

**MUNICIPALITY OF LAKESHORE**

**SUBDIVISION AGREEMENT  
(Tracey Estates Phase 2)**

**THIS AGREEMENT** made (in triplicate) this 28<sup>th</sup> day of September, 2021.

**BETWEEN:**

**MUNICIPALITY OF LAKESHORE,**  
(hereinafter referred to as "Lakeshore"),

**OF THE FIRST PART**

-and-

**RAYMOND JOSEPH TRACEY &  
DEBORAH DALANE TRACEY,**  
(hereinafter referred to as the "Owner"),

**OF THE SECOND PART**

**WHEREAS** the Owner received Draft Plan Approval (File# 37-T-12001) for a plan of subdivision prepared and certified by Brian Coad O.L.S. dated February 25, 2021, showing thirty-seven (37) lots, for single detached residential dwellings, and one (1) for a storm water management facility, on lands legally described as Part of Lot 6 Concession North Middle Road, geographic Township of Tilbury West in the Municipality of Lakeshore, as more particularly described in Schedule A (the "Subject Lands");

**AND WHEREAS** the aforementioned Approved Draft Plan is attached hereto as "Schedule "B" (the "Plan of Subdivision");

**AND WHEREAS** the Conditions of the aforementioned Draft Plan Approval dated July 12, 2021 require that the Owner enter into a Subdivision Agreement for the provision of services for the Plan of Subdivision and to satisfy all other Lakeshore requirements, financial and otherwise, related to the Plan of Subdivision;

**AND WHEREAS** Lakeshore has certain design criteria that the Owner's construction and installation of services must meet or exceed. Lakeshore's design criteria are contained in its Development Manual, current as of the date first mentioned above, (hereinafter referred to as the "Development Manual");

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

**1.0 GENERAL CONDITIONS**

**Definitions**

1.1 In this Agreement the following terms shall have the meanings set out below unless otherwise redefined or where the subject matter or context requires another meaning to be ascribed:

- (a) "Agreement" means this subdivision agreement;
- (b) "Approval" means draft plan approval under the Planning Act;
- (c) "Development Manual" means Lakeshore's development manual published on its website, as may be amended from time to time;
- (d) "Engineer" means the Owner's consulting engineer who is hired and retained in accordance with Section 2.2 hereof;
- (e) "Final Approval" means approval for the final plan of subdivision under the Planning Act;
- (f) "Plan" means the plan depicted on Schedule B;
- (g) "Planning Act" means the *Planning Act*, R.S.O. 1990, c. P.13, as amended or any successor statute;

- (h) "Works" means all works and services to be constructed for the purposes of servicing the Plan in accordance with the Development Manual and this Agreement that will ultimately be utilized by the general public and assumed by Lakeshore and, without limiting the generality of the foregoing, includes finishing works such as grading and any required landscaping.

#### **Lands Affected**

- 1.2 This Agreement applies only to the Subject Lands. The Owner warrants that it is the registered owner of the Subject Lands.

#### **Scope**

- 1.3 This Agreement shall define the obligations and duties of the Owner with respect to the development of the Subject Lands and, without limiting the generality of the foregoing, shall include the installation, construction, repair and maintenance of the Works to be provided and payments required to be made to Lakeshore and to such other persons or entities, and such other matters as may be more specifically set out herein, and shall define the responsibilities of the Owner related to the acceptance and assumption of the Works by Lakeshore.

## **2.0 GENERAL CONSTRUCTION REQUIREMENTS**

#### **Cost of Works**

- 2.1 The Owner shall be solely responsible for the cost of the Works. Lakeshore shall not be required to pay any portion of any cost related to the Works unless otherwise expressly provided in this agreement or as expressly required by statute. In the event that Lakeshore incurs any expenses related to construction lien actions or otherwise respecting the construction of the Works, such expenses shall be reimbursed by the Owner forthwith upon demand.

#### **Consulting Engineer**

- 2.2 The Owner shall employ, at its sole expense, a Professional Engineer registered under the *Professional Engineers Act*, R.S.O 1990, c.P.28, as amended, (hereinafter called the "Engineer"). The Engineer, and any successor, must be acceptable to Lakeshore and shall carry out all engineering requirements for the development of the Subject Lands in accordance with this Agreement and with the Development Manual. The Engineer shall be retained by the Owner until all requirements of this Agreement have been completed to Lakeshore's satisfaction. The Owner's agreement with the Engineer shall include design, general supervision and/or resident supervision and shall provide that Lakeshore may inspect the construction, installation and provision of the Works and shall have the power to stop any work or construction that, in Lakeshore's opinion, is being performed in a manner that may result in completed installations or construction that would not be satisfactory to Lakeshore. The Owner shall provide Lakeshore with a certificate from the Engineer certifying that the Works have been completed in accordance with this Agreement and the Development Manual prior to Lakeshore accepting the Works. Without limiting the generality of the foregoing, the Engineer shall:

- a) design and submit to Lakeshore for approval, detailed engineering drawings for the Works including grading plans for all lots, blocks, right-of-ways and landscaped blocks in accordance with the Development Manual;
- b) prepare any contracts necessary for the construction of the Works;
- c) forward of all documentation necessary to obtain from municipal, provincial and federal authorities all approvals required for the construction of the Works;
- d) submit to Lakeshore, prior to the commencement of any construction, a report showing existing elevations and the proposed method of drainage of the Subject Lands;
- e) arrange for all survey and layout work required for the construction of the Works;
- f) maintain, for his/her client's purposes, all records of construction for the Works;
- g) submit to Lakeshore all required record drawings of all details, elevations and drawings of the Works;
- h) be responsible for the coordination of all services required under this Agreement; and
- i) visit the site of the said works as requested by Lakeshore for any reasons related to the Works.

In approving any matter, exercising any discretion, or providing or withholding any consent or permission contemplated in this agreement, both Owner and Lakeshore agree to act reasonably and in good faith and in a timely manner.

#### **Geotechnical report**

- 2.3 The Owner shall provide Lakeshore, as part of the engineering submission, a geotechnical report prepared by a qualified person.

#### **Lakeshore's Review and Inspection**

- 2.4 Lakeshore, at its option, may retain a professional engineer in the Province of Ontario ("Reviewing Engineer") for the purpose of:
- a) reviewing all plans, specifications, engineering documents, contracts, records, details, elevations and other relevant information; and
  - b) supervising the installation of the Works.

The fees, expenses and charges of the Reviewing Engineer shall be payable by the Owner to Lakeshore upon demand. The Reviewing Engineer's charges with respect to the services provided shall be in accordance with the hourly rate normally applicable in the engineering profession for like work.

#### **Prior to Commencement of Construction**

- 2.5 Unless the Owner has received Lakeshore's written consent to do so, no work shall be commenced until the designs for all the Works have been approved by Lakeshore. Any work undertaken by the Owner prior to this Agreement coming into force shall not be accepted by Lakeshore unless the Engineer has advised Lakeshore in writing that such work has been carried out in accordance with the Development Manual and Lakeshore, and/or the Reviewing Engineer, are satisfied that such is the case. The Owner shall provide all the information and expose or reconstruct any portion of the Works that Lakeshore may in its absolute discretion require.

#### **Contractor for Construction of Works**

- 2.6 The Owner covenants and agrees not to let any contract for the performance of any of the Works unless the contractor has first been approved by Lakeshore, which approval shall not unreasonably be delayed or withheld. The contract(s) shall provide that Lakeshore may inspect the construction of all Works and shall have authority to instruct the contractor(s) to stop work should any construction be undertaken contrary to the provisions of this Agreement or the Development Manual or that may result in the Works or any part thereof being unsatisfactory to Lakeshore.

#### **Approval of Plans**

- 2.7 Detailed plans and specifications for the Works shall be submitted to Lakeshore for final approval before any work is commenced. Lakeshore shall provide written confirmation that it is satisfied that the Works have been designed in accordance with the Approval and the Development Manual by placing its certificate on the plans and specifications. Plans submitted will be reviewed within a reasonable time. Lakeshore's approval of the plans and specifications shall not absolve the Owner of responsibility for errors or omissions in the plans and specifications. Lakeshore shall not grant final approval of the plans and specifications until all Ministry of Environment, Conservation and Parks, Lower Thames Conservation Authority and any other government approvals have been received.

#### **Implementation of Reports, Plans and Studies**

- 2.8 The Owner agrees to implement all recommendations contained in all reports/studies prepared and submitted in support of the approval of the Plan of Subdivision and the Works, to Lakeshore's satisfaction.

#### **Installation**

- 2.9 The Works shall be constructed and/or installed in accordance with the plans and specifications, including, without limitation, the composite utility plan, approved pursuant to section 2.6, above, the Development Manual, this Agreement, all applicable law to Lakeshore's satisfaction.

#### **Inspection of Work**

- 2.10 The Owner shall, at any time or times prior to the issuance of the Certificate of Completion, when required to do so by Lakeshore, make such openings, tests, inspections, excavations, examinations, or other investigations in, through, of or in the vicinity of the Works as may be necessary for Lakeshore to make adequate inspection and observation, and shall, as required, make good again, to the satisfaction of Lakeshore, any openings, excavations or disturbances of any property, real or personal, resulting there from. If, in the opinion of Lakeshore, any unacceptable work for which the Owner is responsible is found by such investigations, the cost of such investigations and such making good shall be borne by the Owner but if, in the opinion of Lakeshore, no such unacceptable work is found by such investigations, the said costs shall be borne by Lakeshore.

### **Sewer Video Inspection Program**

- 2.11 The Owner covenants and agrees to:
- (a) undertake and pay for a sewer video inspection program for all new storm and sanitary sewers constructed as part of the Works. This inspection shall be undertaken by a qualified provider of this service that has been approved by Lakeshore's Division Leader of Engineering & Infrastructure Services prior to the video inspection being undertaken;
  - (b) provide Lakeshore with video tapes and written reports in a format as specified by Lakeshore;
  - (c) carry out the video inspection:
    - i. after completion of the base coat of asphalt and prior to Acceptance of the applicable works by Lakeshore;
    - ii. prior to Assumption of the applicable works; and
    - iii. at any other time if required by Lakeshore's Division Leader of Engineering & Infrastructure Services.
  - (d) remove all silt and debris from the storm and sanitary sewers prior to the video inspection taking place and to rectify any sewer deficiencies that may be outlined in the written report or as may be identified by Lakeshore during its review of the video.

### **Specifications and Materials**

- 2.12 All work or detail required for the completion of the Works shall adhere to the Development Manual.
- 2.13 In the event the Owner shall call for tenders for any of the Works, such tenders shall be called on the basis of the specific requirements prescribed under this agreement and in accordance with the Development Manual and the Owner shall provide Lakeshore with a copy of the tender and an executed copy of the contract let to each successful tenderer for any such work.
- 2.14 All material to be incorporated into the Works shall be tested by Owner from time to time as may be required by Lakeshore and in accordance with the material testing requirements identified in the Development Manual.
- 2.15 The Owner shall employ the services of a certified material testing company qualified in the fields of concrete, compaction and asphalt testing to carry out the testing referred to in paragraph 2.14. Prior to the commencement of the installation of the Works, the Owner shall submit for Lakeshore's approval, the name of the proposed testing company and its recommended material testing program.

### **Construction Management**

- 2.16 The Owner agrees to submit, prior to the commencement of the construction of services, a construction management plan addressing, among other things, site access, construction traffic, parking for construction trades, material delivery and storage, staging, mud, dust and noise controls, for Lakeshore's approval and to implement the measures contained in such approved plan.

### **Right-of-Way Damage**

- 2.17 The Owner agrees to reconstruct any services damaged in front of each individual building lot on the Subject Lands to Lakeshore's satisfaction. These include, but are not limited to, curb and gutter, pavement, and manholes. Finalization of any building permit shall be contingent on compliance with this section.

### **Damage to Pavement**

- 2.18 The Owner covenants and agrees that any pavement or landscaped areas on the public right of way that are damaged during construction on the Subject Lands shall be restored by the Owner at its entire expense, and to Lakeshore's satisfaction. All driveway approaches that become redundant following the development of the Subject Lands shall be closed and this area restored to Lakeshore's satisfaction.

### **Dirt and Debris**

- 2.19 (a) The Owner further covenants and agrees to keep the public highways and other Lakeshore lands adjacent to the Subject Lands free from dirt and debris caused by the construction of the Works on the Subject Lands.
- (b) The Owner shall deposit, with Lakeshore, cash in the amount of \$5,000 as security for the Owner's compliance with section 2.19(a), above. Should the Owner fail to comply

with the requirements of section 2.19(a), above, Lakeshore may take such actions as it may deem necessary to correct such non-compliance and shall be entitled to draw upon the aforementioned security to cover any costs so incurred. The aforementioned security, or any portion thereof left unused, shall be returned to the Owner upon expiry of the maintenance period as provided for in this Agreement.

#### **Topsoil**

2.20 Any topsoil removed from the Subject Lands during grading operations shall be stockpiled on the Subject Lands in areas compatible for the reception of same and the Owner covenants and agrees that it will not remove or permit any other person to remove such topsoil from the Subject Lands prior to the end of the maintenance period without Lakeshore's approval.

#### **Specific Requirements**

2.21 The Owner agrees to fulfill all of the specific requirements contained in Schedule "C".

#### **Taxes Etc.**

2.22 The Owner agrees that forthwith upon the execution of this agreement it shall commute all arrears of taxes, local improvement charges, and drainage assessments chargeable upon the Subject Lands.

#### **Development Charges**

2.23 The Owner hereby acknowledges that the Corporation has a valid by-law(s) pursuant to the *Development Charges Act, 1997*, S.O. 1997, c.27, as amended, that applies to the Subject Lands. The Owner hereby agrees to pay the development charges imposed by Lakeshore's Development Charges By-law and to insert the following clause into all agreements of purchase and sale dealing with any portion of the Subject Lands and shall, upon request, provide Lakeshore with copies of any or all such agreements of purchase and sale:

NOTE: The Municipality of Lakeshore has passed a by-law under the *Development Charges Act, 1997* that applies to the Subject Lands and requires the calculation and payment of development charges at the time of building permit issuance. Lakeshore's development charges by-law is not registered on title but may be viewed at their offices located at 419 Notre Dame Street, Belle River, Ontario, during regular business hours or on line at [www.lakeshore.ca](http://www.lakeshore.ca).

#### **Municipal Street Numbers**

2.24 The Owner shall request from Lakeshore the allocation of municipal street numbers and hereby agrees to inform any purchaser of a serviced lot, from the Owner, of the correct municipal street number as so allocated. The Owner shall affix the assigned municipal street number to the front wall of the dwelling facing the front lot line, as defined in Lakeshore zoning by-law 2-2012, as amended.

#### **School Board Issues**

2.25 The Owner agrees to include the following clause in all offers to purchase, agreements of sale and purchase or lease and in the title, deed or lease of each lot:

"There may not be an elementary and/or secondary school available in the area and students may be bussed to the next available school. The present existence of such a school is not a guarantee of its future availability and bussing may be required due to future circumstances."

#### **Canada Post Issues**

2.26 The Owner hereby acknowledges that Canada Post will be providing mail service by way of community mailboxes and agrees to include the following clause in all offers to purchase, agreements of sale and purchase or lease and in the title, deed or lease of each lot:

"Canada Post will be providing mail service to these lands by way of a community mailbox. A notice concerning the location of the community mailbox serving your home will be posted at a prominent location within the development of which these lands are a part."

#### **Parking during Lot Servicing**

2.27 The Owner shall ensure that, for the duration of construction, all parking necessary for construction and trades during the servicing of the Plan of Subdivision shall be provided wholly on the Subject Lands and not on Public Streets outside of the limits of the Plan of Subdivision.

### **Fire Protection**

2.28 The Owner shall maintain access routes for fire department vehicles to new buildings, construction trailers and material storage areas at all times during construction and shall ensure the availability of a water supply for firefighting purposes that is adequate, accessible and operational at all times.

### **Costs**

2.29 The Owner shall pay to Lakeshore all costs incurred by Lakeshore in connection with the Development and/or the preparation and administration of this Agreement including, but not limited to, costs associated with engineering, planning and legal services. The Owner acknowledges that the application fee submitted by the Owner with its application for the approval of a Plan of Subdivision is a deposit to be applied against the aforementioned costs. Should the said deposit prove to be insufficient to cover the aforementioned costs the Owner agrees to provide such additional deposits, as may reasonably be required by Lakeshore, upon demand.

### **Applicable Laws**

2.30 (a) In constructing, installing or providing the Works, the Owner shall comply with all statutes, laws, by-laws, regulations, ordinances, orders and requirements of governmental or other public authorities having jurisdiction at any time and from time to time in force. Without limiting the foregoing, the Owner agrees to comply with, and cause to be complied with, the provisions of the *Occupational Health and Safety Act*, the *Environmental Protection Act* and the *Ontario Water Resources Act* and any regulations, policies and guidelines relating thereto, including all obligations of the constructor and employer under the *Occupational Health and Safety Act* and regulations, as applicable, and any obligation to obtain any approval or permit required under the *Environmental Protection Act* or the *Ontario Water Resources Act* or any regulations, policies and guidelines relating thereto. The Owner further agrees to handle and dispose of all materials in accordance with the foregoing legislation.

(b) The Owner shall do, cause to be done or refrain from doing any act or thing as directed by Lakeshore if at any time Lakeshore considers that any situation or condition is unsafe, damaging to the environment or contrary to the provisions of any applicable laws. If the Owner fails to comply with such direction, Lakeshore may take action to remedy the situation at the expense of the Owner and in this regard Lakeshore shall also be entitled to draw upon any security filed by the Owner under this Agreement in order to recover its costs incurred in this regard.

2.31 The Owner shall immediately advise Lakeshore and the Ministry of the Environment, Conservation and Parks should waste materials or contaminants be discovered during the development of the Subject Lands. If waste materials or contaminants are discovered, the Owner shall obtain any necessary approval pursuant to the *Environmental Protection Act*, as amended from time to time, if required by the Minister of the Environment.

## **3.0 WORKS**

### **Sewers**

3.1 The Owner agrees to construct a complete sanitary and storm sewer system or systems, including private sanitary and storm connections to the lot lines as well as catch basins, leads and sub-drains to service the Subject Lands and adjacent road allowances all according to the plans approved by the Lakeshore and in compliance with the Development Manual. No construction of the above-mentioned systems shall take place without an Environmental Compliance Approval issued by the Ministry of the Environment, Conservation and Parks.

3.2 Upon being satisfied, in its sole discretion, that sufficient sanitary sewage treatment capacity is available, Lakeshore agrees to allocate sufficient sanitary sewage treatment capacity to service the Plan to a maximum of 37 single detached dwellings. The Owner acknowledges and agrees that Lakeshore may, in its sole discretion, withdraw the aforementioned treatment capacity allocation and redirect it if the Owner fails to complete the Works, in accordance with the terms and conditions of this Agreement, within **two years** of the registration of the Plan.

### **Watermains**

3.3 The Owner agrees to construct a complete watermain system or systems, including hydrants and water service connections to the lot lines to service all lots on the Plan in accordance to designs approved by Lakeshore and in accordance with the Development Manual. No construction of the above-mentioned water mains shall take place without the

necessary approvals from the Ministry of the Environment, Conservation and Parks or, if Lakeshore is the approval authority, until Lakeshore has executed the Ministry of the Environment's "Form 1 – Record of Watermains Authorized as a Future Expansion" completed and submitted by the Engineer.

#### **Fire Hydrants**

3.4 The Owner agrees to provide fire hydrants in conformity with the requirements of the Ontario Building Code, or other authorities, to Lakeshore's satisfaction and shall submit a detailed plan, noting all services/hydrant locations to Lakeshore for approval.

#### **Oversizing**

3.5 If Lakeshore deems necessary, the Owner agrees to oversize the sanitary sewer, storm sewer and water main systems within the Subject Lands to service additional downstream lands according to the design approved by Lakeshore and the Development Manual.

#### **Conservation Authority Requirements**

3.6 If the Subject Lands are within an area regulated by the Lower Thames Conservation Authority, the Owner agrees that no construction or placing of fill on the Subject Lands shall take place prior to obtaining a permit from the said Authority. The Owner shall flood proof the Subject Lands to a minimum elevation satisfactory to the Lower Thames Conservation Authority. Specific details regarding the flood proofing required for the Subject Lands are contained in Schedule "C" attached hereto and forming part of this Agreement.

#### **Electrical Services & Utilities**

3.7 The Owner agrees to construct a complete electrical distribution system including transformers and services to the lots and a street lighting system all in accordance with the design approved by Lakeshore and by ELK or Hydro One, as the case may be. The installation shall include the necessary connections to the existing supply.

3.8 The Owner agrees to co-ordinate the underground installation of any telecommunications cables, hydro cable, gas mains and connections to and within the limits of the Subject Lands and to provide for easements with respect to such installations in accordance with terms, conditions, standards and specifications set out by the respective utility companies.

3.9 The Owner and its Engineer shall provide any information required by any utility company, including construction drawings and schedules, as well as lot and street locations in the field. Prior to the commencement of any construction, the Owner agrees to submit to Lakeshore a comprehensive schedule indicating the timing and co-ordination of all utility installations with the servicing for which the Owner is responsible.

#### **Fencing**

3.10 The Owner shall provide all corner and exterior lot fencing. The location of all corner and exterior lot fencing and all fencing or other fencing required by the Municipality of Lakeshore shall be shown on a separate sheet within the required engineering submission and all fencing to be in accordance with the Municipality's Fencing By-law, the Development Manual to Lakeshore's satisfaction.

#### **Roadways, Curbs and Gutters**

3.11 The Owner agrees to construct all roads including concrete curbs and gutters, driveway approaches and the necessary drainage facilities as shown on the plans approved by Lakeshore and in accordance with the Development Manual.

#### **Sidewalks**

3.12 The Owner agrees to construct sidewalks in the Development in compliance with the criteria contained in the Development Manual and to Lakeshore's satisfaction. In accordance with section 5.2 of the Development Manual, the sidewalks shall be constructed at the same time as roads and underground services unless Lakeshore requests a delay in the construction of sidewalks based on the level of building activity and/or to allow for the consolidation of utility trenches as determined by Lakeshore's Division Leader of Engineering & Infrastructure Services.

#### **Noise and Vibration**

3.13 The Owner agrees to provide at its expense, all noise and vibration attenuation measures as outlined in the Development Manual and in Schedule "C" attached hereto.

#### **Drainage**

3.14 The Owner agrees to:

- (a) conduct regular inspections once every two weeks and after each sizeable storm event of all sediment and erosion control measures incorporated into the Development;
  - (b) maintain an inspection log that shall be made available for review by Lakeshore, the Ministry of the Environment, Conservation and Parks and the Lower Thames Conservation Authority, upon request. The log shall state the name of the inspector, date of inspections and the rectifications or replacements which were taken to maintain the sediment and erosion control measures. Inspections shall continue until the assumption of services by Lakeshore or until site construction conditions warrant cessation of the visits; and
  - (c) the stormwater management works associated with this plan shall all be certified as functional and must obtain statutory approval under the *Ontario Water Resources Act*, not the *Drainage Act*;
- 3.15 The Owner shall require any Contractors erecting buildings on the Subject Lands to block off any existing agricultural field tiles that could adversely affect any proposed construction.
- 3.16 The Owner further agrees that no natural watercourses shall be blocked, abandoned or otherwise altered during the course of construction on the Subject Lands unless approved by Lakeshore and the Lower Thames Valley Conservation Authority. No natural land drainage shall be cut off without adequate provision being made for its interception to Lakeshore's satisfaction.
- 3.17 The Owner further agrees that prior to undertaking construction or site alteration activities, any and all necessary permits or clearances shall be received from the Lower Thames Valley Conservation Authority.

#### **Tree Planting**

- 3.18 The Owner agrees to provide Lakeshore with a deposit of \$450.00 per tree for the 37 trees required for the Plan of Subdivision for a total sum of \$16,650.00, which Lakeshore shall use towards the planting of trees in accordance with typical road cross sections. Lakeshore shall be responsible for planting the trees on the Subject Lands, once the said deposit has been provided and Lakeshore's tree planting tender for the year has been awarded. The Developer is responsible for payment of the tendered amount in excess of the deposit. In accordance with the Development Manual, the number of trees to be planted shall be determined as follows:
- (a) Single Family Residential Lots: 1-60mm caliper tree per lot;
  - (b) Semi-detached Residential Lots: 1-60mm caliper tree per unit; and
  - (c) Townhouse Residential Lots: 3-60mm caliper trees per 4 units.

#### **Parkland Dedication**

- 3.19 The Owner shall make the parkland conveyance set out in section C.2 of Schedule "C", attached hereto, and Lakeshore agrees to accept this conveyance in full satisfaction of the Owner's parkland dedication obligations under the *Planning Act* for the Development.

#### **Boulevards**

- 3.20 The Owner agrees that all unpaved portions of the street allowances shall be fine graded to finished grade and to fill and rough grade the lots prior to the issuance of building permits.

#### **Temporary Access Road**

- 3.21 In the event a temporary access road is deemed necessary by Lakeshore and/or the County of Essex for the orderly management of construction and/or to minimize the impact of construction traffic on public streets and neighbouring lands, Lakeshore and/or the County of Essex shall determine the location of such temporary access road, taking into account the recommendations of the Owner, and the Owner shall provide, maintain and ultimately remove such temporary access road.

#### **REQUIRED CONVEYANCES**

- 4.1 The Owner shall gratuitously dedicate as public highways all road allowances shown on the Plan and shall name all such road allowances in a manner satisfactory to Lakeshore.
- 4.2 The Owner agrees that open ends and sides of all road allowances shall terminate in 0.30 metre reserves and to convey, without cost and free of all encumbrances, all such 0.30 metre reserves to Lakeshore.



- 4.3 The Owner agrees to sign local improvement petitions for and agrees not to oppose any municipal works proposed by Lakeshore to be constructed pursuant to the provisions of the *Municipal Act, 2001* and O.Reg. 119/03, both as amended.
- 4.4 The Owner shall convey to Lakeshore, or the appropriate authority without cost and free of encumbrance, any and all easements as may be required by Lakeshore, the applicable hydro authority, the applicable telecommunications, cable TV and internet service provider(s), any natural gas provider and/or any other applicable utility provider. Such easements may be through, over or under the appropriate portion of the Subject Lands and may be required for drainage purposes, sewers, hydro, water mains, telephone, cable tv, natural gas or any other purpose as deemed necessary by Lakeshore. The Owner acknowledges all existing utility easements and agrees not to interfere with same. In the event that the development of the Plan requires relocation or revisions to existing utility easements or facilities, these shall be made at the option of the applicable utility provider, and at the expense of the Owner.
- 4.5 The Owner shall convey, without cost and free of all encumbrances, all blocks, shown on the Plan that contain, or will contain, the storm water management works.
- 4.6 Without limiting the generality of any of the forgoing, the Owner shall convey all of the lands specifically listed in Schedule "E", attached to this agreement.
- 4.7 The Owner agrees that all conveyances required by paragraphs 4.1, 4.2, 4.3, 4.4 and 4.5, as well as those detailed in Schedule "E", shall be completed immediately upon execution of this Agreement.

#### **ACCEPTANCE OF WORKS**

- 5.1 The performance by the Owner of its obligations under this agreement to Lakeshore's satisfaction shall be a condition precedent to Lakeshore's acceptance of the Works.
- 5.2 Prior to Lakeshore's acceptance of the said Works, the Owner shall furnish Lakeshore 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 the Works and that there are no outstanding claims relating thereto.
- 5.3 Inspection records, sewer video inspection results referred to in paragraph 2.9 and test results of the material testing company referred to in paragraph 2.12 and 2.13 shall be submitted by the Owner to Lakeshore in conjunction with the Certificate of the Engineer contemplated in paragraph 2.2 as a pre-condition to Lakeshore's acceptance the Works. The Owner further agrees to submit all information and reports reasonably required by Lakeshore to ensure that the Works have been installed in accordance with the Development Manual.
- 5.4 Within Forty-five (45) days, after the completion of the Works, Lakeshore may accept the Works and Lakeshore shall thereupon permit such Works to be incorporated with the appropriate existing municipal services. The parties agree that Lakeshore shall be the sole determinant.
- 5.5 The acceptance of the Works shall not require Lakeshore to maintain or in any way be responsible for driveway approaches, private sewer connections or any other private services that may be installed in or on public lands.
- 5.6 The Owner agrees to provide Lakeshore with digital "as constructed" record information in a format suitable to Lakeshore as outlined in the Development Manual.
- 5.7 Following notification from the Owner that the Works, for which formal acceptance is requested, are complete, Lakeshore shall inspect the Works to determine whether they have been completed in a satisfactory fashion and shall review all financial requirements of this agreement to determine whether they have been met. If Lakeshore determines that the requirements of this Agreement have been met, Lakeshore agrees to forthwith furnish to the Owner written confirmation of its acceptance of the Works.
- 5.8 The Division Leader of Engineering & Infrastructure Services at their sole discretion may delay the final coat of asphalt to be placed, no later than five (5) years from the commencement date of the first maintenance period for base asphalt, curbs and underground infrastructure.

## **MAINTENANCE PERIOD AND SECURITY**

- 6.1 The maintenance period shall run for a minimum period of one (1) year following the date of the issuance of written confirmation of Lakeshore's acceptance of the Works but in no case shall the maintenance period expire until the final surface asphalt has been completed. During this time the Owner shall be responsible for all materials, equipment and work necessary to maintain and/or repair the Works. Upon the issuance of the written confirmation of Lakeshore's acceptance of the Works, the Owner shall file with Lakeshore cash, or an irrevocable letter of credit in a form acceptable to Lakeshore for 25% of the cost of the works as security for the Owner's obligations under this section.
- 6.2 Notwithstanding expiration of the maintenance period, the Owner shall not be relieved of correcting any defects or faults of which notice has been given to the Owner prior to the expiration of the said period.

## **ASSUMPTION OF PLAN OF SUBDIVISION**

- 7.1 Within 30 days prior to the expiration of the maintenance period, the Engineer shall arrange for a field inspection to be conducted by Lakeshore, the contractor and the Engineer. The requirements of section 2.9, above shall have been complied with prior to this inspection.
- 7.2 Within 30 days following the expiration of the maintenance period contemplated by section 6.1 of this agreement, Lakeshore's Division Leader Engineering & Infrastructure Services shall prepare a written report stating whether the Works were completed in a satisfactory fashion and remain in good working order. In addition, Lakeshore's Finance Department shall prepare a written report stating whether all financial requirements have been met. If the aforementioned reports state that the requirements of this Agreement have been satisfactorily met, Lakeshore's Division Leader of Engineering & Infrastructure Services shall recommend that Lakeshore Council pass a by-law assuming the Works.
- 7.3 The Owner agrees to provide all of the information and reports requested by Lakeshore that are reasonably necessary for the Division Leader of Engineering & Infrastructure Services to complete his report mentioned in section 7.2 above.
- 7.4 The Owner covenants and agrees that the Works shall vest in Lakeshore upon Lakeshore Council's passing of a by-law Assuming of the Works, and the Owner shall thereafter have no claims or rights to the Works other than those accruing to it as an owner of land abutting streets on which services have been installed. The Owner further agrees that Lakeshore shall not be obligated to return the maintenance security for Surface Asphalt & Sidewalk until Lakeshore Council passes the assumption by-law assuming the Works.

## **INDEMNITIES AND INSURANCE**

- 8.1 The Owner shall indemnify and save Lakeshore 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 or injury to, or death of, any person 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.
- 8.2 During the period of construction of the Works, the Owner shall maintain a policy of public liability and property insurance, in the amount of Five Million dollars (\$5,000,000.00) and containing endorsements showing Lakeshore as an additional named insured and having a cross-liability clause, in form satisfactory to Lakeshore. Before commencing construction of any of the Works, the Owner shall provide Lakeshore with a Certificate of Insurance.
- 8.3 The Owner agrees when paying contractors to hold back such sums as are provided by the *Construction Act*, R.S.O. 1990, c.C.30, as amended, and to indemnify Lakeshore against any claims, actions or costs incurred by Lakeshore respecting Construction Liens or otherwise in connection with the Works. The Owner shall take the necessary action to immediately discharge any liens that arise with respect to the Works.

## **BUILDING PERMITS**

- 9.1 The Owner agrees:
- (a) that no building permit for any lot or block on the Subject Lands will be issued until Lakeshore has accepted the Works in accordance with the requirements of this Agreement;
  - (b) that notwithstanding subsection 9.1(a) above, the Chief Building Official may issue permits for model homes. The maximum number of model home permits that may be issued is for the greater of either four dwellings or ten percent (rounded upward)

of the total dwelling units in any particular phase of the Development as stated in the Development Manual provided:

- i. the base coat of asphalt has been installed, to the satisfaction of the Division Leader of Engineering & Infrastructure Services, in the road allowance in front of and abutting the lot for which the building permit is being sought;
- ii. all works necessary to meet the Railway requirements have been installed if the model home is within 300 metres of a Railway right-of-way;
- iii. there is no conflict between the activity that would result from the building permit being issued and the installation of various utilities;
- iv. a surveyor's certificate has been received by Lakeshore pertaining to the lot for which the building permit is being sought;
- v. it is clearly noted on the building permit that occupancy of the model home will not be permitted until Lakeshore has accepted the Works and that all Agreements to Purchase affecting the model home must contain a notice regarding this occupancy restriction until such time as Lakeshore has accepted the Works; and
- vi. Lakeshore has received a letter received from the Engineer confirming support for the building permit issuance.

#### **PERFORMANCE SECURITIES**

- 10.1 Prior to commencing any of the Works, the Owner shall provide Lakeshore with an irrevocable letter of credit as security for the Owner's performance of its obligations under this agreement. The said letter of credit shall be in a form acceptable to Lakeshore and shall be in an amount equal to 50 percent (50%) of the value of the said works as determined from the accepted tenders for the said works. If the owner is constructing the said works so that there shall be no tender then the Owner's Consulting Engineer shall provide an estimate of the value of the Works that, subject to the Lakeshore's right to verify and approve the said estimate, shall be used to establish the amount of the securities.
- 10.2 If the Owner fails in the performance of the terms and conditions of this Agreement, Lakeshore shall be entitled to realize on the securities that have been deposited with respect to this Agreement in order to fulfil those terms and conditions in respect of which the Owner is in default.
- 10.3 No performance security will be released until the Owner has filed maintenance security in accordance with the Development Manual and this Agreement.

#### **ADMINISTRATION**

##### **Registration of Plan**

- 11.1 The Owner covenants and agrees to register the Plan as soon as possible upon receiving Final Approval but shall not register the Plan before registering this agreement upon title of the Subject Lands.
- 11.2 The Owner acknowledges and agrees that the Plan may only proceed to registration at such time as Lakeshore is satisfied, in its sole discretion that all municipal services are available, including, but not limited to, sanitary sewage treatment capacity.
- 11.3 Prior to registering the Plan the Owner shall provide Lakeshore with a table of lot areas and lot frontages certified by an Ontario Land Surveyor confirming compliance with the Comprehensive Zoning By-law, 2-1012, as amended.

##### **Notices**

- 11.4 (a) If any notice is required to be given by Lakeshore to the Owner with respect to this Agreement, such notice shall be mailed prepaid mail, personally delivered or sent by facsimile transmission to:
- Raymond Tracey & Deborah Tracey  
2155 Myers Road,  
Woodslee, ON N0R 1V0

or such other address or facsimile number of which the Owner has notified Lakeshore's Clerk, in writing, and any such notice mailed or delivered shall be deemed good and sufficient notice under the terms of this Agreement.

- (b) If any notice is required to be given by the Owner to Lakeshore with respect to this Agreement, such notice shall be mailed prepaid mail, personally delivered or sent by facsimile transmission to:

Municipality of Lakeshore  
Attention: Clerk  
419 Notre Dame,  
Belle River, ON N0R 1A0

Facsimile: (519) 728-9530

or such other address or facsimile number of which Lakeshore has notified the Owner, in writing, and any such notice mailed or delivered shall be deemed good and sufficient notice under the terms of this Agreement.

### **Registration of Agreement**

- 11.5 The Parties hereby covenant and agree that this Agreement and any schedules attached hereto shall be registered upon title to the Subject Lands prior to the registration of the Plan. The Owner further agrees to pay, upon demand, all costs associated with the preparation and registration of this Agreement, including but not limited to, any amendments thereto notwithstanding that such registration may have been solely at Lakeshore's instance.

### **Postponement and Subordination**

- 11.6 The Owner covenants and agrees, at its own expense, to obtain and register such documents from its mortgagees or encumbrancers as Lakeshore may deem necessary to postpone and subordinate their interest in the Subject Lands to Lakeshore's interests to the extent that this Agreement shall take effect and have priority as if it had been executed and registered before the execution and registration of the document or documents giving to the Mortgagees and/or other encumbrancers their interest in the Subject Lands.

### **Enforcement**

- 11.7 The Owner acknowledges that Lakeshore, in addition to any other remedy it may have, shall be entitled to enforce this Agreement in accordance with s. 446 of the *Municipal Act, 2001*.
- 11.8 If the Owner fails in the performance of any of the terms and conditions of this Agreement, Lakeshore at its option, may, in addition to any other remedy it may have, refuse to grant to the Owner any permissions, certificates, approvals, building permits or authorities of any kind or nature which the Owner, had the Owner otherwise complied with Lakeshore requirements and this Agreement, may have been entitled to receive. Lakeshore may continue to refuse to grant any permissions, certificates, approvals, building permits or authorities until Lakeshore is satisfied that any default in question shall have been remedied and, further, the Owner specifically agrees not to apply for any such permissions, certificates, approvals, building permits or authorities.
- 11.9 In the event that the Owner fails or neglects to perform any of its obligations under this Agreement, or fails or neglects to proceed with the construction of the Works within two year of the date of execution of this Agreement, or, having commenced the construction of the Works, fails or neglects to proceed with reasonable speed, or in the event that the Works are not being or have not been installed in the manner required by Lakeshore or, having completed installation of the Works, they do not function properly, in addition to any other remedy Lakeshore may have and upon Lakeshore giving seven days written notice by prepaid registered mail to the Owner, Lakeshore may, but need not, without further notice, stop any part of the work for any length of time until it is satisfied that the work will be proceeded with satisfactorily, or stop any part of the work by any contractor and require that another contractor be placed on the job to complete the work or enter upon the Subject Lands and proceed to supply all materials and do all necessary works in connection with the installation of the Works, including the repair or reconstruction of faulty work and the replacement of materials not in accordance with the Development Manual and may charge the cost of taking such actions, together with an administrative fee equaling 20% of the cost of taking such actions, to the Owner who shall forthwith pay the same to Lakeshore upon demand. If the Owner shall fail to pay Lakeshore's costs and administrative fee within fifteen (15) days of demand, the Lakeshore shall be at liberty to recoup its costs and administrative fee by realizing on the Performance Securities

deposited by the Owner without the consent of the Owner. It is understood and agreed between parties hereto that entry upon the Subject Lands for the purposes of this section shall be as agent for the Owner and shall not be deemed, for any purposes whatsoever, as an acceptance or assumption of the Works by Lakeshore. The rights set forth herein are in addition to any other rights Lakeshore may have in pursuance of this Agreement at law or in equity.

#### **Time Limit for Completion**

11.10 If the Works are not completed within three (3) years from the date of execution of this agreement, Lakeshore may, at its option and on sixty (60) days' notice to the Owner, declare this agreement null and void and of no further effect and construction of the Works may not proceed thereafter unless a new subdivision agreement is entered into by the parties. The refund of any fees, levies or other charges paid by the Owner pursuant to this agreement shall be at Lakeshore's sole discretion.

#### **Other Applicable Laws**

11.11 Nothing in this Agreement shall relieve the Owner from compliance with all applicable municipal by-laws, laws and/or regulations or laws and/or regulations established by any other governmental body that may have jurisdiction over the Subject Lands.

#### **Interpretation of Agreement**

- 11.12 (a) The part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (b) This Agreement shall be construed with all changes in number and gender as may be required by the context.
- (c) Every provision of this Agreement by which the Owner is obligated in any way shall be deemed to include the words "at the expense of the Owner" unless the context otherwise requires.
- (d) References herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto.
- (e) All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants.
- (f) Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference.
- (g) The Parties agree that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in the Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.

#### **Waiver**

11.13 Lakeshore's failure at any time to require the Owner's performance of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall Lakeshore's waiver of the performance of any obligation hereunder be taken or be held to be a waiver of the performance of the same or any other obligation hereunder at any later time. Lakeshore shall specifically retain its rights at law to enforce this Agreement.

#### **Lakeshore as Agent of Owner**

11.14 Any work done by Lakeshore for or on behalf of the Owner or by reason of the Owner not having done the work in the first instance shall be deemed to be done as agent for the Owner and shall not, for any purpose whatsoever, be deemed as an acceptance or assumption of any works, services or facilities by Lakeshore.

#### **Governing Law**

11.15 This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.

#### **Successors & Assigns**

11.16 It is hereby agreed by and between the parties hereto that this Agreement shall be enforceable by and against the parties hereto, their heirs, executors, administrators, successors and assigns and that the Agreement and all the covenants by the Owner herein contained shall run with the Subject Lands.

**Recitals**

11.17 The parties confirm that the recitals at the beginning of this Agreement are true in fact and are incorporated into this Agreement as though repeated herein.

**LIST OF SCHEDULES**

12.1 The following schedules are attached hereto and form part of this Agreement:

- SCHEDULE "A": Subject Lands
- SCHEDULE "B": Plan of Subdivision
- SCHEDULE "C": Specific Requirements
- SCHEDULE "D": Summary of Required Financial Payments, Guarantees and Insurance
- SCHEDULE "E": Required Conveyances

**IN WITNESS WHEREOF** the Parties hereto have, respectively, hereunto affixed their signatures or their corporate seals duly attested by the hands of their proper signing officers duly authorized in that behalf, as the case may be.

**SIGNED, SEALED AND DELIVERED**

	)	
	)	_____
	)	Raymond Joseph Tracey
_____	)	
Name:	)	_____
Witness as to the signatures of	)	Deborah Dalane Tracey
Raymond Joseph Tracey and	)	
Deborah Dalane Tracey	)	<b>MUNICIPALITY OF LAKESHORE</b>
	)	
	)	
	)	per: _____
	)	Tom Bain, Mayor
	)	
	)	per: _____
	)	Kristen Newman, Corporate Leader - Strategic and
	)	Legal Affairs / Clerk
	)	We have authority to bind the Corporation

**SCHEDULE "A"**  
to a  
SUBDIVISION AGREEMENT dated September 28, 2021  
**B E T W E E N:**  
MUNICIPALITY OF LAKESHORE  
-and-  
RAYMOND JOSEPH TRACEY & DEBORAH DALANE TRACEY

**Subject Lands**

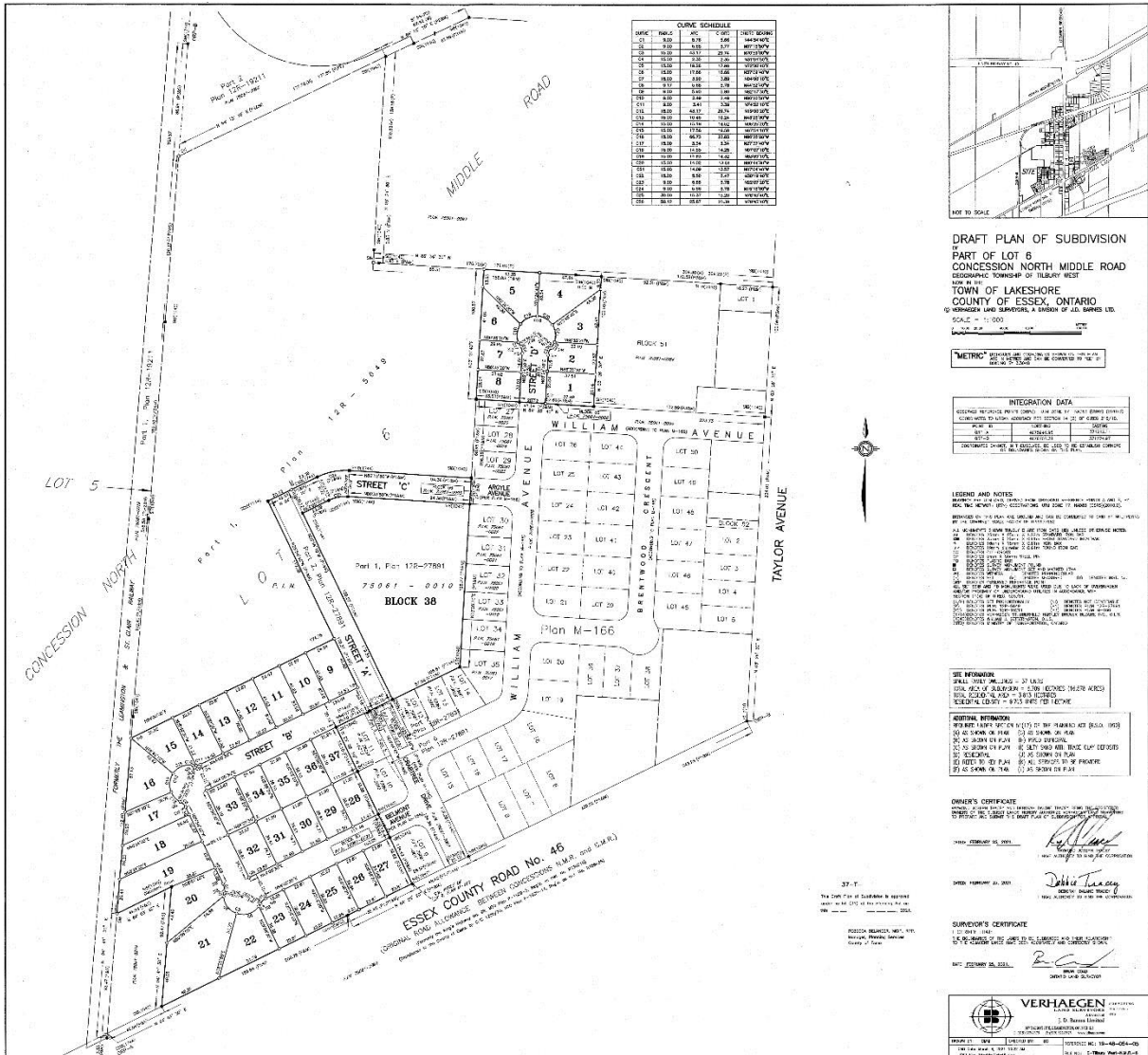
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Part 1 of Plan 12R5649, Tilbury West; Lakeshore

PIN: 750610236

**SCHEDULE "B"**  
to a  
**SUBDIVISION AGREEMENT** dated September 28, 2021  
**B E T W E E N:**  
**MUNICIPALITY OF LAKESHORE**  
-and-  
**RAYMOND JOSEPH TRACEY & DEBORAH DALANE TRACEY**

**Plan**





**SCHEDULE “C”**  
to a  
SUBDIVISION AGREEMENT dated September 28, 2021  
**B E T W E E N:**  
MUNICIPALITY OF LAKESHORE  
-and-  
RAYMOND JOSEPH TRACEY & DEBORAH DALANE TRACEY

**Specific Requirements**

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**Storm Water Management**

- C.1 The Owner shall implement and/or install all stormwater management measures identified in the report entitled “Stormwater Management Report, Tracey Residential Subdivision, Village of Comber, Ontario”, dated March 14, 2019, and prepared by Baird AE, to the satisfaction of Lakeshore and the Lower Thames Valley Conservation Authority.

The Owner agrees to prepare, grade, seed and/or landscape the lands surrounding storm water retention pond located on the lands legally described as Part 1 Reference Plan 27891.

**Parkland**

- C.2 Parkland requirements for this phase have been met by the previous conveyance of Block 51 on Registered Plan M-166. Furthermore the Developer agrees that said Block 51 shall be graded and seeded as part of this phase of development.

**Archaeological Report**

- C.3 The Owner shall provide documentation from the Ministry of Tourism, Culture and Sport that the archaeological reports completed by qualified archaeological consultants and contractors has been accepted into the Ontario Public Register of Archaeological Reports and that the site has no cultural value or interest.

**Subdivision Map**

- C.3 The Owner shall, to Lakeshore’s satisfaction, post, on all road frontages, a subdivision map that is colored and drawn to show the lotting pattern of the Plan, proposed land uses and adjacent land uses, external and internal roadways, pedestrian walkways and sidewalks, and all prominent natural features. The said subdivision map shall include a legend and an arrow indicating the north direction.

**No Driveway Access to County Road 46**

- C.4 The Owner acknowledges and agrees that there shall be no driveway access to County Road 46.

**Abandoned Wells**

- C.5 The Owner acknowledges that improperly constructed, maintained or abandoned oil, gas and water wells (“Wells”) present a safety risk to humans as well as a potential risk to pollute groundwater resources. The Owner represents and warrants that it has researched Oil, Gas and Salt Resources Library and the Ministry of the Environment and Climate Change Well Records (the “Records”) and has made itself aware of the presence of any Wells 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 is has:
- i. Systematically searched the lands for potential Well sites; and
  - ii. Taken all other necessary steps to ensure that there are no other Wells on the Lands and that any Well found has been or will be capped in accordance with the applicable legislation, regulations or guidelines, the proof of which shall be submitted to Lakeshore.

**Bell Canada**

- C.6 The Owner agrees that should any conflict arise with existing Bell Canada facilities where a current and valid easement exists within the Subject Lands, the Owner shall be responsible for the relocation of any such facilities or easements at their own cost.

**SCHEDULE "D"**

to a  
SUBDIVISION AGREEMENT dated September 28, 2021  
B E T W E E N:  
MUNICIPALITY OF LAKESHORE  
-and-  
RAYMOND JOSEPH TRACEY & DEBORAH DALANE TRACEY

**Summary of Required Financial Payments, Guarantees and Insurance**

OBLIGATION	AMOUNT	METHOD*	DUE DATE
Performance Guarantee	50% of Value of Works (Servicing)	Letter of Credit	Prior to Construction
Tax Arrears	Outstanding Tax Amount	Certified Cheque / Bank Draft	Execution of Agreement
Dirt and Debris Deposit	\$5,000	Certified Cheque / Bank Draft	Prior to Construction
Lakeshore's Costs Including Engineering, Planning, Legal Fees	As per Tariff of Fees By-law	Certified Cheque / Bank Draft	Due upon Demand
Tree Planting Cost	\$16,650.00	Certified Cheque / Bank Draft	Execution of Agreement
Cash-in-Lieu of Parkland	Satisfied by conveyance of as part of phase 1	N/A	Execution of Agreement
Maintenance Guarantee	25% of Value of Works	Letter of Credit	Acceptance of Services by Lakeshore
Insurance	\$5,000,000	Certificate of Insurance	Prior to Construction

\* Note: Payment may also be made by non-certified cheque however obligation will not be considered satisfied until clearance of non-certified cheque by financial institution.

**SCHEDULE "E"**

to a  
SUBDIVISION AGREEMENT dated September 28, 2021  
B E T W E E N:  
MUNICIPALITY OF LAKESHORE  
-and-  
RAYMOND JOSEPH TRACEY & DEBORAH DALANE TRACEY

**Required Conveyances**

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Lands to be conveyed by the Owner to Lakeshore

None