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AGREEMENT BETWEEN

**ACTIVA HOLDINGS INC.**

AND

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

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**HERITAGE PARK SUBDIVISION PHASE 2 STAGE 2**

This **AGREEMENT** dated the 17th day of July 2009.

**BETWEEN:       ACTIVA HOLDINGS INC.**

(Hereinafter called the Subdivider)

- and -

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

(Hereinafter called the City)

**WHEREAS** the Subdivider is the owner of the lands described in Schedule A and has applied to the City for approval of a plan of subdivision.

**AND WHEREAS** the City is authorized by *The Planning Act* to enter into an Agreement imposed as a condition to the approval of a plan of subdivision.

**AND WHEREAS** the Encumbrancer has a property interest in the said property subject to this Subdivision Agreement;

**AND WHEREAS** the City has imposed as a condition of its approval that the Subdivider enter into such an Agreement;

**NOW THEREFORE** this Agreement witnesseth that in consideration of the mutual promises and other good and valuable consideration expressed in this Agreement the parties hereto agree as follows:

**DEFINITIONS**

1. In this Agreement,
  - (a) "City Engineer" means the Director of Utility Services, or designate, for the City;
  - (b) "Council" means the Council of The Corporation of the City of Peterborough;
  - (c) "Public Services" means the services described in Schedule D attached hereto;
  - (d) "Subdivision" means all of Plan 45M\_\_\_\_\_, consisting of Lots 1 to 58 inclusive, Blocks 59, 60 and 61, including Heritage Trail, Carriage Lane, and Blacksmith Way.

**DEPOSITS AND CONVEYANCES**

2. Concurrently with the execution of this Agreement the Subdivider shall deposit with the City Engineer:
  - (a) A certified cheque in the sum of \$470,866.54, in payment of the amount due to the City for Phase 1 in Schedule B;
  - (b) An overall servicing co-ordination plan showing the location (shared or otherwise) and installation, timing and phasing of all required Public Services and utilities (on-grade, below grade or above grade, including on-site drainage facilities and community mail boxes) and such location shall be to the Satisfaction of the City Engineer, having considered the requirements of Peterborough Utilities Services Inc., Enbridge Consumers Gas, Bell Canada, Cogeco Cable Systems and Canada Post who will conduct works within the Subdivision.

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Further, the plan shall consider the respective standards and specification manuals, where applicable, of the utility providers.

- (c) A written acknowledgement from the General Manager of the Peterborough Utilities Services Inc. that the Subdivider has made satisfactory arrangements with the Commission for the installation of a water distribution system including fire hydrants, an electrical distribution system and a street lighting system;
- (d) A written acknowledgement from Enbridge Consumers Gas, Bell Canada and Cogeco Cable Solutions that the Subdivider has made satisfactory arrangements for the installation of their underground facilities;
- (e) Certificates of Approval from the Ministry of the Environment and Energy for the construction of sanitary and storm sewers and watermains;
- (f) Satisfactory evidence that all municipal taxes levied against the lands have been paid;
- (g) An Inhibiting Order as referred to in Article 26
- (h) An Irrevocable Letter of Credit in the amount of \$25,000.00 to the satisfaction of the City Solicitor.
- (i) A general lot drainage plan and restrictive covenants to the satisfaction of the City Engineer and City Solicitor on a sufficient part of the Subdivision to establish a drainage scheme on those lots to be released for sale on all other affected lots;
- (j) A certified copy of an insurance policy to provide public liability insurance coverage for the Subdivider and the City to the extent of \$3,000,000.00 for any one occurrence and such insurance shall be maintained for 12 months following the date of the Final Acceptance Certificate. The City shall be named as an additional third party insured in any such policy, and there shall be a cross-liability provision in the policy allowing the City to make claim against the Subdivider pursuant to the insurance policy.

**REGISTRATION OF SUBDIVISION PLAN AND AGREEMENT**

3. The Plan of Subdivision shall not be registered unless the Solicitor for the City is in attendance at the Land Titles Office and this Agreement shall be registered immediately thereafter. The Subdivider shall within seven (7) days following the registration of the plan provide the City Engineer with a copy thereof on drafting film of 0.003" thickness (3 mil Mylar, chronoflex process) and a copy in digital form on CD in AutoCAD (DWG) or Micro station (DGN) format. The registered plan must be tied in to the horizontal control monument system, established by the City, to the satisfaction of the City Engineer. The Subdivider agrees to fully comply with any and all collateral undertakings provided to the City, its agents, employees or servants in any matter related to:
- (a) the registration of the Plan of Subdivision; and
  - (b) the registration of the Subdivision Agreement; and
  - (c) the registration of all instruments required to satisfy the requirements of Clause 4.

**LANDS TO BE CONVEYED BY THE SUBDIVIDER**

4. Concurrent with the execution of this Agreement, the Subdivider will convey, free of encumbrances and without cost to the City or other appropriate authorities, the lands and/or easements described in Schedule C and thereafter will, upon request, convey such additional lands and/or easements free of encumbrances and without cost to the City, or appropriate authorities, as are, in the opinion of the City Engineer, required for and in connection with the servicing of the Subdivision.

**ENGINEERING PLANS AND REPORTS**

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5. (a) The Subdivider hereby covenants and acknowledges that the construction of all of the Public Services shall be carried out in compliance with the engineering plans, which include all drawings, specifications, design calculations and reports, which are described in Schedule E.
- (b) The Subdivider also covenants and acknowledges that the Subdivision shall be developed in compliance with the stormwater management, sedimentation and erosion control plans and related reports and the general lot grading plan, which are described in Schedule F. These plans and related reports show the following:
- (i) The intended means of controlling stormwater runoff in terms of quantity, frequency and duration for all events up to and including the Regulatory storm in accordance with the final accepted plans;
  - (ii) The intended means of safely conveying stormwater flow from the site, including use of stormwater management water quality measures, both temporary and permanent, which are appropriate and in accordance with the provincial *Ministry of the Environment (MOE) Stormwater Management Planning and Design Manual, March 2003*;
  - (iii) The means whereby erosion and sedimentation and their effects will be contained and minimized on the site both during and after the period of construction, which shall include the completion of Public Services and the housing construction. These means shall be in accordance with the provincial *Guidelines on Erosion and Sediment Control for Urban Construction*. Supporting technical documentation should also be submitted which meets or exceeds standards in the *Ministry of Natural Resources (MNR) Technical Guidelines – Erosion and Sediment Control, February 1989*, and the *MOE Erosion and Sediment Control Training Manual, 1997*;  
Temporary ponds for sediment control shall be capable of accommodating 125 cubic metres/hectare of contributing drainage area for a period of not less than 12 hours or removing particle sizes down to 40 microns;
  - (iv) Site soil conditions, including grain size distribution profiles;
  - (v) Site grading plans;
  - (vi) Soils/hydrogeological report to assess soil types and ground water levels relative to establishing house elevations and the requirement for a foundation drain discharge system;
  - (vii) Existing and proposed lot corner elevations, ground elevations at building (front and back), basic lot grading type, general surface drainage patterns and other related information described in the *Lot Grading and Drainage Policies and Guidelines Report* prepared by the City of Peterborough, April, 2001;

### **CONSTRUCTION OF PUBLIC SERVICES**

6. The Subdivider shall notify the Otonabee Conservation at least 48 hours prior to the commencement of the construction of stormwater management and sedimentation control structures in accordance with Schedule F and shall maintain all such works in good repair until the issuance of the Final Acceptance Certificate, in a manner satisfactory to the Otonabee Region Conservation Authority.
7. The Subdivider hereby undertakes to provide full-time on-site supervision by the Subdivider's qualified professional engineer authorized to practise in the Province of Ontario to supervise the construction of all Public Services and to ensure compliance with all engineering plans, and the stormwater management and sedimentation and erosion control plans as described in Schedules E and F; and, further, until such time as building permits are authorized pursuant to Article 10, to supervise all of the grading on the lots in the subdivision. The Subdivider hereby acknowledges that

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the City may, at the Subdivider's expense carry out any inspection or work necessary to ensure that the stormwater management and sedimentation and erosion control measures are implemented if the Subdivider, in the sole opinion of the City Engineer, fails to do so. The City may cash or realize on any security provided pursuant to this Agreement for any cost or expense incurred; if security funds are insufficient, outstanding costs shall be paid by the Subdivider forthwith upon receipt of an invoice.

8. The Subdivider shall, at its expense, proceed to perform all the work and provide all the materials necessary for the construction of the Public Services within the times and in the sequence required by this Agreement and/or noted on the said engineering plans and in any event within three (3) years of the date of registration of this Agreement, unless such date is extended in writing by the City Engineer. The Public Services shall be constructed in a good and workmanlike manner and strictly in accordance with the said engineering plans. The Subdivider shall coordinate the work with installations by the Peterborough Utilities Services Inc., Enbridge Consumers Gas, Bell Canada and Cogeco Cable Solutions. The Subdivider shall grade all streets to final elevation prior to installation of the gas lines and provide the necessary field survey information required of the gas lines, all to the satisfaction of Enbridge Consumers Gas. All utilities shall be constructed underground at no cost to the City.

The Subdivider shall not commence any work until the City Engineer and the aforesaid parties have received two (2) weeks written notice from the Subdivider and the Subdivider has arranged a site meeting with all of the parties recited in this provision. Construction of the Public Services shall proceed in an orderly and expeditious manner and the Subdivider shall not stop or interrupt the work without reasonable written notice being given to the City Engineer or his designated representative of its intention to do so.

9. Upon completion of the Public Services, the Subdivider shall provide the City Engineer with one set of As Constructed Plan and Profile drawings showing the Public Services either drawn in ink on drafting film of 0.003" thickness (3 mil Mylar) or a satisfactory copy thereof made by the chronoflex process, and one copy in digital form on a CD in AutoCAD (DWG) or Micro station (DGN) format.

The Subdivider shall pay the amount set forth in Schedule B for the establishment of second order control monuments by the City for input to the MNR COSINE database system, according to Article 2(a).

**ISSUANCE OF BUILDING PERMITS**

10. The City shall not be obligated to release the Inhibiting Order as referred to in Article 26 or authorize the issuance of a building permit for any lot within the Subdivision until an Interim Acceptance Certificate, referred to in Article 15, has been issued.
11. The parties agree that building permits shall be issued in two stages with respect to all dwellings in the following manner:
- (a) Initially, the City may issue a building permit to construct a foundation, but only after a detailed lot plan, approved by the Subdivider's Engineer as being in conformity with the subdivision general lot grading plan, has been received and approved by the City.
  - (b) Subsequently, the City may issue a full building permit, provided that written verification has been received from an Ontario Land Surveyor or Professional Engineer to the effect that the foundation is in compliance with the approved detailed lot plan.

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12. (a) The Subdivider acknowledges that, pursuant to By-Law No. 97-123 of the City of Peterborough, being the comprehensive Zoning By-Law, decks elevated 3.0 metres or greater above the lot grade are considered to be part of the main building and therefore are subject to the minimum rear yard provisions of the By-Law. Decks, which are, elevated more than 1.5 metres but not more than 3.0 metres may extend not more than 3.0 metres into a building setback from a rear lot line. Furthermore, decks elevated less than 1.5 metres but more than 150 mm. above lot grade are considered a platform and may extend not more than 3.0 metres into a building setback from a rear lot line, not more than 1.5 metres into a building setback from a street line and not more than 0.9 metres into a building setback from a side lot line. The Subdivider agrees to include this information and specifically refer to this requirement in any agreement of purchase and sale for any lot.
- (b) The Subdivider hereby agrees and acknowledges that the City accepts no responsibility for enforcement of the approved general lot drainage plans or the final grades following construction of dwellings, other than the enforcement, in the normal course, of the Ontario Building Code and the City's Minimum Property Standards By-law.
13. The Subdivider acknowledges that, pursuant to By-law No. 91-10 of the City, the foundation drains of buildings may not be connected into the sanitary sewer system. The Subdivider agrees to include this information and specifically refer to this requirement in any Agreement of Purchase and Sale for any lot.
14. The Subdivider agrees that no building permit shall be issued until the City Engineer and the Peterborough Utilities Services Inc. have approved a plan showing driveway locations and service connections for all lots.

**INTERIM ACCEPTANCE CERTIFICATE**

15. An Interim Acceptance Certificate shall be issued by the City, within 14 days of the fulfilment of the following requirements:
- (a) storm sewer, sanitary sewer, and water distribution systems have been completed and the sewers connected to outlets all to the satisfaction of the City Engineer, interim As Constructed Plan and Profile drawings showing all sewer connection locations and elevations have been provided to the City Engineer, and camera test results / sewer ratings of the sanitary and storm sewers have been submitted in accordance with the City's Unit Price Contract Supplemental Information Package (current edition) and approved by the City Engineer. As Constructed drawings shall be provided either drawn in ink on drafting film of 0.0003 inch thickness (3 mil Mylar) or a satisfactory copy thereof made by the chronoflex process and one copy in digital form on a CD in DWG or DGN format.
- (b) the full width of the road allowances have been rough graded, the granular base and asphalt base have been completed and the streets have been connected to an existing assumed street;
- (c) the Subdivider has submitted an overall utility distribution plan showing the utility services of the various utility companies;
- (d) the Subdivider has rough graded the lots to within 450 mm. below finished grade in conformity with the general lot grading plan and further established any specific elements of the plan, such as rear yard swales common to and crossing through several lots, as deemed essential by the City Engineer so that subsequent builders may conform readily to the plan;
- (e) the Subdivider has erected and shall maintain a sign at or near each entrance clearly

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depicting the land use designations within the Subdivision and on the immediately abutting lands and the arterial and collector streets as recited in the Official Plan; temporary sedimentation ponds shall also be clearly shown on the signs. The size, content and location of each sign shall be approved by the City Engineer in advance of erection;

- (f) the Subdivider has erected temporary street name signs and traffic control signs to the satisfaction of the City Engineer;
- (g) the Subdivider has marked the municipal address and lot number on the water service markers at each lot or block;
- (h) the Subdivider's Consulting Engineer has provided written confirmation that the requirements of subsections (a), (b), (c), (d), (e), (f) and (g) have been fulfilled;
- (i) the Subdivider has made arrangements to maintain the Public Services and emergency routes to the satisfaction of the City Engineer. Satisfactory arrangements shall include an undertaking by the Subdivider's Professional Engineer that the Public Services, including stormwater management and sedimentation and erosion control facilities will be monitored on a weekly basis and that deficiencies will be immediately rectified to the satisfaction of the City Engineer. The Subdivider shall provide the following:
  - Name and phone number of contact person for maintenance problems and emergency conditions;
  - Name of Contractor for maintenance of sedimentation and erosion control facilities and road cleaning and sweeping;
- (j) the Subdivider has posted a further Irrevocable Letter of Credit in the amount of \$240,000.00 to secure completion of its remaining obligations pursuant to this Agreement to the satisfaction of the City Engineer;
- (k) a written acknowledgement from the City of Peterborough Fire Chief or his designate has been received to the effect that the Subdivider has made satisfactory arrangements for the sequence of building construction so as to create fire breaks during the period of construction and further that adequate access is available for Fire Department vehicles;
- (l) the Subdivider has paid in full all outstanding invoices for work performed by the City pursuant to this Agreement;
- (m) a written acknowledgement from the General Manager of the Peterborough Utilities Services Inc. has been received to the effect that the water distribution system, including the fire hydrants, is complete and operable;
- (n) the City Engineer is satisfied that the Subdivider is in compliance with the stormwater management and sedimentation and erosion control measures required by Article 5. The Subdivider agrees to provide a certificate, from his Consulting Engineer, confirming that the stormwater management system will not cause any adverse impacts, in terms of water quantity and quality, downstream of the Subdivision;

After issuance of the Interim Acceptance Certificate, the City will be responsible for garbage collection and snow ploughing within the Subdivision.

**FINAL ACCEPTANCE CERTIFICATE**

- 16. When the City Engineer is satisfied of the following:
  - (a) The Public Services required by Schedule D have been completed in a satisfactory manner and have been fully paid for;
  - (b) The Subdivider has provided a certificate of Current Value, from the Subdivider's Engineer, establishing the value of the Public Services being assumed by the City upon expiry of the

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Warranty Period; and

- (c) The Subdivider has provided written confirmation from an Ontario Land Surveyor that all standard iron bars within the Subdivision, as shown on the registered plan, have been located and, if necessary, replaced; the City Engineer shall provide the Subdivider with a certificate indicating that the Public Services have been completed to the satisfaction of City Engineer (herein referred to as the "Final Acceptance Certificate"). The Subdivider shall continue to be solely responsible for the maintenance of the Public Services in a state of good repair for twelve (12) months following the date of the Final Acceptance Certificate (herein referred to as the Warranty Period) and shall promptly remedy any defects in the work appearing within such period. The Warranty Period shall not expire until the final inspection has been arranged by the Subdivider and carried out by the City, and any defects identified by the final inspection have been repaired by the Subdivider. Within fourteen (14) days of the final inspection, or the repair of any defects identified by the final inspection performance security shall be returned to the Subdivider and the City shall acknowledge in writing that the Public Services have been fully assumed by the City

### **ADDITIONAL DRAINAGE WORKS**

17. If, prior to the expiry of the Warranty Period, and in the opinion of the City Engineer, drainage works in addition to those required in accordance with Schedules E and F, are reasonably required for the proper drainage of the Subdivision, the City Engineer may notify the Subdivider in writing of the need for such works. The Subdivider may consult with the City Engineer within fourteen (14) days of the date of such written notice in order to review the need for the works. The City Engineer may, not sooner than the fifteenth (15th) day after such notice was given to the Subdivider, direct the Subdivider, in writing, to promptly construct such works at its expense, and the Subdivider shall forthwith do so.

### **PROTECTION OF PROPERTY**

18. The Subdivider shall do all things reasonably necessary to protect residents of the Subdivision and neighbouring subdivisions from dust, noise, building debris, mud and traffic and will promptly carry out any directions given it in this regard by the City Engineer or his designate. Without in any way derogating from the Subdividers responsibilities pursuant to this Agreement, the Subdivider acknowledges and agrees that the City may in the Citys absolute discretion and after twenty-four (24) hours notice to the Subdivider, carry out street cleaning operations as required. The Subdivider shall reimburse the City for any such cleaning, within 30 days of receipt of an invoice therefor.
19. The Subdivider shall take steps to prevent damage being caused to existing public highways or other Public Services leading to the Subdivision by persons or vehicles employed by the Subdivider or others in the course of the development of the Subdivision and if, in the opinion of the City Engineer, damage in excess of fair wear and tear has been so caused the Subdivider will, at its expense, promptly repair such damage. The City shall be at liberty to cash or realize on any security provided pursuant to this Agreement if the City should repair any such damage. If security funds are insufficient, outstanding costs shall be paid by the Subdivider upon receipt of invoice; invoices must be paid within 30 days of receipt by the Subdivider.
20. The Subdivider shall, at its expense, repair any damage to public property, which occurs during the construction of the Subdivision to the satisfaction of the City Engineer, acting reasonably.



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21. Vacant lots within the Subdivision shall be maintained in a neat and clean manner free of weeds, debris, or construction materials in accordance with Chapter No. 611 of The City of Peterborough Municipal Code, until the earlier of the expiry of the Warranty Period or conveyance of such lots by the Subdivider.
22. The Subdivider shall ensure, at its expense, that any temporary topsoil or earth stockpile within the Subdivision or other designated area shall be indicated on the engineering plans and shall comply with the following regulations:
- (a) A maximum height of 3.0 metres;
  - (a) Maximum side slopes of 3:1;
  - (b) Graded in a uniform manner and seeded.
- In addition, any lot which is vacant as of the earlier of the expiry of the Warranty Period and the fifth anniversary of the date of registration of the Plan of Subdivision, shall forthwith be graded in accordance with the general lot grading plan, to the satisfaction of the City Engineer, at the expense of the Subdivider.

**PERFORMANCE OF OBLIGATIONS**

23. If the Subdivider fails or neglects to properly perform its obligations under this Agreement, the City may, after 5 business days written notice to the Subdivider and without prejudice to any other right or remedy it may have, enter on the Subdivision and, at the expense of the Subdivider, perform such work and provide such materials as are necessary to correct the default.
- Where in the sole opinion of the City Engineer an emergency exists, the City may enter on the Subdivision without notice and, at the expense of the Subdivider, do such work and provide such materials as are necessary to answer the emergency. In either event, any monies expended by the City in so doing shall immediately become due and payable to the City by the Subdivider, and the City may cash or realize on any security provided pursuant to this Agreement for any cost or expense incurred by the City. If security funds are insufficient, outstanding costs shall be paid by the Subdivider upon receipt of invoice; the Subdivider must pay invoices within 30 days of receipt.
24. The Subdivider shall indemnify and save the City harmless from any and all actions, claims or demands made or brought against the City by any person or persons for damages arising out of the act or omission of the Subdivider in respect to its obligations under this Agreement.
25. The Subdivider shall not assign this Agreement without written consent of the City.
26. The Subdivider agrees to an Inhibiting Order being registered against all lots within the Subdivision, in favour of the City, stating that there shall be no further dealing with the subject property without the consent of the City. The said Inhibiting Order shall be deposited on title by the Subdivider at its expense and shall be registered immediately subsequent to the registration of the Plan of Subdivision and this Agreement. Upon issuance of the Interim Acceptance Certificate, the City shall release the Inhibiting Order forthwith.

The City agrees that the said Inhibiting Order shall not prejudice any chargee or encumbrancer in the exercise of any remedies available to realize upon their security in the subject land provided that any transferee by sale under power of sale, judicial sale, foreclosure, or otherwise, agrees to be obligated to comply with the provisions of the Subdivision Agreement, including the re-imposition of

the Inhibiting Order.

**WAIVER**

27. It is expressly understood and agreed that the remedies of the City under this Agreement are cumulative and the exercise by the City of any right or remedy for the default or breach of any term, covenant, condition or Agreement herein contained shall not be deemed to be a waiver or alter, affect or prejudice any other right or remedy or other rights or remedies, to which the City may be lawfully entitled for the same default or breach; and any waiver by the City of the strict observance, performance or compliance by the Subdivider with any term, covenant, condition or Agreement herein contained, or any indulgence granted by the City to the Subdivider shall not be deemed to be a waiver of any subsequent default or breach by the Subdivider, nor entitle the Subdivider to any similar indulgence heretofore granted.

**DEVELOPMENT CHARGES**

28. The Subdivider acknowledges that development charges are payable, in accordance with the City's Development Charges Bylaw. Development charges must be paid on an individual lot or block basis prior to the occupancy or sale of the property, in accordance with the development charges rate in effect at that time.

**CONSTRUCTION TRAFFIC ROUTES AND SIGNAGE**

29. The Subdivider hereby agrees and acknowledges that the streets and other routes listed in Schedule G are the designated construction traffic routes within and leading into the Subdivision and shall be used for construction traffic during the development of the Subdivision.

The Subdivider further agrees to take all reasonable steps and actions to ensure that, during the construction of the Subdivision, heavy truck traffic is restricted to the routes designated in Schedule G attached hereto. Such steps shall include, if necessary, and/or requested, the posting of appropriate signage and/or barricades, on-site supervision and traffic direction, or appropriate contractual arrangements with any contractors or equipment suppliers who may have occasion to use heavy trucks. All such steps shall be carried out to the satisfaction of the City Engineer, failing which the City may take whatever steps it deems appropriate to enforce this requirement, at the expense of the Subdivider, including drawing on the Subdivider's security. For the purposes of this provision, "heavy truck" has the same meaning as that contained in Section 767-1-5 of the Peterborough Municipal Code.

**EASEMENTS FOR UTILITY COMPANIES**

30. The Subdivider agrees to grant easements for utility purposes, including telephone and cable TV, to the appropriate authorities, including making application to the Committee of Adjustment for consent to do so, where required. The Subdivider shall make all such arrangements without cost to the City.

**MODEL HOUSES**

31. Notwithstanding Article 10, the City may issue building permits for the construction of five (5) model

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houses according to the following conditions:

- (a) The Subdivider shall construct a 6.1 metre access road from an open public road to the lot upon which the model home is to be constructed. The access shall be paved to the base course asphalt stage;
- (b) The Subdivider shall construct a gravel turning circle at the end of any such access road, in accordance with the Building Code Act;
- (c) An in-service fire hydrant shall be located within 90 metres of the model house, based on vehicular travel distance;
- (d) At the time of commencement of construction of a model house, no portion of a model house shall be constructed within 15.0 metres of any other building with an unfinished exterior, other than another model house;
- (e) The Subdivider shall maintain, at its sole cost, the access road and turning circle, including snow ploughing, until the issuance of the Interim Acceptance Certificate, pursuant to Article 15.

The Subdivider covenants and agrees that no model house shall be occupied for residential purposes prior to the issuance of the Interim Acceptance Certificate. The Subdivider shall assume all responsibility and liability arising from the issuance of the building permits, and shall indemnify and hold harmless the City from any and all claims, which may arise from the issuance of the said building permits.

#### **PARKLAND REQUIREMENTS**

32. The Subdivider acknowledges the requirement for land to be conveyed to the City for park purposes, pursuant to the Planning Act, and covenants and agrees that the parkland requirement in connection with this Plan is 0.xxx hectares. The Subdivider agrees that the area of 0.xxx hectares shall be conveyed to the City, free of encumbrances and at no cost to the City, in connection with the development of adjoining lands of the Subdivider, being Parts 1 and 2, Plan 45R - 8421, save and except Plan 45M-195, 45M-223 and 45M -.\_\_\_\_\_ . The area of 0.xxx hectares is in addition to 0.470 hectares to be conveyed in conjunction with Phases 1 and 2 of the subdivision, Plans 45M-195 and 45M-223, for a total of 0.xxx hectares. The Subdivider also agrees to the registration of an Inhibiting Order against the said adjoining lands, stating that there shall be no further dealings with the said lands, without the consent of the City.

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**CANADA POST CORPORATION REQUIREMENTS**

33. The Subdivider agrees to inform all prospective purchasers, through a clause in all agreements of purchase and sale, that the \_\_\_\_\_ corner of Lots \_\_, and the \_\_\_\_\_ corner of Lots \_\_ have been identified as potential community mailbox locations
34. The Subdivider agrees to provide a curb depression 2.0 metres in width and no higher than 25 mm., at each community mailbox location. A concrete walkway, 1.0 metres in width, shall be provided between the curb and the mailbox.

**LOT GRADING CERTIFICATION**

35. The Subdivider shall ensure that each lot is graded in accordance with the approved detailed lot plan and general lot grading plan. Within 30 days of receiving notice from a builder that a lot is ready for lot grading inspection, the Subdivider's Engineer shall inspect the subject lot and provide a written confirmation of grading certification or the presence of any deficiencies to the said building and the City of Peterborough's Building Division.

Where a building is occupied or ready for occupancy between the dates of May 1<sup>st</sup> and September 15<sup>th</sup> in any year, the Subdivider agrees to provide the following to the City Engineer by October 30<sup>th</sup> in the same year:

- A lot grading certificate issued by the Subdivider's Engineer in a form acceptable to the City's Engineer confirming that the lot grading complies with the approved general lot grading plan and the approved detailed lost plan; and
- An as built topographic survey of the final lot grading.

Where a building is occupied or ready for occupancy between the dates of September 16<sup>th</sup> and April 30<sup>th</sup> of the succeeding year, the Subdivider agrees to provide the said lot grading certificate and as built topographic survey to the City Engineer prior to the next July 15<sup>th</sup>.

The Subdivider shall reserve the right to enter upon any lot in the Subdivision for a period of one (1) year after the date of submission of the final lot grading certificate to the City to carry out any necessary rectification of grading deficiencies.

36. Prior to final acceptance of the Subdivision by the City, the Subdivider shall have provided a lot grading certificate for each lot. Prior to the issuance of the Interim Acceptance Certificate referred to in Article 15, the Subdivider shall provide an Irrevocable Letter of Credit in the amount of \$96,0000 (96 lots x \$1,000 per unit), which may be utilized by the City in the event that the Subdivider fails to fulfil its obligations pursuant to lot grading. If any lot grading certificates are outstanding at the time of issuance of the Final Acceptance Certificate, the City may retain \$1,000 for each outstanding uncertified lot from the original Letter of Credit until the Subdivider fulfils its obligations.
37. The Subdivider agrees to advise all prospective purchasers, through a clause in all Agreements of Purchase and Sale, that homeowners shall not alter the grades on their property prior to the City's acceptance of the Final Lots Grading Certificate for the lot. Any alterations to the grade made by the

**Exhibit D**  
**Sheet 13 of 18**

homeowner following acceptance of the Final Lot grading Certificate shall be entirely at the homeowner's risk.

**EROSION AND SEDIMENTATION CONTROL**

38. The Subdivider agrees, during and after construction, to monitor the erosion and sedimentation control facilities on a weekly basis, or forthwith following rainfall events of 13 millimetres or greater, and immediately rectify any deficiencies within 24 hours to the satisfaction of the City Engineer. Where overland drainage occurs to the open space areas, the Subdivider agrees that all of the erosion and sediment control works shall be inspected and maintained to ensure their structural integrity. The Subdivider shall provide the name and phone number of the Contractor for maintenance of the erosion and sedimentation control facilities. Where in the sole opinion of the City Engineer an emergency exists with respect to erosion and sedimentation control, the City may enter on the subdivision without notice and, at the expense of the Subdivider, do such work and provide such materials as are necessary to answer the emergency.
39. The temporary sediment control basin(s) shall be inspected and maintained on a regular basis and shall be cleaned out when sediment accumulation reaches 50% of the basin capacity, or as directed by the City Engineer. Rock check dams shall also be inspected and maintained on a regular basis; accumulated sediment upstream of all rock check dams shall be removed when the sediment depth is greater than 50% of the check dam height. Once construction and landscaping of the subdivision, including open space areas, have been stabilized, the erosion and sedimentation control works may be removed, sediment basin cleaned out and internal slopes of the stormwater management pond restored and landscaped to the satisfaction of the City Engineer.

**ZONING BY-LAW**

40. The Subdivider agrees to include a clause in all Agreement of Purchase and Sale the following clause:

“Use of the property is regulated by the City of Peterborough Zoning By-law No.97-123, as amended from time to time. Homeowners are advised to consult the City of Peterborough Building Division prior to physically altering any portion of any building or the property, and/or changing the use of property, to ensure compliance with the City's Zoning By-law.”

**THIS AGREEMENT** shall enure to the benefit of and be binding upon the respective parties hereto, their respective heirs, executors, administrators, successors and assigns.

**IN WITNESS WHEREOF** the parties have hereunto affixed their Corporate seals duly attested by their proper officers.

**ACTIVA HOLDINGS INC.**

\_\_\_\_\_  
Werner Brummund - President

I have the authority to bind the Corporation.

**THE CORPORATION OF THE CITY**

**OF PETERBOROUGH**

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Mayor – D. Paul Ayotte

Clerk - Nancy Wright-Laking

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**SCHEDULE A**

**DESCRIPTION OF THE PROPERTY**

LOTS 1 TO 96, both inclusive, Blocks 97, 98, 99, 100, 101 and 102 and Streets namely Bowen Drive, Peace Crescent and Logan Lane.

PLAN 45M-\_\_\_\_\_, IN THE CITY OF PETERBOROUGH

**SCHEDULE B**

**PARTICULARS OF THE AMOUNTS TO BE PAID BY THE SUBDIVIDER TO THE CITY  
PURSUANT TO ARTICLE 2(a)**

<b>1. City Engineering Overhead Relating To Subdivision</b> (5.5% of the servicing cost required by Schedule D). This cost is estimated and shall be adjusted by the City Engineer upon determination of the actual cost.	\$66,478.54
<b>2. Charges for Planting of Street Trees</b> 58 Units X \$190.00	\$11,020.00
<b>3. Charges for Control Monuments</b>  58 Units @ \$15.00 per unit	\$870.00
<b>4. Area Specific Development Charge</b> (as per By-Law 08-128)  58 units @\$6,731.00	\$390,398.00
<b>5. Charges for Street Name Signs &amp; Traffic Signs</b>  3 street name signs, 3 traffic signs: 10 @\$350.00	\$2,100.00
<b>TOTAL</b>	<b>\$470,866.54</b>

**SCHEDULE C**  
**LANDS TO BE CONVEYED BY THE SUBDIVIDER**

1. Blocks 59, 60 and 61 for 0.30 metre reserves;
2. Easement for temporary turning circle and snow storage at the west end of Heritage Trail;
3. Easement for temporary turning circle and snow storage at the south end of Carriage Lane.

**SCHEDULE D**  
**PUBLIC SERVICES TO BE CONSTRUCTED BY AND AT THE EXPENSE OF THE SUBDIVIDER**

**1. Sanitary Sewers**

A sanitary sewer system shall be installed by the Subdivider throughout the Subdivision including the construction of the mains and connections from the main to all lots. The system shall be connected to an adequate outlet. The sanitary sewer system is to be completed by November 30, 2010.

**2. Storm Sewers**

A storm sewer system shall be installed by the Subdivider in the Subdivision including the construction of mains, cross-drains and catch basins and, for Lots 59 to 96 only, a “wye” connection from the storm sewer main to two houses sharing a common lot line, as set out in the engineering drawings described in Schedule E.. The sump pumps in Lots 59-96 shall not be required to be connected to the “wye” connections, but rather the sump pumps shall discharge to the rear of the lot in accordance with the lot grading plan.

The storm sewer system is to be completed by November 30, 2010.

**3. Storm Water Management and Sedimentation & Erosion Control**

Storm Water Management and Erosion Control facilities shall be installed by the Subdivider in accordance with the approved plans described in Schedule F. The Sedimentation and Erosion Control system is to be completed to the satisfaction of the City Engineer prior to any other construction on site.

**4. Roads**

Asphalt pavement on a granular base with concrete curbs and gutters, sub-drains, sidewalks and sodded boulevards shall be constructed by the Subdivider and extended to properly connect with similar existing services. Base asphalt and curb and gutter shall be placed in conjunction with the placement of the granular base. Surface asphalt shall be constructed as directed by the City Engineer but generally not until after one full winter season after completion of the granular base and base asphalt and not until 75 percent of the houses in each block have their roofs completed.

**5. Conduit Crossing under Roadways**

Prior to the placement of the granular base, conduits shall be supplied and installed by the Subdivider for the use of and to the satisfaction of Bell Canada, Cogeco Cable Solutions, Enbridge Consumers Gas, the Peterborough Utilities Services Inc. and the City of Peterborough.

**6. Streetlights**

Streetlights shall be installed by the Subdivider throughout the Subdivision by arrangement with the Peterborough Utilities Services Inc. and at the same time as their installation of its electrical distribution system. The luminaire and pole style shall be approved by the City of Peterborough.



**7. Sidewalks**

Sidewalks shall be constructed on both sides of all streets in the subdivision, excluding laneways and the perimeter of Block 97, at the same time as the final asphalt is constructed.

**8. Barriers**

Barriers shall be installed by the Subdivider at street ends or elsewhere for the protection of the public as directed by the City Engineer.

**9. Emergency Access Route**

The Subdivider shall maintain the emergency access from Carriage Lane to Cumberland Avenue until it must be removed as a requirement of a future Subdivision Agreement.

**SCHEDULE E**

**APPROVED PLANS FOR CONSTRUCTION OF PUBLIC SERVICES**

1. Site Servicing Plan (Southwest), Drwg. No. 10013SS-01, Rev. 3, dated November 3,2008, by D. M. Wills Associates Limited;
2. Site Servicing Plan (West), Drwg. No. 10013SS-02, Rev. 3, dated November 3,2008, by D. M. Wills Associates Limited;
3. Blacksmith Way, Plan & Profile, Sta. 1+000 to 1+247, Drawing No. 10013PP-07, Rev. 3, dated November 3,2008, by D. M. Wills Associates Limited;
4. Carriage Lane, Plan & Profile, Sta. 1+040 to 1+134, Drawing No. 10013PP-08, Rev. 3, dated November 3, 2008, by D. M. Wills Associates Limited.
5. Heritage Trail, Plan & Profile, Drawing No. 10013PP-09, Rev. 3, dated November 3, 2008, by D. M. Wills Associates Limited;
6. Heritage Park Subdivision, Phase 2 – Stage 2, Details, Drawing No. 10013DT-16, Rev. 3, dated November 3, 2008, by D. M. Wills Associates Limited;
7. Heritage Park Subdivision, Phase 2 – Stage 2, Details and General Notes, Drawing No. 10013DT-17, Rev. 3, dated November 3, 2008, by D. M. Wills Associates Limited;
8. Sanitary Drainage Area Plan, Drawing No. 10013SA-21, Rev. 3, dated November 3, 2008, by D. M. Wills Associates Limited;
9. Storm Drainage Area Plan, Drawing No. 10013SA-22, Rev. 3, dated November 3, 2008, by D. M. Wills Associates Limited;
10. Geotechnical Investigation Report, Heritage Park Subdivision, Phase 2, Project No. 06-G-181, dated January 2007, by Geo-Logic Inc.

**SCHEDULE F**

**APPROVED STORMWATER MANAGEMENT,  
LOT GRADING AND SEDIMENTATION AND EROSION CONTROL  
PLANS AND REPORTS**

1. Lot Grading Plan (Southwest), Drawing No. 10013LG-04, and Rev. 3, dated November 3, 2008, by D. M. Wills Associates Limited;
2. Lot Grading Plan (West), Drawing No. 10013LG-05, Rev. 3, dated November 3, 2008, by D. M. Wills Associates Limited;
3. Erosion Control Plan (Southwest), Drawing No. 10013EC-18, Rev. 3, dated November 3, 2008, by D. M. Wills Associates Limited;
4. Erosion Control Plan (West), Drawing No. 10013EC-19, Rev. 3, dated November 3, 2008, by D. M. Wills Associates Limited;
5. Cut/Fill Plan, Drawing No. 10013, Rev. 3, dated November 3, 2008, by D. M. Wills Associates Limited;

**SCHEDULE G**

**CONSTRUCTION TRAFFIC ROUTES PURSUANT TO ARTICLE 29**

Construction Traffic Routes:

Carnegie Avenue to Heritage Trail (construction traffic prohibited on Settlers Ridge, Farrier Crescent, Colonial Crescent and Carriage Lane).