

THIS AGREEMENT made in triplicate this ____th day of October, 2018

BETWEEN:

THE CORPORATION OF THE CITY OF LONDON
(hereinafter called the "City")

OF THE FIRST PART

AND

PETER SERGAUTIS
(hereinafter called "the Owner")

OF THE SECOND PART

WHEREAS the Owner represents that it is seized of those lands situate in the City of London, (formerly the Township of London) in the County of Middlesex, more particularly described on **Schedule "A"** attached, (the Lands), and desires to obtain the approval of the City of London for the Draft Plan of Subdivision (39T-09501) of the said Lands.

AND WHEREAS approval of this Plan of Subdivision would be premature, would not be in the public interest, and would not be lands for which municipal services are or would be available unless assurances were given by the Owner that the matters, services, works and things referred to in this Agreement were done in the manner and in the order set out in this Agreement;

AND WHEREAS the Approval Authority has required as a condition precedent to his approval of the said Plan of Subdivision that the Owner enter into this Agreement with the City;

AND WHEREAS the City proposes to construct a Stormwater Management Facility on the Land;

NOW THEREFORE THIS AGREEMENT WITNESSETH that for other valuable consideration and the sum of Two Dollars (\$2.00) of lawful money of Canada, paid by the City to the Owner (the receipt whereof is hereby acknowledged) the parties hereto covenant and agree each with the other to comply with, keep, perform and be bound by each and every term, condition and covenant herein set out to the extent that the same are expressed to be respectively binding upon them, and the same shall ensure to the benefits of and shall be binding upon their respective heirs, executors, administrators, successors and assigns.

1. DEFINITIONS

The words and phrases defined in this paragraph shall for all purposes of this Agreement and of any subsequent agreement supplemental hereto have the meanings herein specified unless the context expressly or by necessary implication otherwise requires.

- (a) "Director - Development Finance" means that person who from time to time, is employed by the City as its Director of Development Finance.
- (b) "City Engineer" means that person who, from time to time, is employed by the City as its Engineer.
- (c) "CSRF" or "Fund" means the City Services Reserve Fund.
- (d) "Land" means the land described on Schedule "A".
- (e) "Planning Act" means the Planning Act R.S.O. 1990, c. P.13, as amended;

- (f) "SWM" means Stormwater Management; and
- (g) "SWM Facility Works" means those acts necessary for the construction of Stoney Creek SWM Facility 2.

2. LANDS FOR STONEY CREEK SWM FACILITY 2:

Upon registration of this Agreement, the Owner shall transfer Part 2 on Plan 33R-20150 to the City, free and clear of all encumbrances, all at no cost to the City and all to the satisfaction of the City Engineer. This land dedication is eligible for reimbursement from the CSRF as described in Section 3(a) of this Agreement to be paid in accordance with Section 3(b).

3. LANDS FOR PARKLAND

Upon registration of this Agreement, the Owner shall transfer Part 1 on Plan 33R-20150 to the City, as a portion of the required parkland dedication, (Condition 22 of the Notice of Decision for Draft Approval) free and clear of all encumbrances, all at no cost to the City and all to the satisfaction of the City Engineer. This land dedication is eligible for reimbursement from the CSRF as described in Section 3(a) of this Agreement to be paid in accordance with Section 3(b).

4. CLAIMS AGAINST THE CITY SERVICES RESERVE FUND

Following the transfer of the Land, the Owner may submit a claim to the City for the future reimbursement of the SWM facility land value. The claim shall contain confirmation of the transfer of Land and the final land value, refined from the estimate contained in this Agreement.

- (a) The anticipated reimbursements from the Fund are:

for lands dedicated to the City for the construction of Stoney Creek SWM Facility 2, (being Parts 1 and 2, on Reference Plan 33R-20150) the estimated cost of which is \$253,808.00 Dollars (CDN), which is comprised of 0.706 hectares (0.8217 acres) of Developable Land at \$308,880/hectare (\$125,000/acre), plus applicable taxes.

- (b) On a quarterly basis following the execution of this Agreement, the City will review the building permits issued and associated Development Charge payments received from new development within the catchment area. A running total will be maintained by the City. Once Development Charge payments totaling \$2.778 million have been received as a result of new development within the stormwater catchment area, as shown on **Schedules "B: and "C"** of this Agreement, the City will reimburse the Owner for the land cost in the quarter following achievement of the \$2.778 million threshold.

5. EASEMENTS

The Owner shall grant to the City a Multi-purpose easement for temporary access across lands owned by the Owner that are adjacent to the Land in favor of the City, its consultants, contractors and employees, for the purpose of constructing the SWM Facility Works and completing any peripheral grading work on said lands. The temporary access shall run until the project is complete.

6. RELEASE

Subject to the terms hereof, the Owner releases the City of and from all claims, suits, demands, actions, causes of action, and damages accruing to the Owner resulting directly or indirectly from the use of the Owner's lands, in relation to the City works outlined herein; save and except for any and all liability, loss, claims, demands and costs caused by or resulting from the actions or omissions of the City, its consultants, contractors, employees and/or agents.

7. INCONTESTABILITY

The Owner will not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any administrative or other tribunal the right of the City to enter into this Agreement and to enforce each and every term, covenant and condition thereof and this provision may be pleaded by the City in any such action or proceeding as a complete and conclusive estoppel of any denial of such right.

8. REGISTRATION DOCUMENTS

The City agrees to register the transfers of Parts 1 and 2 on Plan 33R-20150 forthwith upon the delivery thereof to the City and authorize the claims to the CSRF as specified in Sections 3 and 4 of this Agreement.

9. GENERAL PROVISIONS

- (a) The parties hereby do authorize, empower and instruct their solicitors to enter into an appropriate escrow arrangement to facilitate the completion of those parts of this Agreement to be completed upon registration of this Agreement and those to be completed thereafter. In default of agreement between the parties' solicitors as to the terms such appropriate escrow arrangement; the Documentation Registration published by the Law Society of Upper Canada on its website shall be employed.
- (b) The division of this Agreement into sections and headings (or paragraphs) herein are for convenience or reference only and are not be used in the interpretation of the provisions related to them.
- (c) The Owner and its successors shall not assign this Agreement in whole or in part without the written consent of the City, which consent shall not be unreasonably withheld.
- (d) Subject to the provisions herein, the Owner shall be subject to all By-laws of the City. In the event of a conflict between the provisions of this Agreement and the provision of any By-law of the City, the provisions of the By-law shall prevail.
- (e) All of the provisions of this Agreement are, and are to be construed as, covenants and agreements as though the words importing such covenants and agreements were used in each separate clause hereof. Should any provision of this Agreement be adjudged unlawful or not enforceable, it shall be considered separate and severable from the agreement and its remaining provisions as though the unlawful or unenforceable provision had never been included.
- (f) This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns, and that the Agreement and the covenants herein contained shall run with and burden the Lands.
- (g) Any notices required or permitted to be given pursuant to the terms of this Agreement shall be given in writing sent by prepaid registered post, addressed in the case of notice given by the City to: Peter Sergautis P.O. Box 143, Arva, Ontario N0M 1C0 and in the case of notice given by the Owner, addressed to: The City Clerk, P.O. 5035, London, Ontario N6A 4L9.

Notice shall conclusively be deemed to have been given on the day that the same is posted. Wherever in this Agreement the City Engineer is permitted or required to give direction, exercise supervision, or to require work to be done or work to cease in respect of the construction, installation, repair and maintenance of works and services, they shall be deemed to have done so if they communicate such direction, supervision or requirement, orally or in writing, to any person purporting or appearing to be a foreman, superintendent or other servant of the Owner, and if the City Engineer shall have made such communication orally they shall confirm such communication in writing as soon as conveniently possible.

SCHEDULE "A"

This is Schedule "A" to the Subdivision Agreement dated this _____ day of October, 2018, between The Corporation of the City of London and Peter Sergautis to which it is attached and forms a part.

(Stoney Creek SWM Facility 2)

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying, and being Part of Lot 13, Concession 6, Designated as Parts 1 and 2 on Plan 33R-20150 (geographic Township of London), now in the City of London, County of Middlesex.

SCHEDULE "B"



SCHEDULE "C"

Part 1: Stoney Creek SWMF 2 Land Acquisition 25% DC Payment Trigger Calculation

<u>Major Flows to Stoney Creek SWMF 2</u>				
Category	Yields	DC Rate	Estimated DC Revenue	
LOW DENSITY (units) ¹⁾	339	\$ 27,926	\$	9,466,914
MEDIUM DENSITY (units) ²⁾	49	\$ 20,934	\$	1,025,766
HIGH DENSITY (bachelor)	0	\$ 12,990	\$	-
HIGH DENSITY (2+ bedroom)	0	\$ 17,331	\$	-
INSTITUTIONAL	0	\$ 140.08	\$	-
COMMERCIAL (sq/m) ³⁾	2553	\$ 242.66	\$	619,511
INDUSTRIAL	0	\$ 179.30	\$	-
			\$	11,112,191
			25%	\$ 2,778,000

Notes:

- 1) Blocks 1-33 In Draft Plan of Subdivision from Notice of Decision dated February 21, 2018. Yields are calculated by a net unit per hectare rate of 21, total LDR development area as per Draft Plan is 16,177ha.
- 2) Blocks 40 & 41 In Draft Plan of Subdivision from Notice of Decision dated February 21, 2018. Yields are calculated by a net unit per hectare rate of 25, total MDR development area as per Draft Plan is 10,694 ha.
- 3) Blocks 43-48 In Draft Plan of Subdivision from Notice of Decision dated February 21, 2018. Yields are calculated by a max of 50% coverage ratio of the total block area, which is 0,851 ha (9510 sq/m).

Part 2: Stoney Creek SWMF 2 Land Acquisition Valuation

Part 1 - Plan 33R-20160	Land Classification ¹	Area (ha.)	Rate (\$/ha) ¹	Total	
	Developable	0.1155	\$ 308,880	\$	35,676
	Non-developable	0	\$ 13,590	\$	-
Part 2 - Plan 33R-20160	Land Classification ¹	Area (ha.)	Rate (\$/ha) ¹	Total	
	Developable	0.7062	\$ 308,880	\$	218,132
	Non-developable	0	\$ 13,590	\$	-
GRAND TOTAL				\$	253,808

Notes:

- 1. Determination was made in accordance with Schedule B section 4.7 of By-law C.P. - 1496-244 (Development Charges By-law)