision for residential purposes within the limits of the Town.

AND WHEREAS an approval of the draft Plan of Subdivision has been given by the Corporation of the County of Essex in file No. 37-T-05002, a copy of which is on file with the Clerk for the Town.

AND WHEREAS the draft plan of approval applies to the plans prepared under the supervision of Verhaegen, Stubberfield, Hartley, Brewer, Bezair Inc. as certified by Andra Mantha O.L.S. dated January 11, 2005 showing a total of 13 single family lots, 36 Blocks inclusive of 25 Blocks for 14 tri-plex lots, 8 quad lots, 2 five-plex lots totaling 84 townhouse units as revised April 3, 2006. .

AND WHEREAS the Town has accepted the proposal for a Plan of Subdivision and supports the creation of residential lots to be registered with the local Land Registry Office;

AND WHEREAS the lands comprising the proposed Plan of Development, a copy of which Plan (hereinafter called the "Plans") is filed with the Clerk of the Town, including a Reference Plan on which the lands are more particularly described in Schedule "A" attached hereto.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the
aforementioned premises and in consideration of the sum of Five Dollars (\$5.00) now paid by the
Owner to the Town (the receipt whereof is hereby expressly acknowledged) the parties hereto
covenant and agree one with the other as follows:

SCOPE OF AGREEMENT

1. Owner agrees to complete at their own expense, and in a good and workmanlike manner, all the municipal services as hereinafter set forth to the entire satisfaction of the Town and to complete, perform or make payment for such other matters as may be provided for herein.

CONSULTING ENGINEER

2. The Owner shall employ, at the Owners' expense, a consulting engineer registered with the Professional Engineers of Ontario:
 - a) To design and submit to the Town engineering drawings of;
 - b) To prepare any contracts necessary for the construction of;
 - c) To obtain from municipal, provincial and federal authorities any approvals necessary for;
 - d) To submit to the Town, prior to the commencement of construction, a report showing existing elevations, proposed new elevations and the proposed method of drainage of the lands serviced by;
 - e) To have a stormwater management plan prepared to the satisfaction of the Town, the Essex Region Conservation Authority, the Ministry of Environment and the Ministry of Transportation..
 - f) To construct, inspect and supervise the construction and maintenance of the required work. The consulting engineer shall notify the Town's engineer or representative of the Town's engineer in order to insure that the Town's engineer or a representative of the Town's engineer may be on site when construction of any works is proceeding.
 - g) To maintain all records of construction of and to prepare all reports with respect to soil conditions required for;
 - h) To submit to the Town all required "as built" details, elevations and drawings of;
 - i) To be responsible for the co-ordination of;
 - j) To visit the site of the said works as required by the Town for any reason related to; all services and other matters required under this Agreement.
3. The Town at its option may retain:
 - i) A Professional Engineer registered by the Professional Engineers of Ontario to review all plans, specifications, engineering documents, contracts, details, elevations and any other relevant information, including the provision of inspection services if required.
 - ii) A Public Works Director to inspect the construction, repair and maintenance of the services and/or monitoring of the supervision of the construction, repair and maintenance of all services required under this Agreement; andThe fees, expenses and charges of the Professional Engineer and/or Public Works Director shall be payable by the Owner to the Town upon demand. The Engineer's charge with

respect to the services provided shall be in accordance with the hourly rate normally applicable in the engineering profession for like work. The Public Works Director shall be paid upon hourly rates at the same rate that the Public Works Director is paid by the Town for the inspection of buildings.

4. SERVICES

The Owner shall supply, construct and install the following services, at the Owner's expense unless otherwise provided herein, in accordance with the terms of this Agreement.

(i) STORM AND SANITARY SEWERS

- a) The Owner shall construct and pay for a complete sanitary and storm sewer system or systems, including sanitary and storm connections to the street line and catchbasins and leads to service all the lands on the said plan of development and adjacent road allowances, as shown on the engineered plans which are on file with the Clerk for the Town (which plans are hereinafter called the "Plans"), maintain them including clearing the blockages until they are formally accepted by the Town. The Town may connect or authorize connection into them but such connection shall not constitute acceptance of the sewer system or systems by the Town. All sanitary sewer connections are to be 125 mm.diameter single connections and in no instance shall any "Y" connections be permitted. All sanitary sewer system construction and materials shall be according to the standard specifications and approval of the Ministry of the Environment and the Town.
- b) The storm sewer system shall include a professionally engineered drainage system to adequately drain the property and road allowance. Eavestrough down spouts are to be outletted to the yard of the lot and not into the storm sewage system unless the down spouts are located over a driveway in which case the down spout shall be required to discharge into the storm sewer.
- c) The Owner undertakes to conduct an engineering analysis to determine the effect of increase 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.
- d) The Owner shall conduct regular inspections every two weeks and after each sizeable storm event of all sediment and erosion control measures incorporated into this Plan of Subdivision and maintain an inspection log which shall be made available for review by the Town, the Ministry of the Environment and the 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 Town or until site construction conditions warrant cessation of the visits.
- e) The Storm Water Management Works associated with this plan of subdivision will require

approval under the Ontario Water Resources Act and not under the Drainage Act and any environmental protection measure recommended in the Storm Water Management Plan that is not capable of being addressed under the Ontario Water Resources Act shall be implemented through the provisions of this agreement.

- f) The Chief Building Official may, if necessary, require a sewage ejector system to be installed in each basement as approved by the Chief Building Official of the Town or such other person as may be designated by the Town. This requirement may be included in any agreement of purchase and sale entered into between the Owner and any subsequent owners on title.
- g) As part of the storm water management plan the owner shall be required, at its sole expense, to enlarge the existing storm water pond located adjacent to the lands herein. The Owner agrees to pay to the Town the fair market value of the lands which are required to enlarge the storm water management system on the same basis as the calculation set out in paragraph 8(i) hereof.

(ii) REAR YARD DRAINAGE

- a) Rear yard drainage and catch basins shall be provided in the locations and according to the specifications prescribed by the Owner's Engineer and approved by the Town. Rear yard drainage shall be installed contemporaneously with the construction of the dwellings. The requirements of rear yard drainage systems shall be included as an obligation to be assumed by the purchaser in the agreement of purchase and sale of the lands from the owner.
- b) The engineering drawings shall include a drainage contour plan. The Owner must ensure that when houses, townhouses and other structures are built upon the building lots, the drainage plan is adhered to.

(iii) WATERMAINS

- (a) The owner shall be required to install watermains, services valves, valve chambers, fittings, blowoffs, hydrants, service connections and other appurtenances, the location of which is indicated on the said "Plans". All watermain construction and materials shall be according to the standard specifications of the Town, and to the satisfaction and approval of the Town and the Ministry of the Environment.
- (b) Inauguration or extension of a piped water supply is subject to the approval of the Ministry of the Environment under Section 23 and Section 24 of the Ontario Water Resources Act.

(iv) WATER SERVICE CONNECTIONS

- a) Unless otherwise arranged with the Town, the owner shall install the Town's portion of every water service connection, namely the portion that extends from the watermain to the side

limit of the road allowance.

- b) Before any water services are constructed on any particular street, the owner shall complete the watermains on that street and subject the watermains to the tests required by the standard specifications of the Town.
- c) Water services connections shall be constructed under the supervision of the Town of Essex Water Department and in compliance with the standard specifications of the Town and the then current by-laws, rules and regulations.
- d) All water connections are to be Type K copper 3/4" diameter single connections and in no instance shall "Y" connections be permitted.

(v) ROADWAYS AND SIGNAGE

a) ROADS - ROUGH GRADE

The Owner shall, if required by the Town or its Engineer; construct to rough grade the grades as shown on the "Plans", all road allowances as shown on the said Plans prior to the installation or construction of the relevant municipal services provided for herein.

b) ROADS - PAVED

The Owner shall construct pavement on all the roads as shown on the Plans and he shall maintain them until they are formally accepted by the Town. Roadways shall have a paved surface width as shown on the said Plans. The roads shall conform to the grades shown on the said Plans hereto. The said roads, when formally accepted by the Town, shall be conveyed to the Town gratuitously.

c) CHANGE OF ROAD GRADE

When, in the written opinion of the Town, it is necessary to change the grade of existing Town roads adjacent to or abutting the said plan of development, the Owner shall grade the roads to sub-grade, in the manner and at the time stipulated by the Town in accordance with the specification of the Town.

d) CURBS AND GUTTERS

The Owner shall construct curbs and gutters as shown on the "Plans" and shall maintain them until they are formally accepted by the Town.

e) DEAD ENDS AND OPEN SIDES

Any dead ends and open sides of road allowances created shall be terminated in 0.3 metre reserves to be conveyed to, and held in trust, by the Town.

f) ROAD SIGNAGE

The Owner shall provide and erect on the said lands all street and traffic signs required and

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approved by the Town. Every such sign shall be in conformity with the then current standards designed for such type of sign on the highways of the Town and all street names must be approved by the Town. The Owner shall also provide and erect at its own costs, temporary street signs at locations designated by the Town.

g) INSPECTION OF WORK

All watermain, sewer, drainage works, road and curb work shall be constructed and installed under the full time observation of Inspectors employed by the Owner.

h) HANLAN STREET RECONSTRUCTION

The Owner acknowledges that Hanlan Street is being reconstructed by the Town. The Owner agrees to pay to the Town, its costs relating to the Hanlan Street Reconstruction as set out on the Schedule attached hereto entitled "Kimball Development Cost Share", on receipt of the invoice for such work and prior to the issuance of any Building Permit for the construction of a residence on Hanlan Street.

(vi) HYDRO SERVICE

- (a) The Owner shall make satisfactory arrangements with E.L.K. Energy Inc. to provide for the installation of all power supply lines, pad mounted above-ground transformers and power distribution equipment. The Owner shall provide for the design of the system and shall engage the consulting engineer and contractor to install same. The cost of any relocation or revisions to E.L.K. Energy Inc. facilities which are necessary to accommodate the development of the subdivision will be borne by the Owner.
- (b) Any existing easement rights in favour of E.L.K. Energy Inc. are to be respected.
- (c) The Owner shall verify with E.L.K. Energy Inc. if any low voltage distribution lines may be affected by this development.
- (d) All hydro services shall be installed in accordance with the requirements of the Town's Development Standards Manual.

(vii) STREETLIGHTS

- (a) The Owner shall make satisfactory arrangements with E.L.K. Energy Inc. to provide for all streetlights to be installed on the plan of development. All hydro service shall be constructed in accordance with the requirements of E.L.K. Energy Inc. and the Development Standards Manual requirements of the Town.

(viii) TELEPHONE SERVICE

The Owner shall make satisfactory arrangements with Bell Canada to provide for a buried or underground telephone service for this development and for the granting of easements required therefore and should any conflict arise with the existing Bell Canada facilities or

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easements the Owner shall be responsible for the re-alignment or relocation. The Owner shall provide to the Town upon demand, confirmation from Bell Canada that such arrangements have been made.

(ix) GAS SERVICE

The Owner shall make satisfactory arrangements with UnionGas to provide for a buried or underground gas service for this development and for the granting of easements required therefore. The Owner shall provide to the Town upon demand, confirmation from Union Gas that such arrangements have been made.

(x) CABLE T.V. SERVICE

The Owner shall allow a buried or underground cable television service for this development and provide for the granting of easements, if required, therefore. The cable company will be responsible for the provision of all labour, material and other expenses to supply and maintain the cable television service.

(xi) SUPER MAILBOX

The Owner shall make satisfactory arrangements with Canada Post to provide for a Super Mailbox located to the satisfaction of Canada Post. The Owner shall provide to the Town upon demand confirmation from Canada Post that such arrangements have been made.

(xii) EASEMENTS

The Owner agrees to transfer to the Town and the appropriate utility authorities any and all easements as required to service the lands including, but so as not to restrict the generality of the foregoing for drainage purposes.

(xiii) WATER SUPPLY EXTENSIONS

The owner acknowledges that the inauguration or extension of a piped water supply, a sewage system or a storm drainage system is subject to the approval of the Ministry of Environment under Sections 23 and 24 of the Ontario Water Resources Act RSO 1980.

5. DUMPING AND REMOVAL OF DEBRIS OR FILL

The Owner agrees neither to dump nor to permit to be dumped any fill or other debris on nor to remove nor to permit to be removed any fill from any lands, other than for the actual construction of the roads in or abutting the said lands, without the written consent of the Town.

6. VACATED LOTS

The Owner and subsequent owners of the lots upon which no buildings have been erected shall keep the grass and weeds cut. In the event that the Owner or subsequent owners fail to do so, the Town shall have the right to enter on the lot and perform such work. The



reasonable costs shall be a debt owed to the Town by the Owner of the lot at the time that such work is performed and shall be a lien on the lot. As security for the payment to the Town for performing the work of cutting the grass or cutting the weeds, the Owner undertakes and agrees to deposit with the Town the sum of \$3,000.00.

7. DRIVEWAY APPROACHES

- (a) The Town expressly reserves the right to determine the location of each and every driveway approach and curb cut in the subdivision.
- (b) All driveway approaches must be constructed, at the option of the Owner, of concrete, asphalt or interlocking brick.
- (c) The Town and the Applicant acknowledge that included in the building permit application fees is a fee for the purposes of insuring that the driveway approaches (on the unopened portion of the road allowance) are completed to the satisfaction of the Town. These monies will be held in trust by the Town and if no driveway approach is completed to the satisfaction of the Town within two (2) years of the issuance of a building permit, then the Town, at its option, shall be at liberty to use these monies to complete the necessary driveway approaches. If the driveway approaches are constructed within the two (2) year period, then the monies shall be refunded to the applicant for the building permit.

8. PARKLAND DEDICATION AND DEVELOPMENT CHARGES

- (i) A monetary contribution in an amount of five percent (5%) of the value of the land included in the plan shall be paid to the Town for park purposes. The amount of the park land fee shall be determined at the time of the registration of the Plan of Subdivision. The park land fee shall be payable to the Town at the time each phase is approved by the Town for the lands included in the phase to be developed.
- (ii) Development charges shall be paid by the owner to the Town for all lots in the development in accordance with the Development Charges By-Law existing at the date of the Application for the Building Permit. The owner agrees to include in the Agreement of Purchase and Sale a clause outlining all of the development charges related to the lands herein for which the owner shall be responsible.

9. SUPERVISION AND INSPECTION OF THE WORK

- (i) The consulting engineer for the Owner shall supervise the works and conduct actual field inspections of the work carried out pursuant to this Agreement. In addition the Town may at its option conduct actual field inspections of the work carried out pursuant to this Agreement and for that purpose may designate the Town Public Works Director or such other person as may be designated by the Town.
- (ii) The Owner shall provide and pay for all necessary testing and inspection services to guarantee and control the quality of the workmanship and materials used in the work. Copies

of all tests and certificates required by the Town shall be provided by the owner upon demand at their sole expense.

10. ESSEX REGION CONSERVATION AUTHORITY PERMIT

(a) Prior to any construction or site alteration, the Owner shall obtain from the Essex Region Conservation Authority any and all permits required. In accordance with Ontario Regulation 147/90 as amended by Ontario Regulation 535/91 the Essex Region Conservation Authority's "fill, construction and alteration to waterways" regulations, the owner is required to obtain a permit from the Essex Region Conservation Authority prior to any new construction activities on the lands herein.

11. PERFORMANCE SECURITY

(i) So as to assure the performance by the Owner of the terms and provisions of this Agreement the Owner shall deposit, prior to the commencement of the installation of services, with the Town:

- (a) Cash or a letter of credit for 50% of the value of the development; or
- (b) Cash or letter of credit for 25% of the value of the development, plus a subdivision bond for the full value of the development.

Any and all interest earned on any cash deposit will be returned to the owner upon release of the Performance Security by the Town.

(ii) It is the intent herein that if the Owner shall fail in the performance of the terms and conditions of this agreement then the Town:

- (a) may require the person or corporation issuing the letter of credit to pay the proceeds of the letter of credit to the Town and the Town will fulfill the terms and conditions in respect of which the owner is in default; or
- (b) may require the person or corporation issuing the subdivision bond to fulfill the terms and conditions in respect of which the Owner is in default; or
- (c) may fulfill the terms and conditions in respect of which the Owner is in default by utilizing the cash on deposit.

It is also the intent herein that if the Owner shall fail in the performance of any of the terms and conditions of this agreement the Town, at its option, may refuse to grant to the Owner any permission, certificate, approvals or authorities of any kind or nature which the Owner, had the Owner otherwise complied with the Town's requirements, and this Agreement, would have been entitled to receive and may continue to so refuse until the Town is satisfied that any default in question has been cured.

(iii) The said amount of the cash, letter of credit, or subdivision bond shall be based upon the contract or contracts mentioned in paragraph 15 hereof, unless such construction

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shall be carried out by the Owner in which event the cost shall be estimated by the Owner's engineer and shall be approved by the Town.

(iv) The cash deposit, letter of credit or subdivision bond may be reduced to the extent of the value of the work remaining as certified by the municipal engineer.

(v) No security shall be released until the Owner has filed the security in accordance with paragraph 14 hereof, covering the services in respect of which such security was deposited.

12. INDEMNITY AND INSURANCE

Until the Town acknowledges in writing that it assumes the services herein referred to the owner shall indemnify and save the Town harmless against all actions, claims, loss, damage and liability connected with the installation of the services contemplated herein arising directly or indirectly out of the negligent or unlawful performance or the non-performance of any obligation of the owner under this Agreement.

While any of the works herein have not been accepted and assumed by the Town, the Owner shall maintain in full force and effect a policy of personal liability and property damage insurance in forms and amounts satisfactory to the Town Solicitor wherein the owner and the Town shall be insured as principals against such liability to the limits of such policy. The Owner shall provide the Town with a certified copy of such policy prior to the commencement of constructing any of the works referred to herein.

13. ACCEPTANCE OF WORK

(i) The performance by the Owner of its obligations under this Agreement to the satisfaction of the Town shall be a condition precedent to the acceptance by the Town of services and works required herein.

(ii) After the works have been installed by the owner and certified by the engineer of the owner to have been installed according to the plans and specifications and after they have been inspected by the Town and deficiencies, if any, corrected the above mentioned work shall be accepted by the Town and the period of twelve months maintenance by the Owner shall commence. At the end of the twelve month maintenance period and after any repairs or deficiencies have been corrected as the result of the use of the works during the twelve month maintenance period, the work as outlined above shall be finally assumed by the Town.

(iii) Upon applying for final assumption of the development, the Owner shall supply the Town with a Statutory Declaration that all accounts for work and materials have been paid, except normal guaranty holdbacks, and that there are no claims for liens or otherwise in connection with such work done or materials supplied for or on behalf of the Owner in



connection with the development.

- (iv) No sewers will be finally assumed until they have been cleaned and inspected with video cameras and the videos provided to the Town for their approval.

14. MAINTENANCE SECURITY

The Owner shall be responsible for all materials, equipment and work until all construction and installation has been completed as aforesaid, and upon such acceptance thereof by the Town, the Owner shall deliver to the Town:

- (a) Cash or letter of credit for twenty-five percent (25%) of the value of the development; or
- (b) Cash or letter of credit for twelve and one-half percent (12.5%) of the value of the development plus a maintenance bond for fifty percent (50%) of the value of the development;

Upon final inspection, after the one year maintenance period has expired, and all deficiencies have been rectified, the balance of the security will be refunded.

Any and all interest earned on any cash deposit will be returned to the Owner upon release of the maintenance security by the Town.

In the event that the Owner fails to rectify any and all deficiencies the Town:

- (a) may require the person or corporation issuing the letter of credit to pay the proceeds of the letter of credit to the Town and the Town will rectify the deficiencies; or
- (b) may require the person or corporation issuing the maintenance bond to fulfill the terms and conditions with respect to the deficiencies outstanding; or
- (c) may rectify the deficiencies by utilizing the cash on deposit.

15. TENDERS

In the event that the Owner shall call for tenders for any of the work required herein, such tenders shall be called on the basis of the specifications prescribed under this Agreement and the owner shall provide the Town with a copy of the accepted tender and an executed copy of the contract let to each successful tenderer for any such work.

16. BUILDING PERMIT

No building permit will be issued for any building until such time as storm sewers, storm drainage, sanitary sewers, water connections and hydro services have been installed.

17. GENERAL

The Owner shall repair forthwith, at its own expense, any damage done by its servants, agents, contractors or sub-contractors to any land or property of the Town during the course of or arising in any way out of the construction of the installation of the work required under this Agreement.

18. SIDEWALKS & BUS STOPS

- (i) The Owner shall install, at its own expense, sidewalks in accordance with the Town Development Standards Manual.
- (ii) The Owner shall construct, at its own expense, sidewalks or a hard surface pad separated from the traveled portion of any road allowance to the satisfaction of the Greater Essex County District School Board in order to facilitate bus stops and student safety.
- (iii) The Owner, at its own expense will construct a sidewalk along the south side of Brien Avenue from Hanlan Avenue to its existing terminus east of Westlawn Avenue. The Owner and the Town undertake to negotiate a cost sharing agreement relating to the construction of the said sidewalk. This agreement shall be entered into between the parties hereto prior to the issuance of any Building Permits.

19. TREES

The Owner shall plant, at its own expense, one tree per lot in accordance with the provisions of the Town Development Standards Manual, unless otherwise agreed to between the owner and the Town.

20. ELEMENTARY/SECONDARY SCHOOLS

The Greater Essex County District School Board and The Windsor/Essex Catholic District School Board shall require a copy of a fully executed Subdivision Agreement between the owner and the Town, in wording acceptable to the Greater Essex County District School Board and The Windsor/Essex Catholic District School Board requiring the owner to include as a condition of the Agreement of Purchase and Sale notice to the purchasers of the lots that students may not be able to attend the closest elementary/secondary school and could be bused to a distant school with available capacity and that the present existence of such a school is not a guarantee of its future availability.

21. ROAD ALLOWANCES

The Owner and the Town agree that all road allowances included in the draft plan of subdivision shall be shown and dedicated as public highways.

22. MINISTRY OF ENVIRONMENT

The Owner acknowledges that the Ministry of Environment's review of the subdivision did not include any ground water, soil or soil atmosphere testing to fully discount the possibility that waste materials and/or contaminants are present within or in close proximity to this subdivision. If either the Town or the Owner require this assurance before proceeding any further with the Plan of Subdivision consultants should be engaged to conduct the necessary investigations. The Ministry must be advised immediately should waste materials or other

contaminants be discovered during the development of this Plan of Subdivision. If waste materials or contaminants are discovered a further approval under Section 46 of the Environmental Protection Act may be required from the Minister.

23. PHASING

In the event that the lands herein are developed in phases, the Owner undertakes and agrees to receive the written consent of the Town prior to any development taking place in each phase.

24. REALTY TAX ARREARS

The Owner shall forthwith pay to the Town all tax arrears and current taxes due and unpaid charges against the subject lands up to the date hereto.

25. AGREEMENT REGISTRATION

The Owner agrees that this Agreement shall be registered by the solicitor for the Town upon the title to the lands within the Plan of Subdivision in accordance with Section 51 (26) of the Planning Act, R.S.O. 1990. Chapter 13, prior to the registration of the Plan of Subdivision.

26. MUNICIPAL STREET NUMBERS AND NAMES

The Owner and/or its assignee shall request from the Town the designated street names and the allocation of municipal street numbers and hereby agree to inform any purchaser of a dwelling from the Owner of the correct municipal street number as so allocated. The owner further covenants and agrees to inform any purchaser of a serviced lot of the obligation of such purchaser to obtain allocation of municipal street number as aforesaid.

27. ASSIGNMENT

This Agreement is not assignable by the Owner (or any person claiming through or under the Owner) unless the assignee thereof shall first in writing covenant and agree with the Town to assume the burdens and obligations imposed upon the owner under this Agreement and to undertake with the Town to observe and perform the obligations herein imposed upon the Owner.

28. BINDING AGREEMENT

This Agreement shall enure to the benefit of the Town and shall be binding upon the Owner and the respective heirs, executors, administrators, successors, subsequent purchasers of any portion of the lands herein and authorized assigns of the Owner.

29. SOLICITORS' FEES

The owner agrees to pay forthwith on demand all solicitors' fees and disbursements incurred by the Town on a solicitor and client basis in any way arising out of this agreement, including negotiations and preparations prior to the signing of the Agreement and work done

subsequent to the signing of this Agreement.

30. PROVINCIAL OFFENCES ACT

Any person who violates any provisions of this agreement or causes or permits a violation shall be liable on conviction to a penalty exclusive of costs in accordance with the provisions of the Provincial Offences Act for each offence and every such penalty shall be recoverable under the provisions of the Provincial Offences Act.

31. The Owner shall not call into question, directly or indirectly in any proceeding whatsoever in law or in equity or before any administrator 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 action or proceeding as a complete and conclusive estoppel of any denial of such right.

32. Unless otherwise specified in this Agreement, any notices required under the provisions of this Agreement, shall be given by prepaid registered mail or by personal delivery to the following persons at the following addresses:

Town:
The Clerk
Corporation of the Town of Essex
33 Talbot Street South
Essex, Ontario
N8M 1A8

Owners:
Kimball Estates Inc.
c/o Paul Mullins
691 Ouellette Avenue
Windsor, Ontario
N9A 4J4

IN WITNESS WHEREOF each of the parties hereto has executed this Agreement under seal.


SIGNED, SEALED & DELIVERED)
In the presence of)


THE CORPORATION OF THE TOWN OF ESSEX

)
)
) 
) Ronald McDermott - Mayor
)

)
)
) Jerry Marion, Clerk
) We have authority to bind the Corporation
)

) KIMBALL ESTATES INC.

)
) 
) Per: Mary Ellen Mullins -Authorized Officer
)

) 
) Per: Ben Klundert -Authorized Officer
) We have authority to bind the Corporation
)

SCHEDULE "B"

8-Mar-06

**HANLAN STREET RECONSTRUCTION
Kimball Development Cost Share**

ITEM	UNIT	QUANTITY	UNIT PRICE	AMOUNT
SECTION A - UTILITIES				
1. Storm PDCs				
a) Short	Each	9	\$ 800.00	\$7,200.00
b) Long	Each	0	\$ 1400.00	\$0.00
2. Sanitary PDCs				
a) Short	Each	0	\$ 1500.00	\$0.00
b) Long	Each	9	\$ 3000.00	\$27,000.00
3. Sanitary Stub	m	0	\$ 450.00	\$0.00
4. Sanitary MH	Each	0	\$ 3800.00	\$0.00
5. Watermain to Valve				
a) 150mm diameter, PVC CL150	m	0	\$ 115.00	\$0.00
b) 200mm diameter, PVC CL150	m	53.1	\$ 150.00	\$7,965.00
6. Fire Hydrant and Valve	Each	1	\$ 3200.00	\$3,200.00
SECTION A - TOTAL =				\$45,365.00
SECTION B - ROAD CUTS				
7. Earth Excavation	m ³	350	--	\$2,545.00
8. Granular 'A' - 350mm thick	Tonnes	435	\$ 15.00	\$6,525.00
9. Curb and Gutter	m	96	\$ 35.00	\$3,360.00
10. Subdrains	m	96	\$ 15.00	\$1,440.00
11. Asphalt				
a) HL4, 50mm to 135mm thick	Tonnes	88	\$ 50.00	\$4,400.00
b) HL3, 40mm to 50mm thick	Tonnes	43	\$ 55.00	\$2,365.00
12. Dead End Barricade	Each	1	\$ 1000.00	\$1,000.00
SECTION B - TOTAL =				\$21,635.00
TOTAL =				\$67,000.00

NOTES:

1. All unit prices are per "HANLAN STREET RECONSTRUCTION" Form of Tender from Amico Contracting and Engineering (1992), dated October 5, 2005.
2. Road Cut cost is for one cut, with new road extending to rear lot line of lots bordering road.
3. New watermain extends to end of new road.