

**CORPORATION OF THE TOWN OF AMHERSTBURG
BY-LAW NO. 2025-014**

**By-law to authorize the execution of a
Consent Agreement between Casey James Ray Martin and Nicholas Joel
Ernest Martin and the Council of the Corporation of the Town of Amherstburg
Easy Street Paving, Servicing of V/L Easy Street and Right-of-Way Restoration**

WHEREAS Casey James Ray Martin and Nicholas Joel Ernest Martin have proposed the severance and servicing of lands owned by them within Part Lots 14 and 15, Plan 13; Part 1, 12R-29143; Town of Amherstburg;

AND WHEREAS the Corporation of the Town of Amherstburg have settled Casey James Ray Martin and Nicholas Joel Ernest Martin, the requirements for the provisions of municipal services within the area to be subdivided, which requirements are set out in the agreement hereto annexed, and which agreement is ratified and adopted by Casey James Martin and Nicholas Joel Martin;

NOW THEREFORE the Council of the Corporation of the Town of Amherstburg hereby enacts as follows:

1. That the Corporation of the Town of Amherstburg enter into a Consent Agreement with Casey James Ray Martin and Nicholas Joel Ernest Martin in the form annexed hereto, and the Mayor and Clerk be and they are hereby authorized to sign the original and copies thereof and affix the Corporate Seal thereto.
2. This this By-law shall come into force and effect on the date of final passage hereof.

Read a first, second and third time and finally passed this 24th day of February, 2025.

MAYOR – MICHAEL PRUE

CLERK – KEVIN FOX

CONSENT AGREEMENT

THIS AGREEMENT made in quadruplicate this 24th day of February, 2025.

BETWEEN: **CASEY JAMES RAY MARTIN
AND NICHOLAS JOEL ERNEST MARTIN**

(hereinafter called the "**Developer**")

OF THE FIRST PART;

-and-

THE CORPORATION OF THE TOWN OF AMHERSTBURG

(hereinafter called the "**Town**")

OF THE SECOND PART;

WHEREAS the Developer proposes the severance, and, servicing of lands within Part Lots 14 and 15, Plan 13; Part 1, 12R-29143, Town of Amherstburg, County of Essex which lands are more particularly described in Schedule "A" annexed hereto;

AND WHEREAS the Amherstburg Committee of Adjustment granted consent on February 7, 2024 for the severance of lands to create one (1) severed building lot for purpose of one (1) single unit dwelling and one (1) retained building lot for the purpose of one (1) single unit dwelling, subject to conditions imposed including a provision that the Developer agrees in writing to satisfy all of the requirements, financial and otherwise, of the Town concerning the repairing of roads, installation of services, drainage, the granting of easements and other matters;

AND WHEREAS the Developer represents and warrants to the Town that it is now the registered Developer of all of the lands described in Schedule "A" annexed hereto and that all of the right, title and interest of its predecessors in title and all the right and authority to complete the land severance and to develop the lands is vested in it.

NOW THEREFORE IN CONSIDERATION of the premises and of the Town certifying to the Committee of Adjustment that the requirements of the Town have been met, the parties hereto agree as follows:

1. Recitals

The foregoing Recitals are true in substance and in fact and are hereby incorporated herein by reference.

2. Installation of Services

The Developer will design, construct and install services at its own expense on the lands in accordance with such design criteria, detailed plans and work schedules to be filed in the office of the Clerk of the Town, with good materials, in a good, workmanlike and timely manner, in accordance with good and accepted engineering practices, and to the satisfaction of the Town.

3. Certificate of Liability Insurance

The Developer will provide to the Town, on or before the commencement of any construction and installation of any of the services called for herein, a certificate of liability insurance satisfactory to the Town, naming the Town as an additional insured party. The insurance shall protect the Developer and the Town against any liability that might arise out of the construction or installation of any of the services herein referred to, and the said Developer shall continue such insurance in full force and effect so long as any services are to be constructed or installed, and for

a period of not less than one (1) year after completion and acceptance of the services. The insurance is to be maintained in full force and effect until the services are completed and formally accepted (final assumption of ownership) by the Town.

The limits of liability for public liability and property damage coverage under such insurance shall not be less than \$2,000,000.00.

4. Save and Hold Harmless

The Developer covenants and agrees to save the Town harmless from any and all claims, demands, loss, costs, or damages, including legal costs on a substantial indemnity basis in any way arising from or related to the severed and retained parcels and the proposed development thereof, arising or accruing to anyone up to two years after the completion and final acceptance of the last of the services for the subdivided lands.

5. Drawings and Tenders

The Developer shall submit an overall servicing plan that details how all retained and severed parcels are going to be serviced with municipal servicing in order to facilitate development. The approved servicing plan shall form Schedule 'C' of this agreement.

All engineering drawings submitted to the Town must comply with the Town's Development Manual and all applicable provincial regulations, including but not limited to the design criteria for sanitary sewers, storm sewers, and forcemains for alterations authorized under an Environmental Compliance Approval.

In the case of any services to be constructed by a Contractor, the Developer shall also submit to the Town a copy of the quote obtained by the selected Contractor to complete the works. The quote obtained must include the scope of work being completed by the Contractor, a list of subcontractors being used to complete the works, and the total value of the works including HST.

The Developer shall obtain the approval in writing of the Town to all of the foregoing, except the selection of contractors or sub-contractors before granting any contract or commencing any work. The design criteria contained in the Town's Development Manual provides the minimum standards for all works designed to be completed within the municipal right-of-way. All requests for deviation from the Town's Development Manual must be approved in writing by the Town prior to execution.

6. Construction of Services by Contractors

In case of construction of services by contractors, the Developer shall comply with all of the holdback provisions of the Construction Lien Act. In the construction of all services the Developer shall indemnify and save the Town harmless from any and all claims, actions and demands resulting from the construction and installation of services.

7. Inspection

The Town and its authorized agents shall have the right at any time to inspect all services during and after construction and to inspect and test all materials proposed to be used in the construction of any of the services. The costs of such inspections and tests shall be paid by the Developer within 30 days of written demand by the Town. If at any time, the construction of any service or material is, in the opinion of the Town, acting reasonably, not in accordance with the plans and specifications or not in accordance with good engineering practices or any of the provisions of this agreement, the Town may order the materials to be replaced or the work to be placed in satisfactory condition within such time as they may specify,

and in the event of the Developer failing to comply or obtain compliance with such order, the Town may stop work upon such services, or in their sole discretion upon all services.

The Developer shall at all times provide all information requested by the Town, its authorized agents in relation to the various materials and services and shall at any time at his expense expose any municipal service for inspection by the Town.

Notwithstanding the generality of the foregoing, the rights of the Town and its authorized agents hereunder shall be limited to a period of one year after the initial acceptance of the last of the services within or required to facilitate the servicing of lots where such inspection, testing or other action is proposed during the maintenance period.

8. Third Party Inspection

In the event that the Town is unable to complete the required inspections of the Works due to lack of resourcing, the Town reserves the right to acquire a third-party engineering consulting firm to complete the required inspections on the Town's behalf. In this event, the Developer is responsible to borne all costs incurred for third-party inspection.

9. Approval for Commencement of Work

No work shall commence without the approval of the Town and any work requiring the approval or consent of any other governmental authority shall not commence until such approval or consent has also been obtained. No watermain, sanitary sewer, storm sewer or hydro line shall be connected to any existing municipal services without the written approval of whichever of the Town or approval authority has jurisdiction over such municipal system.

10. Work Schedule/Quality of Work

The Developer will prepare and submit to the Town, plans for the installation of services for the development and will correspond with the Town and its consultants in order to establish a work schedule acceptable to the Town and shall proceed with reasonable development procedures and in accordance with such work schedule. A pre-construction meeting may be required at the discretion of the Town based on the complexity of the scope of work.

Subject to Force Majeure, if the Developer fails to proceed with reasonable development procedures and in accordance with the accepted work schedule or if in the opinion of the Town the services are not being installed in accordance with the drawings, or specifications approved therefore, or in accordance with good engineering practices in a good, workmanlike manner, using good materials, then the Town shall give the Developer thirty (30) days to cure any default following which and in addition to any other remedy the Town may have, the Town may, without further notice, enter upon the lands of the Developer and proceed to supply all materials and do all necessary work in connection with the installation of the services, including the repair or reconstruction of faulty work, and replacement of materials not in accordance with the drawings or specifications and the Town shall charge the cost thereof, including all engineering and other fees to the Developer, who shall forthwith pay the same within thirty (30) days of a written demand therefor by the Town. In the event that the payment is not received within thirty (30) days of the written demand by the Town, the amount expended shall constitute and be a lien and charge upon the lands of the developer and may be collected as real property taxes in accordance with the Municipal Act as amended from time to time.

11. Material Testing

It is the responsibility of the Developer and consulting engineer to confirm material

testing requirements for the work prior to commencement of the work. The Town will provide the material testing requirements in writing. Securities will not be reduced until all material testing results are submitted to the satisfaction to the Town.

12. Restoration of the Municipal Right-of-Way

The Developer is responsible to restore the municipal right-of-way to original condition or better, but not less than the following specifications:

- Grassed Boulevard - 100mm topsoil and grass seed
- Sidewalk Replacement 125mm thick, 30mpa concrete on 150mm granular 'a' base compacted to 100% SPMDD, 1.5m in width
- Asphalt Multi-Use Pathway – contact Infrastructure Services or County of Essex for specifications required for like-for-like replacement
- Roadway – contact Infrastructure Services or County of Essex for specifications required for like-for-like replacement.

Restoration of the municipal right-of-way is not limited to the above-noted items and additional restoration efforts may be required to be completed by the Developer to the satisfaction of the Town.

The Town reserves the right to dictate the extents of all restoration within the municipal right-of-way including, but not limited to, extending the required scope of pavement restoration to capture multiple areas requiring repair due to construction of the works.

13. Acceptance of Services

Once all of the required municipal services are installed as approved in the design drawings and all deficiencies are resolved, the consulting engineer is to arrange for a field inspection by Amherstburg, the Contractor, and the consulting engineer. If the works are deemed acceptable, the consulting engineer will advise the Town by letter that Amherstburg should "accept the services" and that the maintenance period shall begin. Acceptance of services shall not occur until the following is submitted to the Town for review and accepted by the Town:

- Sewer inspection videos
- Material testing results for granular road base and asphalt
- Overall grading plan with all new municipal services depicted

The date of the acceptance of services will be communicated with the Developer by the Town.

14. Maintenance Period

The maintenance period shall be no less than one year (365 days) from the date the acceptance of services by the Town occurs. The maintenance security and liability insurance must remain in force for the duration of the maintenance period.

During the maintenance period, it will be the Developer's sole responsibility to maintain all the services, including but not limited to, maintaining the general condition of the vacant lots, infrastructure, and road rights-of-way as established in the Consent Agreement.

The Developer is obligated to perform (or pay for) all maintenance and repairs to the services (should the Town undertake this work) during the maintenance period including street cleaning of mud and debris, sewer flushing if necessary, weed control on all developed or undeveloped lands.

All catch basins will have filter fabric placed under the lid to catch sediment. It will be the Developer's responsibility to ensure the filter fabric is changed periodically

as required to allow drainage through the catch basins.

The Town will undertake all required snow plowing on the road right-of-way (roads and sidewalk). This act does not constitute the assumption of sidewalks or roads.

15. Assumption of Services

Upon expiration of the maintenance period, the consulting engineer is to arrange for a field inspection by the Town. The following items are to be completed prior to inspection by the Developer:

- All roadways cleaned of mud and debris

Provided there are no outstanding deficiencies and all Consent Agreement requirements have been satisfied, including payment of all accounts and the receipt of a statutory declaration that all accounts have been paid, the consulting engineer will submit a report to the Town requesting that the Town "assume ownership of the infrastructure".

16. Building Permits

The Developer covenants and agrees on behalf of itself and its successors in title to any lot, not to apply for any building permit for the construction of any building on any lots covered by this agreement until the Town has accepted the services as outlined in Section 12 of this agreement.

17. Registration Requirements

The Developer covenants and agrees to cause the local Land Registrar to register, immediately after registration of the proposed reference plan, as annexed to each lot on the reference plan, a condition of restriction running with the lands, that such lot is not to be built upon unless the provisions of this agreement, limiting entitlement to building permits has been complied with.

The Developer agrees to deposit with the Town on or before the execution of this agreement, the sum of \$2,000.00 to be applied against such fees as may be incurred by the Planning Department, with such deposit to be renewed as used immediately upon requested by the Town. Any unused balance to be returned to the Developer without interest, on the expiry of the maintenance period.

18. Financial Security

The Developer will provide to the Town, before the commencement of any construction or installation of any service, an irrevocable letter of credit (self-renewing and without burden of proof), or a certified cheque, satisfactory to the Town, in an amount equal to 100% of the value set by the Town for all services to guarantee satisfactory installation of all services.

The amount of financial security collected will be determined based on a direct quote from the Developer's Town-approved contractor submitted to the Town for review and approval. The Town reserves the right to verify the value of the work and amend the contractor's estimate accordingly. The contractor's estimate as amended by the Town shall be used for establishing the amount of the securities.

19. Maintenance Security

The Developer shall provide to the Town an irrevocable letter of credit, (self-renewing and without burden of proof), or a certified cheque, satisfactory to the Town, in an amount equal to 15% of the value set by the Town upon initial acceptance thereof, for all servicing of the severed parcels, until final acceptance of services after completion and initial acceptance by the Town of the last service provided. If the Town agrees and/or requests that some of the work be delayed,

performance securities for 100% of the outstanding works would be required in addition to the maintenance security.

In lieu of providing a new letter of credit or certified cheque for the maintenance period, the Developer or Developer's consultant can provide a written request to Amherstburg to have the current securities remain in place and amount reduced.

20. Iron Bars

The Developer will file with the Town a surveyor's certificate prior to the application for initial acceptance by the Town of asphalt surfacing on roadways, to the effect that all standard iron bars shown upon the registered reference plan have been located or replaced. The registered reference plan (12R) shall be submitted to the Town prior to any reduction of financial securities.

The Contractor shall be responsible for the preservation of all Property Monuments while the Work is in progress. All Monuments disturbed, damaged, or removed by the Contractor's operations shall be documented and replaced under the supervision of an Ontario Land Surveyor. Monuments removed to facilitate the Work shall be replaced at the Owner's expense, and all others shall be replaced at the Contractor's expense.

21. Developer's Responsibilities in Regard to Damages

The Developer undertakes and agrees to pay for any damage caused to any existing road, road allowance, structure or plant and any costs involved in the relocation of or repair or connection to any existing services arising in any way from or in connection with this agreement or the provision of services called for herein including the changing of grades of existing adjacent roads, and also any taxes or other charges levied or to be levied upon the lands to be subdivided, until such time as the lands have been assessed and entered on the collector's roll according to the proposed and presently registered plans.

22. Additional Work

If at any time prior to final acceptance of the last of the services by the Town it is of the opinion that additional works are proven necessary to provide adequately any of the public services specified in the schedules hereto, which were not reasonably foreseeable at the date of this agreement then the Developer shall construct, install or perform such additional work at the request of the Town provided that if the Developer disagrees that such additional works are necessary, the question shall be resolved by a single arbitrator if the parties can agree on one, otherwise by a panel of three arbitrators proceeding under The Arbitrations Act.

23. Removal of Material

In seeking consent of the Town to the removal of topsoil the Developer shall establish that when final grades are established for all of the lots and blocks within the severed lands there will be topsoil to a depth of at least four inches (4") over the entire area not covered by buildings, roadways and driveways.

24. Permits

The Developer shall be required to obtain a Public Works Permit from the Town according to Town policy for any work required within the limits of the Town right-of-way per lot. All permitting costs will be borne entirely by the Developer.

25. Rear Yard Drainage

Rear lot drainage shall be installed on each lot, in connection with the construction of a house thereon, and shall be connected to the storm sewer system. The

specifications, design and installation of such rear yard drainage shall be acceptable to, and subject to the approval of the Town.

In instances where a storm connection is not required by the Town and the lot can drain all stormwater runoff to the approved sufficient, legal outlet by overland flow, the requirement for rear yard drainage can be satisfied through proposed grading and/or soakaway pits. Proposals of this nature require approval from the Town prior to execution.

26. Hydro & Gas Service Availability

The Developer shall confirm that sufficient hydro & gas distribution systems exist fronting the retained and severed parcels.

If not, The Developer shall be responsible to construct and install a sufficient hydro & gas distribution system to service to all lots therein.

Individual lot services, where possible, shall be provided on common lot lines so that residential hydro meters face each other. All hydro service within the developed lands shall be underground and designed and installed in accordance with the requirements and criteria of the Town of Amherstburg and Hydro One/Essex Powerlines Corporation.

27. Environmental Impact Assessment

The Developer shall ensure all recommendations included within the Environmental Impact and Endangered Species Act Assessment dated January 10, 2025, authored by Sage Earth, are completed to the satisfaction of the Town.

The Developer shall register a conservation easement on title of both the severed and retained lots, as per the recommendations of the Environmental Impact and Endangered Species Act Assessment dated January 10, 2025, authored by Sage Earth.

28. Town's Fees

The Developer undertakes, covenants and agrees to pay any planning, engineering, legal, auditing or other fees or disbursements incurred by the Town relating in any way to the proposed development of lands, or the servicing thereof, or to this agreement, including negotiations and preparations prior to its execution and including the entire fees and disbursements of the Town engineer when acting pursuant to the terms of this agreement, and any clerical or administrative expense of the Town relating in any way to or arising from this agreement, forthwith upon being invoiced therefor. Schedule "B" references all known fees related to the requirements of this consent agreement at the time of execution of the said agreement. Additional fees may arise through the completion of the proposed work.

29. Enforcement of Agreement

The Developer 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 Town to enter into this agreement and to enforce each and every term, covenant and condition thereof and this provision may be pleaded by the Town in any such action or proceeding as a complete and conclusive estoppel of any denial of such right. If any provision of this agreement shall be found to be or deemed illegal or invalid, the remainder of the agreement shall not be affected thereby.

30. No Waiver of Rights

No indulgence or forbearance by the Town shall be deemed to constitute a waiver by the Town of its rights to insist on performance in a full and timely manner of all

the covenants contained herein, and any such waiver, in order to be binding, must be in writing and duly authorized by the Town Council. No such waiver of any provisions, conditions or covenants shall be deemed to be a waiver of the right to later require full and timely compliance with the same terms, conditions or covenants, or with any other terms, covenants or conditions of this agreement at any time.

31. Easements

The Developer covenants and agrees that such easements may be required for utility or drainage purposes shall be granted to the appropriate authority and registered on title.

32. Cure Period

Throughout this Consent Agreement, where reference is made to the Town undertaking works on behalf of the Developer because of default or some other reason, it is agreed that the Developer will be given thirty (30) days to cure any such deficiency, default or other problem or commence to Cure default and proceed diligently to remedy same prior to the Town undertaking the required works unless such deficiency, default or other problem is deemed to be an emergency.

33. Notice

- (a) Any notice, direction or other instrument required or permitted to be given by any party under this Agreement shall be in writing and shall be sufficiently given if delivered personally, sent by prepaid first-class mail or transmitted by telecopier or other form of electronic communication during transmission of which no indication of failure or receipt is communicated to the sender:

In the case of notice to the Developer:

Casey James Ray Martin and Nicholas Joel Ernest Martin
27 Centre Street
Amherstburg, ON N9V 2T2

In the case of notice to the Town:

271 Sandwich Street South
Amherstburg, ON N9V 2A5
Attention:

Town Clerk
kfox@amherstburg.ca

Manager, Planning Services
caspila@amherstburg.ca

Manager of Engineering
thewitt@amherstburg.ca

- (b) Any such notice, direction or other instrument if delivered personally, shall be deemed to have been given and received on the date on which it was received at such address, or, if sent by mail, shall be deemed to have been given and received on the date which is five (5) days after which it was mailed, provided that if either such day is not a business day, then the notice shall be deemed to have been given and received on the business day next following such day. Any notice transmitted by telecopier or other form of electronic communication shall be deemed to have been given and received on the date of its transmission provided that if such day is not a business day or it is received after the end of normal business hours on the date of its

transmission at the place of receipt, then it shall be deemed to have been given and received at the opening of business in the office of the recipient on the first business day next following the transmission thereof. If normal mail service, telex, telecopier or other form of electronic communication is interrupted by strike, slowdown, Force Majeure, or other cause, a notice, direction or other instrument sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice shall utilize any other such service which has not been so interrupted to deliver such notice.

34. Agreement Binding on Parties

This agreement shall ensure to the benefit of, and be binding upon the parties hereto, and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the Parties have executed this Agreement, as of the date set out above, under the hands and seals of their respective and duly-authorized signing officers.

**CASEY JAMES RAY MARTIN
AND NICHOLAS JOEL ERNEST MARTIN**

Per _____
Casey James Ray Martin

Per _____
Nicholas Joel Ernest Martin

**THE CORPORATION OF THE
TOWN OF AMHERSTBURG**

Per _____
Michael Prue, Mayor

Per _____
Kevin Fox, Clerk

We have authority to bind the Corporation

Authorized and approved by By-law
No. 2025-014 enacted the 24th day of
February, 2025.

SCHEDULE "A"

LEGAL DESCRIPTION

The following is a description of the land to which this instrument applies.

PT LOTS 14 AND 15, PLAN 13;
PART 1, 12R29143, AMHERSTBURG;
in the Town of Amherstburg,
County of Essex,
Province of Ontario
PIN 70723 0313 LT

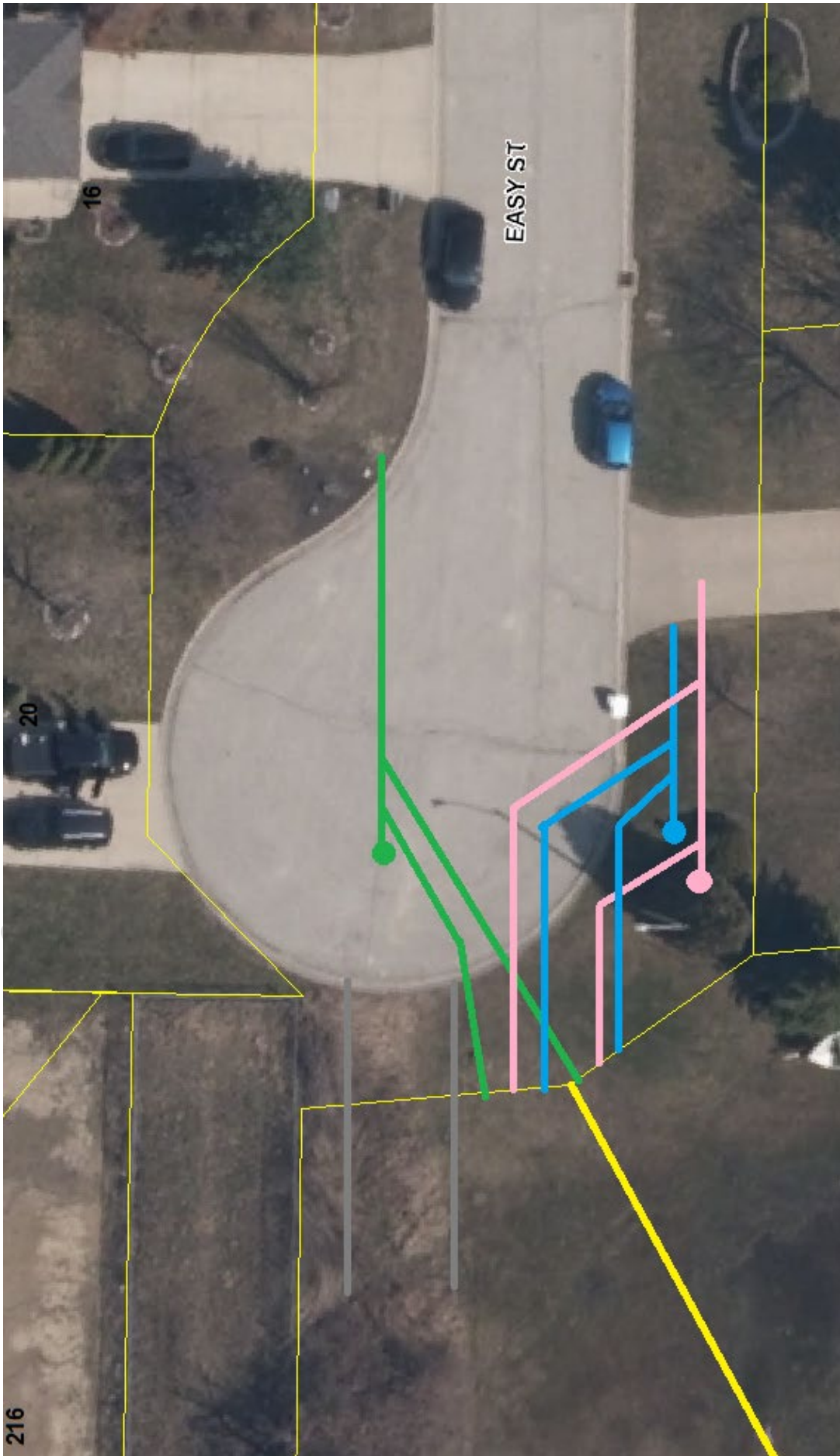
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SCHEDULE "B"

**SUMMARY OF FINANCIAL REQUIRED PAYMENTS,
SURETIES, AND INSURANCE**

OBLIGATION	AMOUNT	METHOD	DUE DATE
Financial Securities	100% of the value of the civil works within the municipal right-of-way	Letter of Credit/ Certified Cheque	Prior to Construction
Tax Arrears	Outstanding Tax Amount	Cash, Cheque, Debit, Certified Cheque, Bank Draft, Online Payment	Prior to the Issuance of the Consent Certificate
Registration Requirements (Deposit)	\$2000	Cash, Cheque, Debit, Certified Cheque, Bank Draft	Prior to Execution of the Consent Agreement
Amherstburg's Fees, including Engineering, Planning, Legal Fees	As per the current user fee by-law	Cash, Cheque, Debit, Certified Cheque, Bank Draft	Due Upon Receipt of Invoice
Cash-in-lieu of Parkland Dedication	\$1070 per lot created	Cash, Cheque, Debit, Certified Cheque, Bank Draft	Prior to the Issuance of the Consent Certificate
Maintenance Securities	15% of the value of the civil works	Letter of Credit/ Certified Cheque	Acceptance of Services by the Town
Insurance	\$2,000,000 liability with the Town of Amherstburg named as additionally insured	Certificate of Insurance	Prior to Construction

SCHEDULE "C"
SERVICING PLAN



1. Sanitary connection to be 125mm DR35 PVC pipe (green in colour)
2. Storm connection to be 150mm DR35 PVC pipe (white in colour)
3. Water connection to be 25mm PE-RT AquaPure