

The Corporation of the Town of Essex

By-Law Number 2338

Being a by-law to enter into a Subdivision
Development Agreement between: The
Corporation of the Town of Essex and Fantuz
Holdings INC.

WHEREAS an application has been made by Fantuz Holdings INC. for approval of a Plan of Subdivision for residential purposes within the limits of the Town, the lands comprising the proposed Plan being more particularly described as PART OF PART LOTS 1 AND 2 CONCESSION 12 (COLCHESTER NORTH) ESSEX BEING PT 1 ON 12R18530 EXCEPT PLAN 12M453;

AND WHEREAS the draft plan approval applies to the draft plan of subdivision prepared by Dillon Consulting and certified by Chris Oyler, O.L.S, dated February 20, 2024, which shows eighteen (18) lots (Lots 1 to 18) for Single Detached Dwellings, One (1) Block (Block 19) for a stormwater management facility, and One (1) Block (Block 20) for Natural Heritage Protection;

AND WHEREAS a conditional approval of draft Plan of Subdivision has been issued by the County of Essex in File No. 37-T-24003, a copy of which is on file with the Clerk for the Town, such approval being conditional upon Council's acceptance of the draft plan of subdivision and the execution of a subdivision development agreement;

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

NOW THEREFOERE be it resolved that the Council of The Corporation of the Town of Essex hereby enacts as follows:

1. **That** the Mayor and Clerk be directed to affix their signatures, on behalf of the Corporation of the Town of Essex, to the Subdivision Development Agreement attached hereto to Schedule '1' and forming part of this Bylaw, for the purpose of executing the Subdivision Development Agreement.
2. **That** this By-Law shall come into full force and effect upon the final passing thereof.

Read a first, a second and a third time and finally passed on June 17, 2024.

Mayor

Clerk

Schedule '1'

THIS AGREEMENT made this 17th day of June 2024

BETWEEN:

FANTUZ HOLDINGS INC.

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 draft Plan of Subdivision has been issued by the County of Essex in file No. 37-T-24003, a copy of which is on file with the Clerk for the Town;

AND WHEREAS the draft plan of approval applies to the draft plan of subdivision prepared by Dillon Consulting and certified by Chris Oyler, O.L.S., dated February 20, 2024, which shows eighteen (18) lots (Lots 1 to 18) for Single Detached Dwellings, One (1) block (Blocks 19) for a stormwater management facility, and one (1) block (Block 20) for natural heritage protection;

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 are more particularly described as PART OF PART LOTS 1 AND 2 CONCESSION 12 (COLCHESTER NORTH) ESSEX BEING PT 1 ON 12R18530 EXCPET PLAN 12M453;

NOW THEREFORE THIS AGREEMENT WITNESSETH the parties hereto covenant and agree one with the other as follows:

SCOPE OF SUBDIVISION AGREEMENT

1. The Owner agrees to satisfy all the requirements, financial and otherwise, of the Town as set out in this Agreement concerning the payment of development charges (including educational development charges), provisions of roads, installation and capacity of services, including sanitary sewage collection systems, water distribution system, private utilities and stormwater management facilities for the development of the lands within the Plan.
2. This Agreement consists of any schedules or other attachments referred to herein or therein, and all such material forms part of this Agreement together with all things, terms and provisions so incorporated.
3. Owner refers to any person or persons, corporation or other lawfully recognized entity that has the power and authority to bind the authorization and execution of this agreement. For simplicity, in this agreement the Owner shall be referred to in the neutral.
4. Any reference in this Agreement to all or any part of any manual, statute, regulation, By-law or Council Resolution shall, unless otherwise stated, be a reference to that manual, statute, regulation, By-law or Council Resolution or the relevant part thereof, as amended, substituted, replaced or re-enacted from time to time.

SPECIAL PROVISIONS

5. **STORMWATER QUANTITY AND QUALITY MANAGEMENT MEASURES** – The Owner shall:
 - a) Prior to obtaining final approval, for any and all phases of the development, finalize to the satisfaction of the Town and the Essex Region Conservation

Authority (ERCA), an engineering analysis to identify stormwater quality and quantity measures, as necessary to control any increase in flows in downstream watercourses, in accordance with the most recent version of the *Windsor-Essex Region Stormwater Management Standards Manual* and any other relevant municipal/provincial, standards or guidelines, in consultation with the ERCA.

- b) Agree to install, entirely at its expense, the stormwater management measures, identified in the final engineering analysis completed, as part of the development for the site and undertake to implement the recommendations contained therein, to the satisfaction of the Town and the Essex Region Conservation Authority (ERCA).
- 6. **PARKLAND CONVEYANCE** - The Owner agrees to provide to the Town cash-in-lieu of parkland equal to the appraised value of the standard parkland conveyance (5%) at the time of plan of subdivision approval based on the *Planning Act*.
- 7. **EXCLUSIONARY FENCING REQUIREMENT**- The Owner agrees to install exclusionary fencing, along rear of Lots 12 to 15 shown on the draft plan, prior to the transfer of the lots, to prevent any future encroachments, dumping of lawn waste, etc., onto the Essex Region Conservation Authority (ERCA) property by neighbouring residents, and that there be no new access points created to the ERCA owned Greenway.
- 8. **BLOCK 20** – The Owner agrees to gratuitously dedicate Block 20 on the draft plan to the Essex Region Conservation Authority (ERCA), and said conveyances to be in fee simple and free of encumbrances, at no cost to the ERCA, and be at the Owner's expense.
- 9. **LOTS 15 THROUGH 18** – The Owner agrees to include, to the satisfaction of the Essex Region Conservation Authority (ERCA), notice in every agreement of purchase and sale for Lots 15 through 18, inclusive, that the properties are subject to Section 28 approvals by the ERCA under the Conservation Authorities Act. Additionally, the notice is to specify that the rear portion of the lots within 8 metres plus the depth of the drain, may not meet the minimum setback requirement for additional accessory structures, and that the feasibility of constructing buildings and structures in proximity

to the regulated watercourses will be determined through the ERCA permitting process in line with applicable legislation.

10. **SANITARY ALLOCATION** – The Owner acknowledges that sanitary allocation equivalent to eighteen (18) Single Detached Dwellings for the proposed development will be available for a period of three (3) years commencing on the date of adoption of draft plan approval and that the allocation shall be deemed null and void should in the opinion of the Town, the issuance of building permits has not been obtained within the period specified in the condition.

The Owner acknowledges that written approval from the Town of Amherstburg for sanitary sewer connection is required and is the sole responsibility of the Owner.

11. **FIRE HYDRANT FLOW** – The Owner and the Town acknowledge that based on the fire hydrant flow test report prepared for this subdivision and completed by Dillon Consulting LTD., that the proposed development can be adequately serviced through the existing water distribution system however fire flows may be problematic and additional mitigative measures may need to be implemented. The Owner agrees to implement the mitigative measures outlined in the fire hydrant flow report as noted below in consultation and to the satisfaction of the Town of Essex:

- Confirmation that the Town's Fire and Rescue Services can contain a fire with the reduce available fire flow.
- Consideration of the Town securing or dedicating a tanker truck for fire fighting purposes.
- Each dwelling should consider a sprinkler system. This would require a minimum 25mm water service size. This would also reduce the RFF to 2,000 l/min.
- Increasing the fire resistant materials used in the construction of the dwelling.

12. **INTERNAL SIDEWALKS** - The Owner agrees to construct, at its entire expense and according to the Town of Essex Development Standards Manual, and in a manner satisfactory to the Director of Infrastructure Services, the Greater Essex County District School Board and the Windsor Essex Catholic District School Board, sidewalks along the internal streets within the proposed plan, pursuant to standard municipal

requirements, to facilitate pedestrian movement, bus routing and stops, and safety of school children.

13. **SCHOOL WARNING CLAUSE** - The Owner agrees to insert a notice into all Agreements of Purchase and Sale, to the satisfaction of the Greater Essex County District School Board, the Windsor Essex Catholic District School Board and the Town, advising purchasers of lots to be aware that students may not be able to attend the closest neighbourhood school and could be bused to a distant school with available capacity.
14. **SEWAGE EJECTOR PUMPS** – As identified in the Functional Servicing Report (FSR) dated August 31, 2022, all services lots shall be equipped with sewage ejector pumps to provide a hydraulic break between the sewer and the building lot.
15. **CONSTRUCTION PERMITS** - The Owner further agrees that the Chief Building Official shall not be required to issue a construction permit for any lot or block in the subject lands until the Owner shall have constructed curbs and base asphalt fronting the said lots or blocks and such other matters as determined by the Chief Building Official.

GENERAL PROVISIONS

16. **CONSULTING ENGINEER**- The Owner shall employ, at its own expense, a Consulting Engineer registered by the Professional Engineers of Ontario:
 - a) to design and submit to the Director of Infrastructure drawings of,
 - b) to prepare and administer any contract necessary for the construction of,
 - c) to obtain from municipal, provincial and federal authorities any approvals necessary for,
 - d) to submit to the Director of Infrastructure Services, prior to the commencement of construction, a report showing existing elevations and the proposed method of drainage of the lands served by,
 - e) to be responsible for all survey and layout work required for construction of,
 - f) to maintain for the client's purposes all records of construction of,
 - g) to submit to the Director of Infrastructure Services all required as-built details, elevations, and drawings in mylar copy and digital data in copy format, as well

- as details of private drain connections of,
 - h) to be responsible for the co-ordination of, and
 - i) to visit the site of the said works as requested by the Director of Infrastructure Services for any reason related to, the completion in good practise of all services required under this Agreement.
- 17. **CONSTRUCTION MANAGEMENT PLAN** - The Owner agrees to submit a Construction Management Plan which addresses, amongst other matters, site access, construction traffic, parking for construction trades, material delivery and storage, staging, mud, dust and noise controls to the satisfaction of the Town, prior to the issuance of the subdivision servicing.
 - a) The Owner further agrees to maintain access routes for fire department vehicles to new buildings, construction trailers and material storage areas at all times during construction.
 - b) The Owner further agrees that all required parking for construction and trades shall be provided wholly on-site and not on public streets outside of the development limits for the duration of the construction.
- 18. **SERVICES** – The Owner agrees to provide to the Town all servicing plans and reports for the review and final approval by the Town in accordance with the most current version of the Town’s Development Standards Manual, the Town of Amherstburg Watermain Specification and MECP’s Design Criteria for Sanitary Sewers, Storm Sewers and Forcemain for Alterations Authorized under an Environmental Compliance Approval. The Owner shall supply, construct and install the following services at its own expense, unless otherwise provided herein, in accordance with the manner, location and design shown in the approved engineering drawings and otherwise in accordance with the terms of this Agreement. No such work shall be carried out until the said engineering drawings have been approved by the Director of Infrastructure Services and the Town of Amherstburg. 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 catch basins and leads to service all the lands on the said plan of development and adjacent road allowances, as shown on the approved 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. Prior to acceptance by the Town, the Town may authorize connection into them, but such connections shall not constitute acceptance of the sewer system or systems by the Town.

19. **SANITARY SEWERS** - The Town, in consultation with the Town of Amherstburg, undertakes and agrees to confirm that sewage treatment capacity and water supply capacity will be available for all lots in the proposed development and undertakes and agrees to provide confirmation of same to the Minister of Municipal Affairs and Housing.
 - a) All sanitary sewer connections are to be 125 mm diameter single connections and in no instance shall "Y" connections be permitted. All sanitary sewer system construction and materials shall be according to the standard specifications and MECP's Design Criteria for Sanitary Sewers, Storm Sewers and Forcemain for Alterations Authorized under an Environmental Compliance Approval (ECA). Approval from the Town of Amherstburg and in accordance with the Town of Amherstburg's Consolidated Linear Infrastructure ECA is required.
20. **STORM WATER DETENTION SCHEME** -The Owner further agrees to retain a Consulting Engineer, *prior to the issuance of a construction permit*, for the design and preparation of drawings for an internal storm water detention scheme to service the subject lands. The purpose of the said storm water detention scheme will be to ensure that storm water drainage being directed to the Town's storm sewer, combined sewer or ditch, as the case may be, from the subject lands in their improved state shall be restricted to no greater than the present flow from the subject lands, and not result in any adverse impact on abutting existing lots.

The storm water detention scheme shall be prepared and approved to the satisfaction of the Town.

 - a) **Downspout Disconnection** - Eaves trough 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.

- b) **Rear Yard Drainage** - 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.
- c) **Lot Grading Plan** - The engineering drawings and report shall include a lot grading plan. The Owner must ensure that when houses and other structures are built upon the building lots, the lot grading plan is adhered to.
- d) Upon approval of the drawings and report by the Director of Infrastructure Services the Owner further agrees to construct at its entire expense the said storm detention scheme in accordance with the approved drawings and report and to the satisfaction of the Town.
- e) **Site Inspections** - The Owner shall conduct regular inspections every two weeks after each sizeable storm event of all sediment and erosion control measures incorporated into this Plan and maintain an inspection log which shall be made available for review by the Town, the Ministry of the Environment, Conservation and Parks 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.

21. **WASTE DISPOSAL SITES** - The Owner agrees that any evidence of former waste disposal activity encountered during the construction on the subject lands shall be brought to the attention of the Director of Infrastructure Services and Chief Building Official. The Owner's Engineer shall make an assessment of any hazards the previous activity may present. The Owner further agrees to remove and or eliminate such hazards, at his entire expense and to the satisfaction of the Town. No work shall be carried out in the affected area until agreement has been reached between the Owner

and the Town.

22. **PAVEMENTS** - The Owner agrees to construct pavements, including curbs and gutters, driveway approaches and the necessary drainage facilities, according to Town's most recent version of the Development Standards Manual. The Owner further agrees that temporary cul-de-sacs and barricades shall be installed at temporary dead-ended streets, where required at the sole discretion of the Director of Infrastructure Services. The Owner further agrees that one (1) full winter shall elapse following the laying of base asphalt prior to the laying of surface asphalt. All work to be to the satisfaction of the Director of Infrastructure Services. The Owner agrees that provision for school buses to load and off load passengers will be accommodated at the Owners expense within the public right of way, if required by a local board of education.
23. **ROADS** -The Owner shall construct pavement on all the roads, as shown on the approved plans, and 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.
24. **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 specifications of the Town.
25. **DRIVEWAY APPROACHES** -The Owner agrees that driveway approaches shall be constructed in such width and location as shall be approved by the Director of Infrastructure Services and in accordance with the most current version of the Town of Essex's Development Standards Manual.

At the time of the application for a building permit, the applicant shall escrow with the Town, in addition to any other building permit and indemnity charges assessable by the Town, an indemnity deposit in the amount identified in the Town's current fees and charges by-law is to be held in trust by the Town 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 eighteen (18) months 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 eighteen (18) month period, then the monies shall be refunded to the applicant for the building permit.

UTILITIES

26. **Transformers near Driveways** -The Owner agrees that driveways and driveway approaches shall not be constructed closer than one (1) metre from the edge of an electricity transformer. Any owner of a lot whose driveway or driveway approach has been constructed closer than one (1) metre from the edge of a transformer, shall pay on demand to the utility for the cost of relocating the transformer to comply with this requirement.
27. **Communication Telecommunication** -The Owner agrees to arrange with communication telecommunication providers for the installation of sufficient underground communication telecommunication infrastructure services to the subject lands in accordance with the terms, conditions, standards and specifications of the communication/ telecommunication providers, and to locate switching stations to the satisfaction of the Director of Infrastructure Services, and where such switching stations are located in a municipal park, also to the satisfaction of the Director of Community Services. In the event that such communication telecommunication infrastructure is not available, then the Owner shall pay all expenses for the connection to and or extension of the existing communication telecommunication infrastructure, or for rearrangement or relocation of such communication telecommunication infrastructure, as required. The Owner is required to arrange for their Engineering Consultant to complete part time inspection of the installation of telecommunication infrastructure at their sole expense.
28. **Street Lighting** - The Owner agrees to construct and install street lighting including all poles, wiring fixtures and conduits in accordance with the type, design, location and specifications satisfactory to Hydro One and to the Director of Infrastructure Services.
29. **Water Services** - The Owner further agrees to construct and install water services in

accordance with the design, location and specifications of the Director of Infrastructure Services and the Town of Amherstburg.

30. **Electrical Services** - The Owner further agrees to construct and install electrical services in accordance with the design, location and specifications of Hydro One. The Owner is required to arrange for their Engineering Consultant to complete part time inspection of the installation of electrical infrastructure at their sole expense.

31. **Canada Post Community Mailbox Program** - The Owner agrees to provide notice in every Agreement of Purchase and Sale advising that mail will be delivered via Community Mailboxes. The Owner further agrees to note the location of all Community Mailboxes within the development, and to notify affected homeowners of any established easements granted to Canada Post to permit access to the Community Mailbox.

The Owner agrees to provide the following for each Community Mailbox site and to include these requirements on the appropriate servicing plans:

- i. Any required walkway across the boulevard, per municipal standards,
 - ii. Any required curb depressions for wheelchair access with an opening of at least two (2) metres (consult Canada Post for detailed specifications), and,
 - iii. A Community Mailbox concrete base pad per Canada Post specifications.
32. **Existing Watercourses and Natural Land Drainage** - The Owner agrees that no natural watercourses shall be blocked, abandoned or otherwise altered during the course of construction of this development unless approved by the Town. No natural land drainage shall be cut off without adequate provision made for its interception to the satisfaction of the Director of Infrastructure Services.
33. **Drainage and Flood Proofing** - The Owner agrees to follow all drainage and flood proofing recommendations of the Essex Region Conservation Authority (ERCA) may have with respect to the subject lands, based on final approval by the Director of Infrastructure Services.

34. **Pavement Markings and Signage** - The Owner agrees to pay to the Town the Town's cost of installing public highway signage, striping, off-site road improvements, traffic signals and associated works as determined by the Director of Infrastructure Services.

35. **Dirt and Debris** – The Owner agrees to install debris/sediment control measures along the entire property boundary between the Owner's lands and the former railway lands owned by the Essex Region Conservation Authority (ERCA) during the construction phase.

The Owner further agrees to keep the public highways adjacent to the subject lands free from dirt and debris caused by the construction on the subject lands. The Owner further agrees that, within twenty-four (24) hours of being notified by the Town, to clean-up the streets adjacent to the subject lands and unassumed streets within fifty (50) metres of the subject lands and take dust control measures at the Owner's entire expense, failing which, the Town may carry out or cause to have carried out the said work at the entire expense of the Owner.

36. **Vacant Lots** - The Owner and subsequent owners of the lots upon which no buildings have been or are being 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 Three Hundred Dollars \$300.00 per lot to a maximum amount of Five Thousand Dollars (\$5,000.00).

37. **Repair of Highway** - The Owner further agrees that any curbs, gutters, pavements, sidewalks, or landscaped areas on the public highway which are damaged during construction on or adjacent to the subject lands shall be restored by the Owner at its expense, and to the satisfaction of the Director of Infrastructure Services. Any driveway approaches which become redundant following the development of the subject lands shall be closed and this area restored to the satisfaction of the Director of Infrastructure Services.

38. **Street Opening Permits** - The Owner further agrees to obtain street opening permits for sewer taps, drain taps, curb cuts and driveway approaches from the Director of Infrastructure Services and the County of Essex prior to the commencement of any construction on the public highway.

LANDSCAPE AND PARK PROVISIONS

39. **Trees** - The Owner agrees to plant and warrantee for one year subsequent to planting one street tree for each building lot and further agrees to post with the Corporation, *prior to the issuance of any construction permits*, a letter of credit in connection with the trees required for the subject lands, based on the provision of one tree for each single-detached dwelling lot, the choice of tree species and their value to be approved by the Director of Infrastructure Services.
40. **Topsoil** – The Owner agrees
- a) that all unpaved portions of street allowances shall be graded and further agrees to supply and replace any topsoil removed therefrom during construction operations to the satisfaction of the Director of Infrastructure Services.
 - b) to retain the topsoil removed from the street right-of-way pavement areas for parks purposes and deliver same pursuant to the Director of Infrastructure Services on demand.
 - c) to distribute the topsoil removed from the all unpaved portions of street allowances, over any lands utilized or to be utilized for parkland pursuant to the provisions of this agreement, in accordance with the lot grading plan specified in clause 18 c) herein.

BUILDING PROVISIONS

41. **Elevation, Grades and Drainage Plans** - The Owner agrees to adhere to the elevations, grades and drainage plans as approved by the Director of Infrastructure Services and the Chief Building Official on a lot grading plan for the subject lands. The Owner further agrees to provide each purchaser of a lot in the subject lands with an approved individual lot grading plan, which shall be presented to the Chief Building Official, *prior to the issuance of a construction permit* for the said lot.
42. **Internal Drainage** - The Owner agrees to provide internal drainage for each building

lot located on the subject lands in the locations and according to the specifications approved by the Chief Building Official.

43. **Placing of Fill in Regulated Areas** - The Owner agrees to obtain permits from the Town and ERCA, when in regulated areas, throughout for any construction or placing of fill on the subject property.

CONVEYANCES AND CONTRIBUTIONS

44. **Development Charges** - The Owner agrees to notify in writing each person who first offers to purchase any subdivided lot within the plan of subdivision of all approved development charges, including development charges for school purposes, relating to any such lot pursuant to Section 59 (4) of the Development Charges Act and that the applicant agrees to pay, *at the time of issuance of a building permit*, the appropriate Development Charges in accordance with the Town's Development Charges By-law.
45. **Land Dedication for Public Highway Purposes** - The Owner agrees to dedicate to the Town on the registration of the subdivision plan, all public highways as shown on the approved draft plan of subdivision.
46. **Street Naming** - The Owner shall arrange to have all public highways named, and shall obtain street numbers for all lots, to the satisfaction of the Town.
47. **Easements** - The Owner agrees to provide all easements, as may be required and as shown on the plans, for services, utilities, or drainage purposes in a form satisfactory to the Town and the relevant agencies. The Owner agrees that should any conflict arise with existing Bell Canada facilities, or any other third part utility company, where a current and valid easement exists within the subject area, the Owner shall be responsible for the relocation of any such facilities or easements at their own cost.
48. **Reserves** - The Owner further covenants and agrees that, if required by the Town, dead-ended highways shall terminate in 0.3 metre reserve blocks. The Owner further agrees to convey to the Town those 0.3 metre reserve blocks, in fee simple and without encumbrance and *prior to the issuance of any construction permits*, in order that the Town may hold the aforesaid reserve blocks, until required for future highway purposes or for the development of the adjacent lands.
49. **Surveys and Land Descriptions** - All surveys, plans, or descriptions of land to be

conveyed to the Town and or utility companies shall be at the entire expense of the Owner.

COMPLETION OF WORK

50. All works required hereunder in each stage of construction approved by the Director of Infrastructure Services shall be completed within twenty-four (24) months of the date of this Agreement, provided however, that the said completion date may be extended with the approval of the Director of Infrastructure Services. Each one (1) year extension granted by the Director of Infrastructure Services will be conditional upon the recalculation of all outstanding monies in this Agreement owed to the Town by the Owner and likewise owed to the Owner by the Town. Recalculation will constitute the addition of a simple interest charge based on the average annual rate of debentures issued by the Town in each one (1) year period prior to the terminal date being so extended for a one (1) year period.

SPECIFICATIONS AND MATERIALS

51. All work relative to this Agreement on land owned by the Town or on any lands to be conveyed hereunder to the Town shall be carried out by a contractor competent in the type of construction involved. The latter shall be subject to the approval of the Director of Infrastructure Services. All work or detail required for the completion of construction under this Agreement and not shown in the engineering drawings, shall adhere to the latest Town's specifications and standards.
52. 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 Director of Infrastructure Services with a copy of the tender and an executed copy of the contract sent to each successful tenderer for any such work.
53. All material to be incorporated into the work required herein shall be tested from time to time, at the Owner's expense, as may be required by the Director of Infrastructure Services.

INSPECTION OF WORK

54. It is understood by the Owner that the work on land owned by the Town or on any lands

to be conveyed hereunder to the Town carried out under this Agreement must be inspected and approved, but not supervised by the Town's inspectors, but that no charge will be made by the Town for such inspections. The Owner shall give the Director of Infrastructure Services forty-eight (48) hours' notice of the commencement of such work; shall make every effort to proceed expeditiously to the completion of all work undertaken without delay or interruptions; shall submit to the Town a work schedule to be followed in construction of the services required herein; shall co-operate fully with the inspectors aforesaid by making all parts of the work accessible to them and shall organize the work operation in such a manner as to permit inspections to be carried out in the most efficient manner during regular working hours as far as possible. The Town likewise upon receipt of reasonable notice shall co-operate with the Owner in arranging to have inspectors available to carry out, without delay, such inspections as may be necessary.

ACCEPTANCE OF WORK

55. The performance by the Owner of its obligations under this Agreement on land owned by the Town or on any lands to be conveyed hereunder to the Town to the satisfaction of the Director of Infrastructure Services shall be a condition precedent to the acceptance by the Town of the services and works required herein.
56. Prior to the acceptance by the Town of the said services and works, the Owner shall furnish the Town with a statutory declaration to the effect that the Owner has paid all accounts that are payable in connection with the installation and maintenance of such works and that there are no outstanding claims relating thereto.
57. Upon completion of the services to be constructed or installed in public lands and upon acceptance thereof by the Director of Infrastructure Services, such services shall become the property of the Town and or utility service provider and the Town shall thereupon permit such services to be incorporated with the appropriate existing municipal services at the expense of the Owner or its assignee. This paragraph shall not require the Town to maintain or in any way be responsible for driveway approaches, private sewer connections or any other private services which may be installed in public lands.

FINANCIAL SURETIES

58. **Performance**- To ensure due and proper performance of the works set out in this Agreement, the Owner shall deposit prior to the commencement of the installation of services with the Town and for a period up to and including two (2) years after final completion of all required municipal infrastructure and services:
- a) Cash or an irrevocable Letter of Credit in an amount equal to fifty percent (50%) of the value of the development.
 - b) The value of the securities to be provided shall be based upon the full amount of construction costs including all taxes. If there is no tender, the Consulting Engineer shall provide an estimate of the value of the work.
 - c) The Town reserves the right to verify the value of the work and amend the Consulting Engineer's estimate accordingly, in which case, the amended estimate shall be used for establishing the value of the securities.
 - d) Upon acceptance of the development, the amount shall be reduced to twenty-five percent (25%) of the development cost. The remaining twenty-five percent (25%) shall be returned to the Owner after assumption of the development by the Town of Essex.
 - e) The Owner acknowledges that should the Town agrees to and/or requests that some of the work be delayed, securities for one hundred percent (100%) of the outstanding works will be required.
 - f) If the Owner shall fail in the performance of the terms and conditions of this agreement then the Town:
 - i) 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,
 - ii) may fulfill the terms and conditions in respect of which the Owner is in default by utilizing the cash on deposit.

It is 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 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 rectified.

59. **Maintenance** -The Owner shall be responsible for all materials, equipment and work on land owned by the Town or on any lands to be conveyed hereunder to the Town for a minimum of one (1) year following completion and acceptance thereof by the Town, and shall deliver to the Town, cash or a Letter of Credit in an amount equal to twenty-five percent (25%) of the total cost of the work required herein.
- a) Securities will not be released or reduced until after final completion of all required municipal infrastructure and services and any and all deficiencies have been addressed to the satisfaction of the Director of Infrastructure Services.
 - b) No sewers will be finally accepted until they have been cleaned and inspected with video cameras and the videos provided to the Town for their approval.

CONSTRUCTION LIEN ACT

60. In as much as the Owner is obliged at its entire expense and not at the expense of the Town to make improvements to the highway, the Owner shall deposit with the Town a security, in form satisfactory to the Town Solicitor and in an amount satisfactory to the Director of Infrastructure Services, for the estimated amount of the holdbacks (under part IV of the Construction Lien Act) that would have been required were the improvements made at the expense of the Town.
61. Upon the sixtieth (60th) day following the completion of the said work and provided that the Town has received no notice of claim or lien for the supply of services or materials for the improvement of the streets or highways, the Town shall redeliver the letter of credit hereinbefore mentioned to the Owner.

INDEMNITY AND INSURANCE

62. The Owner further agrees to indemnify and save the Town harmless from and against all loss or damage, expense, claims, suits and liability on account of any and all damage to or loss or destruction of any property (including without limitation, the work hereby covered and all property of the Owner and the Town), or injury to or death of any person (including without limitation, employees of the Owner and the Town) arising directly or

indirectly out of or in connection with the negligent performance or unlawful or non-performance of any obligation of the Owner under this Agreement on land owned by the Town or on any lands to be conveyed hereunder to the Town.

63. During the construction of the works on land owned by the Town or on any lands to be conveyed hereunder to the Town required herein, and during the maintenance period, the Owner further agrees to maintain:
 - a) A policy of public liability and property damage insurance, in the amount of FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence and containing endorsements showing the Town and the Town's consultants as additional named insured and have a cross-liability clause, and as to be in form satisfactory to the Town Solicitor.
 - b) If deemed necessary by the Director of Infrastructure Services, a policy to provide environmental pollution liability insurance, in the amount of TWO MILLION DOLLARS (\$2,000,000.00) exclusive of interest or costs, on a claims-made basis or such other limit as the Town may reasonably require and containing endorsements showing the Town as an additional named insured, to cover third party bodily injury and property damage claims arising out of sudden and accidental pollution, including but not limited to unexpected and unintentional spill, discharge, emission, dispersal, leakage, migration, release or escape of pollutants. The coverage is not to be subject to the one hundred and twenty (120) hour reporting period and is not to be limited to hostile fire only and is to be in form satisfactory to the Town Solicitor.
 - c) A policy to provide proof of auto liability insurance, in the amount of TWO MILLION DOLLARS (\$2,000,000.00) per occurrence.
64. The said insurance policies shall not be altered, cancelled or allowed to lapse without thirty (30) days prior written notice to the Town. If the said insurance policies are cancelled or changed in any manner that would affect the Town as outlined in coverage specified in the policy for any reason, thirty (30) days prior written notice by registered mail must be given by the insurer to the Town. Before commencing any work on land owned by the Town or on any lands to be conveyed hereunder to the Town required herein, the Owner further agrees to provide the Town Solicitor with a certified copy of

said such policies.

PHASING PLAN

65. The Owner shall submit plans showing any revised phasing to the Town for review and approval if this subdivision is to be developed in more than one registration.

ABANDONED OIL, GAS AND WATER WELLS

66. The Owner *acknowledges that an oil, gas or water well ("Well") that is improperly constructed, maintained or abandoned presents a safety risk to humans as well as a potential risk to pollute groundwater resources. The Owner represents and warrants that it has researched the Oil, Gas and Salt Resources Library and the Ministry of Environment, Conservation, and Parks Well Records (together the "Records") and has made itself aware of the presence of any Well on the lands. The Owner acknowledges that not all Wells are recorded or located accurately in the Records. The Owner further represents and warrants that it has:*
- i. systematically searched the subject lands for potential Well sites; and
 - ii. taken all other necessary steps to ensure that there are no other Wells on the subject lands and that any Well found has been or will be capped in accordance with the applicable legislation, regulations, guidelines or orders, the proof of which shall be submitted to the Town.

In the event that an improperly constructed, maintained or abandoned Well is found upon or within any lands either conveyed to the Town as a requirement of the subdivision agreement or lands which become owned by and/or under the jurisdiction of the Town as a result of the registration of the plan of subdivision, the Owner covenants and agrees to indemnify and save harmless the Town for all costs incurred relating to the capping, repairing or otherwise remediating of such Well in accordance with the applicable legislation, regulations, guidelines or orders. It is the intention of the parties that this provision shall survive the closing of any transaction related to the transfer of the applicable lands.

OTHER PROVISIONS

67. 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 Corporation during

the course of, or arising in any way out of the construction or installation of the work required under this Agreement.

68. This Agreement shall be registered at the Owner's expense against the subject lands described herein.
69. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.
70. The Owner acknowledges that the Ministry of Environment, Conservation and Parks' 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. The Ministry must be advised by the Owner immediately should waste materials or other contaminants be discovered during the development of this Plan of Subdivision. If waste materials or contaminants are discovered, further approval under Section 46 of the Environmental Protection Act may be required from the Minister.
71. 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.
72. The Owner and/or its assignee shall request from the Town allocation of municipal street names and 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.
73. 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.
74. The Director of Infrastructure Services, Engineer, the Director of Community Services, the Chief Building Official, the Manager of Planning Services, the Fire Chief, the Town Solicitor and such other employees of the Town of Essex so named in this Agreement are those of the Corporation of the Town of Essex.

75. Counterparts: This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same agreement. Any signature to this Agreement by facsimile or electronic transmission shall be deemed to be an original.

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their corporate seals duly attested by the hands of their proper signing officers in that behalf respectively.

**SIGNED, SEALED AND DELIVERED
in the presence of**

THE CORPORATION OF THE TOWN OF ESSEX:

Sherry Bondy (Mayor)

Joseph A. Malandrucolo (Clerk)

Name: Fantuz Holdings Inc. (Gary Taveirne)

I have the authority to bind the corporation