

THIS AGREEMENT made in duplicate this 16<sup>th</sup> day of December, 2010

BETWEEN:

**THE CORPORATION OF THE  
TOWNSHIP OF SOUTHGATE**

hereinafter called "Southgate" of the First Part;

And

**THE CORPORATION OF THE  
TOWNSHIP OF MELANCTHON**

hereinafter called "Melancthon" of the Second Part;

WHEREAS each of the Parties hereto wishes to clarify its obligations to the other Party with respect to the Southgate Recreation Services in Dundalk providing access to the residents of Melancthon in the Dundalk services area. These services include access to the Dundalk Arena & Community Centre facilities, Dundalk Swimming Pool, Baseball diamonds, soccer fields, parks, playgrounds and other recreation infrastructure in the Village of Dundalk;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants of each Party, the one with the other, the Parties hereto covenant and agree as follows:

1. The Dundalk Recreation services and facilities shall be used jointly by the parties hereto with all parties to have equal rights, and shall be under the management and control of the Recreation Department of the Township of Southgate and will report to the Southgate Recreation Advisory Board (Board) or its future committee structure and the Township of Southgate Council.
2. It is agreed that the Board or committee shall be appointed every four years by resolution, by the Council of Southgate, and shall be composed of membership of the Township of Southgate and qualify to be elected as members of the Council of Southgate, and one (1) of whom shall be from Melancthon Council.
3. The Council members that act as committee members at recreation committee level take part in the budget discussions. Discussions and proposals will be communicated through meeting minutes and council representatives to both municipal councils. Concerns from Melancthon Council on recreation budget concerns should be sent in writing to Southgate Council prior to the 15<sup>th</sup> day of April in every year.
4. It is agreed that subject to the provisions of Section 5 of the Act, the Board shall formulate policies, rules and regulations for and relating to the administration and the use of the Dundalk Community Recreation facilities with Southgate Council approval.

5. It is agreed that the operating and capital cost deficits for the operating of the facilities shall be split by the municipalities as follows:

Southgate	90%
Melancthon	10%

Further Melancthon's deficit contributions are capped and will not exceed \$8,000.00 for operating and \$6,000.00 for capital per year.

6. It is in Southgate councils best interest seeing as 90% of all recreation deficits in Dundalk is the burden of Southgate tax payers to manage these costs, which ultimately Melancthon council benefits from as well. However large capital requirements are necessary from time to time. In light of this capital costs will be managed as low as possible. However the replacement of high cost infrastructure and unforeseen failures periodically cause larger than normal capital costs. Some are budgeted and predictable and some are not. Southgate maintains reserve accounts for higher than normal and these unforeseen expenses.

Southgate will maintain a Melancthon Recreation reserve account to hold any unused capital contributions each year. This reserve will be to absorb the impact of large purchases and or unforeseen emergency capital requirements in future years where capital costs or failures of a single purchase exceeds \$50,000.00. Melancthon will not be indebted to Southgate for more than the annual capital plus the balance of the Melancthon reserve account at that point in time. A report on the balance of the Melancthon recreation reserve will be provided on an annual basis by the Southgate Treasurer.

7. It is further agreed that Capital costs shall be shared by the participating municipalities in the same proportions as set out in Clause 5 providing that a five year capital plan be presented to the Councils for approval and that they are kept current.
8. It is agreed that this agreement shall be for a period of 4 years starting January 1, 2011 and expire December 31, 2014. At that time the agreement will be reviewed and may be extended by agreement of both parties.
9. The parties hereto shall execute such further assurance as may be reasonably required to carry out the terms hereof.
10. It is further agreed that these presents and everything herein shall respectively ensure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
11. The parties agree that this agreement may be amended at any time by the mutual consent of the parties, after the party desiring the amendment(s) gives the other party a minimum of thirty (30) days written notice of the proposed amendment(s).

12. The previous agreement dated September 5, 2007 shall be in effect until December 31, 2010.

In WITNESS WHEREOF each of the parties hereto has affixed its corporate seal attested to by the proper officers duly authorized in that behalf;

SIGNED, SEALED AND DELIVERED  
in the presence of:

THE CORPORATION OF THE  
TOWNSHIP OF SOUTHGATE

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

THE CORPORATION OF THE  
TOWNSHIP OF MELANCTHON

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
CAO/Clerk - Treasurer

Shepherd, Osyany & King LLP  
Barristers and Solicitors

155 Main Street West  
P.O. Box 760  
Shelburne, Ontario, L0N 1S0  
☎ (519) 925-5331  
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George H. Shepherd (retired 2002)  
Andrew Osyany Professional Corporation - [osyany@sok-law.com](mailto:osyany@sok-law.com)  
Douglas J. King Professional Corporation - [king@sok-law.com](mailto:king@sok-law.com)  
Ruhia Jokhio - [jokhio@sok-law.com](mailto:jokhio@sok-law.com)

File No. 20264

December 9, 2010

Michael Durisin  
Bratty & Partners LLP  
200 - 7501 Keele St.  
Vaughan, Ont. L4K 1Y2

Faxed to 905 760-2900  
or e-mailed to [mdurisin@bratty.com](mailto:mdurisin@bratty.com)

Dear Sir:

Re: Township of Melancthon - Strada Aggregates Inc.

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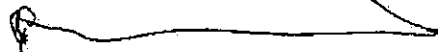
Thank you for your various communications. This is also to acknowledge that your client has made payment to the Township as requested in my previous correspondence.

The current draft agreement is attached, both as a clean copy and in a red-lined version. The current draft has the changes that were requested on behalf of your client and that were accepted. In cases of disagreement, the previous version's wording is accompanied by the highlighted difference requested on behalf of your client.

For the security figure I used \$68,000, being the figure from the Condrain estimate, grossed up by 15% for contingencies and HST. The Township Engineer and Road Superintendent are reviewing the estimate, and depending on their comments, the figure may be changed.

It is my understanding that Council will be considering the agreement in a public session on December 16, 2010. I will have a report for Council as well, and I will be forwarding you a courtesy copy when it is ready. Following the consideration of the agreement, Council will deal with the proposed re-zoning.

Yours very truly,  
SHEPHERD, OSYANY & KING, LLP  
per:



Andrew Osyany

(ext. 233)

DEC 16 2010

AO/ofa  
cc. Township of Melancthon

Shepherd, Osyany & King LLP  
Barristers and Solicitors

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P.O. Box 760  
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Ruhia Jokhio - [jokhio@sok-law.com](mailto:jokhio@sok-law.com)

File No. 20264

December 13, 2010

Township of Melancthon  
157101 Highway 10  
R.R. 6  
Shelburne, Ont. L0N 1S9

Dear Mesdames & Sirs:

Re: Township of Melancthon - Strada Aggregates Inc.

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**Introduction**

This is a status report regarding the legal aspects of the proposed new Melancthon Pit for Strada. Aggregate operations are governed by the Aggregate Resources Act, which is administered by the Minister of Natural Resources. The MNR grants a licence, which follows a period of consultation, and the requirement of proof of appropriate zoning of the lands. The licence allows the operation in accordance with what is called a Site Plan. This is somewhat different from the site plan agreements developed under the Planning Act. The Site Plan is a series of drawings, showing the existing features, the operational plan, progressive and final rehabilitation and cross sections. The drawings have relatively brief notes and references on them, incorporating some of the studies that have led up to the Site Plan. While in the process there is consultation with the Township, the contents of the Site Plan really depends solely on the MNR.

The following is contained in the Aggregate Resources Act:

**66. (1) This Act, the regulations and the provisions of licences and site plans apply despite any municipal by-law, official plan or development agreement and, to the extent that a municipal by-law, official plan or development agreement deals with the same subject-matter as this Act, the regulations or the provisions of a licence or site plan, the by-law, official plan or development agreement is inoperative.**

DEC 16 2010

**(2) Subsection (1) applies even if the by-law, official plan or development agreement came into force before the day subsection 1 (4) of Schedule N to the Red Tape Reduction Act, 1999 came into force.**

**(3) Except as provided in paragraph 142 of section 210 of the Municipal Act, being chapter M.45 of the Revised Statutes of Ontario, 1990, as that paragraph read immediately before its repeal by the Municipal Act, 2001, no by-law passed under that Act may prohibit or require a licence for the carrying on or operating of a pit or quarry or wayside pit or quarry.**

**(4) Subsection (3) applies even if the by-law came into force before the day subsection 1 (4) of Schedule N to the Red Tape Reduction Act, 1999 came into force.**

**(5) A requirement for a development permit imposed by a development permit system established under subsection 70.2 (1) of the Planning Act does not apply to a site for which a licence or permit has been issued under this Act.**

The only "control" that the Township has is in regard to the planning process, approving the required zoning by-law changes. Once the zoning approval is granted, the Township really has no power over the aggregate operation, except in fringe aspects. For this reason, the Township is as involved as it can be in the process leading up to the issuing of the licence by the MNR. It is also important to have any possible side agreements in place, prior to the issuing of the licence and the consideration of the proposed zoning changes.

Traditionally, the side agreements have been very simple and covered essentially the cost of road works necessitated by the aggregate operation, and the eventual repair and replacement of the paved road surface. In some older aggregate operations, even such a contribution by the operator had not been obtained.

In recent years the power of the Township to control activities within the Township has been reduced by the Province. These activities have a tremendous impact on the Township, but the Township has been prevented from fairly sharing in the revenue resulting from them. A classic example is the artificially low assessment of wind turbines.

Melancthon has a tradition of trying to work with all interested parties for the better future of the Township, and the Township has been willing to go out on the limb, even when the provincial regulatory scheme is problematic. An example of this is the biosolids control by-law of some years ago.

In regard to the current developments, the Township has been successful in the renewable energy field to negotiate agreements that go beyond the black-letter obligations of the developers. This has been possible because of the pro-active stance taken by the Township and because the

developers in question have recognized that being good corporate citizens involves something in addition to simply ticking off the legislated check-boxes.

It is my opinion that the old-fashioned side agreements with aggregate operators are inadequate in today's world and that should an operator not be willing to address the larger picture (from the Township's point of view), the Township should consider whether in the context of the planning framework, such a position properly impacts on the planning decision that the Township should make. This is because the Municipal Act entrusts such a range of responsibilities for local issues upon the local government and because of the specific list of matters of provincial interest that the municipality has to have regard to. A partial listing is as follows:

- (a) the protection of ecological systems, including natural areas, features and functions;*
- (b) the protection of the agricultural resources of the Province;*
- (c) the conservation and management of natural resources and the mineral resource base;*
- (d) the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest;*
- (e) the supply, efficient use and conservation of energy and water;*
- (h) the orderly development of safe and healthy communities;*
- (l) the protection of the financial and economic well-being of the Province and its municipalities;*
- (m) the co-ordination of planning activities of public bodies;*
- (n) the resolution of planning conflicts involving public and private interests;*
- (o) the protection of public health and safety;*
- (p) the appropriate location of growth and development;*

The language in the Aggregate Resources Act is broad in preventing a municipal site plan or development agreement. However, it is my opinion that if the municipality discovers that by granting a re-zoning, it loses the ability to fulfil its statutory mandate and the local implementation of the enumerated matters of provincial interest, because of (a) the language of the Aggregate Resources Act, s. 66; and (b) the inability to reach side operating agreements, it is a proper exercise of planning authority to weigh whether the municipality should grant the re-zoning or not.

In this case, the Township's professional advisors worked up a draft agreement for consideration by Strada. Strada has responded to the draft agreement, and the draft now before you represents the current state of the process. The highlighted parts represent changes that Strada has asked for and that are to be considered by Council. The other areas have been resolved, or are larger issues and are dealt with in this letter.

The wording in the Aggregate Resources Act talks about "development agreements". No definition of this term is given, but presumably it encompasses only agreements that are prepared under the authority contained in the Planning Act. Again, presumably, agreements prepared under the authority of other Acts should not be caught by the wording. Accordingly, the draft agreement prepared in this case references the statutory and common law authority of the Township outside of the Planning Act, and is called an operating agreement.

### **Scheme of the Draft Agreement**

The draft agreement is divided into different parts. The **construction part** deals with the road works that are necessitated by the new pit and the construction procedure. The **operations and maintenance part** covers the operations that can be carried out on the site, the hours of operations, the haul routes, maintenance and repair of the roads, hydrogeological and amphibian monitoring, spills and some other operational matters. The **rehabilitation part** deals with the ultimate rehabilitation of the pit. The **community development contribution part** is where the applicant puts forward its good corporate citizen profile. The **general part** covers such things as insurance, rights of entry, liability, default and enforcement. There are two important **schedules**; one sets out the required groundwater monitoring program, and the other the well interference protocol.

I believe that the agreement is reasonably readable and is not overly long. Therefore, I do not propose to review the various parts in detail, but will respond to any questions from Council. I do want to make some comments on some issues, however.

### **Site Plan - Operating Agreement Interplay**

Because of the wording of the Aggregate Resources Act, quoted above, there is a question as to just how enforceable the various parts of this Operating Agreement might be. The Agreement requires the best efforts of the parties to have the Agreement referenced in the Site Plan, in which case the Agreement would be perfectly enforceable. If the Agreement is not referenced in the Site Plan, however, the enforceability questions remain.

The Site Plan is enforced by the MNR, and although we have asked for provisions in the Agreement to get similar enforcement powers to the Township, they have not been agreed to by Strada, so that all the enforcement that the Township really has at its disposal is through the MNR. According to the Rockfort case, the MNR's enforcement abilities are not stellar. And

concern in this regard is what prompted the Township's professional advisors to ask for the enforcement powers. In my opinion the possibility of the Operating Agreement not being enforced is a legitimate planning concern for the Township, but this is probably not the most extreme case for a concern in that regard.

### Operations

The most obvious day-to-day impact is likely to be the hours of operation and the road use by the gravel trucks. While there are some provisions on the Site Plan and some provisions in the Operating Agreement, it is the enforcement that is of concern. The Township should put appropriate by-laws in place, to establish an offences regime for violations, but the reality is that pursuing violators through the Provincial Offences Act is an expensive procedure for the Township. We have proposed an alternative scheme for consideration, but the Developer was not interested in co-operating on developing something like that.

### Community Development Contribution

The scheme of the Aggregate Resources Act is that a licence fee is paid on each tonne in the amount of 11.5 cents, of which the Township gets 6 cents. The rest goes to the Province (3.5 cents), the County (1.5 cents) and the abandoned pits and quarries fund (.5 cent). Accordingly you can visualize that the average 20 tonne gravel truck you see on the road represents 60 cents to the Township (\$1.20 when full, and zero cents when empty). The price for a tonne of A gravel is about \$6.50, plus shipping.

In this particular case the licence being sought is for 1.25 million tonnes per year, resulting in a possible gross revenue of eight million dollars, of which the Township would get \$75,000. The Township gets production figures from the developer, which are confidential. However, the total received from the Ontario Aggregate Resource Council for all gravel operations in the Township in the last five years ranged from \$14,686 to 73,583.

There is, of course, absolutely no legal obligation on a developer to make any contribution to local community development, but I understand that in a neighbouring municipality the aggregate proponent is agreeing to contribute to the purchase of some environmentally sensitive lands and a tree planting program. And, as mentioned above, in the renewable energy field, developers have made significant contributions to community development.

In the instant case, Strada has advised us that it has been doing local sponsorships and the like to the tune of \$2,500 per year, and it is prepared to continue that practice. This is the provision that is found in the draft agreement.

### Security, Rockfort and Related Issues

The wording in the draft agreement provides that the financial security is in place for the duration of the agreement and that it is available for enforcement, periodic road maintenance and decommissioning. However, the figure of \$68,000 represents only the cost of the initial road construction for the entrance work to the new pit. The developer wants to have the language clarified that security is only provided for the initial road construction, and that there be no financial security for anything else.

The developer is required to engage in progressive rehabilitation throughout the lifetime of the pit and then final rehabilitation when the pit is worked out, or possibly abandoned. This is a significant on-going and final operation which, again, is to be monitored and enforced by the MNR. The impact of the rehabilitation is strictly local, of course, which is why the municipality has a concern. While there is a contribution of .5 cent per tonne to the abandoned quarries fund handled by The Ontario Aggregate Resources Corporation (TOARC), that fund is for abandoned pits and quarries, not for currently licensed operations. Of course, the municipality has no involvement in those projects and no way of accessing the funds in case the rehabilitation is not done properly. If the developer were to have legal obligations to the Township to carry out the rehabilitation work, then at the very worst, the Township could enforce the work under the remedial provisions in the legislation and have a lien for the cost of the rehabilitation on the property. Of course, if the property is then not worth the cost of rehabilitation, that is an empty remedy.

Prior to the Mike Harris bloodletting, resulting in the MNR losing about half its staff, the MNR used to collect security from the operators for rehabilitation, however 80% of the money was then returned to the operators and some turned over to TOARC, which now has about \$15 million in its trust fund, and which is for abandoned operations, not currently licensed operations.

There is inspection by the local MNR staff; the local MNR inspector was out to the current Strada operations half a dozen times this year, among other things, giving directions regarding rehabilitation, and I understand that if the directions are not complied with, an order will be made in the spring time.

The MNR overall view is that the municipal involvement is up front, in the re-zoning, determining if this aggregate use is appropriate at this location. If it is, then the Aggregate Resources Act tells you how to operate the quarry in a way that is environmentally sound. The municipality would not be consulted if the area of the excavation were enlarged, but would be consulted in case of increased production or major land use change, such as the eventual use not going to agriculture but to residential development. Otherwise, the municipality's role is finished with the re-zoning.

The Rockfort application was for quarrying below the water level, which this one is not. The Rockfort application foundered on several grounds, and the OMB did not really get to a

serious consideration of the ultimate rehabilitation situation, which involved the creation of two lakes. But this is what the OMB said about the adaptive management plan, in the context of the municipality asking for a funded agreement with the municipality: "No statute or policy affords the Board the authority to require any person to enter into such agreements. However the Board cannot envision the approval of a quarry dependant upon a complex, highly engineered adaptive management plan, without such agreements being in place or without making the execution of such agreements a condition of approval." The case is remarkable for the strong focus on local interests and impacts. Although the decision speaks of balancing all the requirements of the provincial policy statements and the official plan provisions, such a balancing is not really evident in the decision, in spite of the statement that the Board did do the balancing. The Board found several instances where the official plan requirements were not met (as well as the concern with the adaptive management plan) and these were enough to bring to the OMB to the conclusion that the application did not represent good planning.

It is hard to assess the impact of the Rockfort case. Will other panels of the OMB follow the lead of Rockfort? On a question of law, the decision can be considered by the Divisional Court. I have no expertise in this area, but it is not obvious how there could be a successful appeal to the Divisional Court.

I think the Rockfort case can be safely taken as an encouragement to the applicants and municipalities to work together, perhaps beyond the strict black-letter wording of the various pieces of legislation, to come up with the best solutions for all the competing interests.

#### **Peer Review Process**

The Township Planner is dealing with the course and outcomes of the peer review process.


#### **How to Proceed?**

The following actions are available to the Township at this point:

1. Approve the draft agreement as presented, with or without the requested Strada changes;
2. Engage in further discussions with Strada to resolve issues of concern to the Township;
3. Approve the requested re-zoning;
4. Refuse the requested re-zoning;
5. Approve the requested re-zoning, but as a holding zone, with the holding provision removed when the agreement is sorted out to the satisfaction of the Township.

I trust the above is of assistance to Council in its considerations.

Yours very truly,  
SHEPHERD, OSYANY & KING, LLP  
per:



Andrew Osyany

(ext. 233)

AO/ofa

cc. Michael Durisin, for Strada

Shepherd, Osyany & King LLP  
Barristers and Solicitors

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P.O. Box 760  
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File No. 20264

December 13, 2010

Michael Durisin  
Bratty & Partners LLP  
200 - 7501 Keele St.  
Vaughan, Ont. L4K 1Y2

Faxed to 905 760-2900  
or e-mailed to [mdurisin@bratty.com](mailto:mdurisin@bratty.com)

Dear Sir:

Re: Township of Melancthon - Strada Aggregates Inc.

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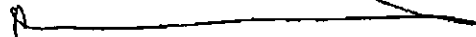
This is to acknowledge your e-mail of December 10, 2010, which contained the following from Mr. Grant Horan, of Strada:

*Hello Michael, Strada (similar to other aggregate producers operating in Ontario) are obligated to contribute on an annual basis \$0.115 / tonne shipped to The Ontario Aggregate Resources Corporation (TOARC). One of the major functions of TOARC is the management of abandoned pits and quarries.*

*Strada has an estimated reserve of approx 4.5 million tonnes with a corresponding TOARC fee/obligation of approx \$518K. The rehabilitation security is held by TOARC and therefore an L/C or addition security is not necessary relating to rehab.*

The above is not correct. Only .5 cent is paid towards rehabilitation, and it is towards the rehabilitation of abandoned operations, not currently licenced operations. The balance of the moneys are licence fees to various levels of government. I think this is well-known in the industry, but not being an expert I have had to look it up. I like to be able to rely on what the other side tells me.

Yours very truly,  
SHEPHERD, OSYANY & KING, LLP  
per:



Andrew Osyany

(ext. 233)

AO/ofa  
cc. Township of Melancthon

DEC 16 2010

## WordPerfect Document Compare Summary

Original document: X:\MEL\STRADA\Melancthon - Strada Lots 11 & 12 agreement 2010 12 01.wpd

Revised document: X:\MEL\STRADA\Melancthon - Strada Lots 11 & 12 agreement 2010 12 09.wpd

Deletions are shown with the following attributes and color:

~~Strikeout~~, Blue RGB(0,0,255).

Deleted text is shown as full text.

Insertions are shown with the following attributes and color:

Double Underline, Redline, Red RGB(255,0,0).

The document was marked with 4 Deletions, 10 Insertions, 0 Moves.

**MELANCTHON - STRADA OPERATING AGREEMENT**  
**MELANCTHON PIT - WEST HALF LOTS 11 & 12, CONCESSION 3 OS**

Made as of December 19, 2010

B E T W E E N :

**THE CORPORATION OF THE TOWNSHIP OF MELANCTHON**

(Hereinafter referred to as the “**Municipality**”)

OF THE FIRST PART

- and -

**STRADA AGGREGATES INC.**

(Hereinafter referred to as the “**Developer**”)

OF THE SECOND PART

**WHEREAS** the Developer is the registered owner of Parts of Lots 11 and 12, Concession 3, Old Survey, Melancthon, consisting of approximately 47.6 hectares, more particularly described in Schedule “A” (“Property”);

**AND WHEREAS** the Developer is desirous of developing the Property as an Aggregate Pit (“Pit”, “Melancthon Pit” or “Development”), for an aggregate licence;

**AND WHEREAS** the Developer has applied for Official Plan and Zoning By-Law amendments;

**AND WHEREAS** the Developer and the Municipality have negotiated this Agreement as a condition of the Municipality’s support for the approval of the related Official Plan and Zoning By-law amendments by the applicable approval authority and, in the case of appeals, the Ontario Municipal Board, although the parties acknowledge that there is no contracting between the parties to rezone the Property;

**AND WHEREAS** the parties acknowledge that the Developer is subject to the provisions of the Aggregate Resources Act, and the regulations passed under it;

**AND WHEREAS** the parties acknowledge that the Development has **could have** a significant impact on the Municipality, and that notwithstanding the provisions of the Aggregate Resources Act and the regulations passed under it, the Municipality has continuing jurisdiction pursuant to Provincial legislation, including the Municipal Act, 2001, Planning Act, Fire Protection and Prevention Act, Emergency Management and Civil Protection Act, the Building Code Act, 1992, and the Environmental Protection Act to deal with the matters contained in this Agreement;

**AND WHEREAS** the parties shall use their best efforts to incorporate this Agreement into the Site Plans approved as part of a licence issued under the Aggregate Resources Act (“Site Plans”);

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, the Municipality and the Developer agree as follows:

## **CONSTRUCTION PART**

### **Works to be Constructed by the Developer**

1. At its sole expense, the Developer shall construct the following works (“Works”):
  - (a) A northbound right turn on the Melancthon 4<sup>th</sup> Line at the Pit entrance, in order to accommodate gravel trucks.
  - (b) Road granular shall be provided to a minimum depth of 450mm. Asphalt thickness to be a minimum of 90mm. The length of acceleration and deceleration tapers to be in accordance with Ministry of Transportation design criteria.
  - (c) Such construction shall be substantially completed during the months from May to November 1st during the first Pit operating season, provided that there is no undue delay with receiving any entrance related required planning, environment or other approval or inspections in this regard.

### **Drawings, Meetings and Construction of the Works**

2. Prior to commencing construction of the Works, the Developer shall provide a complete set of engineering drawings, including landscape design, to the Municipality, together with proof of all legally required approvals and permits for the Development. No actual work shall be commenced prior to the Municipality’s written approval of the construction work.
3. Engineering drawings shall meet the following criteria. All existing utilities shall be shown with appropriate details.
4. The Developer acknowledges that existing municipal works and services (including Municipality and County of Dufferin Roads, drainage culverts, etc.) may not meet the requirements of the Developer for the installation of the works and services proposed to be carried out by the Developer, and the Developer agrees that the improvement or upgrading of the existing municipal works and services to meet the Developer’s requirements shall be carried out by and be at the sole expense of the Developer. The Developer shall obtain the approval of the Municipality or The Corporation of the County of Dufferin, as the case may be, to the improvement or upgrading of the existing municipal works and services.
5. All driveway entrance culverts are to have a minimum thickness of 2.0mm. The Developer acknowledges that it has not used engineering designs to obtain the proposed diameter for its driveway culverts. All culverts have been specified to have diameters of 500mm. In the event that the Municipality Road Superintendent experiences difficulties with the capacity of any of these culverts, he may at his sole discretion, acting reasonably, order them to be replaced with properly sized culverts at the expense of the Developer.
6. All underground crossings of watercourses, ditches and municipal drains shall be 1m below the invert of ditches, drains and watercourses.
7. As appropriate the Developer shall provide dust control and clean up all construction refuse and debris in order to prevent any dust or refuse problem to traffic or home occupants. The Municipality shall have the right to remedy any concern in this regard utilizing the securities established in this Agreement.
8. At least two weeks prior to the commencement of work, the Developer shall provide to the Municipality pre-development condition reports for all Municipality roads that will be affected by the construction.
9. Construction work shall be carried out between the hours of 7AM and 7 PM, Monday to Saturday only and excluding statutory holidays.
10. Prior to the start of construction the Developer and its engineer shall attend a pre-construction meeting with the Municipality, the Municipality Engineer and other agencies involved

in construction approvals to establish any additional requirements and/or considerations related to the construction of the Development.

#### **Construction Haul Routes**

11. During construction traffic control shall be provided in accordance with all Provincial and Municipal requirements, and in particular Ontario Traffic Manual - Book 7. Road closures will not be permitted. The Developer shall minimize disruption of access to private properties and shall allow local access to driveways at all times.
12. The removal of excess fill shall be deemed to be in compliance with the Municipal Site Alteration By-law, By-law 29-2004. The dumping of excess fill off-site and within the Municipality shall be subject to the provisions of By-law 29-2004.

#### **Construction Completion**

13. Upon the completion of construction the Developer shall provide to the Municipality the following:
  - (a) “As constructed” plans of the Works and services;
  - (b) Certificate of the Developer’s engineer that all Works have been completed.

## OPERATION AND MAINTENANCE PART

### Operations

14. The Developer shall limit its combined annual production from the Pit and from the gravel pit operations on the West Half of Lot 13, Concession 3 Old Survey, Melancthon ("Shelburne Pit") to a maximum of 1.25 million tonnes per year.
15. The Developer shall promptly provide the Municipality with a confidential report of its annual returns to The Ontario Aggregate Resources Corporation. The Municipality agrees to keep these Annual Returns confidential.
16. No aggregate recycling processes shall be permitted as part of the extractive industrial use. A concrete batching plant or other industrial or similar use not listed on the Aggregate Resources Act site plan is not permitted as either a principal use or an accessory use.
17. The Developer shall manage its truck operations in such a way as to ensure trucks do not arrive at the Pit before 6:00 a.m., do not use engine brakes on Dufferin County Road 17 or Melancthon 4th Line, do not park on Dufferin County Road 17 or Melancthon 4th Line, and obey posted speed limits.
18. The Developer shall confine the Pit's active hours of operation to the following times (Monday to Friday):
  - a. Off-site shipping 6:00 a.m. to 5:00 p.m.
  - b. Extraction and processing 7:00 a.m. to 7:00 p.m.

The Pit shall not be operated on Saturdays, Sundays or statutory holidays.

19. The Developer shall use its best efforts to make sure that no gravel trucks shall park on the Melancthon 4<sup>th</sup> Line, but that they shall enter the Pit directly upon arrival and leave directly upon departure.
20. The Developer shall use its best efforts to make sure that the gravel trucks shall not stop or park on Melancthon 4<sup>th</sup> Line for any purpose, including covering the load of the aggregate, and that all such work, necessitating stopping and parking shall be carried out on the Pit site. The Municipality retains its right to impose no stopping zones on municipal roads in the vicinity of the Pit.
21. Truck turning or other directional road signs that are required by the Municipality as a result of the Developer's operation shall be supplied and installed at the Developer's sole expense.

### Haul Routes

22. Within the Municipality, the operational haul routes shall be only the following: from the Pit entrance south on Melancthon 4<sup>th</sup> Line to Dufferin County Road 17, and Dufferin County Road 17 to Dufferin County Road 124. Deliveries within the Township of Melancthon may also use Dufferin County Road 17 westbound to the limits of the Municipality. The Developer, its servants and agents shall observe the above restriction and the Developer shall use its best efforts to make sure that all customers of the Developer observe it as well.

### Road Maintenance

23. The parties acknowledge that the Municipality has the ultimate statutory obligation to maintain Melancthon 4<sup>th</sup> Line from the Pit entrance, south to Dufferin County Road 17 ("Road Section").
24. The parties also acknowledge that the cost of maintaining, repairing and resurfacing the Road Section is greatly increased by the Developer's operation of the Pit. The parties by this Agreement are endeavouring to establish the amount and timing of the Developer's fair contribution to the maintenance, repair and resurfacing of the Road Section. To the extent that changing circumstances warrant it, either party shall be at liberty to revisit the issue.

25. The following are identified as the Developer's fair contribution to the Road Section:
  - (a) keeping the road clear of debris and dust;
  - (b) providing sufficient gravel (supply and load) for shouldering both sides of the Road Section - estimated to need 40 tonnes per year;
  - (c) carrying out repairs to damaged patches and the like;
  - (d) resurfacing the road as and when necessary in the opinion of the Municipality's Road Superintendent.
26. The Developer may use its own equipment to keep the road clear of debris and dust. In the event that the Municipality's Road Superintendent requests work in this regard, and the work is not done by the Developer, the Municipality may carry out the work, and invoice the Developer.
27. The Developer may provide the gravel for the shouldering of the Road Section. In the event that the Municipality's Road Superintendent requests work in this regard, and the work is not done by the Developer, the Municipality may carry out the work, and invoice the Developer.
28. The Municipality shall carry out repairs to damaged patches and the like and invoice the Developer.
29. The Municipality shall resurface the Road Section as and when necessary in the opinion of the Municipality's Road Superintendent, and invoice the Developer.
30. The invoices referred to in the previous four sections shall be payable upon rendering and shall bear interest at the rate of 12% per annum from their date. In the event that the Developer fails to pay the invoices referred to in the previous four sections, the Municipality may have recourse to the security provided under this Agreement, commence legal action, and invoke the default provisions of this Agreement.

### **Hydrogeological Monitoring**

31. The Developer shall implement the following recommendations of the hydrogeological study and peer review:
  - (a) Monitoring for water level elevations and quality shall be completed at all existing and proposed groundwater monitoring wells as outlined on the attached Schedule "B" ("Groundwater Monitoring Program").
  - (b) The additional proposed groundwater monitors (described as OW-6-10, OW-7-10, OW11-10 and OW12-10) shall be constructed in accordance with the parameters outlined in the August 17, 2010 letter to the Municipality of Melancthon from Bluewater Geosciences Consultants Inc. Re: "Review of Strada Aggregates Proposed Melancthon Pit Level 2 Hydrogeological Assessment, Whitewater Hydrogeology Ltd. letter dated August 16, 2010".
  - (c) Monitoring for surface water level elevations shall be completed at the South Pond as well as the Wash Pond.
  - (d) An annual groundwater monitoring report which presents and interprets the monitoring data shall be submitted to the Ministry of Natural Resources, Ministry of Environment, Nottawasaga Valley Conservation Authority and Municipality by March 31st of each year and include the data from the 12 month period ending December 31st of the previous year.
32. The Developer shall implement a well interference protocol that establishes both the level of adverse groundwater impact at which remedial action is required and a procedure for the related remedial work and compensation. The Developer shall promptly undertake any required remedial work and shall compensate any party adversely affected by significant groundwater deterioration resulting from the industrial use as provided in the well interference protocol are outlined in attached Schedule "C" ("Well Interference Protocol").

### **Amphibian Monitoring**

33. The Developer shall monitor the retained wetland for amphibians, including the presence of western chorus frog, in accordance with the recommendations of “Natural Resource Solutions Inc.: Melancthon Pit, Natural Environment Level 2 Assessment, March 2010” (“Natural Environment Report”).
34. Prior to commencing operations at the Pit, the Developer shall prepare the monitoring programs to the Municipality for review, which shall cover:
  - (a) Inclusion of amphibian breeding habitats of the south pond and wetland in the surface water and shallow groundwater monitoring program, and
  - (b) Monitoring the wetlands for amphibian breeding, including the presence of the western chorus frog.
35. The results of the monitoring shall be provided to the Municipality and Nottawasaga Valley Conservation Authority by September 30<sup>th</sup> of each year.
36. The Developer shall implement all the recommendations of the Amphibian Report, including the protection and restoration of key environmental features, buffers and linkages in the site rehabilitation, through the site plans required for the licensing approval and any other appropriate means. The status of the Developer’s implementation shall be covered in the annual reports, as may be applicable.
37. The Developer shall retain the restored natural environment linkages in perpetuity, except as varied by the prior written consent of the Municipality, and in consultation with the Nottawasaga Valley Conservation Authority.

### **Compliance Assessment Report**

38. The Developer shall provide to the Municipality a Compliance Assessment Report forthwith after filing the same with the Ministry of Natural Resources, but in any event on or before September 30 of each year for the latest completed 12 month period.

### **Spills**

39. The Developer shall promptly provide to the Municipality copies of all notifications given by the Developer to the Ministry of Environment and Technical Standards & Safety Authority. In the event that the notifications are verbal, the Developer shall promptly provide a memorandum of the notification to the Municipality.
40. Prior to commencing operations at the Pit, the Developer shall provide to the Municipality a Spills Contingency Program for review, and the Developer shall implement such reasonable recommendations as may be made by the Municipality.

### **Lights**

41. The Developer shall not erect, locate, relocate, or otherwise place any sign, light or light standard on any part of the Development unless the sign, light or light standard has been approved in this Agreement. Site illumination shall be designed to minimize the spread of light into adjacent properties, while maintaining the safety and security of the infrastructure and personnel.

### **Progressive Rehabilitation**

42. The Developer shall comply with the progressive rehabilitation requirements imposed in its licence under the Aggregate Resources Act, and shall provide all particulars of such compliance on an on-going basis to the Municipality. The Municipality shall have the right to monitor and to enforce such compliance through the Ministry of Natural Resources (“MNR”).

### **Operations Part General Provisions**

43. This Operations Part shall apply so long as any part of this Agreement is still in force.
44. The Developer shall maintain the Development in good working order and shall carry out such repairs and maintenance as may be reasonably required by the Municipality.
45. The Developer shall supply the Municipality with a copy of the operation and maintenance manuals or plans of the Development, if any, and shall periodically update the Municipality's copies if there have been any material changes.
46. The Developer shall comply with all governmental regulatory requirements in maintaining the Development.
47. The Developer shall promptly notify the Municipality in writing of any written order or notice of non-compliance from any regulatory authority received by the Developer in respect of the Development.
48. The Developer shall promptly provide to the Municipality copies of all applications made to the Ministry of Natural Resources, the Ministry of Environment, and every other governmental agency, concerning the Development, including applications to amend existing licences.
49. The Developer shall not exceed the noise levels permitted in its licences, or otherwise prescribed by legislation or regulations.
50. The Developer shall implement the monitoring programs for the construction and operational phases of the Development in accordance with the requirements of all agencies having jurisdiction. The results of all the Developer monitoring programs, particularly those relating to noise levels at off-site sensitive uses, shall be provided to the Municipality along with any related comments or requirements from all agencies having jurisdiction. These results shall be provided to the Municipality on an annual basis or more frequently as the circumstances warrant. The Developer and the Municipality shall consult with each other every three years to determine if any additional mitigation measures would be appropriate for the Development. The mitigation requirements may be internal or external to the Development. Nothing in this Agreement shall limit the Municipality's authority to implement its own monitoring programs.
51. The Developer shall be solely responsible for Municipality's share of the per-call cost of providing emergency services provided to the Development, including all specialized services, at the otherwise prevailing rates.
52. At all times the Developer shall provide the Municipality with the names and contact information (including emergency contact) for all persons engaged by the Developer to be responsible for the Development.

**Ultimate Rehabilitation**

53. The Developer shall follow the post-rehabilitation management plan program in accordance with the “Pit Floor Agricultural Rehabilitation Sequence” (page 3 of the Site Plans) to accommodate a five-year plan for the restoration of the soils. The Developer shall use best management agricultural practices as are appropriate for the area, climate and conditions. The Developer shall monitor to verify that productivity and soil capability standards have been met in accordance with “Surficial Soil Study, May 2008” prepared by DBH Soil Services Inc. and the associated peer review.
54. For greater certainty, the Developer shall rehabilitate the site so as to restore substantially the same areas and same average soil quality for agriculture as existed prior to the extractive industrial use, as required in the Provincial Policy Statement.
55. The Developer shall implement a one year post-rehabilitation monitoring program to verify that productivity and soil capability restoration standards have been met and shall continue any required restoration procedures until such standards are met.
56. The results of the monitoring shall be provided to the Municipality by ~~March 31st~~September 30<sup>th</sup> of the year following complete rehabilitation of the site, as required in the draft Official Plan Amendment, page 11, and such further yearly reports as may be required until compliance is completed.

## COMMUNITY DEVELOPMENT CONTRIBUTION PART

57. The parties acknowledge that the Development has a significant impact on the financial, developmental, social and environmental situation of the Municipality. **[Strada wishes this clause deleted]**
58. The Developer shall in each calendar year make community development contributions to local activities and charities in the minimum amount of \$2,500, and shall provide details of such contributions annually to the Municipality.

## GENERAL PROVISIONS

### Agreement Pre-conditions

59. This Agreement shall not come into force until all of the following pre-conditions have occurred:
- (a) The required Official Plan amendment is approved by either the Ministry of Municipal Affairs and Housing or, in the case of an appeal, the Ontario Municipal Board;
  - (b) The required Zoning By-Law amendment is approved either by the Municipality or, in the case of an appeal, by the Ontario Municipal Board;
  - (c) The Developer obtains a Category 3, Class A pit licence from the Ministry of Natural Resources;
  - (d) The Developer complies with the security provisions of Section 81.

### Site Plans - Aggregate Resources Act

60. The parties agree that as between themselves, the terms of this Agreement are deemed to have been incorporated into the terms of the Site Plans. Neither the express inclusion of some terms, nor the omission of some terms from the printed version of the Site Plans shall have any effect on the provision of this section.
61. A breach of this Agreement shall be deemed to be a breach of the Site Plans.
62. The Municipality shall have the right to monitor compliance with the Site Plans and the Developer shall assist the Municipality in the monitoring by providing access and copies of all relevant reports.
63. In the case of any conflict between the provisions in the Site Plans and the provisions of this Agreement, the Site Plans shall prevail.

### Entry

64. For the purposes of this Agreement the Developer hereby irrevocably grants to the Municipality, its servants, agents and advisors access to the Property at all reasonable times with two weeks' notice containing reason for access. An escort will be provided for all access with notice. No notice shall be required for emergency access.

### Insurance

65. The Developer shall insure against legal liability arising, directly or indirectly, out of the design, installation or construction of the Development and the operations of the Developer, with a policy or policies from an insurance company satisfactory to the Treasurer of the Municipality, acting reasonably. Such policy or policies shall be comprised of primary and/or umbrella coverage and shall include the Municipality, its servants and agents and the Municipality's engineers as additional insureds and shall remain in the custody of the Developer and shall be retained in full effect during the life of this Agreement, including any decommissioning period. Annually the Developer shall provide a certificate of insurance, certified by the insurer, to the Municipality.
66. The insurance policies required to be maintained by the Developer shall comply with the following conditions:
- (a) The minimum limits shall be \$5,000,000 all inclusive for each incident;
  - (b) The minimum period of insurance policy coverage shall be one year or as otherwise approved;

- (c) The policy shall specify that the policy shall not be cancelled or allowed to expire unless prior notice by registered letter has been received by the Municipality from the Insurance Company, or its agent, thirty (30) days in advance of the expiry date.
67. The Developer shall be responsible for all adjustment service costs and shall maintain on deposit with the Municipality throughout the term of this Agreement after the first loss claim on the policy the amount of the deductible in excess of \$25,000.
68. The insurance policies may contain an exclusion for blasting. If they do, and blasting is found to be necessary, no blasting shall be done until a blasting insurance endorsement is added.
69. The issuance of such policies of insurance shall not be construed as relieving the Developer or any land Developers from such responsibility for claims which exceed the policy limits, for which they may be held responsible.
70. Should the Developer fail to maintain the proper insurance coverage for the Term of this Agreement, the Municipality shall have the authority to draw on the Security to pay any and all costs related to maintaining insurance coverage.
71. Upon the request of the Municipality, the Developer shall provide to the satisfaction of the Municipality proof that all premiums on such policy or policies of insurance have been paid and that the insurance is in full force and effect.

### **Liability**

72. The Developer shall indemnify and save harmless the Municipality and its representatives from all actions, causes of action, suits, claims, costs, interest and demands whatsoever which may arise either directly or indirectly by reason of this Agreement, save and except for any loss or injury resulting from the gross negligence or intentional acts of the Municipality, its servants and agents.
73. The Municipality shall have no liability to the Developer for any damage or loss as a result of the disrepair of road allowances or municipal drains, nor for damages caused by falling trees, nor for any action or inaction, except direct intentional damage, or inaction amounting to gross negligence.
74. The Municipality shall have no liability to the Developer arising from the actions or inactions of other users of the road allowances. The Municipality shall have no liability to the Developer for any damage or interruption in service arising from repairs or other work to the road allowances, performed in accordance with applicable laws.

### **Municipal Expenses**

75. The Developer shall pay and reimburse (as the case may be) the Municipality for all reasonable charges and expenses incurred by the Municipality in connection with the negotiation, preparation, approval, maintenance and enforcement of this Agreement and without restricting the generality of the foregoing shall also be responsible for all engineering, planning, legal, internal administrative and related expenses incurred by the Municipality in relation to this Agreement both before and after its execution.
76. The Developer shall pay to the Municipality the accounts submitted to the Developer for payment or reimbursement within thirty (30) days. In the event that the Developer does not pay the accounts within thirty (30) days, it is hereby understood and agreed that the Developer shall be in default of this Agreement and the Municipality may, without notice, invoke default provisions as set out in this Agreement.
77. All of the Municipality's expenses shall be a charge against the Security.

### **Security**

78. Security shall be in the form of cash or letters of credit. Letters of credit shall be irrevocable letters of credit from Canadian Chartered Banks issued in accordance with terms satisfactory to the Municipality and they shall provide that if in the sole reasonable opinion of the Municipality default under the terms of this Agreement has taken place the letters of credit thereupon be drawn in whole or in part. The Municipality shall also have the right to draw upon such Securities to enforce this Agreement or defend itself from claims arising from the

entering into of this Agreement and the authorization, maintenance and decommissioning of the Development. The letters of credit shall be in force for a period of one year and shall provide for automatic renewals, unless three months' prior written notice is given to the Municipality.

79. Interest generated by cash deposits, less the Municipality's charges to administer the accounts, shall be added to the Security and be dealt with as provided elsewhere in this Agreement.
80. The Security may be reduced from time to time at the sole reasonable discretion of the Municipality.
81. Forthwith after execution and as a pre-condition of this Agreement coming into force, the Developer shall deposit letters of credit or cash in the sum of ~~\$(“Security”)~~\$68,000.00 [this amount is only for the entrance construction] with the Municipality to guarantee compliance with the term of this Agreement or to otherwise permit the Municipality to enforce the terms of this Agreement until the termination of this Agreement.
82. The parties acknowledge that the estimate of the appropriate amount for the security is based on the anticipated cost of periodic road maintenance and construction, the decommissioning the Development, and the rehabilitation of the Property, but that there is inadequate knowledge of the all the relevant circumstances. Each party covenants to advise the other party of any material facts or knowledge acquired which may impact positively or negatively upon the proper amount for the Security. The parties shall negotiate an appropriate revision of the amount based on the anticipated cost of decommissioning the Development, failing which the matter may be arbitrated. [Strada wishes this section and the previous section amended to provide that the security is only available in connection with the entrance construction and not for rehabilitation, etc.]

#### **Inflation Adjustment**

83. In 2015 and every five years thereafter, the figures referred to in Sections 66.(a), 81 shall be readjusted in accordance with the difference between the December 31, 2010 Ontario - All Items Consumer Price Index and the then most recent December 31 Ontario - All Items Consumer Price Index (or its equivalent). Forthwith after notification by the Municipality, the Developer shall deposit additional Security with the Municipality, as specified in the notification.

#### **Alterations and Amending Agreements**

84. The Municipality may require and may permit minor alterations to the Development and any work done in conformity with any such alterations, as agreed to by the Municipality in writing, shall be deemed to be in compliance with the Agreement.
85. The parties acknowledge that regardless of their efforts to reasonably foresee the requirements of the parties for the expected lifetime of this Agreement, it is expected that changes in technology, governmental regulations, general area development and other factors may reasonably necessitate amendments to this Agreement, which may increase the burden on the Developer. The parties acknowledge that their intent is to make the Development successful and operational and in full compliance with the prevailing requirements and municipal objectives at all times, and to that end the parties agree to review the impact of this Agreement in 2015 and each five years thereafter where they shall use their best efforts to enter into such amending or supplementary agreements as may be reasonably necessary. The parties will act in good faith and insofar as is reasonable without impairing (more than minimally) the feasibility or economic performance of the Development and to maintain the compatibility of the Development with general development of the area.
86. The parties agree, however, that no amending or supplementary agreement shall impose any additional responsibility or burden on the Municipality.

#### **Termination of Agreement**

87. The Developer may, by notice in writing, terminate this Agreement at any time prior to commencement of construction of the Development, and this Agreement shall be at an end and the Developer shall have no further obligation hereunder, but the termination shall not affect the Developer's liability to the Municipality to the date of termination. After payment

of the Municipality's expenses and such other items as are appropriately charged against the Security by the terms of this Agreement, the balance of the Security shall be returned to the Developer forthwith.

88. If this Agreement is terminated, the Municipality is deemed to have withdrawn its consent to the proposed development. No liability or other duty of any kind shall be imposed on the Municipality requiring it to carry out any part of this Agreement that the Municipality is required to carry out herein that has not been completed at the time of termination. The Municipality is under no obligation to return any money paid under this Agreement. All money owing to the Municipality by the Developer and the Developers to the date of termination shall be paid forthwith on demand.
89. Notwithstanding anything contained herein to the contrary, if the Developer is delayed in substantially completing the construction of any Development or facility required by this Agreement, or in the operation, repair or maintenance of such work or facility by an act beyond the Developer's reasonable control and without limiting the generality of the foregoing ("events of *force majeure*") including unavailability of a building permit, adverse weather conditions, unavailability of parts and supplies, material or labour shortages, labour disputes, strikes and lockouts, national shortages, acts of God or the Queen's enemies, riots, insurrection, civil commotion or damage by fire, lightning, flood earthquake, tempest, or other casualty, so long as such impediment exists, the Developer will be relieved from the fulfilment of the obligation and the time for completion shall be extended by a period of time equal to such delay.
90. Unless earlier terminated under other provisions of this Agreement, this Agreement shall be terminated upon the completion of the decommissioning and restoration of the site of the Development.

#### **Repair Obligation**

91. The Developer shall repair, or at its option, be responsible to pay for the repair of, all damage caused to the existing road allowances, other municipal roads, works and services by or on behalf of the Developer pursuant to this Agreement in connection with the Property, whether during construction, hauling, operation and maintenance, decommissioning or restoration. This covenant extends to damage caused by hauling fill for dumping. In all cases the obligation to repair shall be to repair to the condition existing prior to the damage occurring. Normal wear and tear is excluded from the intent of this section.
92. Nothing herein shall constitute an assumption by the Developer of the obligation and responsibility of the Municipality to maintain public highways, road allowances or municipal roads. Where the Developer has performed repair work on municipal roads at the request or direction of the Municipality, then upon such work being inspected and approved by the Municipality, the Municipality shall, in the event of any claims, costs or damages arising from such work, indemnify and save harmless the Developer from any claims, costs or damages arising from such work on the public highways, road allowances or municipal roads.

#### **Notice**

93. All notices which may or are required to be given under this Agreement shall be in writing and shall be delivered personally or sent by registered mail or couriered or faxed to the parties at their respective addresses as set out as follows:

The Corporation of the Municipality of Melancthon  
R.R. 6  
Shelburne, Ont. L0N 1S9  
Fax: (519) 925-1110

Strada Aggregates Inc.  
30 Floral Parkway  
Concord, Ont. L4K 4R1  
Fax: (905) 660-5242

94. Notices which are delivered or sent in the manner set out shall conclusively be deemed to be received for all purposes hereof, in the case of those faxed or delivered personally or by courier on the date of such faxing or delivery, and in the case of those given by registered mail, on the fourth business day following that upon which the notice was mailed. If at the time of mailing an there is an actual or threatened postal disruption, the notice shall not be mailed, but faxed, delivered personally or by courier.

### **Default and Enforcement**

95. In the event of default by the Developer in respect of any material obligation created hereunder, and provided that the Developer: (I) has received prior written notice of such default from the Municipality and, (ii) has been given a reasonable period of time thereafter to cure such default (such period of time not to be less than forty-five (45) days) and has failed to cure such default, or, in the event such default is not curable within a reasonable time, the Developer has ceased proceeding diligently to remedy same, the Municipality at all times maintains the discretion, acting reasonably, to terminate this Agreement. For the purposes of this section, "default" shall be the following,
- (a) any material breach of any covenant or obligation of the Developer pursuant to this Agreement;
  - (b) the Developer becoming insolvent, bankrupt, or making an authorized assignment or compromise with its creditors.
96. If the Developer fails to complete any requirements set out in this Agreement or fails to maintain the Development in accordance with the terms of this Agreement, then the Municipality may upon seven business days' notice to the Developer or in an emergency situation, being one which the Municipality considers to pose an imminent risk to the safety of any persons or property, may upon 24 hours' notice (if practicable, or without notice if the emergency so dictates) undertake the completion of the requirements of this Agreement including such maintenance works as the Municipality deems necessary and the total cost of such work including all engineering, planning, legal and administrative fees shall be borne by the Developer. The Municipality shall, from time to time, render accounts to the Developer and the accounts shall bear interest in the same manner and at the same interest as municipal tax instalments at the time of the rendering of the account. If the Developer fails to pay the Municipality any such amounts within thirty days of the date of billing, then the money owing may be collected pursuant to the security provided therein and/or be added to the tax bill of the Lands whereupon such amount shall be conclusively deemed as tax arrears and may be collected in the same manner as tax arrears.
97. In the event of default by the Developer of any obligations, the provisions of the Municipal Act, 2001, ss. 442 to 446, as amended from time to time, shall apply in addition to any other rights of enforcement that may be available to the Municipality against the Developer.
98. In all matters of opinion, the reasonable determination by the Municipality, its officials, professionals engineers, planners, lawyers and agents shall be final and conclusive, unless submitted to arbitration in accordance with this Agreement. The Developer shall have no right to dispute any of the accounts in any respect until the amount in dispute shall have been fully paid or the Developer has posted security satisfactory to the Municipality in the amount of such account in cash or by way of a letter of credit. If the Developer shall have first either paid the amount in dispute or posted security as aforesaid, the Developers and the Developer may refer the matter to arbitration. All other matters may be referred by any party to arbitration.

### **Arbitration**

99. For the purpose of this part of the Agreement, the Developer and the Municipality are collectively called the "Parties". Each of them is called the "Party" as the context requires.
100. Any and all disputes, claims or controversies arising out of or in any way connected with or arising from this Agreement, its negotiation, performance, breach, enforcement, existence of validity, any failure of the Parties to reach agreement with respect to matters provided for in this Agreement and all matters in dispute relating to the rights and obligations of the Parties, which cannot be amicably resolved, even if only one of the Parties declares that there is a difference ("Dispute"), will be referred to and finally settled by private and confidential binding arbitration. The arbitration shall be governed by the Arbitration Act, 1991 (Ontario) as amended and supplemented by the arbitration sections of this Agreement, and shall constitute a submission for the purposes of the Arbitration Act, 1991. The arbitration shall be held in Ontario in English and governed by Ontario law.

101. Any arbitration shall be resolved in the following manner:

- (a) If the Parties can agree upon a single arbitrator, such arbitrator shall conduct the arbitration alone. If they cannot agree on a single arbitrator, then each shall appoint an arbitrator and the two so appointed shall appoint a third arbitrator who shall be chairman. If either Party appoints an arbitrator and gives notice of the appointment to the other, the other shall appoint an arbitrator within five business days. If such appointment is not made within such period, the arbitrator appointed by the first Party shall be deemed to be a single arbitrator approved by the both of them. The two arbitrators shall appoint a third arbitrator within five business days of the appointment of the second arbitrator.
- (b) Depending on the nature of the dispute, the arbitrator or arbitrators shall, to the extent appropriate, be practising professional engineers, planners, lawyers, or the holders of other appropriate qualifications for the subject matter of the Dispute.
- (c) The arbitrator or arbitrators shall set a date for the hearing of the matters in dispute (“Hearing”) not later than six weeks from the date of appointment of the last arbitrator to be appointed.
- (d) The Party seeking the arbitration (“Claimant”) shall deliver to the other Party (“Respondent”) and the arbitrators, at least four weeks before the hearing, a written statement (“Complaint”), including the allegations of fact and statements of legal principles it admits and which it denies. Within ten days of the receipt of the Complaint, the Respondent shall send to the Claimant and the arbitrators a response (“Response”) stating, in detail, which of the Claimant’s allegations of fact and statements of legal principles it admits and which it denies, on what grounds and on what other facts and principles of law it relies.
- (e) At the time of the delivery of the Complaint the Claimant shall provide to the Respondent copies of all documents on which it intends to rely. At the time of the delivery of the Response, the Respondent shall deliver to the Claimant copies of all documents on which it intends to rely.
- (f) If the Respondent fails to deliver a Response within the time limit referred to above, the Respondent shall be deemed to have admitted the Complaint.
- (g) Within ten days of receipt of the Response the Complainant may deliver to the Respondent and the arbitrators a written reply to the Response.
- (h) Any Party may at any time at least two weeks in advance of the Hearing make a motion to the arbitrator in the event there is a single arbitrator, or the chairman in the event of multiple arbitrators for an order for directions regarding the further conduct of the arbitration and the Hearing, including orders respecting the production of records and documents that are in their possession and power.
- (i) The time limits referred to above may be waived by the Parties on consent, or the arbitrator or arbitrators on motion by one of the Parties, should consent not be given.
- (j) At the Hearing each Party may adduce whatever evidence it deems advisable. In addition the arbitrator or arbitrators may view the site in his or their consideration of the matters complained about.
- (k) The arbitrator or arbitrators shall make their decision as soon as possible after completion of the Hearing and viewing the site. The decision (or the majority decision as the case may be) is final and binding upon the Claimant and the Respondent, and is not to be subject to review or appeal by any Court or other body.
- (l) If the result of the arbitration is in favour, or largely in favour of one Party, the cost of the arbitration, including the expenses of that Party, shall be paid by the other. If the result is mixed, each Party shall pay its own expenses and the fees of the arbitrators shall be divided equally between them. The arbitrator or arbitrators shall make the decision as to whether the result is in favour or largely in favour of one Party, or if the result is mixed.
- (m) The arbitration shall be kept confidential and its existence and any element of it (including submissions and any evidence or documents presented or exchanged) shall not be disclosed beyond the arbitrators, the Parties (including their shareholders, auditors and insurers), their counsel and any person necessary to the conduct of the arbitration, except as required by law or the rules or requirements of any stock exchange. No individual shall be appointed as an arbitrator unless he or she agrees in writing to be bound by this confidentiality provision.

### **Assignment**

102. The Developer shall be entitled to assign this Agreement, with the consent of the Municipality, which shall not be unreasonably delayed, withheld or conditioned, provided that the Municipality is reasonably satisfied as to the financial responsibility of the assignee, the assignee executes formal documents to assume the obligations of this Agreement, and the assignee posts replacement securities provided for in this Agreement. Upon all of the foregoing taking place, the Developer shall be released from its obligations under this Agreement, and the balance of any securities posted by the Developer with the Municipality shall be promptly returned.

### **Legals**

103. The Developer covenants that it shall not contest the authority of the Municipality to enter into this Agreement and enforce it. The parties conclusively stipulate that the Municipality has the authority to enter into this Agreement and enforce it. The parties covenant not to contest the legality of this Agreement.
104. Every provision of this Agreement by which the Developer is obligated in any way shall be deemed to include the words “at the expense of the Developer” and “to the Municipality’s reasonable satisfaction in its sole reasonable discretion” unless specifically stated otherwise.
105. The parties hereto agree that this Agreement may be registered against the title of the lands and premises herein described at the cost of the Developer. The execution of this Agreement by a party is conclusive Acknowledgement and Direction by that party to the Solicitors for the Municipality and the Developer to register this Agreement on behalf of the party. The registration of this Agreement shall be deleted upon the sole application of the Municipality upon the termination of this Agreement.
106. The invalidity or unenforceability of any provision or covenant contained in this Agreement shall affect the validity and enforceability of such provision or covenant only and any such invalid provision or covenant shall be severed from the balance of this Agreement, which shall be enforced to the greatest extent permitted by law.
107. No supplement, modification, amendment or waiver of this Agreement shall be binding unless executed in writing by the parties.
108. Each of the parties covenants and agrees with the other that it will at all times hereafter execute and deliver, at the request of the other, all such further documents, deeds and instruments and will do and perform all such acts as may be necessary to give full effect to the intent and meaning of this Agreement.
109. In this Agreement, words importing the singular number include the plural and vice versa and words importing one gender include the other two genders as well.
110. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
111. The following Schedules attached hereto form part of this Agreement. For registration purposes the Schedules may be omitted. This Agreement and all the Schedules are available for viewing at the offices of the Municipality during regular office hours.

Schedule “A”	Description of Lands Affected by this Agreement
Schedule “B”	Groundwater Monitoring Program
Schedule “C”	Well Interference Protocol

**IN WITNESS WHEREOF** the parties hereto affix their hands and seal or corporate seals, attested to by the hand of their authorized officers, as the case may be, as of the effective date first above noted

**THE CORPORATION OF THE TOWNSHIP OF MELANCTHON**

Per:

~~Debbie Fawcett~~Bill Hill, Mayor

Denise B. Holmes, Clerk

We have the authority to bind the Corporation

**STRADA AGGREGATES INC.**

Per:

Name & Title

I have the authority to bind the Corporation

## **SCHEDULE "A"**

### **DESCRIPTION OF LANDS**

- ✓ Part Lot 11, Concession 3 Old Survey, Melancthon as in MF125718, Except Part 1, 7R4120, PIN 34138-0027 (LT)
- ✓ Part Lot 12, Concession 3 Old Survey, MELANCTHON, as in MF85896, PIN 34138-0035

## SCHEDULE "B"

### GROUNDWATER MONITORING PROGRAM

1. Water levels shall be measured on a daily basis through the installation of automatic dataloggers at all monitoring locations as outlined in the table below.
2. Calibration of the datalogger data shall be completed by the collection of manual groundwater measurements on a quarterly basis.
3. Water quality, including; BTEX, volatile organic compounds (VOC) and F1-F4 fraction petroleum hydrocarbons (PHC), shall be monitored at the well and pond locations as outlined in the table below on a semi-annual basis (spring and fall).
4. Each well to be purged of a minimum of three casing volumes prior to sampling. VOC and PHC parameters to be sampled utilizing appropriate bailers to ensure sampling top of water column.
5. The Municipality shall be notified immediately of the presence of any detectable VOC or PHC. Upon any detection of VOC/PHC , there shall be an immediate re-sampling to confirm or refute the results.
6. Upon any detection of VOC/PHC at or near a property boundary location, the owner of the adjoining property shall be immediately notified of the presence of any detectable VOC or PHC.
7. In addition to the VOC and PHC analyses, the list of parameters for General Chemistry laboratory analyses are as follows:

Electrical  
Conductivity pH  
Saturation pH Langlier Index Total  
Dissolved Solids  
Alkalinity (as CaCO<sub>3</sub>)  
Bicarbonate (as CaCO<sub>3</sub>)  
Carbonate (as CaCO<sub>3</sub>)  
Chloride  
Nitrate as N  
Nitrite as N  
Sulphate  
Ortho Phosphate as P  
Ammonia as N

Dissolved Organic Carbon

Calcium

Magnesium

Sodium

Potassium

Copper

Iron

Manganese

Zinc

8. Site monitoring shall adhere to the special conditions of any permits or certificates issued under the Ontario Water Resources Act.

Well No.	Water Level Elevations		Water Quality		Water Quality Monitoring Location Rationale
	Continuous Datalogger	Quarterly Manuals	General Parameters	Petroleum Hydrocarbons	
OW2-07C	X	X	X		Up-gradient / Background Water Quality
OW2-08A	X	X	X	X	
OW2-08B	X	X	X	X	
OW3-08A	X	X	X		
OW3-08B	X	X			
OW4-07C	X	X	X		
OW4-08A	X	X	X	X	Up-gradient / Background Water Quality
OW4-08B	X	X	X	X	
OW5-07C	X	X			Down-gradient / Water Quality
OW5-08A	X	X	X	X	
OW5-08B	X	X	X	X	
OW8-08A	X	X	X	X	
OW8-08B	X	X			
OW9-08A	X	X			
OW10-08A	X	X	X		
OW10-08B	X	X			
South Pond	X	X	X	X	Surface Water Quality
Wash Pond	X	X	X	X	
OW6-10A(R)	X	X	X	X	Down-gradient / Water Quality
OW7-10A(R)	X	X	X	X	
OW7-10C(R)	X	X	X	X	
OW11-10A	X	X	X	X	
OW11-10C	X	X	X	X	
OW12-10A	X	X	X	X	

## SCHEDULE "C"

### WELL INTERFERENCE PROTOCOL

1. Anyone experiencing either a loss in the water supply or a perceived alteration in the quality of the supply should contact Strada Aggregates at 519-925-6100. The call will be redirected to a qualified hydrogeologist consultant retained by Strada Aggregates to respond to any well interference complaints, which are received.
2. Alternatively, the complainant may wish to contact the Ministry of the Environment Guelph District Office, 1 Stone Road W. Guelph ON N1G 4Y2 Toll free: 1-800-265-8658. Tel: (519) 826-4255.
3. Strada or their hydrogeological consultant shall immediately contact the District MOE office in Guelph as well as the Township of Melancthon to inform them a complaint has been received and an investigation will be completed within 24 hours.
4. If the results of the investigation conclude that the aggregate operations have adversely impacted the domestic water supply, Strada shall comply with their requirements under the Ontario Water Resources Act.
5. Strada shall immediately notify the Director of the Ministry of Environment and the Township of Melancthon of any complaint arising from the taking of water authorized by any Permit and shall report upon any action, which has been taken or is proposed with regard to such complaint. For Ground-Water Takings, if the taking of water is forecast to interfere seriously, or is observed to interfere seriously with other water supplies obtained from any adequate sources that were in use prior to initial issuance of a Permit for this, Strada shall take such action as will make available to those affected a supply of water equivalent in quantity and quality to their normal takings, or shall compensate such persons for their reasonable costs of doing so or shall reduce the rate and amount of taking so as to prevent the forecast interference or alleviate the observed interference. Pending permanent restoration of the affected supplies, the Strada shall provide to those affected temporary water supplies adequate to meet their normal requirements, or shall compensate such persons for their reasonable costs of doing so.

**MELANCTHON - STRADA OPERATING AGREEMENT**  
**MELANCTHON PIT - WEST HALF LOTS 11 & 12, CONCESSION 3 OS**

Made as of December 9, 2010

B E T W E E N :

**THE CORPORATION OF THE TOWNSHIP OF MELANCTHON**

(Hereinafter referred to as the “**Municipality**”)

OF THE FIRST PART

- and -

**STRADA AGGREGATES INC.**

(Hereinafter referred to as the “**Developer**”)

OF THE SECOND PART

**WHEREAS** the Developer is the registered owner of Parts of Lots 11 and 12, Concession 3, Old Survey, Melancthon, consisting of approximately 47.6 hectares, more particularly described in Schedule “A” (“Property”);

**AND WHEREAS** the Developer is desirous of developing the Property as an Aggregate Pit (“Pit”, “Melancthon Pit” or “Development”), for an aggregate licence;

**AND WHEREAS** the Developer has applied for Official Plan and Zoning By-Law amendments;

**AND WHEREAS** the Developer and the Municipality have negotiated this Agreement as a condition of the Municipality’s support for the approval of the related Official Plan and Zoning By-law amendments by the applicable approval authority and, in the case of appeals, the Ontario Municipal Board, although the parties acknowledge that there is no contracting between the parties to rezone the Property;

**AND WHEREAS** the parties acknowledge that the Developer is subject to the provisions of the Aggregate Resources Act, and the regulations passed under it;

**AND WHEREAS** the parties acknowledge that the Development has **could have** a significant impact on the Municipality, and that notwithstanding the provisions of the Aggregate Resources Act and the regulations passed under it, the Municipality has continuing jurisdiction pursuant to Provincial legislation, including the Municipal Act, 2001, Planning Act, Fire Protection and Prevention Act, Emergency Management and Civil Protection Act, the Building Code Act, 1992, and the Environmental Protection Act to deal with the matters contained in this Agreement;

**AND WHEREAS** the parties shall use their best efforts to incorporate this Agreement into the Site Plans approved as part of a licence issued under the Aggregate Resources Act (“Site Plans”);

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, the Municipality and the Developer agree as follows:

## **CONSTRUCTION PART**

### **Works to be Constructed by the Developer**

1. At its sole expense, the Developer shall construct the following works (“Works”):
  - (a) A northbound right turn on the Melancthon 4<sup>th</sup> Line at the Pit entrance, in order to accommodate gravel trucks.
  - (b) Road granular shall be provided to a minimum depth of 450mm. Asphalt thickness to be a minimum of 90mm. The length of acceleration and deceleration tapers to be in accordance with Ministry of Transportation design criteria.
  - (c) Such construction shall be substantially completed during the months from May to November 1st during the first Pit operating season, provided that there is no undue delay with receiving any entrance related required planning, environment or other approval or inspections in this regard.

### **Drawings, Meetings and Construction of the Works**

2. Prior to commencing construction of the Works, the Developer shall provide a complete set of engineering drawings, including landscape design, to the Municipality, together with proof of all legally required approvals and permits for the Development. No actual work shall be commenced prior to the Municipality’s written approval of the construction work.
3. Engineering drawings shall meet the following criteria. All existing utilities shall be shown with appropriate details.
4. The Developer acknowledges that existing municipal works and services (including Municipality and County of Dufferin Roads, drainage culverts, etc.) may not meet the requirements of the Developer for the installation of the works and services proposed to be carried out by the Developer, and the Developer agrees that the improvement or upgrading of the existing municipal works and services to meet the Developer’s requirements shall be carried out by and be at the sole expense of the Developer. The Developer shall obtain the approval of the Municipality or The Corporation of the County of Dufferin, as the case may be, to the improvement or upgrading of the existing municipal works and services.
5. All driveway entrance culverts are to have a minimum thickness of 2.0mm. The Developer acknowledges that it has not used engineering designs to obtain the proposed diameter for its driveway culverts. All culverts have been specified to have diameters of 500mm. In the event that the Municipality Road Superintendent experiences difficulties with the capacity of any of these culverts, he may at his sole discretion, acting reasonably, order them to be replaced with properly sized culverts at the expense of the Developer.
6. All underground crossings of watercourses, ditches and municipal drains shall be 1m below the invert of ditches, drains and watercourses.
7. As appropriate the Developer shall provide dust control and clean up all construction refuse and debris in order to prevent any dust or refuse problem to traffic or home occupants. The Municipality shall have the right to remedy any concern in this regard utilizing the securities established in this Agreement.
8. At least two weeks prior to the commencement of work, the Developer shall provide to the Municipality pre-development condition reports for all Municipality roads that will be affected by the construction.
9. Construction work shall be carried out between the hours of 7AM and 7 PM, Monday to Saturday only and excluding statutory holidays.
10. Prior to the start of construction the Developer and its engineer shall attend a pre-construction meeting with the Municipality, the Municipality Engineer and other agencies involved

in construction approvals to establish any additional requirements and/or considerations related to the construction of the Development.

#### **Construction Haul Routes**

11. During construction traffic control shall be provided in accordance with all Provincial and Municipal requirements, and in particular Ontario Traffic Manual - Book 7. Road closures will not be permitted. The Developer shall minimize disruption of access to private properties and shall allow local access to driveways at all times.
12. The removal of excess fill shall be deemed to be in compliance with the Municipal Site Alteration By-law, By-law 29-2004. The dumping of excess fill off-site and within the Municipality shall be subject to the provisions of By-law 29-2004.

#### **Construction Completion**

13. Upon the completion of construction the Developer shall provide to the Municipality the following:
  - (a) “As constructed” plans of the Works and services;
  - (b) Certificate of the Developer’s engineer that all Works have been completed.

## OPERATION AND MAINTENANCE PART

### Operations

14. The Developer shall limit its combined annual production from the Pit and from the gravel pit operations on the West Half of Lot 13, Concession 3 Old Survey, Melancthon ("Shelburne Pit") to a maximum of 1.25 million tonnes per year.
15. The Developer shall promptly provide the Municipality with a confidential report of its annual returns to The Ontario Aggregate Resources Corporation. The Municipality agrees to keep these Annual Returns confidential.
16. No aggregate recycling processes shall be permitted as part of the extractive industrial use. A concrete batching plant or other industrial or similar use not listed on the Aggregate Resources Act site plan is not permitted as either a principal use or an accessory use.
17. The Developer shall manage its truck operations in such a way as to ensure trucks do not arrive at the Pit before 6:00 a.m., do not use engine brakes on Dufferin County Road 17 or Melancthon 4th Line, do not park on Dufferin County Road 17 or Melancthon 4th Line, and obey posted speed limits.
18. The Developer shall confine the Pit's active hours of operation to the following times (Monday to Friday):
  - a. Off-site shipping 6:00 a.m. to 5:00 p.m.
  - b. Extraction and processing 7:00 a.m. to 7:00 p.m.

The Pit shall not be operated on Saturdays, Sundays or statutory holidays.

19. The Developer shall use its best efforts to make sure that no gravel trucks shall park on the Melancthon 4<sup>th</sup> Line, but that they shall enter the Pit directly upon arrival and leave directly upon departure.
20. The Developer shall use its best efforts to make sure that the gravel trucks shall not stop or park on Melancthon 4<sup>th</sup> Line for any purpose, including covering the load of the aggregate, and that all such work, necessitating stopping and parking shall be carried out on the Pit site. The Municipality retains its right to impose no stopping zones on municipal roads in the vicinity of the Pit.
21. Truck turning or other directional road signs that are required by the Municipality as a result of the Developer's operation shall be supplied and installed at the Developer's sole expense.

### Haul Routes

22. Within the Municipality, the operational haul routes shall be only the following: from the Pit entrance south on Melancthon 4<sup>th</sup> Line to Dufferin County Road 17, and Dufferin County Road 17 to Dufferin County Road 124. Deliveries within the Township of Melancthon may also use Dufferin County Road 17 westbound to the limits of the Municipality. The Developer, its servants and agents shall observe the above restriction and the Developer shall use its best efforts to make sure that all customers of the Developer observe it as well.

### Road Maintenance

23. The parties acknowledge that the Municipality has the ultimate statutory obligation to maintain Melancthon 4<sup>th</sup> Line from the Pit entrance, south to Dufferin County Road 17 ("Road Section").
24. The parties also acknowledge that the cost of maintaining, repairing and resurfacing the Road Section is greatly increased by the Developer's operation of the Pit. The parties by this Agreement are endeavouring to establish the amount and timing of the Developer's fair contribution to the maintenance, repair and resurfacing of the Road Section. To the extent that changing circumstances warrant it, either party shall be at liberty to revisit the issue.

25. The following are identified as the Developer's fair contribution to the Road Section:
  - (a) keeping the road clear of debris and dust;
  - (b) providing sufficient gravel (supply and load) for shouldering both sides of the Road Section - estimated to need 40 tonnes per year;
  - (c) carrying out repairs to damaged patches and the like;
  - (d) resurfacing the road as and when necessary in the opinion of the Municipality's Road Superintendent.
26. The Developer may use its own equipment to keep the road clear of debris and dust. In the event that the Municipality's Road Superintendent requests work in this regard, and the work is not done by the Developer, the Municipality may carry out the work, and invoice the Developer.
27. The Developer may provide the gravel for the shouldering of the Road Section. In the event that the Municipality's Road Superintendent requests work in this regard, and the work is not done by the Developer, the Municipality may carry out the work, and invoice the Developer.
28. The Municipality shall carry out repairs to damaged patches and the like and invoice the Developer.
29. The Municipality shall resurface the Road Section as and when necessary in the opinion of the Municipality's Road Superintendent, and invoice the Developer.
30. The invoices referred to in the previous four sections shall be payable upon rendering and shall bear interest at the rate of 12% per annum from their date. In the event that the Developer fails to pay the invoices referred to in the previous four sections, the Municipality may have recourse to the security provided under this Agreement, commence legal action, and invoke the default provisions of this Agreement.

### **Hydrogeological Monitoring**

31. The Developer shall implement the following recommendations of the hydrogeological study and peer review:
  - (a) Monitoring for water level elevations and quality shall be completed at all existing and proposed groundwater monitoring wells as outlined on the attached Schedule "B" ("Groundwater Monitoring Program").
  - (b) The additional proposed groundwater monitors (described as OW-6-10, OW-7-10, OW11-10 and OW12-10) shall be constructed in accordance with the parameters outlined in the August 17, 2010 letter to the Municipality of Melancthon from Bluewater Geosciences Consultants Inc. Re: "Review of Strada Aggregates Proposed Melancthon Pit Level 2 Hydrogeological Assessment, Whitewater Hydrogeology Ltd. letter dated August 16, 2010".
  - (c) Monitoring for surface water level elevations shall be completed at the South Pond as well as the Wash Pond.
  - (d) An annual groundwater monitoring report which presents and interprets the monitoring data shall be submitted to the Ministry of Natural Resources, Ministry of Environment, Nottawasaga Valley Conservation Authority and Municipality by March 31st of each year and include the data from the 12 month period ending December 31st of the previous year.
32. The Developer shall implement a well interference protocol that establishes both the level of adverse groundwater impact at which remedial action is required and a procedure for the related remedial work and compensation. The Developer shall promptly undertake any required remedial work and shall compensate any party adversely affected by significant groundwater deterioration resulting from the industrial use as provided in the well interference protocol are outlined in attached Schedule "C" ("Well Interference Protocol").

### **Amphibian Monitoring**

33. The Developer shall monitor the retained wetland for amphibians, including the presence of western chorus frog, in accordance with the recommendations of “Natural Resource Solutions Inc.: Melancthon Pit, Natural Environment Level 2 Assessment, March 2010” (“Natural Environment Report”).
34. Prior to commencing operations at the Pit, the Developer shall prepare the monitoring programs to the Municipality for review, which shall cover:
  - (a) Inclusion of amphibian breeding habitats of the south pond and wetland in the surface water and shallow groundwater monitoring program, and
  - (b) Monitoring the wetlands for amphibian breeding, including the presence of the western chorus frog.
35. The results of the monitoring shall be provided to the Municipality and Nottawasaga Valley Conservation Authority by September 30<sup>th</sup> of each year.
36. The Developer shall implement all the recommendations of the Amphibian Report, including the protection and restoration of key environmental features, buffers and linkages in the site rehabilitation, through the site plans required for the licensing approval and any other appropriate means. The status of the Developer’s implementation shall be covered in the annual reports, as may be applicable.
37. The Developer shall retain the restored natural environment linkages in perpetuity, except as varied by the prior written consent of the Municipality, and in consultation with the Nottawasaga Valley Conservation Authority.

### **Compliance Assessment Report**

38. The Developer shall provide to the Municipality a Compliance Assessment Report forthwith after filing the same with the Ministry of Natural Resources, but in any event on or before September 30 of each year for the latest completed 12 month period.

### **Spills**

39. The Developer shall promptly provide to the Municipality copies of all notifications given by the Developer to the Ministry of Environment and Technical Standards & Safety Authority. In the event that the notifications are verbal, the Developer shall promptly provide a memorandum of the notification to the Municipality.
40. Prior to commencing operations at the Pit, the Developer shall provide to the Municipality a Spills Contingency Program for review, and the Developer shall implement such reasonable recommendations as may be made by the Municipality.

### **Lights**

41. The Developer shall not erect, locate, relocate, or otherwise place any sign, light or light standard on any part of the Development unless the sign, light or light standard has been approved in this Agreement. Site illumination shall be designed to minimize the spread of light into adjacent properties, while maintaining the safety and security of the infrastructure and personnel.

### **Progressive Rehabilitation**

42. The Developer shall comply with the progressive rehabilitation requirements imposed in its licence under the Aggregate Resources Act, and shall provide all particulars of such compliance on an on-going basis to the Municipality. The Municipality shall have the right to monitor and to enforce such compliance through the Ministry of Natural Resources (“MNR”).

### **Operations Part General Provisions**

43. This Operations Part shall apply so long as any part of this Agreement is still in force.
44. The Developer shall maintain the Development in good working order and shall carry out such repairs and maintenance as may be reasonably required by the Municipality.
45. The Developer shall supply the Municipality with a copy of the operation and maintenance manuals or plans of the Development, if any, and shall periodically update the Municipality's copies if there have been any material changes.
46. The Developer shall comply with all governmental regulatory requirements in maintaining the Development.
47. The Developer shall promptly notify the Municipality in writing of any written order or notice of non-compliance from any regulatory authority received by the Developer in respect of the Development.
48. The Developer shall promptly provide to the Municipality copies of all applications made to the Ministry of Natural Resources, the Ministry of Environment, and every other governmental agency, concerning the Development, including applications to amend existing licences.
49. The Developer shall not exceed the noise levels permitted in its licences, or otherwise prescribed by legislation or regulations.
50. The Developer shall implement the monitoring programs for the construction and operational phases of the Development in accordance with the requirements of all agencies having jurisdiction. The results of all the Developer monitoring programs, particularly those relating to noise levels at off-site sensitive uses, shall be provided to the Municipality along with any related comments or requirements from all agencies having jurisdiction. These results shall be provided to the Municipality on an annual basis or more frequently as the circumstances warrant. The Developer and the Municipality shall consult with each other every three years to determine if any additional mitigation measures would be appropriate for the Development. The mitigation requirements may be internal or external to the Development. Nothing in this Agreement shall limit the Municipality's authority to implement its own monitoring programs.
51. The Developer shall be solely responsible for Municipality's share of the per-call cost of providing emergency services provided to the Development, including all specialized services, at the otherwise prevailing rates.
52. At all times the Developer shall provide the Municipality with the names and contact information (including emergency contact) for all persons engaged by the Developer to be responsible for the Development.

**Ultimate Rehabilitation**

53. The Developer shall follow the post-rehabilitation management plan program in accordance with the “Pit Floor Agricultural Rehabilitation Sequence” (page 3 of the Site Plans) to accommodate a five-year plan for the restoration of the soils. The Developer shall use best management agricultural practices as are appropriate for the area, climate and conditions. The Developer shall monitor to verify that productivity and soil capability standards have been met in accordance with “Surficial Soil Study, May 2008” prepared by DBH Soil Services Inc. and the associated peer review.
54. For greater certainty, the Developer shall rehabilitate the site so as to restore substantially the same areas and same average soil quality for agriculture as existed prior to the extractive industrial use, as required in the Provincial Policy Statement.
55. The Developer shall implement a one year post-rehabilitation monitoring program to verify that productivity and soil capability restoration standards have been met and shall continue any required restoration procedures until such standards are met.
56. The results of the monitoring shall be provided to the Municipality by September 30<sup>th</sup> of the year following complete rehabilitation of the site, as required in the draft Official Plan Amendment, page 11, and such further yearly reports as may be required until compliance is completed.

## COMMUNITY DEVELOPMENT CONTRIBUTION PART

57. The parties acknowledge that the Development has a significant impact on the financial, developmental, social and environmental situation of the Municipality. [Strada wishes this clause deleted]
58. The Developer shall in each calendar year make community development contributions to local activities and charities in the minimum amount of \$2,500, and shall provide details of such contributions annually to the Municipality.

## GENERAL PROVISIONS

### Agreement Pre-conditions

59. This Agreement shall not come into force until all of the following pre-conditions have occurred:
- (a) The required Official Plan amendment is approved by either the Ministry of Municipal Affairs and Housing or, in the case of an appeal, the Ontario Municipal Board;
  - (b) The required Zoning By-Law amendment is approved either by the Municipality or, in the case of an appeal, by the Ontario Municipal Board;
  - (c) The Developer obtains a Category 3, Class A pit licence from the Ministry of Natural Resources;
  - (d) The Developer complies with the security provisions of Section 81.

### Site Plans - Aggregate Resources Act

60. The parties agree that as between themselves, the terms of this Agreement are deemed to have been incorporated into the terms of the Site Plans. Neither the express inclusion of some terms, nor the omission of some terms from the printed version of the Site Plans shall have any effect on the provision of this section.
61. A breach of this Agreement shall be deemed to be a breach of the Site Plans.
62. The Municipality shall have the right to monitor compliance with the Site Plans and the Developer shall assist the Municipality in the monitoring by providing access and copies of all relevant reports.
63. In the case of any conflict between the provisions in the Site Plans and the provisions of this Agreement, the Site Plans shall prevail.

### Entry

64. For the purposes of this Agreement the Developer hereby irrevocably grants to the Municipality, its servants, agents and advisors access to the Property at all reasonable times with two weeks' notice containing reason for access. An escort will be provided for all access with notice. No notice shall be required for emergency access.

### Insurance

65. The Developer shall insure against legal liability arising, directly or indirectly, out of the design, installation or construction of the Development and the operations of the Developer, with a policy or policies from an insurance company satisfactory to the Treasurer of the Municipality, acting reasonably. Such policy or policies shall be comprised of primary and/or umbrella coverage and shall include the Municipality, its servants and agents and the Municipality's engineers as additional insureds and shall remain in the custody of the Developer and shall be retained in full effect during the life of this Agreement, including any decommissioning period. Annually the Developer shall provide a certificate of insurance, certified by the insurer, to the Municipality.
66. The insurance policies required to be maintained by the Developer shall comply with the following conditions:
- (a) The minimum limits shall be \$5,000,000 all inclusive for each incident;
  - (b) The minimum period of insurance policy coverage shall be one year or as otherwise approved;

- (c) The policy shall specify that the policy shall not be cancelled or allowed to expire unless prior notice by registered letter has been received by the Municipality from the Insurance Company, or its agent, thirty (30) days in advance of the expiry date.
67. The Developer shall be responsible for all adjustment service costs and shall maintain on deposit with the Municipality throughout the term of this Agreement after the first loss claim on the policy the amount of the deductible in excess of \$25,000.
68. The insurance policies may contain an exclusion for blasting. If they do, and blasting is found to be necessary, no blasting shall be done until a blasting insurance endorsement is added.
69. The issuance of such policies of insurance shall not be construed as relieving the Developer or any land Developers from such responsibility for claims which exceed the policy limits, for which they may be held responsible.
70. Should the Developer fail to maintain the proper insurance coverage for the Term of this Agreement, the Municipality shall have the authority to draw on the Security to pay any and all costs related to maintaining insurance coverage.
71. Upon the request of the Municipality, the Developer shall provide to the satisfaction of the Municipality proof that all premiums on such policy or policies of insurance have been paid and that the insurance is in full force and effect.

### **Liability**

72. The Developer shall indemnify and save harmless the Municipality and its representatives from all actions, causes of action, suits, claims, costs, interest and demands whatsoever which may arise either directly or indirectly by reason of this Agreement, save and except for any loss or injury resulting from the gross negligence or intentional acts of the Municipality, its servants and agents.
73. The Municipality shall have no liability to the Developer for any damage or loss as a result of the disrepair of road allowances or municipal drains, nor for damages caused by falling trees, nor for any action or inaction, except direct intentional damage, or inaction amounting to gross negligence.
74. The Municipality shall have no liability to the Developer arising from the actions or inactions of other users of the road allowances. The Municipality shall have no liability to the Developer for any damage or interruption in service arising from repairs or other work to the road allowances, performed in accordance with applicable laws.

### **Municipal Expenses**

75. The Developer shall pay and reimburse (as the case may be) the Municipality for all reasonable charges and expenses incurred by the Municipality in connection with the negotiation, preparation, approval, maintenance and enforcement of this Agreement and without restricting the generality of the foregoing shall also be responsible for all engineering, planning, legal, internal administrative and related expenses incurred by the Municipality in relation to this Agreement both before and after its execution.
76. The Developer shall pay to the Municipality the accounts submitted to the Developer for payment or reimbursement within thirty (30) days. In the event that the Developer does not pay the accounts within thirty (30) days, it is hereby understood and agreed that the Developer shall be in default of this Agreement and the Municipality may, without notice, invoke default provisions as set out in this Agreement.
77. All of the Municipality's expenses shall be a charge against the Security.

### **Security**

78. Security shall be in the form of cash or letters of credit. Letters of credit shall be irrevocable letters of credit from Canadian Chartered Banks issued in accordance with terms satisfactory to the Municipality and they shall provide that if in the sole reasonable opinion of the Municipality default under the terms of this Agreement has taken place the letters of credit thereupon be drawn in whole or in part. The Municipality shall also have the right to draw upon such Securities to enforce this Agreement or defend itself from claims arising from the

entering into of this Agreement and the authorization, maintenance and decommissioning of the Development. The letters of credit shall be in force for a period of one year and shall provide for automatic renewals, unless three months' prior written notice is given to the Municipality.

79. Interest generated by cash deposits, less the Municipality's charges to administer the accounts, shall be added to the Security and be dealt with as provided elsewhere in this Agreement.
80. The Security may be reduced from time to time at the sole reasonable discretion of the Municipality.
81. Forthwith after execution and as a pre-condition of this Agreement coming into force, the Developer shall deposit letters of credit or cash in the sum of \$68,000.00 [this amount is only for the entrance construction] with the Municipality to guarantee compliance with the term of this Agreement or to otherwise permit the Municipality to enforce the terms of this Agreement until the termination of this Agreement.
82. The parties acknowledge that the estimate of the appropriate amount for the security is based on the anticipated cost of periodic road maintenance and construction, the decommissioning the Development, and the rehabilitation of the Property, but that there is inadequate knowledge of the all the relevant circumstances. Each party covenants to advise the other party of any material facts or knowledge acquired which may impact positively or negatively upon the proper amount for the Security. The parties shall negotiate an appropriate revision of the amount based on the anticipated cost of decommissioning the Development, failing which the matter may be arbitrated. [Strada wishes this section and the previous section amended to provide that the security is only available in connection with the entrance construction and not for rehabilitation, etc.]

#### **Inflation Adjustment**

83. In 2015 and every five years thereafter, the figures referred to in Sections 66.(a), 81 shall be readjusted in accordance with the difference between the December 31, 2010 Ontario - All Items Consumer Price Index and the then most recent December 31 Ontario - All Items Consumer Price Index (or its equivalent). Forthwith after notification by the Municipality, the Developer shall deposit additional Security with the Municipality, as specified in the notification.

#### **Alterations and Amending Agreements**

84. The Municipality may require and may permit minor alterations to the Development and any work done in conformity with any such alterations, as agreed to by the Municipality in writing, shall be deemed to be in compliance with the Agreement.
85. The parties acknowledge that regardless of their efforts to reasonably foresee the requirements of the parties for the expected lifetime of this Agreement, it is expected that changes in technology, governmental regulations, general area development and other factors may reasonably necessitate amendments to this Agreement, which may increase the burden on the Developer. The parties acknowledge that their intent is to make the Development successful and operational and in full compliance with the prevailing requirements and municipal objectives at all times, and to that end the parties agree to review the impact of this Agreement in 2015 and each five years thereafter where they shall use their best efforts to enter into such amending or supplementary agreements as may be reasonably necessary. The parties will act in good faith and insofar as is reasonable without impairing (more than minimally) the feasibility or economic performance of the Development and to maintain the compatibility of the Development with general development of the area.
86. The parties agree, however, that no amending or supplementary agreement shall impose any additional responsibility or burden on the Municipality.

#### **Termination of Agreement**

87. The Developer may, by notice in writing, terminate this Agreement at any time prior to commencement of construction of the Development, and this Agreement shall be at an end and the Developer shall have no further obligation hereunder, but the termination shall not affect the Developer's liability to the Municipality to the date of termination. After payment

of the Municipality's expenses and such other items as are appropriately charged against the Security by the terms of this Agreement, the balance of the Security shall be returned to the Developer forthwith.

88. If this Agreement is terminated, the Municipality is deemed to have withdrawn its consent to the proposed development. No liability or other duty of any kind shall be imposed on the Municipality requiring it to carry out any part of this Agreement that the Municipality is required to carry out herein that has not been completed at the time of termination. The Municipality is under no obligation to return any money paid under this Agreement. All money owing to the Municipality by the Developer and the Developers to the date of termination shall be paid forthwith on demand.
89. Notwithstanding anything contained herein to the contrary, if the Developer is delayed in substantially completing the construction of any Development or facility required by this Agreement, or in the operation, repair or maintenance of such work or facility by an act beyond the Developer's reasonable control and without limiting the generality of the foregoing ("events of *force majeure*") including unavailability of a building permit, adverse weather conditions, unavailability of parts and supplies, material or labour shortages, labour disputes, strikes and lockouts, national shortages, acts of God or the Queen's enemies, riots, insurrection, civil commotion or damage by fire, lightning, flood earthquake, tempest, or other casualty, so long as such impediment exists, the Developer will be relieved from the fulfilment of the obligation and the time for completion shall be extended by a period of time equal to such delay.
90. Unless earlier terminated under other provisions of this Agreement, this Agreement shall be terminated upon the completion of the decommissioning and restoration of the site of the Development.

#### **Repair Obligation**

91. The Developer shall repair, or at its option, be responsible to pay for the repair of, all damage caused to the existing road allowances, other municipal roads, works and services by or on behalf of the Developer pursuant to this Agreement in connection with the Property, whether during construction, hauling, operation and maintenance, decommissioning or restoration. This covenant extends to damage caused by hauling fill for dumping. In all cases the obligation to repair shall be to repair to the condition existing prior to the damage occurring. Normal wear and tear is excluded from the intent of this section.
92. Nothing herein shall constitute an assumption by the Developer of the obligation and responsibility of the Municipality to maintain public highways, road allowances or municipal roads. Where the Developer has performed repair work on municipal roads at the request or direction of the Municipality, then upon such work being inspected and approved by the Municipality, the Municipality shall, in the event of any claims, costs or damages arising from such work, indemnify and save harmless the Developer from any claims, costs or damages arising from such work on the public highways, road allowances or municipal roads.

#### **Notice**

93. All notices which may or are required to be given under this Agreement shall be in writing and shall be delivered personally or sent by registered mail or couriered or faxed to the parties at their respective addresses as set out as follows:

The Corporation of the Municipality of Melancthon  
R.R. 6  
Shelburne, Ont. L0N 1S9  
Fax: (519) 925-1110

Strada Aggregates Inc.  
30 Floral Parkway  
Concord, Ont. L4K 4R1  
Fax: (905) 660-5242

94. Notices which are delivered or sent in the manner set out shall conclusively be deemed to be received for all purposes hereof, in the case of those faxed or delivered personally or by courier on the date of such faxing or delivery, and in the case of those given by registered mail, on the fourth business day following that upon which the notice was mailed. If at the time of mailing an there is an actual or threatened postal disruption, the notice shall not be mailed, but faxed, delivered personally or by courier.

### **Default and Enforcement**

95. In the event of default by the Developer in respect of any material obligation created hereunder, and provided that the Developer: (I) has received prior written notice of such default from the Municipality and, (ii) has been given a reasonable period of time thereafter to cure such default (such period of time not to be less than forty-five (45) days) and has failed to cure such default, or, in the event such default is not curable within a reasonable time, the Developer has ceased proceeding diligently to remedy same, the Municipality at all times maintains the discretion, acting reasonably, to terminate this Agreement. For the purposes of this section, "default" shall be the following,
- (a) any material breach of any covenant or obligation of the Developer pursuant to this Agreement;
  - (b) the Developer becoming insolvent, bankrupt, or making an authorized assignment or compromise with its creditors.
96. If the Developer fails to complete any requirements set out in this Agreement or fails to maintain the Development in accordance with the terms of this Agreement, then the Municipality may upon seven business days' notice to the Developer or in an emergency situation, being one which the Municipality considers to pose an imminent risk to the safety of any persons or property, may upon 24 hours' notice (if practicable, or without notice if the emergency so dictates) undertake the completion of the requirements of this Agreement including such maintenance works as the Municipality deems necessary and the total cost of such work including all engineering, planning, legal and administrative fees shall be borne by the Developer. The Municipality shall, from time to time, render accounts to the Developer and the accounts shall bear interest in the same manner and at the same interest as municipal tax instalments at the time of the rendering of the account. If the Developer fails to pay the Municipality any such amounts within thirty days of the date of billing, then the money owing may be collected pursuant to the security provided therein and/or be added to the tax bill of the Lands whereupon such amount shall be conclusively deemed as tax arrears and may be collected in the same manner as tax arrears.
97. In the event of default by the Developer of any obligations, the provisions of the Municipal Act, 2001, ss. 442 to 446, as amended from time to time, shall apply in addition to any other rights of enforcement that may be available to the Municipality against the Developer.
98. In all matters of opinion, the reasonable determination by the Municipality, its officials, professionals engineers, planners, lawyers and agents shall be final and conclusive, unless submitted to arbitration in accordance with this Agreement. The Developer shall have no right to dispute any of the accounts in any respect until the amount in dispute shall have been fully paid or the Developer has posted security satisfactory to the Municipality in the amount of such account in cash or by way of a letter of credit. If the Developer shall have first either paid the amount in dispute or posted security as aforesaid, the Developers and the Developer may refer the matter to arbitration. All other matters may be referred by any party to arbitration.

### **Arbitration**

99. For the purpose of this part of the Agreement, the Developer and the Municipality are collectively called the "Parties". Each of them is called the "Party" as the context requires.
100. Any and all disputes, claims or controversies arising out of or in any way connected with or arising from this Agreement, its negotiation, performance, breach, enforcement, existence of validity, any failure of the Parties to reach agreement with respect to matters provided for in this Agreement and all matters in dispute relating to the rights and obligations of the Parties, which cannot be amicably resolved, even if only one of the Parties declares that there is a difference ("Dispute"), will be referred to and finally settled by private and confidential binding arbitration. The arbitration shall be governed by the Arbitration Act, 1991 (Ontario) as amended and supplemented by the arbitration sections of this Agreement, and shall constitute a submission for the purposes of the Arbitration Act, 1991. The arbitration shall be held in Ontario in English and governed by Ontario law.

101. Any arbitration shall be resolved in the following manner:

- (a) If the Parties can agree upon a single arbitrator, such arbitrator shall conduct the arbitration alone. If they cannot agree on a single arbitrator, then each shall appoint an arbitrator and the two so appointed shall appoint a third arbitrator who shall be chairman. If either Party appoints an arbitrator and gives notice of the appointment to the other, the other shall appoint an arbitrator within five business days. If such appointment is not made within such period, the arbitrator appointed by the first Party shall be deemed to be a single arbitrator approved by the both of them. The two arbitrators shall appoint a third arbitrator within five business days of the appointment of the second arbitrator.
- (b) Depending on the nature of the dispute, the arbitrator or arbitrators shall, to the extent appropriate, be practising professional engineers, planners, lawyers, or the holders of other appropriate qualifications for the subject matter of the Dispute.
- (c) The arbitrator or arbitrators shall set a date for the hearing of the matters in dispute (“Hearing”) not later than six weeks from the date of appointment of the last arbitrator to be appointed.
- (d) The Party seeking the arbitration (“Claimant”) shall deliver to the other Party (“Respondent”) and the arbitrators, at least four weeks before the hearing, a written statement (“Complaint”), including the allegations of fact and statements of legal principles it admits and which it denies. Within ten days of the receipt of the Complaint, the Respondent shall send to the Claimant and the arbitrators a response (“Response”) stating, in detail, which of the Claimant’s allegations of fact and statements of legal principles it admits and which it denies, on what grounds and on what other facts and principles of law it relies.
- (e) At the time of the delivery of the Complaint the Claimant shall provide to the Respondent copies of all documents on which it intends to rely. At the time of the delivery of the Response, the Respondent shall deliver to the Claimant copies of all documents on which it intends to rely.
- (f) If the Respondent fails to deliver a Response within the time limit referred to above, the Respondent shall be deemed to have admitted the Complaint.
- (g) Within ten days of receipt of the Response the Complainant may deliver to the Respondent and the arbitrators a written reply to the Response.
- (h) Any Party may at any time at least two weeks in advance of the Hearing make a motion to the arbitrator in the event there is a single arbitrator, or the chairman in the event of multiple arbitrators for an order for directions regarding the further conduct of the arbitration and the Hearing, including orders respecting the production of records and documents that are in their possession and power.
- (i) The time limits referred to above may be waived by the Parties on consent, or the arbitrator or arbitrators on motion by one of the Parties, should consent not be given.
- (j) At the Hearing each Party may adduce whatever evidence it deems advisable. In addition the arbitrator or arbitrators may view the site in his or their consideration of the matters complained about.
- (k) The arbitrator or arbitrators shall make their decision as soon as possible after completion of the Hearing and viewing the site. The decision (or the majority decision as the case may be) is final and binding upon the Claimant and the Respondent, and is not to be subject to review or appeal by any Court or other body.
- (l) If the result of the arbitration is in favour, or largely in favour of one Party, the cost of the arbitration, including the expenses of that Party, shall be paid by the other. If the result is mixed, each Party shall pay its own expenses and the fees of the arbitrators shall be divided equally between them. The arbitrator or arbitrators shall make the decision as to whether the result is in favour or largely in favour of one Party, or if the result is mixed.
- (m) The arbitration shall be kept confidential and its existence and any element of it (including submissions and any evidence or documents presented or exchanged) shall not be disclosed beyond the arbitrators, the Parties (including their shareholders, auditors and insurers), their counsel and any person necessary to the conduct of the arbitration, except as required by law or the rules or requirements of any stock exchange. No individual shall be appointed as an arbitrator unless he or she agrees in writing to be bound by this confidentiality provision.

### **Assignment**

102. The Developer shall be entitled to assign this Agreement, with the consent of the Municipality, which shall not be unreasonably delayed, withheld or conditioned, provided that the Municipality is reasonably satisfied as to the financial responsibility of the assignee, the assignee executes formal documents to assume the obligations of this Agreement, and the assignee posts replacement securities provided for in this Agreement. Upon all of the foregoing taking place, the Developer shall be released from its obligations under this Agreement, and the balance of any securities posted by the Developer with the Municipality shall be promptly returned.

### **Legals**

103. The Developer covenants that it shall not contest the authority of the Municipality to enter into this Agreement and enforce it. The parties conclusively stipulate that the Municipality has the authority to enter into this Agreement and enforce it. The parties covenant not to contest the legality of this Agreement.
104. Every provision of this Agreement by which the Developer is obligated in any way shall be deemed to include the words “at the expense of the Developer” and “to the Municipality’s reasonable satisfaction in its sole reasonable discretion” unless specifically stated otherwise.
105. The parties hereto agree that this Agreement may be registered against the title of the lands and premises herein described at the cost of the Developer. The execution of this Agreement by a party is conclusive Acknowledgement and Direction by that party to the Solicitors for the Municipality and the Developer to register this Agreement on behalf of the party. The registration of this Agreement shall be deleted upon the sole application of the Municipality upon the termination of this Agreement.
106. The invalidity or unenforceability of any provision or covenant contained in this Agreement shall affect the validity and enforceability of such provision or covenant only and any such invalid provision or covenant shall be severed from the balance of this Agreement, which shall be enforced to the greatest extent permitted by law.
107. No supplement, modification, amendment or waiver of this Agreement shall be binding unless executed in writing by the parties.
108. Each of the parties covenants and agrees with the other that it will at all times hereafter execute and deliver, at the request of the other, all such further documents, deeds and instruments and will do and perform all such acts as may be necessary to give full effect to the intent and meaning of this Agreement.
109. In this Agreement, words importing the singular number include the plural and vice versa and words importing one gender include the other two genders as well.
110. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
111. The following Schedules attached hereto form part of this Agreement. For registration purposes the Schedules may be omitted. This Agreement and all the Schedules are available for viewing at the offices of the Municipality during regular office hours.

Schedule “A”	Description of Lands Affected by this Agreement
Schedule “B”	Groundwater Monitoring Program
Schedule “C”	Well Interference Protocol

**IN WITNESS WHEREOF** the parties hereto affix their hands and seal or corporate seals, attested to by the hand of their authorized officers, as the case may be, as of the effective date first above noted

**THE CORPORATION OF THE TOWNSHIP OF MELANCTHON**

Per:

Bill Hill, Mayor

Denise B. Holmes, Clerk

We have the authority to bind the Corporation

**STRADA AGGREGATES INC.**

Per:

Name & Title

I have the authority to bind the Corporation

## **SCHEDULE "A"**

### **DESCRIPTION OF LANDS**

- ✓ Part Lot 11, Concession 3 Old Survey, Melancthon as in MF125718, Except Part 1, 7R4120, PIN 34138-0027 (LT)
- ✓ Part Lot 12, Concession 3 Old Survey, MELANCTHON, as in MF85896, PIN 34138-0035

## SCHEDULE "B"

### GROUNDWATER MONITORING PROGRAM

1. Water levels shall be measured on a daily basis through the installation of automatic dataloggers at all monitoring locations as outlined in the table below.
2. Calibration of the datalogger data shall be completed by the collection of manual groundwater measurements on a quarterly basis.
3. Water quality, including; BTEX, volatile organic compounds (VOC) and F1-F4 fraction petroleum hydrocarbons (PHC), shall be monitored at the well and pond locations as outlined in the table below on a semi-annual basis (spring and fall).
4. Each well to be purged of a minimum of three casing volumes prior to sampling. VOC and PHC parameters to be sampled utilizing appropriate bailers to ensure sampling top of water column.
5. The Municipality shall be notified immediately of the presence of any detectable VOC or PHC. Upon any detection of VOC/PHC , there shall be an immediate re-sampling to confirm or refute the results.
6. Upon any detection of VOC/PHC at or near a property boundary location, the owner of the adjoining property shall be immediately notified of the presence of any detectable VOC or PHC.
7. In addition to the VOC and PHC analyses, the list of parameters for General Chemistry laboratory analyses are as follows:

Electrical  
Conductivity pH  
Saturation pH Langlier Index Total  
Dissolved Solids  
Alkalinity (as CaCO<sub>3</sub>)  
Bicarbonate (as CaCO<sub>3</sub>)  
Carbonate (as CaCO<sub>3</sub>)  
Chloride  
Nitrate as N  
Nitrite as N  
Sulphate  
Ortho Phosphate as P  
Ammonia as N

Dissolved Organic Carbon

Calcium

Magnesium

Sodium

Potassium

Copper

Iron

Manganese

Zinc

8. Site monitoring shall adhere to the special conditions of any permits or certificates issued under the Ontario Water Resources Act.

Well No.	Water Level Elevations		Water Quality		Water Quality Monitoring Location Rationale
	Continuous Datalogger	Quarterly Manuals	General Parameters	Petroleum Hydrocarbons	
OW2-07C	X	X	X		Up-gradient / Background Water Quality
OW2-08A	X	X	X	X	
OW2-08B	X	X	X	X	
OW3-08A	X	X	X		
OW3-08B	X	X			
OW4-07C	X	X	X		
OW4-08A	X	X	X	X	Up-gradient / Background Water Quality
OW4-08B	X	X	X	X	
OW5-07C	X	X			Down-gradient / Water Quality
OW5-08A	X	X	X	X	
OW5-08B	X	X	X	X	
OW8-08A	X	X	X	X	
OW8-08B	X	X			
OW9-08A	X	X			
OW10-08A	X	X	X		
OW10-08B	X	X			
South Pond	X	X	X	X	Surface Water Quality
Wash Pond	X	X	X	X	
OW6-10A(R)	X	X	X	X	Down-gradient / Water Quality
OW7-10A(R)	X	X	X	X	
OW7-10C(R)	X	X	X	X	
OW11-10A	X	X	X	X	
OW11-10C	X	X	X	X	
OW12-10A	X	X	X	X	

## SCHEDULE "C"

### WELL INTERFERENCE PROTOCOL

1. Anyone experiencing either a loss in the water supply or a perceived alteration in the quality of the supply should contact Strada Aggregates at 519-925-6100. The call will be redirected to a qualified hydrogeologist consultant retained by Strada Aggregates to respond to any well interference complaints, which are received.
2. Alternatively, the complainant may wish to contact the Ministry of the Environment Guelph District Office, 1 Stone Road W. Guelph ON N1G 4Y2 Toll free: 1-800-265-8658. Tel: (519) 826-4255.
3. Strada or their hydrogeological consultant shall immediately contact the District MOE office in Guelph as well as the Township of Melancthon to inform them a complaint has been received and an investigation will be completed within 24 hours.
4. If the results of the investigation conclude that the aggregate operations have adversely impacted the domestic water supply, Strada shall comply with their requirements under the Ontario Water Resources Act.
5. Strada shall immediately notify the Director of the Ministry of Environment and the Township of Melancthon of any complaint arising from the taking of water authorized by any Permit and shall report upon any action, which has been taken or is proposed with regard to such complaint. For Ground-Water Takings, if the taking of water is forecast to interfere seriously, or is observed to interfere seriously with other water supplies obtained from any adequate sources that were in use prior to initial issuance of a Permit for this, Strada shall take such action as will make available to those affected a supply of water equivalent in quantity and quality to their normal takings, or shall compensate such persons for their reasonable costs of doing so or shall reduce the rate and amount of taking so as to prevent the forecast interference or alleviate the observed interference. Pending permanent restoration of the affected supplies, the Strada shall provide to those affected temporary water supplies adequate to meet their normal requirements, or shall compensate such persons for their reasonable costs of doing so.