

AGREEMENT made as of the 31st day of March, 2016.

**BETWEEN:**

**RIVER REALTY DEVELOPMENT (1976) INC.**

(hereinafter called "River Realty")

OF THE FIRST PART

-and-

**THE TOWN OF PELHAM**

(hereinafter called the "Town")

OF THE SECOND PART

**WHEREAS** River Realty Developments (1976) Inc. ("River Realty") is the owner of certain lands being Part Lot 166 of the former township of Thorold, now Town of Pelham in the Regional Municipality of Niagara which lands are more particularly described in a Residential Plan of Subdivision ("River Estates") a copy of which proposed plan is attached hereto as Schedule "A" to this Agreement (hereinafter the "Development");

**AND WHEREAS** in the Development, River Realty has proposed and the Town has approved the construction of such roadways, sewers, storm water facilities and other services (collectively referred to as the "Services") as part of the Development which are in excess of the usual requirements that would have been applicable to it;

**AND WHEREAS** in the completion of the Services there will arise certain credits and debits which will be attributable to River Realty and for which it is entitled, on a net adjusted basis, to be compensated for;

**AND WHEREAS** as of the date hereof, the parties are able to identify where, in the Services, the credits and debits are likely to arise but not the quantum which is not likely to be finally determined until all the Services are completed;

**AND WHEREAS** the purpose of this Agreement is to allow the parties to reach agreement on the principles which will apply to the determination of any credits or debits and who will be responsible for the costs of those Services and how that determination will finally be settled;

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the sum of Two Dollars (\$2.00) now paid by the Town to River Realty, the terms, agreements and covenants hereinafter provided, and other good and valuable consideration, the sufficiency of which the parties hereby acknowledge, the parties agree with each other as follows:

1. **Schedule “B” – the Matrix**

Attached hereto as Schedule “B” to this Agreement is a blank matrix (the “Matrix”). The headings/proposed entries in the Matrix match the same headings in this Agreement pursuant to which the necessary credits and debits will be calculated and eventually identified and quantified. The parties hereto agree that for the purpose of this Agreement the Matrix will function as follows:

- i) The Services to be constructed pursuant to this Agreement and for which credits and debits will be calculated, are broken down in this Agreement in headings identical to those found in the Matrix;
- ii) Under each of those headings, the Agreement will specify the action to be taken and the nature of the calculation and adjustment. The calculation when made will be inserted into the Matrix;
- iii) After the delivery by River Realty’s servicing consultants and engineers of their initial calculation (as provided for in Article 2 hereof) and those calculations have been approved by the Town, the “Estimated Amount” column will be completed, the Matrix will be dated and signed by the parties hereto and form part of this Agreement; and
- iv) After the completion of all the Services, the submission of all Costs (as hereafter defined) and when the work has been accepted and the Costs approved by the Town, the “Final on Completion” column of the Matrix will be dated and signed by the parties hereto and form part of this Agreement.

2. **Design Plans and Calculations**

River Realty has engaged the services of Upper Canada Consultants (“Upper Canada”), its consulting and servicing engineers for the purpose of the Development. Upper Canada will prepare and submit for approval to the Town the following:

- a) Design drawings appropriately signed and certified as required showing the design and necessary materials for the construction of the Services. Where the drawings submitted for the Services are part of the more comprehensive plans for overall servicing of the Development the drawings shall show the Services and any calculations necessary to complete the Matrix in separate or otherwise clearly identifiable form for review and approval by the Town (collectively the “Design Plans”);
- b) Where the design drawings are for the construction of a stand-alone Service (as, for example, the proposed SWF on Block 127) the design drawings and materials schedule shall be prepared as a separate drawing or as a separate schedule to the Design Plans;
- c) An estimate of the costs to complete the construction of the particular item of the Services. The estimate of those costs shall provide sufficient information to allow the Town to assess the reasonableness of those estimates;
- d) Where the Services or part of them will be used for or by the Development, an estimate, expressed as a percentage of the total use that will be attributable to the Development;

- e) Where the Services require the installation of sewer and water pipes or conduits of a size and capacity greater than would ordinarily be required by the Development, an estimate of the cost of over-sizing and any special or additional connections required by said over-sizing; and
  - f) An estimate of the additional costs to be charged by Upper Canada to River Realty for the consulting and/or engineering services supplied by Upper Canada and directly related and attributable to the Services.
- 2.1 Upper Canada shall deliver copies of the Design Plans prepared in accordance with the provisions of Article 2 to the Town Engineer for his/her review and approval. Upper Canada shall provide to the Town Engineer any and all background information and rationale of how the calculation had been prepared and the Design Plans arrived at.

### 3. **Cost Calculation**

For the purpose of determining costs that are calculable and subject to recovery pursuant to this Agreement, the following will apply and shall, in the aggregate be referenced as the "Costs":

- i) the extra costs for the preparation of the Design Plans and required quantity calculations made by Upper Canada and charged to River Realty in excess of the normal engineering costs for the preparation of the servicing plan which would have been required for River Estates;
- ii) any additional costs of monitoring, supervising and reporting to the Town for the excess costs referenced in (i) above;
- iii) the actual construction costs incurred by the party who has assumed the responsibility to construct the Services or any of them. For the purpose hereof "actual costs" being costs paid to third parties to complete the construction of the Services without any administrative or similar charges added by the party responsible for the construction;
- iv) where hereunder or pursuant to the provisions of the Subdividers Agreement between the parties, River Realty is contributing land as part of the Services, then the land shall be valued at the rate of \$300,000.00 per acre and proportionately for any part thereof. Where money is paid in the form of cash-in-lieu of lands then the money shall form part of the Costs.

### 4. **Construction**

- 4.1 Article 5 herein which deals with the various heading of Services will also identify the party which will be charged with tendering for the construction of such services, entering into the construction agreement with the chosen contractor(s), pay for the cost of construction and maintain all record of those costs.
- 4.2 The party which pursuant to this Agreement is charged with and undertakes the construction shall:

- i) Be responsible to make sure that the portion of the Services being contracted under their supervision are completed in accordance with the approved Design Plans;
- ii) Employ competent contractors who will carry out the work in a good and workmanlike fashion, on time and, except for unforeseeable or uncontrollable circumstances, on budget;
- iii) Where unforeseen or uncontrollable circumstances arise which will have the likely effect of altering the contract price, the party responsible for the contract shall put the other party on notice providing explanation and sufficient information to that party to allow it to make an informed decision and to provide its consent. The parties hereto agree that except in the case of an emergency, the notified party shall have the opportunity to consent to the price change of the contract which the notified party agrees to expedite as quickly as reasonably possible.
- iv) Where the contract work for Services is proceeding in conjunction with other work by the same contractor, to maintain or to cause the consulting engineers to maintain the work for Services as separate items of work and/or material so that the cost for Services remain identifiable;
- v) Assure that the contractor is paid in accordance with the terms of the contract and in accordance with applicable law and to keep the improvements free and clear of any and all claims or liens.

## 5. Services

### 5.1 Storm Water Facilities ("SWF")

There are two (2) separate SWF which are identified herein as part of the Services:

- a) Block 127 of Schedule "A" indicates the location of a storm water facility to be installed within the lands of the Development. The purpose of this storm water facility is to accept storm water flows not only from the Development but also from lands outside of those lands. Accordingly, the SWF will be sized to accept flows from other lands to be developed in the future. In accordance with the provisions of this agreement, the following shall apply for the construction of the SWF on Block 127:
  - i) The SWF on Block 127 shall be part of the Services described in the Design Plans being prepared by River Realty;
  - ii) River Realty will be responsible for the construction of this SWF and, pursuant to this Agreement shall contract for its construction and pay for the costs of that work and those costs will form part of the Costs as a credit to River Realty; and
  - iii) The consulting engineers, Upper Canada Consultants, shall size the SWF and also estimate, as a percentage of the total capacity of the SWF that the Development will contribute to its total capacity. The difference between that percentage and 100% shall be the basis of the calculation to determine the credit as provided for in Schedule "B" hereto.
- b) Block 128 represents a part of the second SWF which will only partially be located in the lands within the Development and on the lands of others but will form part of the overall

Services dealt with herein and in Schedule "B". The purpose of this SWF is also to accept storm water flows from part of the Development as well as lands outside of the Development. In accordance with the provisions of this Agreement, the following will apply for the construction of the SWF on Block 128:

- i) River Realty will not be constructing the SWF of which Block 128 will be a part of. It will contribute the lands represented in Block 128 for that purpose;
- ii) The contribution of Block 128 by River Realty constitute a credit towards the Costs to construct the SWF in accordance with the provisions of Article 3, subsection (iv);
- iii) The consulting engineers, Upper Canada Consultants shall estimate as a percentage of the total capacity of this SWF the storm flows contributed by the Development into the SWF. That percentage shall represent the contribution to be made by River Realty to the Costs of constructing the SWF, less the credit referenced in subparagraph 5 b) ii) hereof.

## 5.2 Parks

Pursuant to the provisions of the Planning Act, RSO, 1990, as amended, the Development will be assessed by the Town for a park contribution assessment which will be calculated based on the value of the lands being developed. Accordingly, that contribution will be made by the conveyance of land and, to the extent that that conveyance of land does not satisfy the whole assessment, then by cash-in-lieu of land and the following shall apply:

- i) Blocks 131, 132 and 133 shown on Schedule "A" are intended to be conveyed to the Municipality for park purposes. These lands will be valued as to their contribution to the assessment in accordance with the provisions of Article 3 iv). That calculation shall be reflected as provided for in Schedule "B" hereof;
- ii) To the extent that the conveyance of Blocks 131, 132 and 133 is either greater or lesser than the required park dedication to be made by River Realty, then the balance shall be satisfied by an adjustment pursuant to Schedule "B" hereof;
- iii) As part of the proposed development, River Realty will construct a watercourse along Block 130 of Schedule "A" as part of the storm water management system for the Development. The watercourse will have, in conjunction and adjoining it, within Block 130 a pedestrian walkway. The watercourse is to be constructed in accordance with the minimum standards of the Niagara Peninsula Conservation Authority and the Ministry of Environment. To the extent that the Town should ask for additional improvements or upgrades to those minimum standards, those improvements/upgrades will be considered contributions for park purposes and the additional Costs will either be deducted from any cash-in-lieu of that River Realty would otherwise pay as indicated in subparagraph 5.2 ii) above or alternatively, those costs will form a credit and accordingly be reflected as such in Schedule "B" hereto.

## 5.3 Roadway

Schedule "A", at the north end of the limits of the Development indicates a street marked on the plan as Street (A). The plan indicates that Street "A" will be a total of 28 m. wide. The Official Plan of the Town called for Street "A" to be no wider than 22 m. Accordingly, the additional 6 m. of width for Street "A" constitutes part of an additional contribution by River Realty and therefore part of the Services subject to credits and which will be dealt with as follows:

- i) River Realty shall contribute by way of land, 14 m. (1/2 of the total width of Street "A") from Rice Road to and including the proposed intersection with Wellspring Way. From the intersection of Street "A" with Wellspring Way to the westerly limits of the lands owned by River Realty, River Realty will contribute 28 m. of land for the construction of Street "A".
- ii) The parties hereto agree that 3 m. of River Realty land from Rice Road to the intersection of Wellspring Way and 6 m. of Street "A" from that point to the westerly ownership boundary of the Development are in fact additional lands contributed by River Realty in excess of its normal requirements. These additional areas of land will be identified and quantified and credit will be given to River Realty in accordance with the provisions of Article 3 iv) hereof.
- iii) River Realty shall only be responsible for the Costs which are attributable to 11 m. of width of roadway, at normal municipal cross-sections from Rice Road to Wellspring Way and 22 m. of Street "A" from Wellspring Way to its westerly property boundaries. The proportionate obligation for the construction of Street "A" as between River Realty and the Town shall be certified by the consulting engineers, Upper Canada Consultants. All other Costs incurred by River Realty in excess of those shall be a credit to River Realty and reflected in Schedule "B" hereto.
- iv) If the Town should require additional upgrades to Street "A" which are not ordinarily part of normal cross-section road construction at Municipal standards, then those costs will either be paid for by the Municipality directly or alternatively, those additional costs will be paid to River Realty as an upgrade above the normal minimum standard.

#### 5.4 Sewers, Water and Pipe Sizing

The construction of Services, because they are to benefit and be used by lands other than the Development will be subject to certain sewer, water and pipe over-sizing. The parties agree that for the purpose of determining the debits and credits that are to be allocated pursuant to this Agreement, the following shall apply:

- i) The Town has already installed sanitary sewers from Rice Road to Wellspring Way under Street "A". River Realty acknowledges that it is responsible for its share of those costs along with all others who will benefit from that installation. The benefit shall be determined by Upper Canada and shall form a debit adjustment on the Costs already incurred by the Town for the construction of that sanitary sewer. The Town shall make those costs available to the consulting engineers so that determination can be finalized and the adjustment will be reflected in Schedule "B" hereto;
- ii) In order to provide access to the two SWFs dealt with under Article 5.1 a) and b) hereof, storm sewer capacity will require an increase and over-sizing for both facilities. In accordance with the sharing of costs as calculated pursuant to 5.1 a) and b) credit will be allocated to River Realty with respect to the SWF on Block 127 and a debit will be allocated to River Realty with respect to any over-sizing relating to the SWF located on Block 128;
- iii) Where, in servicing the Development, River Realty is required to install waterlines which are required to be over-sized to carry additional capacity for other lands, then the cost of over-sizing including the material costs shall constitute a credit to River Realty and be reflected in Schedule "B" hereto;

6. **Development Charges Act (the "DCA")**

- i) The Parties hereto agree that after all adjustments are made under Schedule "B" hereto that there will be a substantial monetary credit (the "Credit") due and owing to River Realty for providing excess capacity to the Services for use of other lands.
- ii) It is agreed by the Parties hereto that the total Credit due and owing be considered a credit pursuant to Section 38 of the DCA and the within Agreement shall be considered an agreement entered into between River Realty and the Town as provided for under that section of the DCA.
- iii) The Parties hereto further agree that the total Credit will apply, pursuant to the provisions of Section 39(4) of the DCA as a credit that is not limited only to the credits for similar services but rather is a credit towards any and all development charges which are referable to services covered under the current development charge imposed by the Town in the area of the Development.
- iv) The Town agrees that, in accordance with the provisions of Section 41 (b)(iii) of the DCA the Credit may be transferrable by River Realty to any purchaser of land within the Development. To facilitate transferability, the Town agrees that the Credit will be divided by the number 124 which represents the total single family lots in the proposed Development. Each of those credits will, at the option of River Realty, be assignable as a credit to the Purchaser of such lots and be usable by said Purchaser.
- v) In the event that the total Credit is not exhausted by division into 124 parts, then the balance of the Credit shall be payable in cash by the Town to River Realty.
- vi) The Parties agree that the Credit that in accordance with the provisions of Section 39 for any and all services shall constitute a credit.

7. **General Provisions**

- 7.1 Schedules which are attached to this Agreement are incorporated into this Agreement by reference and are deemed to be part of thereof.
- 7.2 In this Agreement, any reference to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such a statute or section as amended, restated or re-enacted from time to time.
- 7.3 In this Agreement, unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender including all genders.
- 7.4 In this Agreement, "including" means including without limitation and "includes" means includes without limitation.
- 7.5 This Agreement and the Schedules referred to herein constitute the entire Agreement between the Parties and supersede all prior Agreements, representations, statements, promises, arrangements and understandings whether oral or written, expressed or implied with respect to the subject matter of this Agreement.
- 7.6 Each provision of this Agreement is intended to be severable, if any provision hereof is illegal or invalid, such illegality or invalidity shall not affect the validity of the remainder hereof.

8. **Notices**

Notices shall be sent to the following applicable addresses or facsimile numbers:

**River Realty Development (1976) Inc.**

P.O. Box 576

Niagara Falls, ON L2E 6V2

Attention: *John Mestek*

Phone: (905) 354-3853

Fax: (905) 354-1816

**Town of Pelham**

20 Pelham Town Square

P.O. Box 400, Fonthill ON L0S 1E0

Attention: *Nancy Bozzato, Clerk*

Phone: (905) 892-2607 (ex. 315)

Fax: (905) 892-5055

This Agreement is intended to be binding on the Parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement under seal as of the day and year first written above.

**RIVER REALTY DEVELOPMENT (1976) INC.**

Per:

Name:

Title:

Name:

Title:

**TOWN OF PELHAM**

Per:

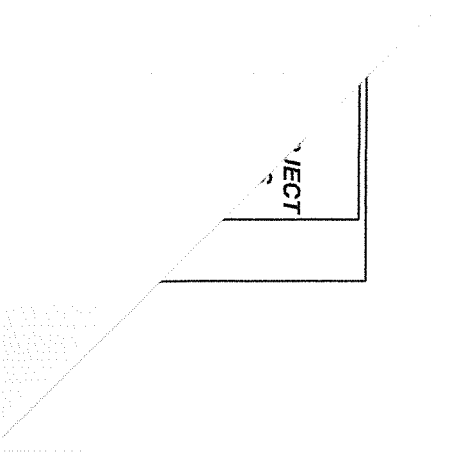
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Title:

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Title:





## Schedule "B"

### Calculation of Estimated and Final Cost for the Services Referenced in Article 5 of the Agreement

	<u>Estimated Amount</u>	<u>Final on Completion</u>
<b><u>Storm Water Facilities</u></b>		
<u>Block 127</u>		
* (i) % of facility Capacity attributable to other's development	_____	(X) %
* (ii) compensation for value of land attributable to excess capacity:		
(balance or % in (i) above) x \$300,000 =		
Credit to River Realty	_____ .00	_____ .00
* (iii) Cost of Construction of SWF	\$ _____ X _____ .00	\$ _____ X _____ .00
* (iv) Credit River Realty for (% in (i) above) of XY =	_____ .00	_____ .00
<u>Block 128</u>		
(i) % of capacity of facility attributable to River Realty	_____ X _____	_____ X _____
(ii) compensation for land values attributable for that capacity		
X % x Total land SWF at \$300,000 – Value of Block 128 at \$300,000 =		_____
(iii) Cost of construction of SWF at Block 128	\$ _____ Y _____ .00	\$ _____ Y _____ .00
(iv) River Realty % (X) of capacity x Y =	_____ .00	_____ .00
* (v) Credit River Realty for land value of Block 128	_____ .00	_____ .00
<b><u>Parks</u></b>		
* (i) Contribution in land as a percentage of Development (based on estimated values)	_____	_____
* (ii) Contribution is cash-in-lieu based on value of land otherwise contributed (if required)	_____ .00	_____ .00

\*(iii) value of any improvements made to Block 130 in excess to minimum standards

\_\_\_\_\_ .00

\_\_\_\_\_ .00

### **Roadway**

#### **Road A "Ceremonial Way"**

\*(i) area of River Realty: lands to be contributed to Road A construction in excess of Secondary Plan requirements

\_\_\_\_\_ X \_\_\_\_\_ (acres)

\_\_\_\_\_ X \_\_\_\_\_ (acres)

\*(ii) X x \$300,000 per acre

\_\_\_\_\_ .00

\_\_\_\_\_ .00

? (iii) Estimated cost to construct all of Street A from Wellspring Way to the Westerly boundary of River Realty lands

\$ \_\_\_\_\_ .00

\$ \_\_\_\_\_ .00

\*(iv) Estimated cost of additional six (6) metres of additional width for Street "A"

\*(v) Estimated cost to construct 3 additional metres of Street A from Rice Road to Wellspring Way

\$ \_\_\_\_\_ .00

\$ \_\_\_\_\_ .00

\*(vi) Estimated costs of all improvements to Street A above and beyond normal cross-section standards

\$ \_\_\_\_\_ .00

\$ \_\_\_\_\_ .00

### **Sewers, Water and Pipe Sizing**

(i) River Realty % contribution to sanitary sewers already installed under Ceremonial Way (Street "A") from Rice Road to Wellspring Way

\_\_\_\_\_ .00

\_\_\_\_\_ .00

\*(ii) Credit to River Realty for cost of over-sizing pipes for storm sewer for SWF on Block 127

\_\_\_\_\_ .00

\_\_\_\_\_ .00

(iii) debit to River Realty for cost of over-sizing storm sewers for SWF at Block 128

\_\_\_\_\_ .00

\_\_\_\_\_ .00

\*(iv) credit of oversizing of water lines (if any) for water conduits to be installed in River Estates for additional capacity elsewhere

\_\_\_\_\_ .00

\_\_\_\_\_ .00

Items marked with an asterisk (\*) are considered potential credits to River Realty. All unmarked items are considered potential debits.

Total Credits, minus total debits \_\_\_\_\_ - \_\_\_\_\_ =  
Credit \$ \_\_\_\_\_