

**THE CORPORATION OF THE
TOWN OF PELHAM**

BY-LAW NO. 3399 (2013)

Being a By-law to authorize the Mayor and Clerk to enter into a
Subdivision Agreement with Costiano Development Inc.
(Residence at Lookout)

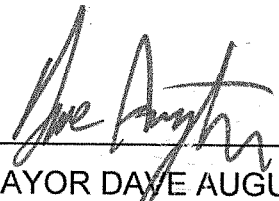
WHEREAS the Council of the Corporation of the Town of Pelham deems it desirable to enter into a Subdivision Agreement with Costiano Developments Inc. with regard to Residence at Lookout.

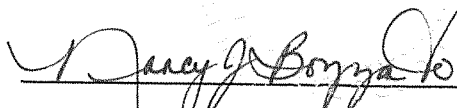
NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF PELHAM ENACTS AS FOLLOWS:

- (1) THAT the Subdivision Agreement attached hereto and made part of this by-law between the Corporation of the Town of Pelham and Costiano 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.
- (3) 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 following the insertion of the registration number of the Plan of Subdivision therein where required, and the Clerk is hereby authorized to affix the Corporate Seal thereto.
- (4) THAT the Clerk , in consultation with the Director of Planning and Development be hereby authorized and instructed on behalf of the Corporation of the Town of Pelham, to amend the said Subdivision Agreement, as required, in order to fulfil any conditions imposed as a result of the waiving of the Conditions of Draft Approval.

(5) That the Subdivision Agreement with Costiano Developments Inc. with regard to Residence at Lookout, not come into effect until such time as all of the Conditions of Draft Approval for the Residence of Lookout have been fulfilled to the satisfaction of the Director of Planning and Development.

READ A FIRST, SECOND AND THIRD TIME
AND FINALLY PASSED BY COUNCIL THIS
15th DAY OF JULY, 2013 A.D.



MAYOR DAVE AUGUSTYN

CLERK NANCY J. BOZZATO

RESIDENCES AT LOOKOUT
FILE NO. 26T19-02005
SUBDIVISION AGREEMENT
TABLE OF CONTENTS

<u>Title</u>	<u>Section #</u>	<u>Page #</u>
Definitions	1	2
Land Affected	2	5
General Provisions	3	5
Land for Municipal Purposes	4	7
Design and Supervision of Construction of Services	5	7
Construction of Works	6	9
Contractors	7	9
Roads, Sidewalks, Driveway Approaches, Signage	8	9
Stormwater Management and Lot Grading	9	10
Storm Drainage and Sanitary Sewers	10	12
Watermains	11	12
Natural Gas, Electrical, Telephone, Cable TV Distribution Systems	12	13
Sodding and Landscaping - Lots, Parklands and Public Lands	13	13
Backlot Drainage and Erosion and Sediment Control	14	14
Primary Services and Certificate of Completion of Primary Services	15	14
Secondary Services	16	15
Maintenance and Assumption of the Works	17	15
Building Permits and Occupancy	18	17
Financial Liability and Insurance	19	17
Security Deposits and Refunds	20	18
Cash-In-Lieu of Parkland Dedication	21	20
Inhibiting Order on the Lands	22	20
Maintenance Guarantee	23	20
Default	24	21
Rescission of Agreement	25	21
Right of Entry	26	22
Warning Clauses	27	22
Indemnification	28	22
Covenants That Run With the Land	29	23
Notice	30	23
Postponement and Subordination	31	23
Schedules	32	23
Special Provisions-Schedule "B"	33	23
Number and Gender	34	24
Notice Re Development Charges	35	24
Binding Effect	36	24

THIS AGREEMENT made this day of , 2013

BETWEEN:

COSTIANO DEVELOPMENTS INC.

Hereinafter called the "Developer"

OF THE FIRST PART

- and -

THE CORPORATION OF THE TOWN OF PELHAM

Hereinafter called the "Town"

OF THE SECOND PART

WHEREAS the Developer represents that it is the owner in fee simple in possession of the Lands which are described in Schedule "A" hereto annexed

AND WHEREAS the Town has granted approval of Residences at Lookout subject to the Developer entering into a Subdivision Agreement with the Town concerning, among other things, the provision and installation of all municipal services;

AND WHEREAS subsection 51(26) of the *Planning Act* permits the registration of this Agreement against the lands to which it applies;

AND WHEREAS subsection 27(1) of the *Development Charges Act, 1997*, permits the early payment of all or part of a development charge;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the approval of the Plan of Subdivision by the Town of Pelham and the covenants herein contained, the parties agree as follows;

1. DEFINITIONS

In this Agreement:

- (a) **ASSUMPTION BY-LAW** means a by-law passed by the Town accepting all of the Works to be constructed hereunder.
- (b) **BUILDER** means the person engaged by the Developer or subsequent Owner to construct a Building or any other work on the Lot.
- (c) **BUILDING BY-LAW** means the Building By-law No. 2277 (2001) passed by the Town and amended from time to time.
- (d) **BUILDING** means any structure which is used or intended to be used for the shelter, accommodation or enclosure of persons, animals or chattels, and includes any structure as defined as a Building in the *Building Code Act* or in the Building By-law, but does not include any vehicles as defined herein.
- (e) **BUILDING CODE ACT** means the *Building Code Act, 1992*, S.O. 1992, c.23, as amended, and all regulations thereto.
- (f) **BUILDING PERMIT** means a permit issued by the Chief Building Official of the Town and required pursuant to the provisions of the *Building Code Act*, as amended, or any successor thereto and the Building By-law of the Town and amendments thereto.
- (g) **CHIEF BUILDING OFFICIAL** means the Chief Building Official of the Town as appointed by by-law of the Council.
- (h) **CLERK** means the Clerk of the Town.
- (i) **COMMISSION** means the applicable local governing hydro-electric commission carrying on business in the Town.

- (j) **CERTIFICATE OF COMPLETION OF PRIMARY SERVICES** means the Certificate issued by the Director upon satisfactory completion of the Primary Services for the Lands prior to commencement of the maintenance period for the primary services as installed.
- (k) **CONSTRUCTION LIEN ACT** means the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended, and all regulations thereto.
- (l) **COST OF CONSTRUCTION** means the cost of construction approved by the Director and may include engineering fees ancillary thereto.
- (m) **COUNCIL** means the Council of the Corporation of the Town of Pelham.
- (n) **DEVELOPER** means, collectively, Costiano Developments Inc., its successors and assigns, and includes its successors in title to the Lands or a Lot shown on the Plan of Subdivision.
- (o) **DEVELOPER'S CONSULTING ENGINEER** means the person or persons registered with the Professional Engineers of Ontario who are employed by the Developer, at its own expense, to provide engineering services.
- (p) **DEVELOPMENT CHARGES** means the development charges imposed under the Town's Development Charge By-law No. 2604(2004), or any successor by-law, as prescribed by the *Development Charges Act, 1997*, S.O. 1997, c. 27, as amended, or any successor thereto.
- (q) **DIRECTOR** means the Director of Public Works and Utilities for the Town.
- (r) **FINAL CERTIFICATE OF COMPLETION OF SERVICES** means the certificate issued by the Director after the end of the maintenance period certifying that all Works required by this Agreement are acceptable for assumption by the Town.
- (s) **FRONT LOT LINE** means the front lot line as defined in the Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (t) **LANDS** means the lands described in Schedule "A" hereto annexed.
- (u) **LETTER OF CREDIT** means a standby municipal, irrevocable Letter of Credit issued by a major chartered bank or credit union, posted with the Town pursuant to the terms of this Agreement. The Letter of Credit shall be in form satisfactory to the Town and shall contain a clause that automatically renews it from year to year, unless the Town gives written notice that it does not require the Letter of Credit to be renewed.
- (v) **LOCAL IMPROVEMENT** shall include utilities, fencing, sanitary sewers, storm sewers, sidewalks, curbs and gutters, pavements and such other local improvements as are defined by the *Municipal Act*, as amended, or any successor thereto.
- (w) **LOT** means a lot as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (x) **LOT FRONTAGE** means lot frontage as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (y) **LOT GRADING PLAN** means a drawing showing grades, swales and drainage patterns and may include catch basins and floor heights in relation to grades for each individual Building Lot or block in the Plan of Subdivision.
- (z) **MAINTENANCE GUARANTEE** means an undertaking by the Developer to the Town that all Works constructed under this Agreement will function as designed and will not fail in any manner whatsoever so as to cause a risk to public safety or private lands, Building or structures within the Plan of Subdivision or immediately adjacent boundary lands, and that should the

Works, or any of them, fail or not perform their intended function within the specified maintenance guarantee period, they will be replaced or repaired to the satisfaction of the Director by the Developer at its cost.

- (aa) **MUNICIPAL ACT** means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, and all regulations thereto.
- (bb) **ONTARIO LAND SURVEYOR** means a surveyor commissioned by the Province of Ontario and qualified to establish monuments that define the boundaries of a parcel or parcels of land and to prepare all necessary reference plans and surveys for the purpose of the Agreement.
- (cc) **OWNER** means the applicant for a Building Permit for one of the Lots and includes the person on whose behalf an application for a Building Permit is made.
- (dd) **PLAN OF SUBDIVISION** means the Plan of Subdivision attached hereto as Schedule "A-1" over the Lands pursuant to the provisions of the *Planning Act*, as amended, or any successor thereto.
- (ee) **PLANNING ACT** means the *Planning Act*, R.S.O. 1990, c. P.13, as amended, and all regulations thereto, or any successor legislation thereto.
- (ff) **PLANS** means 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.
- (gg) **PRIMARY SERVICES** means all private utilities and all municipal services including, without restricting the generality of the foregoing, storm sewers, storm water management facilities, sanitary sewers, watermain, roads (including base coarse asphalt and curbs and gutters), street lighting and drainage works and swales.
- (hh) **PRIVATE UTILITIES** means telephone, hydro electric systems and natural gas systems and cable television systems.
- (ii) **REGION** means the Regional Municipality of Niagara.
- (jj) **REGIONAL PUBLIC WORKS DEPARTMENT** means the Region's Public Works Department.
- (kk) **SECONDARY SERVICES** means all works to be installed, constructed, or erected which are not Primary Services or private utilities.
- (ll) **SECTION**, when used in reference to a numbered part of the Agreement, means:
 - (i) a complete section including all its sections and subsections;
 - (ii) a particular subsection including its subsections; and
 - (iii) a particular subsection as the context may dictate or require.
- (mm) **STORMWATER MANAGEMENT FACILITY** means a system of physical works including but not necessarily only, such things as stormwater structures or ponds and infiltration trenches or pits located at the downstream end of a storm sewer conveyance system (including roof rain water leaders) that are designed to treat stormwater and control pollution and control stormwater runoff to predetermined levels prior to discharge to receiving surface water courses and subsurface ground water regimens.
- (nn) **STREET** means street as defined in the Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (oo) **STREET LINE** means Street Line as defined in Town's Zoning By-law No.

1136 (1987), as amended, or any successor thereto.

- (pp) **SUBDIVISION** means the subdivision of the Lands as shown on Schedule "A-1" Legal Description and known as Residences at Lookout.
- (qq) **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 as shown in Schedule F-1.
- (rr) **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.
- (ss) **TOWN** means The Corporation of the Town of Pelham.
- (tt) **TREASURER** means the Director of Financial Services of the Town.
- (uu) **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 or any other utility companies.
- (vv) **WORKS** shall jointly and severally mean and include all Primary Services and Secondary Services and all other matters, both internal and external, required to be completed or performed by the Developer pursuant to this Agreement.

2. **LAND AFFECTED**

The Lands to be subdivided by the Plan of Subdivision are those lands described in Schedule "A" attached hereto and the Plan of Subdivision shall be registered against all of such Lands. The registered ownership of the Lands shall be confirmed by the Developer's solicitor by way of certificate in form satisfactory to the Town.

3. **GENERAL PROVISIONS**

- (a) Unless the context otherwise requires, where the Developer 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 therefore contained herein shall be deemed to include the words "at the sole expense of the Developer".
- (b) The Developer 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.
- (c) The Developer and the Town acknowledge and agree that it is their intent that all terms, conditions and covenants contained herein:
 - (i) shall run with the Lands;
 - (ii) shall be binding upon the Developer, its heirs, executors, administrators, assigns and successors in title, from time to time; and
 - (iii) 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.
- (d) 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 30.

- (e) 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.
- (f) The Developer shall impose restrictions as set forth in Schedule "G" 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.
- (g) 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.
- (h) The Developer agrees to be bound by the penalty provisions of the *Planning Act* including, but not limited to, Section 67 of said Act.
- (i) Notwithstanding the provisions of this Agreement, the Developer 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.
- (j) 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.
- (k) The Developer 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.
- (l) Time shall be of the essence of this Agreement.
- (m) Prior to execution of this Agreement by the Town, the Developer shall deliver to the Town a Certificate of Status issued by the Ontario Ministry of Consumer and Commercial Relations verifying that the Developer is a company duly incorporated under the laws of the Province of Ontario and is in good standing.
- (n) 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.
- (o) The Developer shall pay, before final approval of the Plan of Subdivision is requested, all arrears of taxes and all taxes for the current year owing in respect of the Lands and the Buildings situate thereon.
- (p) The Developer shall commute and pay to the Town before final approval of the Plan of Subdivision is requested any and all Local Improvement rates assessed against the Lands.
- (q) The Town shall cause this Agreement to be registered against the title to the Lands and at its option against the title to every Lot shown on the Plan of Subdivision.
- (r) The Developer shall cause the final Plan of Subdivision, as approved by the Town of Pelham, to be registered within thirty (30) days after its approval.
- (s) The Developer shall reimburse the Town for all fees and disbursements incurred by it in connection with the preparation, approval, execution and registration of this Agreement and all related documentation in connection with the preparation and enactment of any by-law or registration of any

subsequent Agreements which may be required to implement this Agreement.

- (t) All Streets and properties abutting on the Plan of Subdivision or used for access to the Lands during the installation or construction of the Works or during the construction of Buildings upon the Lots shall, at all times, be kept in a good, clean and useable condition and, if damaged or littered, shall be restored immediately to the Town's requirements.
- (u) All trucks making deliveries to or taking materials from the Lands included within the Plan of Subdivision shall be adequately covered and not unreasonably loaded so as to scatter refuse, rubbish, dust or debris on abutting Streets or properties.
- (v) Any lands required to be conveyed by the Developer in accordance with the provisions hereof shall be in a neat and tidy condition, free of all debris and trash, and the Developer shall complete all services for the Lands in accordance with the terms of this Agreement.
- (w) The Developer shall ensure that adequate dust control and mud tracking control measures are carried out during the construction of all Works and Buildings upon the Lands.
- (x) In the event that the Developer wishes to register more than one Plan of Subdivision over the Lands, the Developer shall first obtain the written consent of the Town to do so, which consent shall be conditional upon the Developer registering such Plans of Subdivision in such order as determined by the Town and upon registering such Plans of Subdivision concurrently. The Developer shall not register a Plan of Subdivision over part of the Lands without prior written consent of the Town.
- (y) Any and all of the Developer's obligations under this Agreement shall be joint and several.

4. LAND FOR MUNICIPAL PURPOSES

- (a) Any dead ends and/or open sides of road allowances created by the Plan of Subdivision may be terminated in 0.3 metre reserves as required by the Town and such reserves shall be conveyed by the Developer to the Town in fee simple, free of all encumbrances.
- (b) All of the road allowances shown on the Plan of Subdivision shall be dedicated by the Developer as public highways.
- (c) All road allowances shown on the Plan of Subdivision shall be named to the satisfaction of the Town.
- (d) All lands required by the Town for public purposes as described in Schedule "D", hereto attached, shall be conveyed by the Developer to the Town in fee simple, free of all encumbrances.
- (e) The Developer shall convey to the Town, a private utility company or to the Commission, such easements as may be required for utility or drainage purposes in, over, across and under any part of the Lands.
- (f) The Developer shall, prior to the final approval of the Plan of Subdivision, at its own expense, obtain and convey to the Town such further easements that in the sole discretion of the Director are required for the construction of the public services to be constructed hereunder.

5. DESIGN AND SUPERVISION OF CONSTRUCTION OF SERVICES

- (a) The Developer shall employ, at its cost, a competent and qualified Developer's Consulting Engineer approved by the Director, to:

- (i) carry out all soil investigations required by the Director;
- (ii) design all of the Works required to be completed by this Agreement;
- (iii) provide the Director with an estimate of the cost of design, construction and maintenance of all Works to be constructed under this Agreement to be used as the basis for determining the amount of security to be posted by the Developer prior to execution of this Agreement to guarantee the construction and maintenance of all Works required under this Agreement;
- (iv) prepare engineering drawings to include plans and profiles and specifications for the Works and to submit detailed plans, profiles and specifications to the Director for approval prior to the installation or construction of such Works;
- (v) submit to the Director the detailed Plans in mylar matte surface for signing and provide the Director with two (2) sets of full-sized, signed hard copies and two (2) sets of signed hard copies reduced to 11" x 17" size;
- (vi) obtain, in conjunction with the Town, all of the necessary approvals prior to installation or construction of the Works;
- (vii) call tenders for the installation and construction of the Works;
- (viii) obtain the approval from the Director of the contractor employed to install or construct the Works;
- (ix) provide full-time resident supervision, inspection and contract administration of all Works covered by this Agreement;
- (x) maintain Upper Canada Consultants (261 Martindale Road, Unit 1, St. Catharines, Ontario, L2W 1A1) as the consultant on record throughout the duration of the project until such time as the subdivision is assumed by the Town to deal with outstanding and deficient items;
- (xi) maintain all of the records of the installation or construction of the Works and submit a copy of the same to the Director;
- (xii) supply to the Director "As Constructed" drawings of all of the Works installed or constructed by the Contractor in both hard copy and DWG digitized format on CD media (AutoCad 2007 or equivalent), at the time of completion of Primary Services;
- (xiii) obtain from the Director the details regarding the form and scale of these drawings prior to their presentation;
- (xiv) on the completion of the installation or construction of the Works, to supply the Town with a certificate, in form satisfactory to the Director, that the Works were installed or constructed in accordance with the approved Plans and specifications;
- (xv) provide the Director with individual record sheets for all sewer and water service locations and depths;
- (xvi) accompany the Director on a final inspection of the Works at the conclusion of the maintenance period herein specified and before the assumption of the Works by the Town;
- (xvii) supervise the construction of any remedial work which the Director may direct;
- (xviii) provide Building levels for construction purposes as hereinafter

provided;

- (xix) furnish the Chief Building Official with the preliminary lot grading certificate for each Lot for which an application for a Building Permit is made; and
- (xx) provide the Chief Building Official with the final lot grading certificate for each Lot.
- (b) The Developer shall not install Works prior to the receipt by it in writing of the approval of the Director of the detailed Plans and specifications therefor.
- (c) All of the Works to be installed or constructed under this Agreement shall be installed or constructed under the direct Supervision of the Developer's Consulting Engineer at the expense of the Developer.
- (d) The Developer shall, prior to the final approval and registration of the Plan of Subdivision, obtain an Environmental Compliance Approval from the Ministry of the Environment for the required servicing of the Subdivision to the satisfaction of the Director and Regional Public Works Department.

6. CONSTRUCTION OF WORKS

The Developer agrees to construct and pay the whole cost of such construction and materials required for all of the Works referred to in this Agreement and the Schedules attached, and in accordance with the conditions and specifications contained in said Agreement and Schedules.

7. CONTRACTORS

Before commencement of any Works, the Developer shall show satisfactory proof to the Director, that the proposed contractors or sub-contractors, whom the Developer 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, and the Region 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 Developer shall, as a condition of such employment, be approved by the Director.

8. ROADS, SIDEWALKS, DRIVEWAY APPROACHES, SIGNAGE

The Developer shall:

(a) ROADS

- (i) rough grade to the Town's specifications the full width of all road allowances as shown on the Plans prior to the installation or construction of the Works. Prior to the construction of any Works, the topsoil shall be stripped and shall be stockpiled during the period of construction at a location which is approved by the Director and is conducive to the interim drainage requirements of the Plan of Subdivision. The topsoil so stockpiled shall be used to grade the Lots and boulevards after construction thereon in accordance with the Subdivision Grade Control Plan filed with and approved by the Director. Topsoil shall not be removed from the Lands for any reason unless the prior written approval of the Director to the removal of such topsoil is received;
- (ii) keep all boulevards and easements clean and clear from all materials and obstructions which, in the opinion of the Director, can or may interfere with the installation or construction of gas, telephone, co-axial, hydro-electric or other services;

- (iii) construct, install and complete roadways, curb and gutters on all road allowances in accordance with the accepted, approved and signed engineering drawings on file in the Public Works and Utilities Department, Town of Pelham;
- (iv) provide turning circles in accordance with the Regional Niagara Waste Collection Policies for all roads that dead-end based on a phasing of the development;
- (v) construct all roads within the Subdivision at a minimum of 20 metres in width in accordance with the policies of the Northwest Fonthill Secondary Plan;
- (vi) construct and maintain a temporary access road off of Haist Street and jersey barriers are to be installed to restrict non-construction related vehicles to enter the construction site; and
- (vii) provide decorative street lighting to the satisfaction of the Town.

(b) **SIDEWALKS**

The Developer shall construct, install and complete concrete sidewalks in accordance with the Plans on file in the Town's office. All sidewalks shall be deemed to be Secondary Services for the Plan of Subdivision and shall be completed within six (6) months of occupancy of each dwelling at the locations shown on the Plans and in accordance with the approved Subdivision Grade Control Plan.

(c) **DRIVEWAY APPROACHES**

- (i) Developer shall provide driveway curb cuts and granular driveway access on the boulevard prior to occupancy of any Building. It shall be the responsibility of the Developer to ensure that driveway access is maintained at all normal times during the construction or maintenance of the Works.
- (ii) All driveway approaches between the curb line and the sidewalk, or in the absence of a sidewalk between the curb line and the Street Line, shall be paved by the Developer by no later than the 1st day of November in the year after the year in which the Buildings served by the driveway approaches are occupied.
- (iii) All driveway approaches shall be constructed to the satisfaction of the Director prior to the assumption of the Plan of Subdivision.

(d) **STREET AND TRAFFIC SIGNS**

The Town shall supply and erect street name and traffic control signs within the Subdivision at the Developer's expense in accordance with Schedule "H". The signs shall conform to the Town standards in place at the time of installation. The Developer's cost per installation of each sign is five hundred dollars (\$500.00) including all applicable taxes.

9. STORMWATER MANAGEMENT AND LOT GRADING

- (a) The Developer shall construct a Stormwater Management Facility in accordance with a Stormwater Management Report, prepared by the Developer and approved by the Town, Region and Niagara Peninsula Conservation Authority, to adequately service the Lands included within the Plan of Subdivision and all or any portion of the ultimate drainage area in which the Lands are located. The Stormwater Management Facility shall be constructed in accordance with the designs and plans therefore approved by the Director and the construction and materials shall be in accordance with the requirements of the Director. The Developer also covenants and

warrants that the Stormwater Management Facility will be designed and constructed such that surrounding lands are not adversely impacted and that there is no increase in post development flows.

- (b) The Developer shall, prior to issuance of Certificate of Completion of Primary Services, supply the Director with lot plans showing the locations, depths and dimensions of all rear yard infiltration trenches and front yard soakaway pits including locations of all roof rainwater leader connections to the Stormwater Management Facility.
- (c) The Developer shall landscape and/or fence the Stormwater Management Facility located within Block 124 to the satisfaction of the Town.
- (d) Implement to the satisfaction of the Town, the Region and Niagara Peninsula Conservation Authority, the approved erosion and sedimentation control plans and lot grading and drainage plans;
- (e) Implement to the satisfaction of the Town, the Region and Niagara Peninsula Conservation Authority, an approved long-term monitoring plan prepared in accordance with the *Area 1 Subwatershed Study and Environmental Impact Statement*, Final Report August 2003;
- (f) All drainage ditches, swales or depressions within the Subdivision shall be final graded and maintained with approved silt traps prior to the issuance of the Certificate of Completion of Primary Services and sodded prior to the occupancy of any dwelling in accordance with the requirements of the Director.
- (g) The Developer shall register the following covenant on all Lots and blocks contained within the lands described in Schedule "A" and such registration shall occur at the time of or immediately after registration of the Agreement and shall provide proof to the Town that such covenant has been registered on all the Lots and blocks within the Subdivision:

"No one shall interfere with the drainage swales, infiltration trenches or surface drainage pattern on a Lot or block without explicit written permission from the Director of Public Works and Utilities, Town of Pelham. All swales are for stormwater drainage management purposes and it shall be the responsibility of the Owner to maintain the drainage across the Lot or block in accordance with the approved grading plan. Infiltration trenches are critical stormwater management controls within the Lot or block in accordance with approved plans and shall not be modified in any manner without the express written approval of the Director of Public Works and Utilities, Town of Pelham. Should the Town find it necessary to enter upon the Lands to undertake any inspection of or any Works with regard to any drainage or stormwater management works, the Town shall have such rights as are prescribed by the Subdivision Agreement dated the _____ day of _____, 2013 and registered the _____ day of _____, 2013, particularly Section 9."

- (h) The Developer shall ensure that all roof rainwater leaders are connected to rear yard infiltration trenches or front yard soakaway pits, as the case may be, using the provided connection to these Stormwater Management Facilities.
- (i) The Developer shall advise all Builders and subsequent purchasers with respect to all of the terms, conditions and requirements of this Agreement, with particular regard to, but not limited to, the provisions of Section 9.
- (j) Unless otherwise approved or required by the Town, the Developer, their heirs, executors, administrators, successors and assigns hereby irrevocably undertake not to alter the grades or remove trees or other vegetation from the Lands described in Schedule "A" until such time as the Director has agreed in writing to such alteration or removal and the Director has approved a Subdivision Grade Control Plan pursuant to the terms of this

10. STORM DRAINAGE AND SANITARY SEWERS

- (a) The Developer shall construct a storm sewer system, including manholes, catch basins, minimum one hundred and twenty-five (125) millimetre diameter house service connections and other appurtenances to adequately service the Lands included within the Plan of Subdivision and all or any portion of the ultimate drainage area in which the Lands are located. The storm sewer system shall be constructed in accordance with the designs and plans therefore approved by the Director and the construction and materials shall be in accordance with the requirements of the Director.
- (b) All Building rainwater leaders shall discharge to rear yard infiltration trenches or front yard soakaway pits, as the case may be, and **SHALL NOT** be connected to the storm sewer or sanitary sewer laterals.
- (c) The Developer shall, prior to the issuance of the Certificate of Completion of Primary Services, supply the Director with lot plans showing the location and depth of each storm lateral and sanitary lateral constructed to serve the Buildings to be erected upon the Lots.
- (d) The Developer shall, at its own expense, cause the sanitary and storm sewer systems to be flushed by high velocity sewer flushing equipment after the placement of the base course asphalt upon the Streets as shown on the Plan of Subdivision.
- (e) The Developer shall cause the sanitary and storm sewer systems to be inspected by closed circuit television camera prior to issuance of the Certificate of Completion of Primary Services and the results thereof shall be provided to the Director for review. Prior to the issuance of the Final Certificate of Completion of Services by the Director, as set out in Section 17, the Developer shall carry out a second TV inspection of the sanitary and storm sewer systems and the results thereof shall be provided to the Director. In the event that the results of either inspection are not satisfactory in the opinion of the Director, then the Developer shall take such remedial steps including re-televising the repairs as may, in the opinion of the Director, be required.
- (f) The Developer shall cause, at its own expense, the sanitary sewer system to be tested either by infiltration or by exfiltration and the method of testing shall be at the sole discretion of the Director.
- (g) The Developer covenants and warrants that foundation drains will not be connected to the sanitary sewer system.
- (h) The Developer agrees:
 - (i) That all drainage ditches, swales or depressions within the Plan of Subdivision shall be fine graded and maintained with approved silt traps to be put in place prior to, during construction, including Building construction and post construction, all in compliance with the Ontario Guidelines on Erosion and Sediment Control for Urban Construction Sites, M.O.E., May 1987, until vegetation is established to prevent erosion and sedimentation, to the satisfaction of the Director.
 - (ii) To re-vegetate or otherwise restore all disturbed areas immediately upon the completion of on-site grading to the satisfaction of the Town and the Niagara Peninsula Conservation Authority.

11. WATERMAINS

- (a) The Developer shall construct a complete watermain system or systems for the purpose of servicing the Plan of Subdivision in accordance with the Plans therefor approved by the Director and the construction and materials shall be in accordance with the requirements of the Director. The said

watermain system or systems shall include valves, hydrants and house water service connections, complete with curb stop and box from the watermain to the Street Line.

- (b) All watermains shall be flushed, chlorinated, pressure tested and bacterial tested in accordance with the Town's requirements as approved by the Director.
- (c) The operation of valves which cause the watermains within the Plan of Subdivision to be charged from existing municipal water mains SHALL ONLY be carried out by Town Staff certified in accordance with Ontario Regulation 170/03 made under the *Safe Drinking Water Act*, 2002, S.O. 2002, c.32, as amended. The Town has an approved Quality Management System for the Pelham Distribution System and the Owner and his contractors shall be aware and informed of the Quality Management System.
- (d) The Developer shall, prior to requesting the issuance of the Certificate of Completion of Primary Services, supply the Director with lot plans showing the location of the water laterals serving each dwelling to be erected upon the Lots.

12. NATURAL GAS, ELECTRICAL, TELEPHONE AND CABLE TV DISTRIBUTION SYSTEMS

- (a) The Developer shall be responsible for providing, at its sole expense, gas, electrical, telephone and cable TV service to each Lot and block in accordance with the approved Plans. All Utility Services shall be installed and constructed prior to the Director approving the Certificate of Completion of Primary Services.
- (b) Proportionate cost contribution is required to bury the telephone, electrical, and cable overhead services that abut any Subdivision on Haist Street. The Developer of the Subdivision will assume the associated costs.

13. SODDING AND LANDSCAPING - LOTS, PARKLANDS AND PUBLIC LANDS

- (a) The Developer shall grade and place a minimum of one hundred (100) millimetres of topsoil, together with No. 1 nursery sod on all portions of road allowances not covered by asphalt or sidewalks shown on the Plans and along that side of the Plan of Subdivision abutting on adjacent existing Streets. All sodding as herein described shall be considered as Secondary Services for the Plan of Subdivision and shall be completed at the time of or within three (3) months after the final sodding of any Lot in accordance with the approved final lot grading certificate.
- (b) The Developer shall be responsible for ensuring that each Lot within the Plan of Subdivision is:
 - (i) fine graded in accordance with the individual Lot Grading Plans for each lot and that a final lot grading certificate for each lot is prepared by the Developer's Consulting Engineer and approved by the Director; and
 - (ii) sodded with No. 1 nursery sod within twelve (12) months of initial occupancy of the Building, in all areas of the Lot including front yards, side yard and rear yards not covered by structure, driveway or walkway; and that all sodding is maintained until it has become established.
- (c) In order to maintain a high standard of amenity and appearance, the Developer shall retain the maximum number of existing trees as approved by the Director consistent with good subdivision design and conservation practices
- (d) In order to maintain a high standard of amenity and appearance, the Developer, its heirs, executors, administrators, successors and assigns hereby undertake and agree to develop the Lands in accordance with

Schedule "C" - Streetscape Plan annexed hereto to the satisfaction of the Director.

- (e) All trees shall be planted a minimum of twelve (12) months prior to the Director approving the Final Certificate of Completion of Services.
- (f) The Developer 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 Developer shall continue to be solely responsible for maintaining all such trees so planted until such time as Council passes an Assumption By-law.

In accordance with Schedule "H" annexed hereto, prior to execution of this Agreement by the Town, the Developer shall post with the Town security for the planting of trees at the rate of five hundred dollars (\$500.00) per tree to be planted.

- (g) Provided, however, that in the event the Developer 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 above mentioned security against the Town's costs and/or collect such costs in like manner as municipal taxes.
- (h) Unless exempted by the Director, all lands conveyed to the Town shall be serviced, sodded and landscaped by and at the expense of the Developer, within eighteen (18) months from the date of registration of this Agreement or such extension of such time period as may be approved by the Director of Public Works and Utilities in writing.

14. BACKLOT DRAINAGE AND EROSION AND SEDIMENT CONTROL

Until the completion of all Buildings on the Lots, the Developer shall ensure that the rear yards and side yards of each of the Lots are properly graded and completed to prevent the ponding of surface water on the Lots or on adjacent lands outside the Subdivision.

15. PRIMARY SERVICES AND CERTIFICATE OF COMPLETION OF PRIMARY SERVICES

- (a) The Developer shall proceed with the installation or construction of the work required hereunder with all reasonable dispatch and shall complete all of the Primary Services within one (1) year after the date of the registration of the Plan of Subdivision. The Director may extend the time for the completion of the Primary Services or any of them for such length of time as he may deem expedient upon the written application of the Developer.
- (b) The performance by the Developer of its obligations hereunder to the satisfaction of the Director shall be a condition precedent to the acceptance by the Town of the Works or any of them.
- (c) Prior to the issuance by the Director of the Certificate of Completion of Primary Services, the Developer shall:
 - (i) furnish the Director with a statutory declaration in a form satisfactory to the Director that all accounts for the installation, construction and maintenance of the Primary Services required to be installed or constructed hereunder have been paid and that there are no outstanding debts, claims or liens in respect of the Primary Services or any of them; and
 - (ii) provide the Director with a Certificate signed by the Developer's Consulting Engineer certifying that the Primary Services have been fully completed, inspected, tested and maintained in accordance with the provisions hereof and the standards of the Town of Pelham and Plans

as approved by the Director.

- (d) The Director shall furnish the Developer with a Certificate of Completion of Primary Services upon the completion by the Developer, to the satisfaction of the Director, of the installation or construction of the Primary Services and the receipt by the Director of the Maintenance Guarantee, as required by Section 23 hereof, and the satisfaction, by the Developer, of all other requirements of this Agreement and the Plans.

16. SECONDARY SERVICES

- (a) With the exception of the asphalt surface course, the sodding required by Sections 13(a) and 13(b) and sidewalks required by Section 8(b), all Secondary Services shall be completed within eighteen (18) months after the date of the registration of the Plan of Subdivision. The Director may extend the time for completion of the Secondary Services or any of them for such length of time as he may deem necessary upon the written application of the Developer.
- (b) The final asphalt surface course shall be completed no sooner than twenty-four (24) months and no later than thirty-six (36) months after issuance of the Certificate of Completion of Primary Services or as directed by the Director.

17. MAINTENANCE AND ASSUMPTION OF THE WORKS

- (a) Until the Town issues the Final Certificate of Completion of Services, the Town agrees to provide only snow plowing and sanding services on paved roads connected by paved road to a public roadway. The Developer shall provide all other services including, but not limited to, maintenance and repairs of sewers, watermains and appurtenances, Stormwater Management Facility, fencing including silt fencing and control structures and overland drainage systems. The Developer agrees that any service provided by the Town prior to actual acceptance of the roads by the Town shall not be deemed acceptance of the roads.
- (b) The Developer shall, at its own expense and to the satisfaction of the Director, repair and maintain all Primary Services and other private services herein required to be installed or constructed for a minimum period of three (3) years from the date of issuance of the Certificate of Completion of Primary Services or until the date of issuance of the Final Certificate of Completion of Services, whichever is later.
- (c) The Developer shall guarantee all Secondary Services including any repairs and maintenance performed by it pursuant to Section 17(b) or by the Town pursuant to Section 17(d) for a minimum period of twelve (12) months from the date of completion of the said services, notwithstanding that the three (3) year period of maintenance provided under Section 17(b) may have elapsed.
- (d) The Developer shall, at its own expense, be responsible for maintaining the granular roads to the minimum maintenance standards until completing the base course asphalt and cubs until May 2014 which are subject to the Directors satisfaction.
- (e) The Town shall, notwithstanding the Developer's obligations to maintain services herein set forth, have the right to enter on the Lands and carry out any necessary maintenance or repairs:
 - (i) without notice to the Developer, where in the sole opinion of the Director, an emergency condition exists or where the Streets have not been kept free of mud and dust; and
 - (ii) where repairs to or maintenance of the Works have not been completed within forty-eight (48) hours after a notice requiring such repairs or

maintenance has been forwarded to the Developer.

- (f) The cost of any repair or maintenance work undertaken by the Town pursuant to the provisions hereof shall be borne by the Developer and the amount thereof shall be paid to the Town within thirty (30) days after a statement of account therefore has been forwarded to the Developer at its last known address. If the Developer fails to pay the amount due to the Town within such thirty day period, then the Town may and is hereby expressly authorized to deduct the amount owing to it for such repairs or maintenance from any monies or Letters of Credit deposited by the Developer with the Town pursuant to the provisions hereof.
- (g) The decision of the Director that repairs or maintenance to the Works are required or that an emergency state exists requiring immediate repair or maintenance to such Works shall be final, conclusive and incontestable.
- (h) After the expiry of the maintenance period provided for in Section 17(c) hereof, the Town shall, subject to the compliance by the Developer with Section 17(h) hereof, issue a Final Certificate of Completion of Services upon written application by the Developer provided, however, that the Town may withhold the issuance of the Final Certificate of Completion of Services if, in the sole opinion of the Director, the Developer is in default of its obligations to repair, construct or maintain any of the Works pursuant to this Agreement.
- (i) The application in writing by the Developer for the Final Certificate of Completion of Services shall include the following:
 - (i) a statutory declaration in a form satisfactory to the Director that all accounts for the installation, construction and maintenance of all the Works required to be installed or constructed hereunder have been paid and that there are no outstanding debts, claims or liens in respect of the Works of any of them;
 - (ii) a Certificate in a format acceptable to the Director signed by the Developer's Consulting Engineer certifying that all the Works including any repairs and deficiencies have been fully completed, inspected, tested and maintained in accordance with the provisions hereof and the standards and specifications of the Town of Pelham and the Plans as approved by the Director;
 - (iii) the original Mylar Construction Drawings in hard copy and on CD media in DWG digitized format (AutoCad 2007 or equivalent) showing each of the Works "As Constructed";
 - (iv) the Certificate of an Ontario Land Surveyor certifying that he has currently found and/or replaced all one inch (1") standard bars as shown on the registered Plan of Subdivision;
 - (v) a copy of the registered Plan of Subdivision and all other reference plans as to easements and other matters in DWG digitized format on CD media (AutoCad 2007 or equivalent); and
 - (vi) confirmation that all sanitary and storm sewers have been flushed and cleaned and reinspected by TV camera subsequent to the expiration of the maintenance period provided in Section 17(c) and acceptance of the TV inspection results by the Director.
- (j) The issuance by the Town of the Final Certificate of Completion of Services may be withheld until eighty-five percent (85%) of the Lots have been built upon with Buildings completed to the *Building Code Act* occupancy requirements and the final grading certificates for the Lots have been approved by the Director.
- (k) Upon the issuance of the Final Certificate of Completion of Services, the Director shall recommend to Council that the Town assume by By-law the

Primary and Secondary Services within the Plan of Subdivision as required to be constructed or installed under this Agreement.

18. BUILDING PERMITS AND OCCUPANCY

- (a) The issuance of a building permit for the construction of dwelling units can be obtained from the Chief Building Official with granular roads and if all other Primary Services with the exception of base course asphalt and concrete curb and gutter and streetlights which shall be installed no later than May 2014. The granular roads are to be constructed and maintained to the minimum maintenance standards and to the satisfaction of the Director.
- (b) The Developer agrees that, unless otherwise determined by Council, no Building Permit shall be issued on any parts of the Lands until all primary services as defined elsewhere in this Agreement including 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 Sections 10(e) and 10(f) have been completed and results provided to and accepted by the Director.
- (c) In addition to paying the Building Permit fee, the Owner of a Lot or block shall:
 - (i) Pay the amount of the Development Charges which are applicable at the time of application for Building Permit, except for the portion of the Development Charges that are prepaid in accordance with Clauses 20(a) (ii) to (v);
 - (ii) Pay the amount of the cash-in-lieu of lands for parks purposes pursuant to Section 21 of this Agreement.
- (d) The Developer agrees that no Building Permit shall be issued until the Control Architect approves the Building drawings for individual lots and blocks and provides written correspondence clearly indicating that the Building drawings are consistent with the Town of Pelham Council approved "Architectural Design Guidelines for the Village of Chestnut Ridge, prepared by The Planning Partnership (July 2006, updated February 2011)", on file in the Town of Pelham Planning Services Department.

19. FINANCIAL LIABILITY AND INSURANCE

(a) COMMERCIAL GENERAL LIABILITY INSURANCE

Before commencing any of the Works, the Developer shall, at its own expense, obtain and keep in force during the term of this Agreement, a certificate of insurance indicating that it has obtained Commercial General Liability Insurance satisfactory to the Town, indemnifying the Town from any loss arising from claims for damages, injury or otherwise in connection with the Works to be performed hereunder by the Developer, its servants or agents in, on or about the Lands included with the Plan of Subdivision or adjacent thereto. The Commercial General Liability Insurance Policy shall also include the following:

- (i) A limit of liability of not less than five million dollars (\$5,000,000.00) or such greater amount as the Director of Public Works and Utilities deems advisable;
- (ii) Inclusion of the Town, its agents and servants and The Regional Municipality of Niagara as named insureds;
- (iii) A provision for cross liability in respect of the named insureds;
- (iv) Non-owned automobile coverage with a limit of at least five million dollars (\$5,000,000.00) including contractual non-owned coverage;

- (v) Completed operations coverage;
- (vi) That sixty (60) days prior notice, of any alteration, cancellation or change in policy terms which reduces coverage, shall be given in writing to the Town; and
- (vii) Owner's protective coverage.

(b) **PROOF OF INSURANCE**

The Developer shall provide, together with its executed Agreement, a certificate of insurance or certified copy of the above referred to policy, satisfactory to the Town, together with proof of renewal at least ten (10) days prior to expiry. If a certificate is provided, all requirements as above set forth must be shown on the said certificate and notwithstanding the provision of any certificate, the Town may require that the Developer provide a certified copy of the policy.

20. SECURITY DEPOSITS AND REFUNDS

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

Security to be posted for Primary Services and Secondary Services and to cover the Town's Administrative, Engineering and Legal costs shall be calculated on the basis of the Developer's Consulting Engineer's estimated cost of design, construction and maintenance of all Works as set out in Schedule "H" annexed hereto. From time to time, upon written request, the Developer'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 "H" annexed hereto by twenty percent (20%) of the original estimates or tender costs and the Developer shall be billed accordingly. Provided that in the event the Developer fails to increase the amount of security within fourteen (14) days of receipt of aforesaid written notice, then the Developer shall be deemed to be in final default of the terms and conditions of this Agreement.

(a) **CASH PAYMENTS**

Prior to the execution of this Agreement by the Town, 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 Developer shall, in accordance with Schedule "H" annexed hereto, deposit with the Town the following non-refundable cash amounts:

- (i) a cash amount to secure the Town's engineering, administrative consulting and legal costs for this Agreement, approval of the Plans, and enactment of by-laws calculated on the following basis:
 - (1) where the Cost of Construction of all Works is less than one hundred thousand dollars (\$100,000.00), the charge shall be ten thousand dollars (\$10,000.00);
 - (2) where the Cost of Construction of all Works is between one hundred thousand dollars (\$100,000.00) and four hundred thousand dollars (\$400,000.00) the charge shall be ten thousand dollars (\$10,000) plus four percent (4.0%) of the costs between one hundred thousand dollars (\$100,000.00) and four hundred

thousand dollars (\$400,000.00); and

(3) where the Cost of Construction of all Works is in excess of four hundred thousand dollars (\$400,000.00) the charge shall be twenty-two thousand dollars (\$22,000.00) plus three and one-half percent (3.5%) of the costs exceeding four hundred thousand dollars (\$400,000.00);

- (ii) a cash amount to cover the Town's cost to construct watermain services to the lands.
- (iii) a cash amount to cover the Town's cost to construct the stormwater outlet for the Lands;
- (iv) a cash amount to cover the Town's cost to supply and install street name and traffic control signage at the rate of five hundred dollars (\$500.00) per sign; and
- (v) a cash amount to cover all arrears of taxes, all taxes for the current year and all current Local Improvement charges assessed against the Lands.

(b) **LETTERS OF CREDIT**

(i) Before commencing any of the Works provided for in this Agreement, the Developer will deposit with the Town a Letter of Credit drawn upon a chartered bank in favour of the Town and in a form satisfactory to the Treasurer, in an amount approved by the Director, which Letter of Credit shall be sufficient to guarantee the satisfactory completion of the Works or any portion of the Works as established by the Town in its sole discretion, and payments or any part thereof required to be made by this Agreement, and will, without restricting the generality of the foregoing, guarantee the following:

- (1) payment of twenty percent (20%) of the approved estimated costs of the construction of the Primary Services to service the Lands, plus one hundred and twenty percent (120%) of the approved estimated construction costs of the Secondary Services upon the Lands as shown in Schedule "H" attached; and
- (2) payment of one hundred percent (100%) of any other payments or Works as may be required of the Developer by the Town pursuant to this Agreement.

(ii) The amount of the Letter of Credit required hereunder shall not be reduced unless all of the conditions of this Agreement are complied with and the estimated costs of rectifying any outstanding deficiencies, as estimated in the sole discretion of the Director, plus one hundred and twenty percent (120%) of the estimated costs of the completion of all outstanding Primary Services and Secondary Services plus all other outstanding costs payable under this Agreement, plus the Maintenance Guarantee as required under Section 23 of this Agreement, plus any *Construction Lien Act* requirements are all, in total, less than the amount of the Letter of Credit held by the Town. In such an instance, the amount of the Letter of Credit may, in the sole discretion of the Director be reduced from time to time to an amount equal to the total of all amounts set out above. Such reduction shall be based on the following:

- (1) progress certificates from the Developer's Consulting Engineer setting forth the cost of the Works completed and paid to date and the cost of unfinished Works;
- (2) a request for reduction in the amount of the Letter of Credit in a form approved by the Director; and

- (3) proof of payment in a form satisfactory to the Director of the amounts paid on account of the completed Works to the date of the application for reduction.

Notwithstanding anything herein contained, the amount of the Letter of Credit shall at all times be sufficient to cover the balance of the costs of the completion of the unfinished Works, including Works deferred for extended periods and the requirements of the *Construction Lien Act*.

- (c) The Developer shall pay the cost of the Works and the fees of the Developer's Consulting Engineer and the Ontario Land Surveyor.

21. CASH-IN-LIEU OF PARKLAND DEDICATION

- (a) The Developer shall convey a portion of Block 123, representing 2.29% of the lands, to the Town for parks purposes. The lands shall be graded and reinstated with topsoil and hydro-seeded to the satisfaction of the Director.
- (b) Prior to the issuance of a Building Permit, the Developer agrees to pay 2.71% of the value of the Lands to the Town in lieu of lands for parks purposes pursuant to the provisions of Subsection 42(6) of the *Planning Act*. The Developer shall have the Lots appraised by a qualified appraiser to determine the value of each Lot pursuant to Subsection 42(6) the *Planning Act*.

22. INHIBITING ORDER ON THE LANDS

The Developer shall not transfer or otherwise deal with the Lands or any part thereof and also acknowledges and agrees that the Town will register an inhibiting order pursuant to the *Land Titles Act*, R.S.O. 1990, c. L.5, preventing transfer of all or any part of the Lands until such time as the Director has issued the Completion Certificate for Primary Services with the exception of base course asphalt and concrete curb and gutter and streetlights which shall be installed no later than May 2014. The Developer also acknowledges that the Town may register an inhibiting order against all or any part of the Lands for other matters to ensure compliance with this Agreement.

23. MAINTENANCE GUARANTEE

- (a) The Letter of Credit deposited by the Developer pursuant to Section 20 hereof may, upon the completion of the Primary Services, and prior to the assumption of the Works by the Town, at the Director's discretion, be reduced to an amount equal to ten percent (10%) of the completed Works (Schedule "H") plus one hundred and twenty per cent (120%) of the value, as estimated by the Director, of any uncompleted Works and such Letter of Credit shall be retained by the Town as a Maintenance Guarantee to guarantee the workmanship and materials of the Works until such time as the maintenance guarantee periods as provided for in Sections 17(c) and 16(c) have both expired.
- (b) The Maintenance Guarantee as required under Section 23 (a) hereof, may be reduced further to five percent (5%) subject to the Developer meeting all requirements of the *Construction Lien Act*.
- (c) The Letter of Credit may be realized upon by the Town if the Developer defaults in any payment or condition contained herein.
- (d) The Developer shall be conclusively deemed to be in breach of the covenant contained in Section 20(c), if, in the case of the cost of the Works or the fees of the Developer's Consulting Engineer and the Ontario Land Surveyor, a lien against the Lands or any part thereof is preserved pursuant to the *Construction Lien Act* and if, in the case of any other payment required to be made under this Agreement, a notice to that effect is forwarded to the Developer by the Director in accordance with Section 24(b)

hereof.

24. DEFAULT

- (a) Upon breach by the Developer of any covenant, term, condition or requirement of this Agreement, or upon the Developer becoming insolvent or making an assignment for the benefit of creditors, the Town, at its option, may declare that the Developer is in default.
- (b) Notice of such default ("Notice of Default") shall be given by the Town and if the Developer does not remedy such default within such time as provided in the notice, the Town may declare that the Developer is in final default under this Agreement and shall then forthwith give notice of final default ("Notice of Final Default") thereof to the Developer.
- (c) Upon Notice of Default having been given, the Town may require all work by the Developer, their servants, agents, independent contractors and sub-contractors to cease (other than any work necessary to remedy such default) until such default has been remedied and in the event of final default, may require all work as aforesaid to cease.
- (d) Upon Notice of Final Default having been given to the Developer, the Town may, at its option, adopt or pursue any or all of the following remedies, but shall not be bound to do so:
 - (i) enter upon the Lands shown on the Plan of Subdivision by its servants, agents and contractors and complete any work, services repairs or maintenance wholly or in part required herein to be done by the Developer and collect the cost thereof from the Developer and/or enforce any security available to it;
 - (ii) make any payment which out to have been made by the Developer and upon demand collect the amount thereof from the Developer and/or enforce any security available to it;
 - (iii) retain any sum of money heretofore paid by the Developer to the Town for any purpose and apply the same in payment or part payment for any work which the Town may undertake;
 - (iv) assume any work or services at its option, whether the same are completed or not, and thereafter the Developer shall have no claim or title hereto or remuneration therefore;
 - (v) bring action to compel specific performance of all or any part of this Agreement or for damages;
 - (vi) add any costs incurred by the Town to the tax collector's roll for the Lands and collect such costs by action or in like manner as municipal real property taxes; or
 - (vii) exercise any other remedy granted to the Town under the terms of this Agreement or available to the Town in law.

25. RESCISSION OF AGREEMENT

- (a) In the event that the Plans of Subdivision are not registered within one (1) year from the date hereof, then the Town may, at its option and on one (1) month's notice in writing to the Developer, declare this Agreement null and void and may Register against the title to the Lands included within the Plan of Subdivision a notice to that effect.
- (b) The Developer shall not sell or convey any Lot or block shown on the Plans of Subdivision until this Agreement is registered on title.

26. RIGHT OF ENTRY

The Developer shall obtain from any Purchaser of any of the Lots shown on the Plan of Subdivision, a licence permitting the Developer and the Town to enter upon such Lands for a period of three (3) years after the transfer thereof in order to ensure compliance with the provisions of this Agreement and shall forward an executed copy of such licence to the Town upon demand therefore.

27. WARNING CLAUSES

- (a) The Developer acknowledges and agrees to provide to the Region a written undertaking that all offers and agreements of purchase and sale which may be negotiated prior to registration of this Subdivision, shall contain a clause clearly indicating that a servicing allocation for this Subdivision will not be assigned until the plan is granted final approval for registration.
- (b) The Developer acknowledges and agrees to insert into all offers and agreements of purchase and sale the following clause: "All Works within the Subdivision, including but not limited to storm sewers, stormwater management facilities, sanitary sewers, watermains, roads, curbs and gutters, street lighting and drainage works and swales, are contracted by the Developer. The Developer is obligated to maintain the Works in accordance with the Agreement and Plans registered on title."
- (c) The Developer acknowledges and hereby agrees to insert into all offers and agreements of purchase and sale the following clause: "The Lands in the Subdivision are subject to the payment of development charges which are payable prior to the issuance of a Building Permit."
- (d) The Developer acknowledges and hereby agrees to insert into all offers and agreements of purchase and sale the following clause: "The Lands in the Subdivision are subject to the payment of cash-in-lieu of the dedication of land for park purposes prior to the issuance of a Building Permit."
- (e) The Developer acknowledges and hereby agrees to insert into all offers and agreements of purchase and sale the following clause: "Purchasers are advised that maintenance activities that are required to be performed on the nearby Regional Niagara Elevated Water Tower, such as painting and cleaning, may occasionally interfere with some activities of the dwelling occupants."
- (f) The Developer acknowledges and hereby agrees to insert into all offers and agreements of purchase and sale the following clause: "The Lands in the Subdivision are subject to architectural control, Purchasers are advised that all construction within the plan of subdivision must comply with the provisions of the established Architectural Design Guidelines."
- (g) The Developer acknowledges and hereby agrees to insert into all offers and agreements of purchase and sale the following clause: "Purchasers are advised that they are located and will be living in proximity to a Town owned archaeological site. The Town will maintain the site in a natural state, which may become of concern to and occasional interfere with some activities of abutting land owners."

28. INDEMNIFICATION

Until the Town passes a By-law assuming the Streets, which should not be unreasonable withheld, shown on the Plan, the Developer, on behalf of itself, its successors and assigns, including its successors in title of the Lands in the Plans of Subdivision, hereby releases and discharges and indemnifies the Town from and against all actions, causes of action, suits, claims and demands whatsoever which may arise by reason of:

- (a) any alteration of the existing grade or level of any Street or Streets on the Plan to bring the said grade or level in conformity with the grade or level required by the Director; and

- (b) any damage to the Lands abutting on any Street or Streets shown on the Plan or to any Building erected thereon arising from or in consequence of any such alteration of grade or level; and
- (c) any damages or injuries (including death) to persons or damage to property occurring or arising on any Street or Streets on the Plan however caused unless due to the negligence of the Town.

29. COVENANTS THAT RUN WITH THE LAND

The Developer and the Town acknowledge and agree that it is their intent that all the terms, conditions and covenants contained herein shall be covenants that run with the land and that the burden of such covenants shall be binding upon the Developer, their successors and assigns, and successors in title, from time to time, of the Lands described in Schedule "A" of this Agreement and any part or parts thereof and that 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 or abutting on the Lands described in Schedule "A".

30. NOTICE

All notices required or permitted to be given by one party to the other shall be given in writing either by prepaid registered mail or delivered personally addressed, in the case of the Town to:

Town of Pelham
20 Pelham Town Square
P.O. Box 400
Fonthill ON L0S 1E0

and in the case of the Developer to:

Costiano Developments Inc.
3350 Merrittville Hwy, Unit #9
Thorold, ON, L2V 4Y6

or at such other addresses as may be given by either of them to the other in writing from time to time, and such notices shall be deemed to have been received, if mailed, on the third day following that on which it was so mailed and if delivered, on the day of such delivery.

31. POSTPONEMENT AND SUBORDINATION

The Developer covenants and agrees at its own expense, to obtain and register such documentation in a form satisfactory to the Town's solicitor from all mortgagees or encumbrancers as may be deemed necessary by the Town to postpone and subordinate their interest in the Lands to the interest of the Town to the extent that this Agreement and all related documentation to be registered shall take effect and have priority as if they had been executed and registered before the execution and registration of the document or documents giving to the mortgagees and/or encumbrancers their interest in the Lands. The Developer acknowledges that it shall not be permitted to sell any lots within the Subdivision until such time as these postponements have been registered and that the Town shall be permitted to register an inhibiting order pursuant to the *Land Titles Act* to ensure compliance with same.

32. SCHEDULES

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

33. SPECIAL PROVISIONS - SCHEDULE "B"

The Developer shall undertake and complete all other special provisions to this Agreement, as outlined in Schedule "B" which forms part of this Agreement.

34. **NUMBER AND GENDER**

In this Agreement, unless there is something in the subject-matter or context inconsistent therewith:

- (a) words in the singular number include the plural and such words shall be construed as if the plural had been used;
- (b) words in the plural include the singular and such words shall be construed as if the singular had been used; and
- (c) words importing the use of any gender shall include all genders where the context or party referred to so requires, and the rest of the sentence shall be construed as if the necessary grammatical and terminological changes had been made.

35. **NOTICE RE: DEVELOPMENT CHARGES**

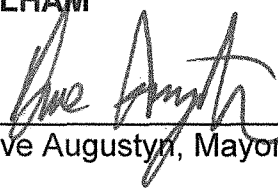
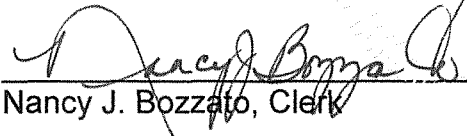
The Developer agrees to provide notice to the first purchaser of any Lot or block in the Subdivision, upon transfer of the Lots or block, of all Development Charges related to the Plan of Subdivision, including Development Charges already paid by the Developer or Development Charges that may be payable in the future.

36. **BINDING EFFECT**

This Agreement shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

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

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

) **COSTIANO DEVELOPMENTS INC.**
)
)
) 
) _____
) Mark Basciano
)
) (Position) PRESIDENT
) _____
)
) I have authority to bind the Corporation.
)
) **THE CORPORATION OF THE TOWN OF**
) **PELHAM**
)
) 
) _____
) Dave Augustyn, Mayor
)
) 
) _____
) Nancy J. Bozzato, Clerk