

THE CORPORATION OF THE
TOWN OF PELHAM

BY-LAW NO. 2190 (2000)

Being a by-law to authorize the Mayor and Clerk to enter
into a Subdivision Agreement with Mountainview
Developments Inc.

WHEREAS the Council of the Corporation of the Town of Pelham deems it
desirable to enter into a Subdivision Agreement with Mountainview Developments Inc. in regards
to Sunshine Subdivision;

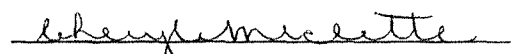
NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN
OF PELHAM ENACTS AS FOLLOWS:

- (1) THAT the Subdivision Agreement attached hereto and made part of this by-law
between the Corporation of the Town of Pelham and Mountainview Developments Inc. be and the
same is hereby approved.
- (2) THAT the Mayor and Clerk be and each of them is hereby authorized and
instructed on behalf of the Corporation of the Town of Pelham to execute the said Subdivision
Agreement and the Clerk is hereby authorized to affix the Corporate Seal thereto.

READ A FIRST, SECOND AND THIRD TIME
AND FINALLY PASSED BY COUNCIL THIS
17TH DAY OF JULY, 2000 A.D.



MAYOR RALPH BEAMER



CLERK CHERYL MICLETTE

SUNSHINE SUBDIVISION
SUBDIVISION AGREEMENT
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THIS INDENTURE made in triplicate this 30th day of August, 2000 A.D.

BETWEEN:

MOUNTAINVIEW DEVELOPMENTS INC.

Hereinafter called the "Owner"

OF THE FIRST PART

- and -

THE CORPORATION OF THE TOWN OF PELHAM

Hereinafter called the "Town"

OF THE SECOND PART

WHEREAS the Owner represents and warrants that it is the owner of the lands in the Town of Pelham described in Schedule "A" attached hereto and has applied, or proposes to apply to the Town for approval of a plan of subdivision thereof, hereinafter called the "Plan of Subdivision" a copy of which is attached hereto on Schedule A-1" for the purpose of registering the same in the Land Registry Office (No. 59), Land Titles Division of Niagara South;

AND WHEREAS the Town requires the Owner, before registration of the proposed Plan of Subdivision, to agree to pay for the construction and installation of certain municipal services hereinafter described to serve such subdivision or that part of such subdivision for which approval is sought and to agree to the other provisions herein contained;

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the Town approving the said proposed Plan of Subdivision, and in consideration of the sum of One Dollar (\$1.00) of lawful money of Canada now paid by the Owner to the Town (the receipt thereof is hereby acknowledged), the Parties hereto mutually covenant and agree as follows:

1. DEFINITIONS in this agreement:

(a) "ASSUMPTION BY-LAW FOR PRIMARY SERVICES" means a by-law passed by Council forthwith after the Director has approved in writing the Certificate of Final Acceptance for Primary Services assuming ownership of and responsibility for all Primary Services constructed by the Owner pursuant to the terms of this Agreement and the approved Plans, SAVE AND EXCEPT the following Primary Services:-

- i) the streets constructed by the Owner within the Plan of Subdivision;
- ii) the Utility Services other than the street lights.

(b) "ASSUMPTION BY-LAW FOR SECONDARY SERVICES" means a by-law passed by Council forthwith after the Director has approved in writing the certificate of Final Acceptance for Secondary Services assuming ownership of and responsibility for:-

- i) all Secondary Services constructed by the Owner;
- ii) the streets constructed by the Owner within the Plan of Subdivision.

(c) "BUILDING PERMIT" means a permit issued by the Chief Building Official approving an application for the construction, reconstruction or alteration of any building or structure for which such permit is required pursuant to the provision of By-law 1592 (1993) and amendments thereto,

(d) "CERTIFICATE OF FINAL ACCEPTANCE FOR PRIMARY SERVICES" means a certificate prepared by the Owner's Consulting Engineer and approved in writing by the Director at the expiration of the Maintenance Guarantee Period for Primary Services setting out the Primary Services being accepted by the Town and indicating the date of final acceptance of such Works. The Certificate of Final Acceptance for Primary Service shall not include:-

- i) any Utility Services other than the street lights;
- ii) the streets, installed and constructed by the Owner pursuant to the terms of this Agreement and the approved Plans.

(e) "CERTIFICATE OF FINAL ACCEPTANCE FOR SECONDARY SERVICES" means a certificate prepared by the Owner's Consulting Engineer and approved in writing by the Director issued at the expiration of the Maintenance Guarantee Period for the Secondary Services setting out the Secondary Services being accepted by the Town and indicating the date of final acceptance of such Works. The Certificate of Final Acceptance for Secondary Services **shall include the streets constructed by the Owner within the Plan of Subdivision.**

(f) "COMPLETION CERTIFICATE FOR PRIMARY SERVICES" means a certificate prepared by the Owner's Consulting Engineer and approved in writing by the Director upon satisfactory completion of all Primary Services the approval date of which shall mark the commencement of the Maintenance Guarantee Period for such Primary Services.

(g) "COMPLETION CERTIFICATE FOR SECONDARY SERVICES" means a certificate prepared by the Owner's Consulting Engineer and approved in writing by the Director upon satisfactory completion of all Secondary Services the approval date of which shall mark the commencement of the Maintenance Guarantee Period for such Secondary Services.

(h) "CHIEF BUILDING OFFICIAL" shall mean the Director of Building and Enforcement Services of The Corporation of the Town of Pelham.

(i) "COUNCIL" shall mean the Council of The Corporation of the Town of Pelham.

(j) "DIRECTOR" shall mean the Director of Operations of The Corporation of the Town of Pelham.

(k) "LANDS" shall mean the lands described in Schedule "A" annexed hereto and forming part of this Agreement

(l) "LETTER OF CREDIT" shall mean any Municipal Standby Irrevocable Letter of Credit drawn upon a chartered bank or other financial institution or credit union acceptable to the Treasurer posted with the Town pursuant to this agreement. The Municipal Standby Irrevocable Letter of Credit shall contain provisions which automatically renews it from year to year and requiring the bank to give thirty (30) days advance written notice of its intention not to renew.

(m) "LOCAL IMPROVEMENTS" shall include utilities, sanitary sewers, storm sewers, sidewalks, curbs and gutters, pavements and such other local improvements as are defined by the Local Improvement Act, R.S.O. 1990 ch. L 26, as amended, or the Municipal Act, R.S.O. 1990 ch. M 45, as amended.

(n) "OWNER" shall mean the applicant for the approval of a Plan of Subdivision and the registered owner or owners in fee simple of the lands for which the Plan of Subdivision is proposed and their respective heirs, executors, administrators, successors and assigns and anyone acquiring an interest in the Land. Wherever the singular is used herein it shall, where the context requires, include the plural

(o) "OWNER'S CONSULTING ENGINEER" means a Professional Engineer or Professional Engineers employed by the Owner.

(p) "ONTARIO LAND SURVEYOR" shall mean a person commissioned by the Province of Ontario to establish monuments that define the boundaries of a parcel or parcels of land.

(q) "PLANS" shall mean all drawings, plans, specifications, contracts and other documents providing for the installation, construction and erection of the Works approved by and filed in the office of the Director prior to execution of this Agreement by the Town.

(r) "PLAN OF SUBDIVISION" shall mean the Plan of Subdivision of the Lands hereto ultimately approved for registration by the Town and registered on title pursuant to the provisions of the Planning Act, R.S.O.1990, ch. P.13, as amended.

(s) "PRIMARY SERVICES" shall mean all municipal services required to be constructed by the Owner including the:-

- i) sanitary sewer system;
- ii) storm sewer and storm drainage facilities sufficient in the opinion of the Director to provide safety and protection from undue inconvenience to the general public;
- iii) water system;
- iv) roadways of final design width with granular base, base course asphalt and concrete curbs and gutters;
- v) street signs and traffic control signs and devices;
- vi) rough grading of the Lands; and
- vii) all Utility Services

(t) "PROFESSIONAL ENGINEER" shall mean a professional engineer registered with the Professional Engineers of Ontario.

(u) "REGION" shall mean the Regional Municipality of Niagara.

(v) "TOWN CLERK" shall mean the Clerk of The Corporation of the Town of Pelham.

(w) "TOWN CONSULTING ENGINEER" shall mean the Consulting Engineer of The Corporation of the Town of Pelham as appointed by Council.

(x) "TREASURER" shall mean the Director of Financial Services of The Corporation of the Town of Pelham.

(y) "SECONDARY SERVICES" shall mean all municipal services required to be constructed by the Owner not defined as "PRIMARY SERVICES" and without limiting the generality of the foregoing shall include:-

- i) top course roadway asphalt;
- ii) sidewalks;
- iii) paved driveway aprons;
- iv) footpaths;
- v) fencing;
- vi) landscaping, and
- vii) trees.

(z) "SUBDIVISION" means the division of a parcel of land into lesser parcels by means of the registered Plan of Subdivision.

(aa) "SUBDIVISION GRADE CONTROL PLAN" shall mean a plan for the purpose of controlling the overall drainage pattern through the establishment of relative surface elevations in accordance with good engineering and drainage practices.

(bb) "SUPERVISION" means the full-time inspection and scrutiny of every phase of the Works for the express purpose of enforcing the provisions of this agreement and certifying that the Works have been performed and completed to Town standards in the form prescribed for this purpose and "SUPERVISE" means to carry out such supervision.

(cc) "UTILITY SERVICES" means physical plant including but not limited to pipes, valves, conduits, cables, terminals, transformers, etc. owned and operated by communications, television, hydro, gas and oil companies.

(dd) "WORKS" means all construction, erection, and installation of Primary and Secondary Services necessary and/or required by the terms of this Agreement and the approved Plans, including, without limiting the generality of the foregoing, storm sewers and connections, sanitary sewers and connections, roadways, paved driveway aprons, landscaping, fencing, sidewalks, grading, tree planting, walkways, street lighting, street signs and traffic control signs and devices.

2. REGISTRATION:

The Owner agrees to the:

(a) registration by the Town of this agreement against the Lands at the expense of the Owner

(b) registration by the Town of the Plan of Subdivision in the Land Registry Office (No. 59), Land Titles Division of Niagara South, within one (1) month after approval of the Plan of Subdivision is granted by the Town, at the expense of the Owner

3. GENERAL PROVISIONS:

3.1 Development at Sole Expense of Owner

Unless the context otherwise requires, where the Owner is obligated by this Agreement or the approved Plans to make any payments or install or construct or carry out any services or action the provisions therefor contained herein shall be deemed to include the Works "at the sole expense of the Owner".

3.2 Indemnification

The Owner hereby covenants, warrants and agrees to save harmless and keep the Town indemnified from and against all manner of actions, causes of actions, suits, claims and demands that may howsoever arise through or from the terms of this Agreement, other than claims arising from negligence by the Town of Pelham, its servants and agents.

3.3 Covenants Run With the Land

The Owner and the Town acknowledge and agree that it is their intent that all terms, conditions and covenants contained herein:-

- a) shall run with the Lands;
- b) shall be binding upon the Owner, its heirs, executors, administrators, assigns and successors in title, from time to time; and
- c) the benefits of the said covenants shall enure to the Town, its successors and assigns in title, of all roads, streets and public lands forming part of the Lands.

3.4 Restrictions on Sale and Transfer of Ownership or Controlling Interest

As set forth in Schedule "M" annexed hereto.

3.5 Notices

Any notices required or permitted to be given pursuant to the terms of this agreement shall be given in the manner set out in Section 38.

3.6 Binding on Heirs, etc.

This Agreement and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto and upon those persons and/or corporations hereafter acquiring title to all or any part of the Lands.

3.7 Restrictions

The Owner shall impose restrictions as set forth in Schedule "M" annexed hereto on all the Lands so that subsequent owners will be made aware of and shall strictly adhere to the requirements of this Agreement.

3.8 Schedules

The Schedules attached hereto are deemed to be a part of this Agreement and are to be interpreted as if the contents thereof were included in this Agreement.

3.9 Section 67 Planning Act

The Owner agrees to be bound by the penalty provisions set forth in Section 67 of the Planning Act, (R.S.O., 1996), and amendments thereto.

3.10 Application of Town By-Laws and Provincial and Federal Statutes and Regulations

Notwithstanding the provisions of this agreement, the Owner shall be subject to all the by-laws of the Town and all provincial and federal government statutes and/or regulations and amendments thereto affecting the development of land and installation of municipal services.

3.11 Severance of Ultra Vires Terms

If any term of this agreement shall be found to be ultra vires of the Town, or otherwise unlawful, such term shall conclusively be deemed to be severable and the remainder of this agreement shall be and remain in full force and effect.

3.12 Incontestability

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

3.13 Time of the Essence

Time shall be of the essence of this agreement.

3.14 Certificate of Status

Prior to execution of this Agreement by the Town, the Owner shall deliver to the Town a Certificate of Status issued by the Ontario Ministry of Consumer and Commercial Relations verifying that the Owner is a company duly incorporated under the laws of the Province of Ontario and is in good standing.

3.15 Mortgagee's Consent

In the event that a Mortgagee(s) exercises any rights as to sale, possession or foreclosure or takes any other steps to enforce its security against the Lands then such Mortgagee(s) agrees on behalf of itself, its heirs, executors, administrators, successors and assigns not to deal with the Lands as a subdivision or part thereof unless and until a new agreement in the same form, mutatis mutandis, as this Agreement has been entered into with the Town.

3.16 Notice to Purchasers

The Owner shall notify or cause to be notified, each and every purchaser of a lot or lots within the Plan of Subdivision, of all Works contracted by the Owner, the

Owner's obligations to maintain the Works and all other conditions covered by this Agreement and shall cause such information to be fully recorded in any offer to purchase or agreement for sale entered into by the Owner.

4. TRANSFER TO TOWN FOR MUNICIPAL PURPOSES:

The Owner shall:

- (a) by certificate on the Plan of Subdivision, dedicate to the Town the road allowances;
- (b) grant by way of easement to the Town those areas as described in Schedule "B"; and
- (c) transfer to the Town, Blocks 30,31,32, and 33 for one foot (.3048 m) reserves.

The Owner covenants and agrees that all transfer of land to the Town as set out above shall be free and clear of all encumbrances.

5. ENGINEERING & INSPECTION:

5.1 Consulting Engineer

The Owner may, with the approval of the Town, employ a competent and qualified Consulting Engineer or firm of engineers to carry out the engineering services required herein provided the Town's design criteria and standards are used and the Plans and specifications are approved by the Director.

The Owner's Consulting Engineer shall:

- a) carry out all soil investigations required by the Director;
- b) design all Works required to be completed by this Agreement and the Plans;
- c) prepare plans, profiles and specifications for the Works and submit such detailed plans, profiles and specifications for the Works to the Director for approval prior to installation or construction of such Works;
- d) obtain from the Director details regarding the form and scale of the plans and profiles prior to their preparation;
- e) obtain and provide the Town with all necessary approvals prior to installation or construction of the Works;
- f) prior to execution of this Agreement by the Town, prepare and furnish the Director with estimates of the cost of installation and construction of the said Works;
- g) if required, call tenders for installation and construction of the said Works;
- h) prepare and supply the Town with progress payment certificates;
- i) obtain all records for the installation and construction of the said Works from the Town Consulting Engineer and submit "as constructed" records in electronic form (if possible) in autocad 2000 DWG file format or alternatively, "as constructed" records shall be submitted in a reproducible form (i.e. mylars, etc.) to the Director.
- j) when requested by the Director, accompany him on his inspections of the Works;
- k) generally supervise construction of all Works, including any remedial work the Director may require;
- l) provide building levels for construction purposes; and
- m) certify, in writing, to the Director, as to the actual cost of all Works completed, prior to the Town approving the Completion Certificate for Primary Services or the Completion Certificates for Secondary Services as the case may be, or reducing any Letter of Credit.

- 5.2 No municipal service shall be installed prior to the Owner obtaining from the Director his written approval for the detailed plans and specifications therefor.

- 5.3 All Primary Services, Secondary Services and Utility Services shall be installed, constructed, inspected and tested under the direct supervision of the Town Consulting Engineer at the sole expense of the Owner.
- 5.4 The Town Consulting Engineer shall conduct all testing of Works, materials, etc. to the complete satisfaction of the Director. All sanitary and storm sewers must be inspected and videoed via closed circuit T.V. and meet the deflection testing requirements of OPSS 410 prior to final acceptance by the Town.
- 5.5 The Director acting reasonably or his designate shall have the right at any time and from time to time to request an inspection and re-inspection of any of the Works in progress to ensure such Works are being constructed in accordance with the Plans and specifications approved by the Director. Such inspections may include testing and the method and time of testing shall be at the sole discretion of the Director.
- 5.6 The Director acting reasonably shall have a discretionary right to order any work-in-progress stopped and such work shall not be recommenced without written authority from the Director.
- 5.7 The Owner shall pay the Town's cost of reviewing engineering design drawings and legal fees as set out in Section 28.1 (a).

6. FIELD REPRESENTATION BY TOWN CONSULTING ENGINEER & ENGINEERING FEES:

- (a) The Town Consulting Engineer will have a field representative on site from time to time and as deemed necessary to review Works undertaken by the Owner pursuant to this agreement. The Owner shall deposit with the Town, cash in accordance with the formula set out in Section 28.1 (b) to cover the estimated fees and disbursements which will be billed to the Town by its Consulting Engineer for services performed by its Consulting Engineer in connection with this subdivision including the costs of field representation and associated administration. The estimated fees calculated in accordance with Section 28.1 (b) are based on those set out in the Schedule of Fees for Consulting Engineers Services recommended by the Professional Engineers of Ontario and also the Owner's estimate of servicing costs and time measured in working days to complete all primary and secondary servicing work contemplated by this agreement. Should the Owner's estimates of costs and time measured in working days to complete etc. be exceeded to the extent that accumulated total fees and disbursements billed to the Town by its Consulting Engineer for services performed by its Consulting Engineer exceed the cash deposits paid to the Town by the Owner in accordance with Section 28.1 (b), the Owner further agrees to pay the Town the whole cost of such additional fees and disbursements as and when these are billed by the Town to the Owner. Upon enactment of the Assumption By-law for Secondary Services by Council, the Treasurer shall, from out of monies remaining on deposit, if any, pay firstly, any engineering fees and maintenance costs still owing by the Owner and shall return the balance, if any, without interest to the Owner.
- (b) The Town Consulting Engineer, as part of his duties, shall pick up all measurements of pipe and material installed as well as the location of manholes, catchbasins and laterals.
- (c) Any work performed by the Town Consulting Engineer pursuant to the provisions of this agreement shall not be deemed to be an assumption by the Town Consulting Engineer of any liability of any nature or kind in connection with such work or a release of the Owner by the Town of the obligations of this agreement.

7. CONSTRUCTION OF WORKS:

The Owner agrees to construct and pay the whole cost of such construction and materials required for all of the Works referred to in Schedules "C", "D", "E", "F", "G", "H", "I", "J", "K", and "L" attached, and in accordance with the conditions and specifications contained in such Schedules.

8. CONTRACTORS:

(a) Before commencement of any Works, the Owner shall show satisfactory proof to the Director, that the proposed contractors or sub-contractors, whom the Owner has retained to construct Works described in this agreement, or any part of the Works, have sufficient and valid liability insurance policies, indicating that the Town and its agents and servants, the Region and the Town Consulting Engineer are named insured; a certificate from the Workers' Safety Insurance Board showing that the contractor is in good standing; and satisfactory evidence that the contractor is qualified, experienced and has adequate equipment to successfully complete the Works. Any contractor employed by the Owner shall, as a condition of such employment, be approved by the Director.

(b) The Owner shall provide to the Director a copy of their contractor's performance and labour and material payment bonds guaranteeing all of the construction required by this agreement. The Owner shall also provide a copy of the contractor's liability insurance, as required by Section 26. Bonds and Insurance shall remain in effect until such time as the Assumption By-law for Primary or Secondary Services as the case may be is enacted by Council.

9. MATERIALS:

All the Works required hereunder shall be done and performed to the satisfaction of the Director, and all materials required for the said Works shall be supplied to the specifications and directions of the Director.

10. STRIPPING TOPSOIL AND TREE REMOVAL:

(a) The Owner shall not remove any topsoil from the Lands without first obtaining written approval from the Director.

(b) The Owner shall remove from all road allowances, any trees, brush, growth, or surplus, or other material as may be designated by the Director and further shall remove from all the lands any unkempt, diseased or infested trees, vines or bushes to an approved disposal site. If such removal is not carried out within fourteen (14) days of written notice delivered to the Owner by the Director, the Director may cause the unkempt, diseased or infested trees, vines or bushes to be removed and the Owner agrees to pay to the Town the cost incurred thereby.

11. ROUGH GRADING ROADS:

The Owner agrees to rough grade all roads connected with the development of the land to the Director's specifications prior to the installation or construction of water and sewer systems and other under ground systems as may be required by this agreement. The

Owner further agrees to keep boulevards and easements clear and free of all material and obstructions which may interfere with the construction of all municipal services.

12. ROUGH GRADING LOTS:

The Owner agrees to stockpile topsoil, rough grade lots to drain, install storm sewers and swales, and install sedimentation control devices as part of the primary services contract and in accordance with Town policies.

13. WATERMAINS:

The Owner shall be responsible for the design and construction of watermains including proper looping to service the development for domestic and fire flows in accordance with Schedule "E".

14. SANITARY SEWER:

(a) The Owner shall design and construct a sanitary sewer system to serve the development in accordance with Schedule "C" to this agreement and the approved engineering drawings.

(b) The Owner shall provide, to the Town, a television inspection report and deflection testing report (if PVC or PE pipe is used) of the sanitary sewer system mains (private drain connections not included) prior to the release of building permits for any lots or blocks within the subdivision to the satisfaction of the Director.

15. STORM SEWER:

(a) The Owner shall design and construct a storm sewer and storm water conveyance systems to serve the development in accordance with Schedule "D" to this agreement and the approved engineering drawings. The Owner shall remain responsible for the impact on the surrounding drainage area and on the natural water occasioned by the operation of the storm sewers and storm conveyance systems until assumption of the subdivision works by the Town.

(b) The Owner shall provide, to the Town, a television inspection report and deflection report (if PVC or PE pipe is used) of the storm sewer system mains (private drain connections and catch basin leads not included) prior to the release of building permits for any lots or blocks within the subdivision to the satisfaction of the Director.

16. LOT GRADING PLAN:

(a) The Owner shall be responsible for providing, at the Owner's expense, a lot grading plan for all of the Lands, to meet with the approval of the Director. The lot grading plan shall show the intended direction of flow of storm water to, within and from each lot, and block within the Plan of Subdivision, key elevations (lot corners, aprons, garage, centre line of road, catchbasins and swales) and swale/ditch/road grades. Building restrictions shall be imposed upon each lot and included in each deed prohibiting a subsequent owner thereof from altering such flow or from impeding the same to an extent sufficient to cause ponding in another lot. The said drainage plan shall be attached to this agreement as

Schedule "H". All elevations shown on Schedule "H" shall be maintained after construction of any building or structure upon said lands affected, and this provision shall be included in the building restrictions hereinbefore referred to. Minor changes to the lot grading plan may be permitted subject to the approval of the Director .

(b) The Owner agrees that prior to the issuance by the Town of a building permit for any lot or block, it shall have prepared, by an Ontario Land Surveyor or by a Professional Engineer, a detailed individual lot or block grading plan which shall be in conformity with the approved subdivision lot grading plan and submitted to and approved by the Owner's Consulting Engineer and subsequently forwarded to the Town as an attachment to the building permit application.

Further, the Owner's Consulting Engineer shall prepare, prior to final acceptance, a Lot Grading Conformance Certificate for each lot and block within the plan of subdivision certifying that the grading has been completed in accordance with the approved detailed individual lot or block grading plan.

17. NATURAL DRAINS:

The Owner shall not change or do any work that will prejudicially affect any natural watercourse or drainage ditch without making full and proper provisions for the continuance of such drainage facilities. The proposed drainage works shall be subject to the approval of the Director. In the event changes are made, after having been approved by the Director, the Owner nevertheless shall be solely responsible for any damage caused thereto, and shall indemnify and save harmless the Town therefrom.

18. NIAGARA PENINSULA CONSERVATION AUTHORITY:

(a) The Owner agrees to submit detailed lot grading and drainage plans, indicating both existing and proposed grades and the means whereby system flows will be accommodated across the site to the Niagara Peninsula Conservation Authority for review and approval.

(b) The Owner shall obtain proper approvals from the Niagara Peninsula Conservation Authority for any works near the Draper's Creek headwater channel.

(c) The Owner shall revegetate or otherwise restore all disturbed areas immediately upon the completion of the Works.

19. REPLACING UTILITIES, ETC.:

The Owner shall assume complete responsibility and make all necessary arrangements for the moving or disturbance of any water, sewer, hydro-electric, gas or telephone pipes conduits, wires or pole lines, or any other public or private utility works as required or approved by the Director, and shall be solely responsible for any damage caused to the said pipes, conduits, wires, pole lines, hydrants or other works.

20. UTILITIES

The Owner shall be responsible for providing, at the Owner's expense, hydro, telephone, cable TV and gas service to each building lot and block in accordance with Schedules "J", "K" and "L". All Utility Services shall be installed and constructed prior to the Director approving the Certificate of Completion of Primary Services.

21. FENCING:

The Owner shall at its own expense, construct a 1.80 m high green vinyl chain link fence along the rear lot lines of lots 1 to 29 to the satisfaction of the Director in accordance with Schedule "O".

22. LANDSCAPING:

The Owner shall at its own expense, landscape along the rear of lots 3 to 28 in accordance with Schedule "N" of this agreement to the satisfaction of the Director.

23. TREES:

- (a) In order to maintain a high standard of amenity and appearance, the Owner, its heirs, executors, administrators, successors and assigns hereby undertake and agree to plant, maintain, and replace trees, if as, and when required, in accordance with the following:-
- i. one tree per Lot frontage and two trees per Lot sideyard flankage shall be planted in the sodded portion of the street allowance between the lot line and the roadway in accordance with the Plans. Trees shall be sound, healthy, vigorous and free from plant disease with normally healthy root systems;
 - ii. trees shall be 70 mm caliper wire basket and be of such varieties as Norway Maple, Green Ash, Little Leaf Linden, Honey Locust, Ornamental Pear or such other compatible variety, as approved by the Town; and
 - iii. all trees shall be planted prior to the Director approving the Completion Certificate for Secondary Services

In accordance with Schedule "P - 2" annexed hereto, prior to execution of this Agreement by the Town, the Owner shall post with the Town security for the planting of trees at the rate of Three Hundred (\$300.00) Dollars per tree to be planted (the "Tree Deposit")

The Owner shall be solely responsible for acquiring and planting trees in accordance with the terms of this Agreement and delivering written notice to the Town that such work has been completed. The Owner shall continue to be solely responsible for maintaining all such trees so planted until such time as Council passes the Assumption By-Law for Secondary Services. Concurrent with the issuance of the Certificate of Final Acceptance for Secondary Services, the Owner shall serve the Town with a second written notice requesting release of the Tree Deposit and provided the trees remain sound, healthy, vigorous and free from plant disease the Town shall forthwith after passage of the Assumption By-Law for Secondary Services release the Tree Deposit to the Owner or whomsoever the Owner shall direct in writing.

Provided however that in the event the Owner does not plant trees in accordance with the provisions of this agreement or within the prescribed time or to the complete satisfaction of the Director then the Town may, at its sole discretion, plant or replace or replant trees in accordance with the provisions of this agreement and apply the Tree Deposit against the Town's costs and/or collect such costs in like manner as municipal taxes.

- (b) In order to maintain a high standard of amenity and appearance, the Owner shall retain the maximum number of existing trees as approved by the Director consistent with good subdivision design and conservation practice.

24. DRIVEWAYS:

- (a) Each lot shall be serviced with a driveway approach constructed in accordance with the Plans filed to the complete satisfaction of the Director.
- (b) All driveway approaches between the curb line and sidewalk, or in the absence of a sidewalk, between the curb line and the street line shall be installed and paved by the Owner prior to the Director approving the Completion Certification for Secondary Services.

25. STREET AND TRAFFIC SIGNS:

The Town shall supply and erect street and traffic signs within the subdivision at the Owner's expense in accordance with Schedule "I". The signs shall conform to the present Town standards. The Owner's cost per installation of each sign is \$250.00 including all applicable taxes.

26. LIABILITY INSURANCE:

Before commencing any of the work provided for herein, the Owner shall supply the Town with a liability insurance policy (with no exclusions) in a form satisfactory to the Town, and in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence, indemnifying the Town, the Town's employees, its servants and its agents and the Town Consulting Engineer, until the Assumption By-law for Secondary Services is enacted by Council, from any loss arising from claims for damage, injury or otherwise in connection with any work done by the Owner, the Owner's employees, servants or agents, or any independent contractor. The Owner shall submit to the Town evidence from its insurer that the premium for the said policy has been paid for a period of one (1) year and so on from year to year and verification that no such policy shall expire without at least thirty (30) days prior written notice to the Town.

27. COMPLETION, MAINTENANCE, FINAL ACCEPTANCE AND ASSUMPTION OF WORKS:

27.1 Condition Precedent

The performance by the Owner of its obligations hereunder to the satisfaction of the Director shall be a condition precedent to the approval, acceptance and assumption of the Works or any of them by the Town.

27.2 Time to Complete Servicing

The Owner shall proceed with the installation or construction of the Works required by this Agreement and the approved Plans with all reasonable dispatch and shall complete:-

- a) all required Primary Services within one year after the date of registration of the Plan of Subdivision; and
- b) all required Secondary Services by the earlier of:
 - i. three (3) years after completion of the Primary Services; or
 - ii. forthwith after 85% of the building construction has been completed; unless otherwise approved by the Director in writing.

c) The Director may at his sole discretion, extend the time for completion of Primary

Services and Secondary Services or any of them for such length of time as he may deem expedient upon written application of the Owner with reasons why the extension is required.

27.3 Roads

a) All road allowances shown on the Plan of Subdivision shall be dedicated by the Owner as public highways on the Plan of Subdivision.

b) Ownership of the roads constructed by the Owner shall not vest in the Town until such time as Council passes the Assumption By-law for Secondary Services.

c) Until Council passes the Assumption By-law for Secondary Services assuming all the roads constructed, the Owner, on behalf of itself, its successors and assigns in title of the Lands, releases, discharges and indemnifies the Town from and against all actions, causes of action, suits, claims and demands whatsoever howsoever arising and without limiting the generality of the foregoing which may arise by reason of:-

- i. any alteration of the existing grade or level of any street or streets on the said plan to bring the said grade or level in conformity with the grade or level required by the Director;
- ii. any damage to the lands abutting on any street or streets shown on the said Plan of Subdivision or to any building erected thereon arising from or in consequence of any such alteration of grade or level; and
- iii. any damages or injuries (including death) to persons or damage to property occurring or arising on any street or streets on the said Plan of Subdivision, however caused, excepting any damages or injuries arising from any negligence by the Town, its servants or agents.

d) Street Names

All road allowances shown on the Plan of Subdivision shall be named to the satisfaction of the Director.

27.4 Completion Certificates

a) General:

Prior to the Director approving a Completion Certificate for Primary Services or a Completion Certificate for Secondary Services, as the case may be, the approval date of which marks the commencement of the Maintenance Guarantee Period for the applicable Works, the Owner must:

- i. furnish the Director with a statutory declaration in form satisfactory to the Director setting out the Works completed and verifying:
 - a. that all such Works have been completed in accordance with the terms of this Agreement and the approved Plan and specifications;
 - b. that all accounts have been paid for installation, construction, inspection, repair and maintenance of such Works; and
 - c. that there are no outstanding debts, claims, or liens in respect of such Works; and
 - d. the actual cost of installing, constructing, repairing, inspecting, testing and maintaining such Works;
- ii. provide the Director with a progress certificate signed by the Town Consulting Engineer certifying such Works have been installed, fully completed, repaired and maintained in accordance with the provisions hereof;
- iii. provide the Director with satisfactory evidence that all grading and drainage Works have been completed in accordance with the Subdivision Grade Control Plan;
- iv. submit to the Director the final drawings showing each of the said Works as constructed together with electronic drawing files in autocad format;

b) Inspection:

Works will not be deemed completed by the Town until an inspection has been made by the Director or his designate. He shall be accompanied during his inspection by the Owner's Consulting Engineer. After the Works have been inspected and all deficiencies rectified to the complete satisfaction of the Director, he shall approve the Completion Certificate.

c) Primary Services:

Upon receipt of the Owner's Consulting Engineer's Completion Certificate for Primary Services and the Director being satisfied that installation and construction of all Primary Services has been completed to his entire satisfaction in accordance with this Agreement and the approved Plans, the Director shall date and approve the Completion Certificate for Primary Services. The approval date on the Completion Certificate for Primary Services shall mark the commencement of the one year Maintenance Guarantee Period for the Primary Services.

d) Secondary Services:

Upon receipt of the Owner's Consulting Engineer's Completion Certificate for Secondary Services and the Director being satisfied that installation and construction of all Secondary Services has been completed to his entire satisfaction in accordance with this Agreement and the approved Plans, the Director acting reasonably shall date and approve the Completion Certificate for Secondary Services. The approval date on the Completion Certificate for Secondary Services shall mark the commencement of the one year maintenance Guarantee Period for the Secondary Services.

The Town may withhold approval of a Completion Certificate if, in the sole opinion of the Director, the Owner is in default of its obligations pursuant to this Agreement or the approved Plans.

27.5 Maintenance of the Subdivision

a) General

i) The Owner shall be responsible for the general tidy appearance of the entire subdivision until completion of all building and carry out all weed cutting, and maintenance on all unsold lands and all unassumed roads to the satisfaction of the Director.

ii) The Owner shall adequately maintain all roads, sidewalks, and pedestrian walks within the Plan of Subdivision free from mud, debris, building materials, and other obstructions, to the satisfaction of the Director until Council passes the Assumption By-Law for Secondary Services.

iii) The Owner shall require the purchaser(s) of any lots or lands to control weeds and to maintain vacant lands free from debris, waste building materials, tree stumps, discarded boulders, and other such items, and the Owner shall notify any purchaser, in writing, to refrain from dumping on such vacant lands, including lands dedicated by it to the Town for municipal purposes.

b) Maintenance Guarantee Period

i) The Owner shall maintain Works, and every part thereof, in perfect order and in complete repair for the duration of the Maintenance Guarantee Period and make good in a permanent manner satisfactory to the Director any and all damage or injury to the Works, both during their construction and during the periods of maintenance as aforesaid; and should the Owner, for any reason, fail to do so when ordered, then the Director acting reasonably, at his sole option, after giving the Owner twenty-four (24) hours written notice, may do so, and the whole cost, charge and expense so incurred shall be borne by the Owner. The decision of the Director shall be final as to the

necessity of repairs or of any work done or required to be done. In the case of an emergency, which in the Director's opinion, may adversely affect public safety or property, the Director will proceed with necessary work and advise the Owner as soon as reasonably possible.

- ii) The Owner's obligation to maintain the Works as aforesaid shall commence on the approval date of the Completion Certificate for the Works and extend for a minimum of one (1) year or until the Director approves the Certificate of Final Acceptance for such Works whichever occurs last (this period is herein referred to as the "Maintenance Guarantee Period")

c) Maintenance Guarantee Period for Primary Services

The Maintenance Guarantee Period for Primary Services shall commence on the date the Director approves the Completion Certificate for Primary Services.

d) Maintenance Guarantee Period for Secondary Services

The Maintenance Guarantee Period for Secondary Services shall commence on the date the Director approves the Completion Certificate for Secondary Services.

27.6 Certificate of Final Acceptance

a) Upon expiration of a Maintenance Guarantee Period for either Primary Services or the Secondary Services as the case may be and receipt of written application by the Owner, the applicable Works will be inspected by the Director and provided all deficiencies have been rectified to his satisfaction and the Owner is not in default of the terms of this Agreement, the subject Works shall be accepted by the Town and the Director shall approve the applicable Certificate of Final Acceptance for the particular services prepared by the Owner's Consulting Engineer, except that, prior to the Director approving a Certificate of Final Acceptance For Secondary Services the Owner shall, in addition, also furnish the Director with the certificate of a registered Ontario Land Surveyor certifying he has found and/or replaced all standard iron bars shown on the registered Plan of Subdivision as of a date not earlier than fourteen days prior to the Director approving the Certificate of Final Acceptance for Secondary Services.

b) If upon inspection of the applicable Works, all deficiencies have not been rectified to the complete satisfaction of the Director, the applicable Maintenance Guarantee Period shall be extended until such time as all deficiencies have been rectified and the applicable Certificate of Final Acceptance has been approved by the Director.

c) The Director may withhold approval of a Certificate of Final Acceptance, if, in the sole opinion of the Director, the Owner is in default of its obligations to inspect, repair, construct or maintain any of the Works pursuant to this Agreement or the approved Plans.

27.7 Assumption of Municipal Services

a) The Owner hereby acknowledges that upon assumption by the Town of the municipal services required to be installed and constructed by this agreement and the Plans filed, all such municipal services shall wholly vest in the Town without payment therefor free and clear of all claims and liens and the Owner shall have no right, title, or interest therein. Primary Services or Secondary Services as applicable, shall be assumed by the Town, by Council passing:-

- i. an Assumption By-Law for Primary Services forthwith after the Director approves the Certificate of Final Acceptance for Primary Services; and
- ii. an Assumption By-law for Secondary Services forthwith after the Director approves the Certificate of Final Acceptance for Secondary Services.

28. SECURITY DEPOSITS & REFUNDS

The Owner shall be responsible for the full amount of the cost for the design, servicing and maintenance of the Plan of Subdivision together with all Town inspection charges, engineering, administrative and consulting fees and legal costs and shall be required to post security on accounts of aforesaid costs, charges and fees in accordance with Schedule "P-1" annexed hereto prior to execution of this Agreement by the Town.

It is acknowledged that for the purpose of determining the amount of security to be posted prior to execution, the Owner's Consulting Engineer shall be required to provide the Town with an estimate of the cost of design, construction and maintenance of all Works. Security to be posted for Primary Services and Secondary Services and Town inspection charges, engineering, administrative and consulting fees shall be calculated on the basis of the Owner's Consulting Engineer's estimated cost of design, construction and maintenance of all Works as set out in Schedule "P-1" annexed hereto. From time to time, upon written request, the Owner's Consulting Engineer may be required to certify in writing the actual cost of design, construction and maintenance of all Works installed and constructed to date and the estimated cost of all outstanding Works and the Director may adjust the amount of security required if the actual cost of construction of all Works installed and constructed to date or the estimated cost of all outstanding Works exceeds the original estimated costs as set out in Schedule "P-1" annexed hereto and the Owner shall be billed accordingly. Provided that in the event the Owner fails to increase the amount of security within fourteen (14) days of receipt of aforesaid written notice, then the Owner shall be deemed to be in final default of the terms and conditions of this Agreement.

28.1 CASH PAYMENTS

Prior to the execution of this agreement by the Town, as security for payment of services to be rendered by the Town, its servants and its agents as required by this Agreement, and for presently outstanding payments owing to the Town, the Owner shall, in accordance with Schedule "P-1" annexed hereto, deposit with the Town the following cash amounts:-

a) a cash amount to secure:-

i. the Town's engineering, administrative consulting and legal costs for this Agreement, approval of the Plans, enactment of by-laws calculated on the following basis:-

- (a) where the costs of construction of all Works in less than \$100,000.00, the charge shall be 2% of such cost;
- (b) where the cost of construction of all Works is between \$100,000.00 and \$400,000.00 the charge shall be \$2,000 plus 1.5% of the costs between \$100,000.00 and \$400,000.00; and
- (c) where the cost of construction of all Works is in excess of \$400,000.00 the charge shall be \$6,500.00 plus 1% of the costs over \$400,000.00;

b) a cash amount to secure:-

i. The Town's engineering inspection costs calculated on the basis of the greater of 6.5% of the estimated cost of all of the Works or \$5,000.00, unless otherwise approved by the Director;

c) cash deposit to secure Town's cost to supply and install traffic signage at the rate of \$250.00 per sign;

d) cash deposit to ensure the installation of street trees; at the rate of \$300.00 per tree to be provided;

e) a cash amount to cover all arrears of taxes, all taxes for the current year and all current local improvement charge assessed against the Lands;

f) oversizing of off-site trunk services; and

g) credit for oversizing or front-ending trunk services for the benefit of others.

28.2 LETTERS OF CREDIT

1. Primary Services:

(a) Letter of Credit Security Deposit:

In order to secure completion of Primary Services as required by the provisions of this Agreement and the approved Plans, the Owner shall deposit with the Treasurer prior to execution of this Agreement, letter of credit in the amount of fifty percent (50%) of the cost of the design and construction of all Primary Services (except Utility Services) to be constructed within the boundaries of the Plan of Subdivision. On default of the Owner in providing such Primary Services in accordance with the provisions of this Agreement or the approved Plans, the Town shall be entitled to call upon such security deposit to pay for the completion of such Primary Services. The Town shall also have the right to call upon the said security deposit to secure its obligations under the Construction Lien Act, which obligations may include payments into Court.

(b) Release of Letter of Credit Security Deposit for Primary Services:

With respect to the security deposit of Primary Services, the Treasurer, from time to time upon written application of the Owner and approved by the Director, may release securities or deposits, provided that at no time shall the amount retained be less than 100% of the estimated costs of uncompleted Primary Service Works plus work completed and not paid for, nor shall the amount released exceed 50% of the actual cost of said Works completed to the date of application for release. Before release of any monies, the Treasurer, from out of the monies on deposit, shall pay firstly, (if owner is contesting lien) into court or in settlement, any liens arising pursuant to the provisions of the Construction Lien Act with respect to the construction of Primary Services secured under Section 28.2 (a) of this Agreement; secondly, any engineering, consulting, administrative and legal costs still owing; thirdly, any arrears of taxes; fourthly, taxes for the then current year whether levied or unlevied, based on the assessment applicable and finally, shall return the balance, if any, to the Owner.

The Treasurer shall retain as security for the Maintenance Guarantee Period for the Primary Services an amount equal to 10% of either the total actual costs of Primary Services or the total security deposits required under Section 28.2 (a) of this Agreement, whichever amount is greater. Upon assumption of Primary Services by the Town in accordance with the provisions of this Agreement, the 10% deposit hereinbefore referred to shall be released by the Treasurer to the Owner.

28.3 Secondary Services

(a) Letter of Credit Security Deposit:

In order to secure completion of Secondary Services as required by the provisions of this Agreement and the approved Plans, the Owner shall deposit with the Treasurer, prior to execution of this agreement a letter of credit (or such other security as may be approved from Town Council from time to time) in the amount of 120% of the costs of installing Secondary Services. On default of the Owner in providing the Secondary Services in accordance with the provisions of this Agreement and the approved Plans, the Town shall be entitled to call upon such security deposit (or other form of security) in order to pay for the completion of the required Secondary Services. The Town shall also have the right to call upon the said security deposit to secure its obligations under the Construction Lien Act, which obligations may include payments in to Court.

(b) Release of Security Deposit for Secondary Services:

With respect to the security deposit for Secondary Services, the Treasurer, from time to time, upon written application of the Owner, may release such securities or deposits, provided that at no time shall the amount retained be less than 120% of the estimated cost of uncompleted Secondary Services plus 120% of work completed but not yet paid for, nor shall the amount released exceed 90% of the actual cost of said Works completed to the date of application for release. Before release of any security deposit, the Treasurer, from out of the security deposit, shall pay firstly, (if owner is contesting lien) into court or in settlement, any liens arising pursuant to the provisions of the Construction Lien Act with respect to the construction of Secondary Services secured under Section 28.3 (a) of this Agreement; secondly, any engineering, consulting, administrative and legal costs still owing; thirdly, any arrears of taxes; fourthly, taxes for the then current year whether levied or unlevied, based on the assessment applicable and finally, shall return the balance, if any, to the Owner.

The Treasurer shall retain as security for the Maintenance Guarantee Period an amount equal to 10% of either the total actual cost of Secondary Services or the total security deposits required under Section 28.3(a) of this Agreement, whichever amount is greater, together with \$500.00 plus the applicable G.S.T. for each vacant Lot as security to repair damages to municipal services which may occur during construction of buildings. Upon assumption of Secondary Services by the Town in accordance with the provisions of this Agreement, the 10% deposit hereinbefore referred to may be released by the Treasurer to the Owner. The \$500.00 deposit for each vacant lot shall be released to the Owner, upon written application, on a lot-by-lot basis as construction of any buildings and repairs to municipal services are completed, less any costs for such repairs to municipal services incurred by the municipality.

28.4 Upon written demand by the Director and upon the Owner making application for release of security, the Owner shall deliver to the Town:-

a) a statutory declaration by or on behalf of the Owner stating:-

- i. the date of completion of subject services;
- ii. the Works completed to date;
- iii. that all accounts that have become due and payable in connection with the construction, installation, inspection, repair and maintenance of the subject services have been paid; and
- iv. that all requirements of the Construction Lien Act have been complied with to date;

b) a cost statement from the Owner's Consulting Engineer for the subdivision based on actual costs for Works completed to date; and estimated costs for all outstanding Works;

c) a letter from the general contractor setting out the amount he has been paid for the Works completed within the plan of subdivision to date.

29. BUILDING PERMITS & OCCUPANCY:

The Owner agrees that, unless otherwise determined by Council, no building permits shall be issued on any parts of the Lands until the sanitary sewer, storm sewer, water service and roadways to base asphalt and curbs, are completed and operational to the satisfaction of the Director and closed circuit T.V. camera video inspection and soundness testing per Section 5.4 have been completed and results provided to and accepted by the Director.

30. LOCAL IMPROVEMENT CHARGES:

Not applicable.

31. COST SHARING PAYMENT TO R.O.A.D. HOLDINGS LIMITED:

The Owner shall pay to the Town, on behalf of R.O.A.D. Holdings Limited, for their share of existing storm sewers, watermain, curb and asphalt improvements previously undertaken by R.O.A.D. Holdings Limited along Welland Road and Quaker Road and along the south limit of Part 1, Plan 59R-6372 at a frontage rate of \$190.40 per metre as set out in Schedule "P-1".

32. DEVELOPMENT CHARGES:

At the time of issuance of a building permit, the Owner shall pay to the Town a development charge in effect at the time of issuance of a building permit in accordance with the Town's Development Charges By-law in effect at the time of issuance of the building permit.

33. RETURN OF PORTION OF DEPOSIT:

Upon acceptance of the subdivision by the Town, the Treasurer shall, from out of monies on deposit, pay firstly any engineering fees and maintenance costs still owing; and shall return the balance, if any, to the Owner. Should the deposit provided in Section 28 be insufficient to pay the engineering and maintenance fees or other charges payable to the Owner, the Town shall invoice the Owner for the balance and the Owner shall pay such balance within thirty (30) days of the invoice date.

34. SCHEDULES:

The provisions of all Schedules attached shall form part of this agreement.

35. WARNING RE: MID-PENINSULA TRANSPORTATION CORRIDOR:

"The Owners of the Lands are hereby advised that a highway, known as the Mid-Peninsula Corridor may be constructed in lands south of this subdivision at some time in the future. There is a possibility of noise impact resulting from this facility". The Owner covenants and agrees that a clause advising purchasers of this warning shall be included in all offers of purchase and sale.

36. DEFAULT:

Upon breach by the Owner of any covenant, term, condition or requirement of this Agreement, or upon the Owner becoming insolvent or making any assignment for the benefit of creditors, the Town, at its option, may declare the Owner to be in default. Notice of such default shall be given by the Town, and if the Owner shall not remedy such default within such time as provided in the notice, the Town may declare the Owner to be in final default under this Agreement. Upon notice of default having been given, the Town may require all work by the Owner, its servants, agents, independent contractors and sub-

contractors to cease (other than any work necessary to remedy such default) until such default shall has been remedied, and in the event of final default, may require all work as aforesaid, to cease. Upon final default of the Owner, the Town may, at its option, adopt or pursue any or all of the following remedies, *but shall not be bound to do so*:

- a) enter upon the subject lands by its servants, agents and contractors and complete any work, service, repair of maintenance wholly or in part required herein to be done by the Owner, and collect the cost thereof from the Owner and/or enforce any security available to it; and/or collect such costs in like manner as taxes.
- b) make any payment which ought to have been made by the Owner to the Town, for any purpose, and apply the same in payment or part payment for any work which the Town may undertake;
- c) retain any sum of money heretofore paid by the Owner to the Town, for any purpose, and apply the same in payment or part payment for any work which the Town may undertake;
- d) assume any work or services whether the same have been completed or not, and thereafter the Owner shall have no claim or title thereto or remuneration therefore; and
- e) bring action to compel specific performance of all or any part of this Agreement for damages.

37. OBLIGATIONS OF THE AGREEMENT:

This agreement and the provisions hereof do not give to the Owner or any person acquiring interest in the Lands (each hereinafter in this paragraph called "such person") or any other person any rights against the Town with respect to the failure of any such person to perform or fully perform any obligation under this agreement, or the failure of the Town to force any such person to perform or fully perform any obligation under this agreement or any negligence of any such person in the performance of the said obligation.

38. NOTICE:

Any notice, demand, acceptance or request provided for in this agreement shall be in writing and shall be deemed to be sufficiently given if personally delivered or sent by registered mail (postage prepaid) as follows:

To the Town at: Town Clerk
Town of Pelham
P.O. Box 400, 20 Pelham Town Square
Fonthill ON L0S 1E0

To the Owner at: Mountainview Homes (Niagara) Ltd.
3350 Merrittville Hwy., Unit 9
Thorold ON L2V 4Y6

or as such other address as the party to whom such notice is to be given shall have last notified the party giving the notice in the manner provided in this paragraph 38 and shall be deemed to have been given and received on the day it is so delivered at such address unless it is mailed than it shall be deemed to have been given and received on the fifth day next following the date of its mailing.

39. PLANS:

The originals of the plans set out in the Schedules of this Agreement are available at the offices of the Town at the address as set out in Section 38.

IN WITNESS WHEREOF THE Parties hereto have executed this agreement as of the date and year first above written.

SIGNED, SEALED & DELIVERED

THE CORPORATION OF THE TOWN OF PELHAM

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(Ralph Beamer
(MAYOR Ralph Beamer

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(Cheryl Miclette
(CLERK Cheryl Miclette

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(MOUNTAINVIEW DEVELOPMENTS INC.

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(Mark Basciano
~~SECRETARY-TREASURER~~
(~~PRESIDENT~~ -Mark Basciano

I have authority to bind the
corporation