

**RIVER ESTATES PHASE 2 SUBDIVISION AGREEMENT**  
**RIVER REALTY DEVELOPMENT (1976) INC.**  
**(SUBDIVISION FILE NO. 26T19-01-2018)**

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THIS AGREEMENT made this 1st ....day of April....., 2019.

BETWEEN:

**RIVER REALTY DEVELOPMENT (1976) 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 warrants and represents that:

- a) it is the registered owner in fee simple in possession of the lands described in Schedule "A" annexed hereto;
- b) as of the date of execution of this Agreement and on the date of registration of this Agreement, the Developer shall be a valid and subsisting corporation in good standing duly incorporated under the laws of the Province of Ontario;
- c) as of the date of execution of this Agreement, registration of this Agreement and registration of the Plan of Subdivision, there will be no outstanding claims, liens, or encumbrances registered against the lands described in Schedule "A" annexed hereto all of which shall be postponed to this Agreement unless otherwise authorized by the Town in writing; and
- d) this Agreement shall take priority over any subsequent registrations against the Lands;

**AND WHEREAS** the Developer has applied to the Town for approval of a Plan of Subdivision of the Lands described in Schedule "A" annexed hereto;

**AND WHEREAS** the Town's "Conditions of Draft Plan Approval" require that all conditions must be fulfilled before the aforesaid Plan of Subdivision is given final approval, and the Developer must enter into a Subdivision Agreement with the Town to satisfy all its requirements, financial and otherwise, relating to the Lands being subdivided;

**AND WHEREAS** this Agreement is made to satisfy the said Conditions of Draft Plan Approval;

**AND WHEREAS** subsection 51 (26) of the *Planning Act, 1990*, 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 mutual covenants and agreements to be observed and performed by each of the Parties hereto, and in consideration of the sum of ONE (\$1.00) DOLLAR of lawful money of Canada now paid by the Developer to the Town, the receipt whereof is hereby acknowledged by the Town, the Parties hereto mutually covenant and agree as follows:

## **1. DEFINITIONS**

In this Agreement:

- 1.1 **AGREEMENT** means this Subdivision Agreement.

- 1.19 **EASEMENTS** shall mean the easements described in Schedule "C" annexed hereto, which forms part of this Agreement.
- 1.20 **FINAL DEFAULT** means a situation where the Developer fails to remedy a default within such time as provided in the notice given by the Town, as provided in Section 39 hereof.
- 1.21 **FINAL CERTIFICATE OF COMPLETION OF SERVICES** means the certificate issued by the Director of Public Works after the end of the maintenance period certifying that all Works required by this Agreement are acceptable for assumption by the Town.
- 1.22 **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.
- 1.23 **GRADING CONFORMANCE CERTIFICATE** means the Certificate identified in Section 29 hereof.
- 1.24 **LANDS** means the lands described in Schedule "A" annexed hereto, and forming part of this Agreement.
- 1.25 **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.
- 1.26 **LETTER OF OCCUPANCY** means a Letter of Occupancy issued by the Chief Building Official subsequent to final inspection of a dwelling, as required by Section 35 hereof.
- 1.27 **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 *Local Improvements Act* or the *Municipal Act*, as amended, or any successor thereto.
- 1.28 **LOT** means a lot as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- 1.29 **LOT FRONTAGE** means lot frontage as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- 1.30 **LOT GRADING DEPOSIT** means a deposit of security as specified in Section 30 hereof.
- 1.31 **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.
- 1.32 **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 of Public Works by the Developer at its cost.
- 1.33 **MAINTENANCE GUARANTEE PERIOD** means the period of time during which the Developer is obliged to maintain the Works following approval of the Completion Certificate for Primary Services or Secondary Services, as the case may be, which period is defined in Section 38 hereof.
- 1.34 **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.

- 1.35 **OWNER** means the applicant for a Building Permit for one of the Lots or Blocks and includes the person on whose behalf an application for a Building Permit is made.
- 1.36 **PARTY** shall mean a party to the Agreement and the successors or permitted assigns.
- 1.37 **PLAN OF SUBDIVISION** means the Plan of Subdivision of the Lands described in Schedule "A" approved for registration by the Town and registered on title pursuant to the provisions of the *Planning Act*.
- 1.38 **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 of Public Works prior to execution of this Agreement by the Town.
- 1.39 **PRE-SERVINCING** means the installation of Works prior to registration of this Agreement.
- 1.40 **PRIMARY SERVICES** means all private utilities and all municipal services including, without restricting the generality of the foregoing, shall include: storm sewers, storm water management, sanitary sewers, watermain, roads (including base coarse asphalt and curbs and gutters), footpaths, street lighting, and drainage works and swales (including hydroseeding and landscaping).
- 1.41 **PRIVATE UTILITIES** means telephone, hydro-electric systems, natural gas systems, and cable television systems.
- 1.42 **REGION** means the Regional Municipality of Niagara.
- 1.43 **REGIONAL PUBLIC WORKS DEPARTMENT** means the Regional Municipality of Niagara Public Works Department.
- 1.44 **RESERVE STRIP** shall mean a parcel of land conveyed by the Developer to the Town in fee simple, free of encumbrances, abutting a Street Line and separating the street from the next abutting lot or block, for the purpose of preventing legal access from said street to the said next abutting lot or block.
- 1.45 **SECONDARY SERVICES** means all works to be installed, constructed, or erected which are not Primary Services or private utilities, and without limiting the generality of the foregoing, shall include: top course roadway asphalt, paved driveway aprons, sidewalks, fencing, and sodding/hydroseeding, landscaping, and tree plantings of boulevards and hydroseeding, landscaping and tree plantings of park blocks and stormwater management blocks.
- 1.46 **SECTION**, when used in reference to a numbered part of the Agreement, means:
- a) a complete section including all its sections and subsections;
  - b) a particular subsection including its subsections; and
  - c) a particular subsection as the context may dictate or require.
- 1.47 **STORM WATER MANAGEMENT FACILITY** means a system of physical works including but not necessarily only, such things as storm water 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 storm water and control pollution and control storm water runoff to predetermined levels prior to discharge to receiving surface water courses and subsurface ground water regimens.

- 1.48 **STORM WATER MANAGEMENT REPORT** means an approved storm water management report and specifications prepared by the Developer in accordance with Section 17 of this Agreement.
- 1.49 **STREET** means street as defined in the Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- 1.50 **STREET LINE** means Street Line as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- 1.51 **SUBDIVISION** means the division of a parcel of land into lesser parcels by means of a registered Plan of Subdivision.
- 1.52 **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 "E", annexed hereto.
- 1.53 **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.
- 1.54 **TOWN** means The Corporation of the Town of Pelham.
- 1.55 **TREASURER** means the Director of Corporate Services for the Town, or their designate.
- 1.56 **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.
- 1.57 **WORKS** shall jointly and severally mean and include all Primary Services and Secondary Services and all other matters, both internal and external, and all construction, erection, installation and engineering required to be completed or performed by the Developer pursuant to this Agreement.

## **2. LANDS TO BE SUBDIVIDED**

The Lands to be subdivided by the Plan of Subdivision are those lands described in Schedule "A" annexed hereto and the Plan of Subdivision shall be registered against all of such Lands.

## **3. GENERAL PROVISIONS**

- 3.1 Unless the context or any other collateral agreements between the Town or the Developer otherwise requires, where the Developer is obliged by this Agreement or the approved Plans to make 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".
- 3.2 The Developer hereby covenants, warrants and agrees to save harmless and keep the Town and its agents, contractors, employees and elected officials indemnified from and against all manner of actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly by reason of the design, installation, construction, or operation of any of the Works required under this Agreement, or by reason of the maintenance or lack of maintenance of such Works by the Developer pursuant to the terms of this Agreement or by reason of any defect in workmanship or material.
- 3.3 The Developer and the Town acknowledge and agree that it is their intent that all terms, conditions and covenants contained herein:

- a) shall run with the Lands; and,
  - b) shall be binding upon the Developer, its heirs, executors, administrators, assigns and successors in title, from time to time; and,
  - c) the benefits of the said covenants shall enure to the Town, its successors and assigns in title, of all roads, streets, and public Lands forming part of or abutting on the Lands.
- 3.4 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 42.
- 3.5 This Agreement and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto and upon those persons and/or corporations hereafter acquiring title to all or any part of the Lands.
- 3.6 The Developer shall impose restrictions as set forth in Schedule "H" annexed hereto on all the Lands so that subsequent Owners will be made aware of and shall strictly adhere to the requirements of this Agreement.
- 3.7 The Schedules annexed hereto, being Schedules "A" to "H" inclusive, are deemed to be a part of this Agreement and are to be interpreted as if the contents thereof were included in this Agreement.
- 3.8 The Developer agrees to be bound by the penalty provisions set forth in Section 67 of the *Planning Act, 1990*, and amendments thereto.
- 3.9 In constructing, installing or providing the Works, the Developer shall comply with all statutes, laws, by-laws, regulations, ordinances, orders and requirements of any governmental or other public authorities having jurisdiction at any time from time to time enforced. Without limiting the foregoing, the Developer agrees to comply with and cause to be complied with, the provisions of the *Occupational Health and Safety Act*, the *Environmental Protection Act*, the *Ontario Water Resources Act*, the *Safe Drinking Water Act* and any regulations, policies and guidelines relating thereto. The Developer further agrees to handle and dispose of all materials in accordance with the foregoing legislation.
- 3.10 The Developer shall do, cause to be done, or refrain from doing any act or thing as directed by the Town if at any time the Town considers that any situation or condition is unsafe, damaging to the environment, or contrary to the provisions of any applicable laws. If the Developer fails to comply with such direction, the Town may take action to remedy the situation at the expense of the Developer and in this regard the Town shall also be entitled to draw upon any security filed by the Developer under this Agreement.
- 3.11 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 *mutatis mutandis* shall be and remain in full force and effect.
- 3.12 The Developer shall not call into question directly or indirectly, in any proceeding whatsoever in law or in equity, or before any court or administrative or other tribunal, the right of the Town to enter into this Agreement and to enforce each and every term, covenant and condition thereof and this provision may be pleaded by the Town in any such action or proceeding as a complete and conclusive estoppel of any denial of such right.
- 3.13 Time shall be of the essence of this Agreement.
- 3.14 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 Government and Consumer Services verifying that the Developer is a company duly incorporated under the laws of the Province of Ontario and is in good standing.

- 3.15 The Developer hereby agrees to procure, register and provide to the Town any postponement agreements which the Town solicitor considers necessary to ensure that this Agreement shall have priority over any interest of a mortgagee in the Lands.
- 3.16 The Developer shall notify or cause to be notified each and every purchaser of a Lot or Lots or Block or Blocks of all Works contracted by the Developer, the Developer's obligations to maintain the Works and all other conditions covered by this Agreement by providing a complete and accurate summary of same and shall cause such information to be fully recorded in any Offer to Purchase or Agreement of Purchase and Sale entered into by the Developer.
- 3.17 In the event that a Mortgagee(s) exercises any rights as to sale, possession or foreclosure or takes any other steps to enforce its security against the Lands then such Mortgagee(s) agrees on behalf of itself, its heirs, executors, administrators, successors and assigns not to deal with the Lands as a subdivision or part thereof unless and until a new agreement in the same form, *mutatis mutandis*, as this Agreement has been entered into with the Town.
- 3.18 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.
- 3.19 Any and all of the Developer's obligations under this Agreement shall be joint and several.

#### **4. SERVICING PLANS AND SPECIFICATIONS**

- 4.1 All Plans and specifications must be approved in writing by the Director of Public Works prior to the execution of this Agreement by the Town and the Developer commencing construction of any of the Works.
- 4.2 The Developer shall submit to the Director of Public Works three (3) copies of each plan required to be submitted for approval with respect to the construction of the Works contemplated in this Agreement.
- 4.3 It is understood and agreed the Director of Public Works in their appraisal of the Plans and specifications will be guided by current requirements of the Province of Ontario, established specifications and standards adopted by the Town, or existing practices and standards as may from time to time be established or amended by the Town by its officials or agents. The Town may require, in writing, such variances from the Plans as it may deem appropriate due to conditions which may be disclosed as the work progresses and by sound engineering practices.
- 4.4 No approval by the Director of Public Works shall operate as a release by the Town of any liability of the Developer which, but for such approval, might exist or hereafter arise.
- 4.5 All Plans shall be prepared and stamped by a Consulting Engineer or an Ontario Land Surveyor licensed to practice in the Province of Ontario.

#### **5. DESIGN AND SUPERVISION OF CONSTRUCTION OF SERVICES**

- 5.1 The Developer shall employ, at its cost, a competent and qualified Consulting Engineer approved by the Director of Public Works, to:
- a) carry out all soil investigations to the satisfaction of the Director of Public Works;
  - b) design all of the Works required to be completed by this Agreement;



- c) prepare plans, profiles and specifications for the Works and submit detailed plans, profiles and specifications to the Director of Public Works for approval prior to the installation or construction of such Works;
- d) obtain from the Director of Public Works the details regarding the form and scale of these drawings prior to their presentation;
- e) obtain and provide the Town with all necessary approvals prior to installation or construction of the Works and prior to execution of this Agreement;
- f) prior to execution of this Agreement, prepare and furnish the Director of Public Works with estimates of the cost of installation and construction of said Works;
- g) if required, prepare contract documents and call tenders for the installation and construction of the said Works;
- h) provide full-time resident supervision, inspection and contract administration of all Works covered by this Agreement including watermain commissioning;
- i) maintain all records for the installation and construction of the said Works and submit "as constructed" records in electronic form in AutoCad format (NAD 83 coordinates) and PDF format, and two (2) sets "as constructed" records shall be submitted in a reproducible form to the Director of Public Works, at the time of completion of Primary Services (including all street light and utility services) prior to approving the Completion Certificate for the Works.
- j) upon completion of the installation or construction of the Works, supply the Town with a certificate, in a form satisfactory to the Director of Public Works, that the Works were installed and constructed in accordance with the approved Plans and specifications;
- k) provide the Director of Public Works with individual record sheets for all sewer and water service locations and depths;
- l) when requested by the Director of Public Works, accompany them on inspections of the Works including 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;
- m) supervise the construction of all Works on a full-time basis including any remedial work which the Director of Public Works may require;
- n) test all services and verify to the Director of Public Works, in writing, that all testing has been completed in accordance with the appropriate requirements;
- o) provide building levels for construction purposes; and,
- p) certify, in writing, to the Director of Public Works, as to the actual cost of all Works completed, prior to the Town approving a Completion Certificate for such Works or reducing any Letter of Credit.

5.2 The Developer shall not install Works prior to the receipt, in writing, of the approval of the detailed Plans and specifications by the Director of Public Works.

5.3 All of the Primary, Secondary, and Utility Services to be installed or constructed under this Agreement shall be installed, constructed, inspected and tested under the direct supervision of the Developer's Consulting Engineer at the sole expense of the Developer.

5.4 The Developer's Consulting Engineer shall conduct all testing of Works and materials to the complete satisfaction of the Director of Public Works. All

sanitary and storm sewers must be inspected and videoed via closed circuit T.V. prior to final acceptance by the Town.

- 5.5 The Director of Public Works, or designate, shall have the right at any time and from time to time to request an inspection and re-inspection of any of the Works in progress to ensure such Works are being constructed in accordance with the Plans and specifications approved by the Director of Public Works. Such inspections may include testing and the method and time of testing shall be at the sole discretion of the Director of Public Works. Town inspections shall be in addition to inspections provided by the Developer's Consulting Engineer and shall in no way relieve the Developer or their Consulting Engineer of any responsibility with regard to design, construction, inspection, testing or proper completion of the Works.
- 5.6 The Director of Public Works shall have a discretionary right to order any work-in-progress stopped and such work shall not be recommenced without written authority from the Director of Public Works.

## **6. BY-LAW (S), DOCUMENTATION, AND REGISTRATION**

- 6.1 The Council may authorize Pre-Servicing (installation of Works) upon such terms and conditions it deems appropriate and/or necessary, which terms and conditions shall include, but not be limited to, posting all security set forth in Schedule "F" annexed hereto, obtaining and filing with the Director of Public Works all necessary and/or required approvals, consents, agreements and certificates, and having all Plans and specifications approved by the Director of Public Works.
- 6.2 Before this Agreement is executed by the Town, the appropriate authorizing By-law must be enacted by the Council of the Town.
- 6.3 The Developer shall provide the Town with two (2) paper copies and a PDF format copy each of the draft Plan of Subdivision (M-Plan) for the Lands and the Reference Plan (R-Plan) providing legal descriptions for Easements within or outside the Lands.
- 6.4 The Developer acknowledges that the Town may register an Inhibiting Order against the Lands and that the Town will not have the Inhibiting Order removed from title until the Developer has supplied all documents in compliance with this Agreement in a form satisfactory to the Town for registration and all other documents required to provide discharges, releases, and postponements with respect to any charges, mortgages or encumbrances with respect to the Lands that have been registered against title to the Lands.
- 6.5 Upon the Town being satisfied that all conditions of Draft Plan approval for the Plan of Subdivision have been satisfied by the Developer within the required time, the Town shall register the following documentations at the sole expense of the Developer as soon as practicable:
  - a) the approved Plan of Subdivision; and,
  - b) all other documentation related thereto, including without limitation, Cessations of Charge, Transfers, and Easements.
- 6.6 In the event the Plan of Subdivision is not registered within one (1) year from the date of registration on title of this Agreement, the Town may declare the Developer in Final Default.
- 6.7 The Developer shall not deal in any manner whatsoever with any Lot or Block shown on the Plan of Subdivision until this Agreement, the Plan of Subdivision and all other documentation (including Transfers, Easements, Cessation of Charge, Inhibiting Orders, Reference Plans, and Postponements of Charges) required by this Agreement and by the Town's solicitor have been delivered,

approved and registered on title to the complete satisfaction of the Town's solicitor.

## **7. LAND FOR MUNICIPAL PURPOSES**

- 7.1 The Developer shall, at its own expense, convey to the Town in fee simple, free of all encumbrances, such lands as may be required for the development of the Lands in accordance with Schedule "B" annexed hereto.
- 7.2 All of the road allowances and road widenings shown on the Plan of Subdivision shall be dedicated by the Developer as public highways.
- 7.3 All road allowances shown on the Plan of Subdivision shall be named to the satisfaction of the Town.

## **8. EASEMENTS FOR MUNICIPAL PURPOSES**

- 8.1 The Developer covenants and agrees, at its sole expense, to obtain and/or grant to the Town such easements as may be required for the installation and construction of services or development of the Lands in accordance with Schedule "C" annexed hereto.
- 8.2 The Developer shall convey to the Town or to such public utility company or commission or cable television company as the Town may direct, easements required for utility and/or co-axial purposes in accordance with Schedule "D" annexed hereto. All such easements shall be prepared to the complete satisfaction of the Town, and if required by the Town, any such utility or cable television company.
- 8.3 The Developer shall undertake and complete all improvements in, over, along and upon such easement lands conveyed to the Town, including Primary Services, Secondary Services and Utility Services, in accordance with the terms of this Agreement and the Plans filed to the complete satisfaction of the Director of Public Works and shall keep such easement lands in a neat and tidy condition, free of all debris and trash until the Town has passed the Assumption By-Law.

## **9. GENERAL SERVICES**

- 9.1 Where the Plan of Subdivision is serviced by a secondary means of egress or emergency access to be constructed by the Developer, an existing road allowance, open or unopened, or any newly dedicated widening thereof, the Developer agrees such secondary means of egress or emergency access, road allowance and any widening thereof shall be deemed to form part of the Lands and be subject to the requirements related thereto specifically indicated in the approved Plans.
- 9.2 Where it is necessary to use a secondary means of egress or emergency access to be constructed by the Developer or an unopened road allowance to service all or any part of the Lands, the Developer shall, at its own expense, construct the necessary municipal services in accordance with the approved Plans.
- 9.3 The Developer shall not change, or do any work that will prejudicially effect, any natural watercourse or drainage ditch without making full and proper provisions satisfactory to the Director of Public Works, and the Developer shall be solely responsible for any damage caused thereby and the Developer hereby indemnifies and saves harmless the Town from any claim arising from such damage.
- 9.4 The Developer shall keep all portions of the development well, properly, and efficiently drained during construction and completion and will be held responsible for all damage which may be caused or results from water backing up or flowing over, through, from or along any part of the Works, or which any of the Developer's operations may cause to flow elsewhere, and the Developer hereby indemnifies and saves harmless the Town from any claim arising from said damage.

- 9.5 The Developer covenants and agrees to carry out all Works necessary to service the Plan of Subdivision in such a manner as to prevent erosion and earth, debris and other material from being washed or carried in any manner onto any road, road allowance or highway whether opened or unopened, or onto the property of any other person or persons. If such earth, debris or other material is washed or carried onto such road, road allowance, whether opened or unopened, or onto the property of any person or persons, the Town, its servants or agents, may, at the Town's discretion, clean and remove such material, rectify any damage caused, and abate any nuisance created by the Developer in the development of the Plan of Subdivision. The cost of any such work performed by or at the instruction of the Town, shall be paid by the Developer on demand, and without limiting any of its remedies at law or in equity, the Town may enforce any security available to it to recover such costs or may collect such costs in like manner as municipal taxes as provided in the *Municipal Act* and with the same priorities as taxes that are overdue and payable.
- 9.6 The Developer shall be solely responsible for controlling dust nuisance in conjunction with the Works, both within the Plan of Subdivision and elsewhere.
- 9.7 All streets abutting on the Lands or used for access to the Lands during installation or construction of the Works or during construction of dwellings shall, at all times, be kept as dust free as possible and in a good and usable condition, and without restricting the generality of the foregoing, the Developer shall at the end of each day during such construction cause all such streets to be cleaned of all refuse, rubbish, waste, debris and other materials of any kind, whether the same resulted from installation and construction of Works or otherwise, and if such streets are damaged the Developer shall at its own cost restore same immediately to the Town's requirements and to the satisfaction of the Director of Public Works.
- 9.8 All trucks making deliveries to or taking materials from the Lands shall be adequately covered and not unreasonably loaded so as to scatter refuse, rubbish, dust or debris on abutting streets or properties. If at any time, in the opinion of the Director of Public Works, damage is being or is likely to be done to any street or any improvement thereon, other than such portions as are part of the Works, by the Developer's or its contractor's vehicles or other equipment, whether licensed or unlicensed, the Developer or its contractor shall on the direction of the Director of Public Works make changes in or substitutions for such vehicles or other equipment or shall alter loading or shall in some other manner satisfactory to the Director of Public Works remove the cause of such damage or nuisance. The Developer shall at its own cost repair any such damage immediately to the Town's requirements and to the satisfaction of the Director of Public Works.
- 9.9 The Developer shall inform all public utility companies having legal authority to install or construct utility systems (including without limitation Bell Canada, Enbridge Consumers Gas, Niagara Peninsula Energy, Hydro One Networks Inc., Cogeco Cable) of the approximate date of construction of the Works in order that such utility companies may place their work in accordance with their requirements and to the satisfaction of the Director of Public Works, and the Developer shall assume complete responsibility and make all necessary arrangements for the moving of hydro-electric, gas, telephone and co-axial cables, pipes, conduits, wires, pipe lines, or any other public utility works as necessary and as approved by the Director of Public Works, and the Developer shall be solely responsible for any damage caused to the said cables, pipes, conduits, wires, pole lines and other works.
- 9.10 The Town disclaims any responsibility or liability for the support and protection of sewers, drains, pipes, conduits, tracks or other utilities, services and structures owned by the Town or any other public body, by companies, or any other person enjoying special franchises or occupying any portion of the streets or ways on or below or above the surface. The Developer is directed to carefully examine the location of the Works and to make special inquiry of the companies or persons owning, controlling or operating said pipes,

conduits, tracks and other utilities, services and structures, and to determine the character, size, position and length of such pipes, conduits, tracks, utilities and structures, and to inspect the public records of the various Town Departments having recognizance and control of pipes, conduits and sewers, and to make such further personal inspection and investigation as is necessary to determine the correctness of the information so obtained. It is the Developer's responsibility to consult the companies concerned as to the exact location of said utilities, services and structures, and, where necessary, the Developer shall protect and support same to maintain their operation. In the event damage is done to a utility, service or structure the Developer thereof shall be notified immediately by the Developer and any costs arising from such damage shall be paid for by the Developer. A copy of such notice shall be sent to the Director of Public Works.

- 9.11 The Developer agrees to keep boulevards and Easements graded and free and clear of all material and obstructions which might interfere with the construction of telephone, co-axial, gas and hydro-electric installations, and other utility works.
- 9.12 The Developer shall remove from all road allowances in the Plan of Subdivision, any surplus or other material and obstructions and such trees and vines, as necessary and to the satisfaction of the Director of Public Works, and further, shall remove from the Lands any unkempt, diseased or infested trees, vines or bushes. In the event this clause is not complied with within fourteen (14) days of written notice delivered by the Town to the Developer, the Town may have such material removed and collect the cost thereof from the Developer, and without limiting its remedies at law or equity, the Town may enforce any security held by it to recover costs or may collect the costs in like manner as municipal taxes as provided in the *Municipal Act* and with the same priorities as taxes that are overdue and payable.
- 9.13 The Developer shall not add any fill to the Lands without first obtaining written approval from the Director of Public Works.
- 9.14 The Developer shall not remove any topsoil from the Lands without first obtaining written approval from the Director of Public Works.
- 9.15 All Works required to be installed or constructed by the Developer shall be installed and constructed in accordance with the Town's specifications therefor at the date of the commencement of the installation or construction of the Works and in accordance with the approved Plans.
- 9.16 The Developer acknowledges and agrees, notwithstanding the complete installation of services in the subdivision as authorized by the Town, that the Town will not be held liable for any stoppage or delay of the registration of the Plan or the issuance of Building Permits for the lots in the Plan.
- 9.17 The Developer acknowledges and agrees that in the event that the Lands are not maintained in an acceptable standard to the Town in regards to refuse, rubbish, dust or debris or if refuse, rubbish, dust or debris from the Lands are found on abutting streets or properties and are not removed in an acceptable standard to the Town that the Town may bill the Developer for the removal of refuse, rubbish, dust or debris from the Lands or on abutting streets or properties impacted by the development of the Lands.

#### **10. SURVEY MONUMENTS TO BE PRESERVED**

- 10.1 The Developer agrees that all survey monuments or related markings established in connection with the installation of public utility and municipal services are to be preserved.
- 10.2 The Developer agrees if any survey monument or related marking is accidentally or deliberately damaged, destroyed or removed, to immediately repair or replace such monuments or related markings under the direction of the person or persons responsible for establishing said survey monuments or related markings.

## **11. TOWN'S RIGHT TO ENTER AND REPAIR**

11.1 The Town shall have the right to enter on the Lands at all times and from time to time and to carry out maintenance and repair of the Works:

- a) without notice to the Developer where, in the sole opinion of the Director of Public Works, danger to public safety or an emergency condition exists, or the streets have not been kept free of mud, dust and/or snow or to prevent damage or hardship to any persons or property; and,
- b) where repairs to or maintenance of the said Works has not been completed within twelve (12) hours after written notice requiring such repairs or maintenance has been delivered to the Developer; and,
- c) such repairs, remedial works or maintenance shall not be deemed acceptance of the Works by the Town or an assumption by the Town of any liability in connection therewith and shall not release the Developer from any of its obligations under this Agreement; and,
- d) the cost of any repair or maintenance work (including professional fees) undertaken by the Town pursuant to the provisions of this Agreement 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 therefor has been delivered to the Developer. If the Developer fails to pay the amount due to the Town within such thirty (30) day period, the Town may and is hereby expressly authorized by the Developer to deduct the amount owing to the Town for such repairs or maintenance from any monies or Letter of Credit deposited with the Town; and,
- e) repairs or maintenance undertaken by the Developer pursuant to this subsection shall be completed in the presence of the Director of Public Works or their representative.

11.2 The Developer shall obtain from any Purchaser of any of the Lots or Blocks shown on the Plan of Subdivision, a license 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 license to the Town upon demand therefor.

## **12. SERVICES TO BE COORDINATED**

The Developer agrees and acknowledges that the designs of all municipal and public utilities and services for the subdivision of the Lands must be co-ordinated with all adjacent developments to ensure secondary access, service main looping and other integration and co-ordination of utilities and services.

## **13. INTERIM WORKS**

The Developer agrees and acknowledges that, until the Director of Public Works affixes their signature of approval to the Plans, all works which may be carried out in the interim are done solely and entirely at the Developer's risk, and that changes to existing works or additional works may be required or reflected in the final approved Plans.

## **14. ROADS**

14.1 The Developer agrees to construct, install, and complete all road Works required by this Agreement and the approved Plans and specifications to the complete satisfaction of the Director of Public Works.

14.2 The Developer agrees to 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 of Public Works 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 of Public Works.

- 14.3 The Developer shall restore any existing road damaged during the development of the Plan of Subdivision to the complete satisfaction of the Director of Public Works, prior to approval of the Completion Certificate for Primary Services.
- 14.4 If required, the Developer agrees to pay the Town the sum indicated in Schedule "F" annexed hereto for the reconstruction of the road allowance upon the removal by the Town of temporary turning bulbs required for the Plan of Subdivision.

## **15. SANITARY SEWER SYSTEM**

- 15.1 If required by the Town, and prior to execution of this Agreement by the Town, the Developer shall undertake a review of the existing downstream sanitary sewer system to ensure the capacity of the system is sufficient for the increase in flows from the Plan of Subdivision. In the event the downstream system is inadequate for the flow increase from this Subdivision, upgrading of those facilities will be the financial responsibility of the Developer and the Work required and/or necessary to upgrade such facilities shall be completed by the Developer as part of development of this Plan of Subdivision to the complete satisfaction of the Director of Public Works.
- 15.2 The Developer shall construct a sanitary sewer system, including service laterals from the sewer main to the Street Line and other appurtenances, to adequately service the Lands. All sanitary sewers, including upgrading of downstream facilities if deemed necessary by the Town, shall be constructed according to the approved Plans and specifications. Plans must be approved by the Director of Public Works, the Region of Niagara Public Works Department and the Ministry of the Environment, and the construction and materials used therein shall be in accordance with the Town's most recent specifications therefor.
- 15.3 All sanitary sewer Works shall be flushed and cleaned by high velocity sewer flushing equipment:
  - a) after placement of the base course asphalt upon the streets in the Plan of Subdivision; and,
  - b) upon receipt of any written notice from the Director of Public Works.
- 15.4 All sanitary sewer Works shall be tested, and if necessary re-tested, and the method and time of testing shall be to the satisfaction of the Director of Public Works.
- 15.5 All sanitary sewer Works shall be inspected and videoed via closed circuit TV to the satisfaction, and upon any written notice from, the Director of Public Works and prior to assumption of the sanitary sewer Works by the Town. In the event the results are not satisfactory in the sole opinion of the Director of Public Works, the Developer shall take such remedial steps as may, in the sole opinion of the Director of Public Works, be required.
- 15.6 Prior to the Director of Public Works approving the Completion Certificate for Primary Services, the Developer shall supply the Director of Public Works with "as constructed drawings" showing the location and depth of the sanitary sewer lateral constructed to service each Lot.
- 15.7 Prior to registration of the Plan, the Region shall confirm that adequate sanitary sewage allotment is available.

- 15.8 The Developer agrees to perform and complete all sanitary sewer Works required by this Agreement and the approved Plans and specifications to the complete satisfaction of the Director of Public Works.
- 15.9 The Developer agrees to decommission any existing water services to the satisfaction of the Director of Public Works.

## **16. STORM DRAINAGE SYSTEM**

- 16.1 The Developer shall construct a storm drainage and storm water management system to adequately service the Lands and all or any portion of the ultimate drainage area in which the Lands are located. This system shall be constructed in accordance with the Plans approved by the Director of Public Works, the Region of Niagara Planning & Development Department and the Ministry of the Environment, and the construction and materials used therein shall be in accordance with the Town's most recent specifications therefor.
- 16.2 All storm sewer Works shall be flushed and cleaned by high velocity sewer flushing equipment:
- a) after placement of the base course asphalt upon the streets in the Plan of Subdivision; and,
  - b) upon receipt of any written notice from the Director of Public Works.
- 16.3 All storm sewer Works shall be inspected and videoed via closed circuit TV to the satisfaction of, and upon any written notice from, the Director of Public Works and prior to assumption of the storm sewer Works by the Town. In the event the results are not satisfactory in the sole opinion of the Director of Public Works, the Developer shall take such remedial steps as may, in the sole opinion of the Director of Public Works, be required.
- 16.4 Prior to the Director of Public Works approving the issuance of the Completion Certificate for Primary Services, the Developer shall supply the Director of Public Works with "as constructed drawings" showing the location and depth of the storm sewer lateral constructed to service each Lot.

## **17. STORMWATER MANAGEMENT FACILITIES**

- 17.1 The Developer agrees that prior to the Town executing this Agreement the Developer shall prepare and provide a Storm Water Management Report which shall be submitted for approval by the Director of Public Works, the Region of Niagara Planning & Development Department, the Ministry of the Environment and the Region of Niagara Public Works Department, indicating the following:
- a) the manner in which storm water will be conveyed across the Lands in both major and minor storms, using storm water management techniques that are in accordance with the Provincial guidelines contained in "Storm Water Management Practices Planning & Design Manual - June 1994" (Ministry of Environment) and the latest revision thereof or such more stringent standards as may be applicable;
  - b) an assessment of downstream and upstream constraints and how these constraints can be addressed (at a minimum the storm water management system must provide Level 1 protection for downstream fisheries and resources); and,
  - c) an Erosion and Sediment Control Plan for the development of the Lands whereby erosion and sediment and their effects will be minimized on site during and after construction in accordance with the "Ontario Guidelines on Erosion and Sediment Control for Urban Construction Sites" May 1987 and the latest revision thereof or such more stringent standards as may be applicable.
- 17.2 The Developer shall prepare and provide a Subdivision Grading Plan in accordance with Section 28 hereof indicating the existing and proposed



grades as well as the means whereby major system flows will be conveyed across the Lands. The 100-year flood level shall be plotted on the Plan to ensure that all structural development will be located above this elevation.

- 17.3 The Developer agrees to carry out or to have carried out all storm water management techniques and Works necessary and/or required to convey storm water runoff from the Lands in accordance with the approved Subdivision Grading Plan and Storm Water Management Plan to the complete satisfaction of the Director of Public Works and the Region of Niagara Planning & Development Department.

## **18. WATER DISTRIBUTION SYSTEM**

- 18.1 The Developer shall construct a complete water supply and distribution system, including valves, valve boxes, fire hydrants, service connections, curb stops and boxes, blow offs and ground hydrants as may be required, for the purpose of servicing the Plan of Subdivision. The water distribution system shall be constructed in accordance with the Plans approved by the Director of Public Works, the Region of Niagara Public Works Department and the construction and materials shall be in accordance with Town's most recent specifications therefor. All work on water distribution system shall be performed in accordance with Ontario Regulation 170/03 made under the *Safe Drinking Water Act*, 2002, S.O. 2002, c.32, as amended and the Town's DWWP and DWWL. The Developer shall install, charge, test and maintain fire hydrants as required by the approved Plans and specifications in accordance with this Agreement to the complete satisfaction of the Town of Pelham Fire Department and the Director of Public Works.
- 18.2 The Developer shall install, charge, test, and maintain fire hydrants as required by the approved Plans and specifications in accordance with this Agreement to the complete satisfaction of the Town of Pelham Fire Department and the Director of Public Works.
- 18.3 The water supply and distribution system shall be designed to accommodate residential and fire flows with the minimum size of 150 mm in diameter.
- 18.4 All water mains shall be flushed, chlorinated, pressure tested, and bacterial tested in accordance with Town standards and to the satisfaction of the Director of Public Works prior to approval of the Completion Certificate for Primary Services.
- 18.5 The operation of valves which cause the water mains within the Plan of Subdivision to be charged from existing municipal water mains SHALL ONLY be carried out by Town Staff. All work on water distribution system shall be performed in accordance with Ontario Regulation 170/03 made under the *Safe Drinking Water Act*, 2002, S.O. 2002, c.32, as amended and the Town's DWWP and DWWL. The Town has an approved Quality Management System for the Pelham Distribution System and the Developer and its contractors shall be aware and informed of the Quality Management System.
- 18.6 The Developer shall, prior to the Director of Public Works approving the issuance of the Completion Certificate for Primary Services, supply the Director of Public Works with "as constructed drawings" showing the location and depth of the water connections constructed to service each of the Lots.

## **19. SIDEWALKS**

- 19.1 The Developer shall, at its sole expense, construct, install and complete concrete sidewalks in accordance with the approved Plans filed and specifications therefor.
- 19.2 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, except between November 15<sup>th</sup> and April 15<sup>th</sup> at which time the sidewalks must be installed as soon as possible, at the locations shown on the Plans and in accordance with the approved Subdivision Grade Control Plan or as amended by the Director of Public Works. The sidewalks are to be

constructed in their entirety in block long sections.

## **20. DRIVEWAY APPROACHES**

- 20.1 Each Lot and Block shall be serviced with a driveway approach constructed in accordance with the Plans filed to the complete satisfaction of the Director of Public Works.
- 20.2 The 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.
- 20.3 All driveway approaches (aprons) between the curb line and the sidewalk, or in the absence of a sidewalk between the curb line and the Street Line, shall be installed and paved by the Developer by no later than the 1<sup>st</sup> day of November in the year after the year in which the Buildings served by the driveway approaches are occupied in accordance with the approved plans and specifications therefor prior to the Director of Public Works approving the Completion Certificate for Secondary Services.
- 20.4 All driveway approaches shall be constructed to the satisfaction of the Director of Public Works prior to the assumption of the Plan of Subdivision and no curbstops shall be allowed in driveways.

## **21. FENCING**

The Developer shall, at its sole expense, construct fencing in accordance with the approved Plans filed and specifications therefor.

## **22. STREET AND TRAFFIC SIGNS**

- 22.1 The Developer shall erect and maintain temporary traffic signs and such other traffic control devices to the satisfaction of the Director of Public Works during the construction period.
- 22.2 The Developer shall pay for all permanent street and traffic signs and other traffic control devices, required by the approved Plans and to the satisfaction of the Director of Public Works, in accordance with Schedule "F" annexed hereto. The Town shall be responsible to supply and install all permanent street and traffic control signs to the current standards of the Town.

## **23. ELECTRICAL DISTRIBUTION SYSTEM AND STREET LIGHTING**

- 23.1 The Developer shall arrange with Niagara Peninsula Energy/Hydro One Networks Inc. for the design provision and installation of all electrical transmission and distribution system and street lighting system required to service all of the Lots shown on the Plan with electrical power in accordance with the plans and specifications therefor approved by Niagara Peninsula Energy/Hydro One Networks Inc. and the Director of Public Works. All such facilities shall be installed underground unless specific external systems are approved by Niagara Peninsula Energy/Hydro One Networks Inc. and the Director of Public Works. The cost of providing such facilities shall be borne by the Developer.
- 23.2 The Developer shall arrange with Niagara Peninsula Energy/Hydro One Networks Inc. for local electrical supply connections and appurtenances thereto from the distribution system to terminals on abutting private property. The wiring for such service connections shall be underground. The cost of providing such service connections and appurtenances shall be borne by the Developer and the Developer shall pay the cost thereof to Niagara Peninsula Energy/Hydro One Networks Inc. upon receipt of a statement of account therefor.
- 23.3 The Developer shall design and provide a decorative street lighting system to the satisfaction of the Director of Public Works and the Director of Community Planning and Development.

- 23.4 Prior to the Director of Public Works approving the Certificate of Final Acceptance for Primary Services, the Developer shall deliver to the Town satisfactory proof of installation and construction of the aforesaid electrical transmission and distribution system and the street lighting system, which shall have been approved and/or accepted by a utility supplier satisfactory to the Town, and upon Council passing the Assumption By-law the Town will assume the street lighting system into the Town's street light inventory. Energizing of the street lights will be undertaken by Town staff.

## **24. UTILITY SERVICES**

- 24.1 All Utility Services required to service the Plan of Subdivision, including, without restricting the generality of the foregoing, gas, electrical, telephone cables and coaxial cables, shall be installed underground from the source with pad-mounted transformers.
- 24.2 The Developer shall be responsible for providing, at its sole expense, Utility Services to each Lot and Block in accordance with the approved Plans. All Utility Services shall be installed and constructed prior to the Director of Public Works approving the Completion Certificate for Primary Services.
- 24.3 The Developer shall, prior to the Director of Public Works approving the issuance of the Completion Certificate for Primary Services, supply the Director of Public Works with "as constructed drawings" showing the location of all Utility Services required to service the Plan of Subdivision.

## **25. TREE PLANTINGS**

- 25.1 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 retain the maximum number of trees within the lands consistent with good design and conservation practices and the East Fonthill Secondary Plan Area Urban Design Guidelines and to provide tree plantings in accordance with the approved Streetscaping Plan to the satisfaction of the Director of Public Works in accordance with the following:
- a) one (1) tree per Lot and two (2) trees per side yard flankage shall be planted in the sodded/hydroseeded portion of the street allowance between the Front Lot Line and the roadway in accordance with the Plans. Trees shall be sound, healthy, vigorous and free from disease with normally healthy root systems; and,
  - b) trees should be 50mm caliper, balled and burlapped at planting.
- 25.2 In accordance with Schedule "F" annexed hereto, prior to registration of this Agreement by the Town, the Developer shall provide security in the form of a Letter of Credit to the Town for Tree Planting within the subdivision, for the cost of replacing and maintaining trees within the Plan.
- 25.3 The Developer shall be solely responsible for acquiring and planting trees in accordance with the terms of this Agreement and in accordance with the approved Streetscaping Plan to the satisfaction of the Director of Public Works and shall deliver written notice to the Town that such work has been completed. All trees shall be planted within nine (9) months of occupancy on each respective lot.
- 25.4 The Developer shall be solely responsible for maintaining all tree plantings in a healthy state on boulevards until such time as Council passes an Assumption By-law.
- 25.5 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 of Public Works, 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.

## **26. LANDSCAPING**

- 26.1 The Developer shall grade and place a minimum of one hundred (100) millimetres of topsoil with No. 1 nursery sod/hydroseed on all portions of road allowances in the Plan of Subdivision not covered by asphalt or sidewalks and along all sides of the Plan of Subdivision abutting on adjacent existing streets. All streetscaping shall be in accordance with the approved Plans to the satisfaction of the Director of Public Works. All sodding/hydroseeding as herein described shall be considered as part of the cost of construction of Secondary Services for the Plan of Subdivision and shall be completed at the time of or within three (3) months after the final sodding/hydroseeding of any Lot in accordance with the approved final lot grading certificate and prior to the Director of Public Works approving the Completion Certificate for Secondary Services. The Developer shall maintain all sod/hydroseed until Council passes the Assumption By-law.
- 26.2 The Developer is responsible for ensuring that each Lot or Block within the Plan of Subdivision is:
- a) fine graded in accordance with the approved individual Lot Grading Plans for each lot; and,
  - b) sodded with No. 1 nursery sod or hydroseeded within six (6) months of initial occupancy of the Building, in all areas of the Lot or Block including front yards, side yard and rear yards not covered by structure, driveway or walkway; and that all sodding/hydroseeding is maintained until it has become established.
- 26.3 Unless exempted by the Director of Public Works, all lands conveyed to the Town (including but not limited to parks, channels, and stormwater management facilities) shall be serviced, hydroseeded, and landscaped in accordance with the approved Streetscaping, and Landscaping Plans. The improvements are considered as part of the Secondary Services of the Plan of Subdivision. Once the lands have been hydroseeded and landscaped and approved by the Director of Public Works the Town will maintain the lands.

## **27. EROSION AND SEDIMENTATION CONTROL**

- 27.1 The Developer agrees to implement the approved erosion and sedimentation and control plans and lot grading and drainage plans to the satisfaction of the Town, Niagara Region.
- 27.2 The Developer agrees to re-vegetate or otherwise restore all disturbed areas immediately upon the completion of on-site grading to the satisfaction of the Town.

## **28. SUBDIVISION GRADING AND DRAINAGE**

- 28.1 Unless otherwise approved or required by the Town, the Developer, its heirs, executors, administrators, successors and assigns hereby irrevocably undertake not to alter the grades or remove trees or other vegetation from the Lands until such time as:
- a) the Town has agreed in writing to such alteration or removal; and,
  - b) the Town has approved the Subdivision Grading Plan pursuant to the terms of this Agreement and the Town's Lot Grading and Drainage Policy and amendments thereto; and,
  - c) prior to execution of this Agreement by the Town or commencing any phase of development, and in accordance with the Town's Lot Grading and Drainage Policy and amendments thereto, the Developer shall prepare and provide the Town, as part of the engineering drawings, a Subdivision Grading Plan for the purpose of controlling the overall drainage pattern in the Plan of Subdivision. The Subdivision Grading Plan shall be prepared in conformance with the Town's Lot Grading and Drainage Policy and amendments thereto.

- 28.2 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 of Public Works has agreed in writing to such alteration or removal and the Director of Public Works has approved a Subdivision Grade Control Plan pursuant to the terms of this Agreement.
- 28.3 The following grading works shall be completed prior to the issuance of any Building Permits:
- a) construction and hydroseeding of all major overland flow drainage swales and other erosion control devices to the satisfaction of the Director of Public Works for the Plan of Subdivision, subject to weather conditions; and,
  - b) rough grading of all Lots to generally conform to the Subdivision Grading Plan.
- 28.4 If drainage problems arise which are as a result of non-compliance with the requirements of the Town's Lot Grading and Drainage Policy and amendments thereto, the Developer shall within forty-eight (48) hours of receiving notice thereof correct the problems. Without limiting its remedies at law or in equity, the Town may enter upon the Lands to remedy any such problem and may use the Subdivider's Grading Deposit to cover the costs of any remedial works deemed necessary. Any costs of these remedial works in excess of the amount of the Subdivider's Grading Deposit shall be the responsibility of the Developer, and if not reimbursed to the Town forthwith after being incurred by the Town, the Town may collect such costs in like manner as municipal taxes as provided in the *Municipal Act* and with the same priorities as taxes that are overdue and payable.
- 28.5 The Developer shall deposit with the Town as security for carrying out the provisions of the Subdivision Grading Plan, in accordance with Schedule "F" annexed hereto, a Subdivider's Grading Deposit as required by the Town's Lot Grading and Drainage Policy and amendments thereto.
- 28.6 Upon completion of the Works and acceptance by the Town of a Subdivision Grading Conformance Certificate prepared and signed by an Ontario Land Surveyor or Professional Engineer, the Developer may apply in writing for release of the Subdivider's Grading Deposit, less any cost for remedial work undertaken by the Town.

## **29. LOT GRADING AND DRAINAGE**

- 29.1 Prior to the issuance of a Building Permit for a Lot or Block, the Owner or the Building Permit applicant shall submit to the Town three copies of a proposed Lot Grading Plan prepared by a Professional Engineer or an Ontario Land Surveyor and shall conform to the Subdivision Grading Plan.
- 29.2 Prior to issuance of a building permit for a Lot or Block, the Owner or the Building Permit applicant shall submit to the Town as security for carrying out the provisions of the Lot Grading Plan a Lot Grading Deposit in the amount of \$1,000.00 per Lot or Block.
- 29.3 Upon acceptance of the Grading Conformance Certificate by the Town, the Owner or the Building Permit applicant may apply in writing for release of the Lot Grading Deposit, less any cost of remedial work performed by the Town.
- 29.4 The grading of a Lot or Block shall be considered complete when the building has been erected and such Lot or Block has been graded and sodded or hydroseeded. Sodding or hydroseeding shall be done within two months after occupancy of the dwelling or by the next June 1st following occupancy should occupancy take place after November 1st.

- 29.5 Upon completion of the grading, prior to landscaping or fencing, the Developer shall submit to the Town one copy of the Lot Grading Plan which shall indicate the finished elevation as shown on the proposed Lot Grading Plan. This "as constructed" Lot Grading Plan shall be prepared and certified by a Professional Engineer or Ontario Land Surveyor.
- 29.6 Once the "as constructed" grading of a Lot has been certified and signed by an Ontario Land Surveyor or Professional Engineer to be in conformance with the latest revision of the Subdivision Grading Plan, the Lot Grading Plan if approved by the Town, shall be accepted and dated by the Town, as the "Grading Conformance Certificate."
- 29.7 The Developer, its heirs, executors, administrators, successors and assigns hereby irrevocably undertake to maintain the grading and drainage schemes as established and verified by the Grading Conformance Certificate and not to alter or revise the grading or drainage without the express written consent of the Director of Public Works or the Chief Building Official.
- 29.8 The Developer agrees that foundation drains shall be pumped by a sump pump in each house discharging via storm laterals. The Developer covenants and warrants that foundation drains will not be connected to the sanitary sewer system.
- 29.9 The Developer agrees that roof water drainage from any structure or building shall be directed via downspouts discharging via splash pads (concrete or other suitable material) to grass surfaces. These splash pads shall extend a distance at least 1.2 metres away from the structure and must direct the flow away from the building, not onto walks or driveways, and not towards adjacent property.
- 29.10 If required, the Developer agrees to submit a plan for approval to the Director of Public Works, detailing the basement control elevations for individual dwellings or structures within the Plan of Subdivision and to ensure compliance with approved basement control elevations.

### **30. PRIMARY SERVICES AND COMPLETION CERTIFICATE FOR PRIMARY SERVICES**

- 30.1 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 of Public Works may extend the time for the completion of the Primary Services or any of them for such length of time as they may deem expedient upon the written application of the Developer.
- 30.2 Primary Services installation will not be considered complete by the Town until an inspection has been made by the Director of Public Works, or designate, and the Completion Certificate for Primary Services has been issued by the Director of Public Works. The Director of Public Works shall be accompanied during their inspection by the Developer's Consulting Engineer. The Works shall be inspected and all deficiencies rectified to the complete satisfaction of the Director of Public Works, prior to the approval of the Completion Certificate for Primary Services.
- 30.3 The performance by the Developer of its obligations hereunder to the satisfaction of the Director of Public Works shall be a condition precedent to the acceptance by the Town of the Works or any of them.
- 30.4 Prior to the Director of Public Works approving the Completion Certificate for Primary Services, the documentation listed in Sections 30.5, 30.6, 30.7 must be provided to the Director of Public Works in a single submission package. Only one reduction shall be permitted prior to issuance of the final completion certificate.
- 30.5 The Developer's Consulting Engineer shall provide to the Director of Public Works:

- a) certificate(s) verifying that all Primary Services were installed and constructed in accordance with approved plans and specifications;
- b) certificate(s) stating that all water mains have been flushed, chlorinated and pressure tested in accordance with Town standards;
- c) certificate(s) stating that all water main tracer wires have been tested and the new water distribution system can be traced;
- d) certificate(s) stating that all fire hydrants servicing the development have been tested by a qualified hydrant testing agent;
- e) copies of the hydrant test reports and fire flow test reports;
- f) certificate(s) stating that all storm and sanitary sewers have been flushed after placement of base course asphalt, air pressure tested, and inspected and videoed via close circuit T.V.;
- g) copies of the storm and sanitary sewer inspection video tape(s) and documentation;
- h) certificate stating that the approved Tree Preservation Plan, if required, has been complied with including a Clearance Letter from the Region;
- i) certificate(s) stating that all utility services required to service the Plan of Subdivision are installed & constructed or a letter of commitment to complete the utility services from utility companies;
- j) certificate (Overall Grading Certificate) stating that rough grading and major drainage works or swales have been completed in accordance with the Subdivision Grade Control Plan;
- k) the original drawings showing each of the said works "As Constructed" together with electronic drawing files in AutoCAD format and PDF format using Town of Pelham Drafting Standards; and,
- l) plans (cards) showing the location and depth of each sanitary sewer lateral, storm sewer lateral and water service lateral constructed to service each of the Lots or Blocks.

30.6 The Developer shall provide the Director of Public Works with:

- a) a Statutory Declaration from the Developer in a form satisfactory to the Director of Public Works setting out the Works completed and verifying:
  - 1. all such works have been completed in accordance with the terms of this Agreement and the approved plan and specifications;
  - 2. all accounts have been paid for installation, construction, inspection, repair and maintenance of such Works; and,
  - 3. that there are no outstanding debts, claims, or liens in respect of such works.

30.7 The Developer shall provide the Town with the Maintenance Guarantee, as required by Section 38 hereof.

30.8 Subject to Sections 30.5, 30.6, 30.7 hereof, upon receipt of the required documentation and the Director of Public Works' satisfaction that the installation and construction of all Primary Services related to Town land has been completed in accordance with this Agreement and approved Plans, the Director of Public Works, shall date and approve the Completion Certificate for Primary Services.

### **31. SECONDARY SERVICES AND COMPLETION CERTIFICATE FOR SECONDARY SERVICES**

31.1 With the exception of the asphalt surface course and the sodding/hydroseeding required by Sections 26.1 and 26.2, all Secondary Services, including hydroseeding and landscaping required by Sections 26.3 and 26.4, shall be completed within eighteen (18) months after the date of the

registration of the Plan of Subdivision. The Director of Public Works may extend the time for completion of the Secondary Services or any of them for such length of time as they may deem necessary upon the written application of the Developer.

- 31.2 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 Completion Certificate for Primary Services or as directed by the Director of Public Works.
- 31.3 Secondary Services installation will not be considered complete by the Town until an inspection has been made by the Director of Public Works or designate and the Completion Certificate for Secondary Services has been issued by the Director of Public Works. The Director of Public Works shall be accompanied during their inspection by the Developer's Consulting Engineer. The Works shall have been inspected and all deficiencies rectified to the complete satisfaction of the Director of Public Works, prior to the approval of the Completion Certificate for Secondary Services.
- 31.4 The Town may withhold approval of a Completion Certificate if, in the sole opinion of the Director of Public Works, the Developer is in default of its obligations pursuant to this Agreement or the approved Plans.
- 31.5 Prior to the Director of Public Works approving the Completion Certificate for Secondary Services, the documentation listed in Sections 31.5 and 31.6 must be provided to the Director of Public Works in a single submission package. Only one reduction shall be permitted prior to issuance of the final completion certificate.

The Developer's Consulting Engineer shall provide to the Director of Public Works:

- a) certificate(s) verifying that all secondary services have been installed, fully completed, repaired and maintained in accordance with approved plans and specifications; and,
  - b) if required, the original Drawings showing each of the said works" as constructed" together with electronic drawing files in AutoCAD format and PDF format using Town of Pelham Drafting Standards.
- 31.6 The Developer shall provide the Director of Public Works with a Statutory Declaration from the Developer in a form satisfactory to the Director of Public Works setting out the Works completed and verifying:
- a) all such works have been completed in accordance with the terms of this Agreement and the approved plan and specifications;
  - b) all accounts have been paid for installation, construction, inspection, repair and maintenance of such Works; and,
  - c) that there are no outstanding debts, claims or liens in respect of such works.
- 31.7 Subject to Sections 31.5 and 31.6 hereof, upon receipt of the required documentation and the Director of Public Works' satisfaction that the installation and construction of all Secondary Services has been completed in accordance with this Agreement and approved Plans, the Director of Public Works shall date and approve the Completion Certificate for Secondary Services.

## **32. MAINTENANCE OF THE SUBDIVISION**

- 32.1 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, water mains and appurtenances, storm water 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.

- 32.2 The Developer shall, at its own expense and to the satisfaction of the Director of Public Works, 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 Completion Certificate of Primary Services or until the date of issuance of the Final Certificate of Completion of Services, whichever is later.
- 32.3 The Developer shall guarantee all Secondary Services including any repairs and maintenance performed by it pursuant to Section 32.2 or by the Town pursuant to Section 11.1 for a minimum period of twelve (12) months from the date of completion of said services, notwithstanding that the three (3) year period of maintenance provided under Section 32.2 may have elapsed.
- 32.4 The Developer shall be responsible for the general tidy appearance of the entire Lands until completion of all building, and carry out all weed cutting and maintenance on all unsold lands and all unassumed roads to the satisfaction of the Director of Public Works.
- 32.5 The Developer shall adequately maintain all roads, sidewalks and pedestrian walkways within the Plan of Subdivision free from mud, debris, building materials, and other obstructions, to the satisfaction of the Director of Public Works until Council passes an Assumption By-Law.
- 32.6 The Developer shall be responsible to control weeds and to maintain vacant lands free from debris, waste building materials, tree stumps, discarded boulders, and other refuse, and shall notify any purchaser, in writing, to refrain from dumping on such vacant lands, including lands dedicated by it to the Town for municipal purposes.
- 32.7 Should the Developer, for any reason, fail to carry out the repairs or maintenance, including weed control, when requested by the Town, the Director of Public Works, at their sole option, after giving the Developer twelve (12) hours written notice, may perform the repairs or maintenance and all costs, charges and expenses so incurred shall be borne by the Developer. The decision of the Director of Public Works shall be final as to the necessity of repairs or of any work done or required to be done. Any costs incurred by the Town not reimbursed by the Developer forthwith may be collected by the Town in like manner as municipal taxes as provided in the *Municipal Act* and with the same priorities as taxes that are overdue and payable.
- 32.8 The Developer's obligation to maintain the Works as aforesaid shall commence on the approval date of the Final Certificate of Completion of Services and extend for a minimum of one (1) year or until the Director of Public Works approves the Final Certificate of Completion of Services whichever occurs last (this period is herein referred to as the "Maintenance Guarantee Period").
- 32.9 The Maintenance Guarantee Period for Primary Services shall commence on the date the Director of Public Works approves the Completion Certificate for Primary Services. The Developer shall, at its own expense and to the satisfaction of the Director of Public Works, 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 Completion Certificate for Primary Services or until the date of issuance of the Final Certificate of Completion of Services, whichever is later.
- 32.10 The Maintenance Guarantee Period for Secondary Services shall commence on the date the Director of Public Works approves the Completion Certificate for Secondary Services. The Developer shall guarantee all Secondary Services including any repairs and maintenance performed by it pursuant to Section 32.2 or by the Town pursuant to Section 11.1 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 32.2 may have elapsed.

### 33. CERTIFICATE OF FINAL ACCEPTANCE

- 33.1 After the expiry of the maintenance period provided for in Section 32.3 hereof, the Town shall, subject to the compliance by the Developer with Section 33.3 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 of Public Works, the Developer is in default of its obligations to repair, construct or maintain any of the Works pursuant to this Agreement. Upon expiration of the three year Maintenance Guarantee Period for Primary Services or the one year Maintenance Guarantee Period for Secondary Services and upon receipt of written application by the Developer, the applicable Works will be inspected by the Director of Public Works, and provided all deficiencies have been rectified to his satisfaction and the Developer is not in default of the terms of this Agreement, the subject Works shall be accepted by the Town and the Director of Public Works shall approve the Certificate of Final Acceptance prepared by the Developer's Consulting Engineer provided the requirements of the Certificate of Final Acceptance have been met.
- 33.2 The Developer is required to submit a certificate from a registered Ontario Land Surveyor certifying they have found and/or replaced all standard iron bars (SIB's) shown on the registered Plan of Subdivision as of a date not earlier than seven days prior to the Director of Public Works approving the Certificate of Final Acceptance for Secondary Services.
- 33.3 The application, in writing, by the Developer for the Final Certificate of Completion of Services shall include the following:
- a) a statutory declaration in a form satisfactory to the Director of Public Works 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; and,
  - b) a Certificate in a format acceptable to the Director of Public Works 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 and the Plans as approved by the Director of Public Works.
- 33.4 If upon inspection of the Works all deficiencies have not been rectified to the complete satisfaction of the Director of Public Works, the Maintenance Guarantee Period shall be extended until such time as all deficiencies have been rectified and the Certificate of Final Acceptance has been approved by the Director of Public Works.
- 33.5 The Director of Public Works may withhold approval of a Certificate of Final Acceptance for Primary or Secondary Services, if, in the sole opinion of the Director of Public Works, the Developer is in default of its obligations to inspect, repair, construct, or maintain any of the Works pursuant to this Agreement and the approved Plans.
- 33.6 The issuance by the Town of the Final Certificate of Completion of Secondary 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 of Public Works.
- 33.7 Upon the issuance of the Final Certificate of Completion of Primary and Secondary Services, the Director of Public Works 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.

### **34. ASSUMPTION OF MUNICIPAL SERVICES**

The Developer hereby acknowledges that upon assumption by the Town of the municipal services required to be installed and constructed by this Agreement and the approved Plans, all such municipal services shall wholly vest in the Town without payment therefor, free and clear of all claims and liens and the Developer shall have no right, title or interest therein. Municipal services shall be assumed by the Town by Council passing an Assumption By-law after the Director of Public Works approves the Certificate of Final Acceptance for Primary Services and the Certificate of Final Acceptance for Secondary Services.

### **35. BUILDING PERMITS AND OCCUPANCY**

35.1 The Developer/Owner covenants and agrees not to apply for building permits until:

- a) all Primary Services (including roadways to base asphalt and curbs) have been completed and are operational and a Completion Certificate for Primary Services has been approved to the satisfaction of the Director of Public Works;
- b) the Town has on file an approved Subdivision Grading Plan;
- c) the Developer has completed the following grading works:
  - i) rough grading of all Lots and Blocks to generally conform to the Subdivision Grading Plan;
  - ii) construction and hydroseeding of all major overland flow drainage swales and other erosion control devices deemed necessary by the Town for the Lands;
- d) the Town has on file an approved Proposed Lot Grading Plan;
- e) the Town is in receipt of all applicable fees and deposits including, without limiting the generality of the foregoing:
  - i) development fees at the prevailing rate as prescribed by the Town's Development Charges By-Law 3527 (2014) and amendments thereto;
  - ii) parkland dedication fees in accordance with By-law 3621 (2015);
  - iii) the Lot Grading Deposit;
  - iv) Building Permit application fee;
  - v) Plumbing Permit application fee;
  - vi) water meter fee;
  - vii) service main connection application and fee, if applicable; and,
  - viii) any other fees, deposits or payments required under this Agreement or as otherwise provided for under any other executed agreement between the Town and the Developer;
- f) the Town's Fire Department has confirmed that an adequate water supply for firefighting operations and satisfactory access for firefighting equipment is available to service the Lands;
- g) the Town is satisfied all terms and conditions of this Agreement have been complied with insofar as they apply at that point in time;
- h) the Developer/Owner has paid or otherwise satisfied all development charges required by the Development Charges By-Law of the Town of Pelham, and the Development Charges By-Law of the Regional

Municipality of Niagara, and the Development Charge of the Niagara District Catholic School Board; and,

- i) the Developer/Owner has otherwise complied with all applicable law.
- 35.2 The Developer/Owner agrees to comply with the East Fonthill Secondary Plan Area Urban Design Guidelines. The building's licensed Architect/Designer shall provide their stamp and a statement on the submitted plans that indicates the building complies with the East Fonthill Secondary Plan Area Urban Design Guidelines.
- 35.3 Notwithstanding anything herein contained, the Town may refuse to issue building permits if there is an existing default in any of the provisions of this Agreement.
- 35.4 Prior to making any connections, if required, to existing municipal services the Developer/Owner shall submit to the Town, completed Connection Permit applications and applicable fees for connection to existing sewer or water mains. No connection shall be made until the Connection Permits are approved by the Town's Public Works Department.
- 35.5 The Developer acknowledges and confirms that all charges, payments, Works to be constructed or installed, studies to be carried out and all other obligations contained in this Agreement or the cost thereof (except where a charge is referred to herein as "a development charge" are characterized as:
- a) services installed or provided at the expense of the Developer within the Plan of Subdivision, as a condition of approval under Section 51 of the *Planning Act*; or
  - b) services denoted on approved Plans or specifically noted in the Agreement for which the Developer is making no claim for credits under the Development Charge By-law except as otherwise provided for under other agreements between the Town and the Developer; and,
  - c) are not charges related to development within the meaning of the *Development Charges Act, 1997* except as otherwise provided for under other agreements between the Town and the Developer.
- 35.6 The Developer/Owner may construct 20 model units once the following Primary Services are completed: roads (base coat asphalt), watermain, and sanitary sewers.
- 35.7 Unless otherwise determined by the Chief Building Official, no dwelling, including model units, shall be occupied:
- a) until the Director of Public Works has approved the Completion Certificate for Primary Services;
  - b) until the Town has on file a Grading Conformance Certificate for the Lot; and,
  - c) until a final inspection has been completed and a Letter of Occupancy is issued by the Chief Building Official.
- 35.8 The Developer/Owner agrees to pay all applicable permit fees and unless otherwise satisfied pursuant to the terms of other agreements between the Town and the Developer, any development charges for the buildings or structures constructed as model units, and shall otherwise comply with Section 35 herein, prior to a Letter of Occupancy being issued for said units.
- 35.9 All new homes constructed shall be equipped with water meters at the sole expense of the Developer/Owner.

### 36. TENDERS, INSURANCE, AND BONDING

- 36.1 If required by the Town, the Developer shall call for tenders for the Works in accordance with the Town's Procurement Policy. Where the Town requires the Developer to call for tenders, any tender proposed to be accepted by the Developer shall not be accepted until same has been approved in writing by the Director of Public Works.
- 36.2 Prior to commencement of any Works, the Developer shall, at its own expense, provide the Town with:
- a) a certified copy of the Developer's third party All Perils and Liability Insurance Policy naming the Town as an additional insured in a form satisfactory to the Town as follows:
    - (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 deems advisable;
    - (ii) inclusion of the Town, its agents and servants and the Regional Municipality of Niagara as additional 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) a Certificate from the Worker's Safety Insurance Board certifying the contractor is in good standing with the Board; and,
  - c) satisfactory evidence the contractor is qualified, experienced and has the equipment to successfully complete the Works.

### 37. SECURITY DEPOSITS AND REFUNDS

#### Security Deposits

- 37.1 The Developer shall be responsible for the full amount of the cost for the design, construction, installation, servicing and maintenance of the Works for the Plan of Subdivision together with all Town inspection charges, administrative and consulting fees, engineering and legal costs and in order to guarantee compliance with all conditions contained herein, the Developer shall be required to post security and cash payments, in a form satisfactory to the Town, on accounts of aforesaid costs, charges and fees in accordance with Schedule "F" annexed hereto prior to execution of this Agreement by the Town. The security should be in the form of a standby Letter or Letters of Credit with **automatic renewal provision**, in a form approved by the Town. The Developer covenants and agrees that the Letter of Credit shall be kept in full force and effect and that it will pay all premiums as the Letter of Credit becomes due or until such time as the Town returns the Letter of Credit in accordance with the provisions of this agreement.
- 37.2 The Developer acknowledges and agrees that should there be a deficiency in or failure to carry out any work or matter required by any provision of this Agreement, whether or not such work or matter is specifically secured by way of Letter of Credit, and the Developer fails to comply within seven (7) days of

being given written notice with a direction to carry out such work or matter, the Town may draw on the Letter of Credit and enter onto the Lands and complete all outstanding works or matters, and pay all costs and expenses incurred thereby from the proceeds so drawn.

- 37.3 The Developer acknowledges and agrees that the Town reserves the right to draw on and use the proceeds from the Letters of Credit to complete any work or matter required to be done by the Developer pursuant to this Agreement. The Developer further acknowledges and agrees that, notwithstanding any provision to the contrary in this Agreement specifying the reduction or release of security, in the event that the Town determines that any reduction in the Letter of Credit would create a shortfall with respect to securing the completion of any work or matter remaining to be carried out by the Developer pursuant to this Agreement, the Town will not be obligated to reduce or release the Letter of Credit as by the particular provision until such time as such work is satisfactorily completed, or the Town has sufficient security to ensure that such work will be completed.
- 37.4 Whenever in this Agreement a Letter of Credit is required to be filed with the Town, the Developer may instead deposit cash or a certified cheque to be cashed in an amount equal to the Letter of Credit and such deposit shall be held by the Town as security in accordance with this Agreement provided that no interest shall be payable on any such deposit.
- 37.5 The Developer acknowledges that upon the transfer of any ownership of the Lands, the Town will not return any Letters of Credit or cash deposit required under this Agreement until the new Developer files a substitute Letter or Letters of Credit or cash or certified cheque in the required amounts with the Town.
- 37.6 The Developer acknowledges that for the purpose of determining the amount of security to be posted prior to execution, the Developer's Engineer shall provide the Town with an estimate of the cost of design, construction, supervision, inspection and maintenance of all Works. Security to be posted for Primary Services and Secondary Services and to cover Town inspection charges, engineering, administrative, legal, and consulting fees shall be calculated, in a manner satisfactory to the Director of Public Works, on the basis of the Developer's Engineer's estimated cost of design, construction, supervision, inspection and maintenance of all Works as set out in Schedule "F" annexed hereto. If in the opinion of the Town the cost estimate does not reflect current costs, the Town reserves the right to modify the estimate.
- 37.7 From time to time, upon written request, the Developer's Engineer shall 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 of Public Works 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 "F" annexed hereto by twenty percent (20%) of the original estimates or tender costs and the Developer shall be required to obtain, and the Developer hereby covenants to obtain, an amendment to the security to give effect thereto. 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.

#### **Cash Payments**

- 37.8 Prior to the execution of this Agreement by the Town, as security for payment of services to be rendered by the Town and its agents as required by this Agreement, and for presently outstanding payments owing to the Town, the Developer shall, in accordance with Schedule "F" annexed hereto, deposit with the Town cash payment and cash security as set out in Schedule "F", which security shall include, but not be limited to the following:
- a) 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 in accordance with the Town's applicable Fees and Charges By-law.

- b) 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
- c) a cash amount to cover all arrears of taxes and all current taxes and all local improvement charges assessed against the Lands described in Schedule "A" annexed hereto.

#### **Letters of Credit**

37.9 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 of Public Works and/or Director of Community Planning and Development, 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 "F" annexed hereto; 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.

37.10 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 of Public Works, 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 38 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, at the sole discretion of the Director of Public Works be reduced to an amount equal to the total of all amounts set out above. Only one reduction shall be permitted prior to issuance of the final completion certificate. 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 of Public Works and/or Director of Community Planning and Development; and,
- (3) proof of payment in a form satisfactory to the Director of Public Works and/or Director of Community Planning and Development of the amounts paid on account of the completed Works to the date of the application for reduction.

37.11 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*.

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

### 38. MAINTENANCE GUARANTEE

- 38.1 The Letter of Credit deposited by the Developer pursuant to Section 37 hereof may, upon the completion of the Primary Services, and prior to the assumption of the Works by the Town, at the Director of Public Works discretion, be reduced to an amount equal to ten percent (10%) of the completed Works (Schedule "F") plus one hundred and twenty per cent (120%) of the value, as estimated by the Director of Public Works, 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 32.2 and 32.3 have both expired.
- 38.2 The Letter of Credit may be realized upon by the Town if the Developer defaults in any payment or condition contained herein.
- 38.3 The Developer shall be conclusively deemed to be in breach of the covenant if, in the case of the cost of the Works or the fees of the Owner's/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 of Public Works in accordance with Section 39.2 hereof.

### 39. DEFAULT

- 39.1 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.
- 39.2 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.
- 39.3 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.
- 39.4 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:
- a) 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;
  - b) make any payment which ought 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;
  - c) 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;
  - d) 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;

- e) bring action to compel specific performance of all or any part of this Agreement or for damages;
- f) 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,
- g) exercise any other remedy granted to the Town under the terms of this Agreement or available to the Town in law.

39.5 Developer shall be deemed to be in Final Default if:

- a) the Town receives written notice from the Bank of its intension to not renew the Letter of Credit;
- b) the Developer has not made provision for renewal at least thirty (30) days prior to the date of maturity of any Letter of Credit posted;
- c) the Town receives written notice from the insurance company or the Developer's agent that any insurance policy filed by the Developer with the Town is being altered, cancelled, or allowed to lapse;
- d) the Developer has not made provision for renewal at least thirty (20) days prior to the date of expiry of any insurance policy, Performance and Maintenance Bond, or Labour and Material Payment Bond;
- e) upon sale of the Lands the new Developer has not delivered to the Town, replacement security deposits; or,
- f) the Developer fails to increase security as required by the provisions of this Agreement.

#### 40. INDEMNIFICATION

Until the Town passes a By-law assuming the Streets 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 of Public Works; 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.

#### 41. 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".

42. 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:

River Realty Development (1976) Inc.  
P.O. Box 576  
Niagara Falls, ON L2E 6V2

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.

43. SCHEDULES

The Schedules annexed hereto, being Schedules "A" to "I" inclusive, are a part of this Agreement. All Schedules are to be interpreted as if the contents thereof were included in the Agreement.

44. SPECIAL PROVISIONS

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

45. 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.

46. BINDING EFFECT

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.

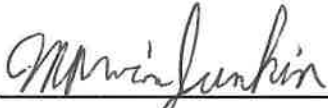
IN WITNESS WHEREOF THE Parties hereto have executed this Agreement as of the date and year first above written.

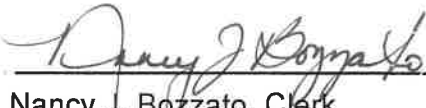
SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

) RIVER REALTY DEVELOPMNET (1976) INC.  
)  
)  
) Print Name: John Mesfel  
)  
)  
) Signature: 

)  
) ☒ I have authority to bind the Corporation.  
)  
)

) **THE CORPORATION OF THE TOWN OF**  
) **PELHAM**  
)

)   
) \_\_\_\_\_  
) Marvin Junkin, Mayor  
)

)   
) \_\_\_\_\_  
) Nancy J. Bozzato, Clerk  
)

***SCHEDULE "A"***

***LEGAL DESCRIPTION***

64063-0460 (LT)

Firstly: Part of Lot 167, Thorold, being Part 1 on 59R16072, together with an easement over Parts 4 and 5 on 59R15473 as in SN482259; Secondly: Part of Township Lot 166, Thorold, being Part 1 on 59R15596; Thirdly: Part Thorold Township Lot 166 being Part 1 on 59R16096; Fourthly: Part of Lot 166, Township of Thorold, being Part 1 on 59R15462 except Part 1 on 59R15499, Parts 2 and 3 on 59R15473 and Part 2 on 59R16193; together with an easement over Part 3 on 59R15473 as in SN482260; in the Town of Pelham, Regional Municipality of Niagara

***SCHEDULE "B"***

***LANDS CONVEYED FOR PUBLIC PURPOSES***

All references to Blocks and Lots relate to 59M- 471

The Developer shall convey free and clear of all encumbrances and at its own expense the following lands to The Corporation of the Town of Pelham:

1. Block 59 for a future laneway.
2. Blocks 48-58 for 0.3 metre reserve.

***SCHEDULE "C"***

***REQUIRED MUNICIPAL EASEMENTS***

All references to Parts, Blocks, and Lots relate to 59R- \_\_\_\_\_

The Developer shall convey free and clear of all encumbrances and at its own expense, an easement to The Corporation of the Town of Pelham; over, under and through:

Parts 14 through 27 for street lighting purposes;  
Parts 1 through 13 for storm water purposes;

Easement over

***SCHEDULE "D"***

***REQUIRED UTILITY EASEMENTS***

All references to Parts, Blocks, and Lots relate to 59R-

The Developer shall convey free and clear of all encumbrances and at its own expense, an easement to N/A; over, under and through:

**SCHEDULE "F"**

**FINANCIAL OBLIGATIONS AND COST OF CONSTRUCTION**

<b>PRIMARY SERVICES</b>				
General grading			\$55 700.00	
Sanitary system			\$122 805.00	
Water system			\$111 330.00	
Storm system			\$306 856.30	
Preliminary Roads			\$377 845.00	
Street lights			\$190 833.00	
Lay by parking - Summersides Boulevard			\$26 926.88	
<b>Subtotal for Primary Security Purposes</b>			<b>\$1 192 296.18</b>	
Contingencies (5%)			\$59 614.81	
Engineering (10%)			\$119 229.62	
<b>Subtotal Primary Servicing, Engineering and Contingency</b>			<b>\$1 371 140.61</b>	
<b>TOTAL PRIMARY SERVICES COST</b>			<b>\$1 371 140.61</b>	
<b>Letter of Credit for Primary Services (20%)</b>			<b>\$274 228.12</b>	(1)
<b>SECONDARY SERVICES</b>				
Hot mix asphalt including clearing and sweeping, flushing, removal of filets, padding and adjustments of manholes, water valves and appurtenances			\$59 196.06	
Concrete sidewalk including wheelchair ramps			\$136 825.00	
Tactile warning strips			\$7 000.00	
Asphalt driveway aprons			\$80 400.00	
Topsoil and sod boulevards			\$44 100.00	
Tree planting	79	Each \$350	\$27 650.00	
Curb and Gutter at catchbasins or double catchbasins			\$10 500.00	
Top Asphalt Parking Lay By and South Half – Summersides Boulevard			\$21 887.36	
<b>Subtotal for Secondary Security Purposes</b>			<b>\$387 558.42</b>	
Contingencies (5%)			\$19 377.92	
Engineering (10%)			\$38 755.84	
<b>Subtotal Secondary Servicing, Engineering and Contingency</b>			<b>\$445 692.18</b>	
<b>TOTAL SECONDARY SERVICES COST</b>			<b>\$445 692.18</b>	
<b>Letter of Credit for Secondary Services (120%)</b>			<b>\$534 830.62</b>	(2)
<b>TOWN FEES</b>				
Town Administration Fee- Subdivision Agreement Fee			\$73 027.15	(3)
Singer's Drain Allotment	4.497 ha	\$1 200 /ha	\$5 396.40	(4)
Street Signs	12	each \$500	\$6 000.00	(5)
Traffic Signs- stop signs	6	each \$500	\$3 000.00	(6)
Dead End Road Signs	8	each \$500	\$4 000.00	(7)
Oversizing of Stormwater Facility and Storm Sewer / Summersides Boulevard			\$458 718.00	(8)
<b>SUMMARY</b>			\$550 141.55	
<b>LETTER OF CREDIT REQUIRED (1)+ (2)</b>			<b>\$809 058.74</b>	
<b>CASH PAYMENT REQUIRED (3) + (4) + (5) + (6) + (7) + (8)</b>			<b>\$550 141.55</b>	



## **SCHEDULE "G"**

### **SPECIAL PROVISIONS**

1. All references to Lots and Blocks in this Agreement are to be the Plan of Subdivision (59M - 471\_\_ ) and all references to Easements in this Agreement are to be the Compiled Easement Plan (59R-\_\_\_\_\_ ).
2. Prior to registration of this Agreement by the Town, the Developer shall file with the Director of Community Planning and Development, an Ontario Land Surveyor's Certificate verifying all Lots as laid out on the Proposed Plan of Subdivision meet or exceed the minimum Lot area and Lot frontage provisions of the Town's Zoning By-law.
3. 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, sanitary sewers, watermain, 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."***
4. The Developer acknowledges and 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."***
5. The Developer acknowledges and agrees to insert into all offers and agreements of purchase and sale the following clause:  
  
***"All building roof downspouts and sump pump discharge within this subdivision shall discharge only to ground surface via splash pads to either side or rear yards, with no direct connection to the storm sewer or discharge directed to the driveway or roadway."***
6. The Developer acknowledges and agrees to insert into all offers and agreements of purchase and sale the following clause:  
  
***"Public sidewalk construction at the Developer's expense shall be in accordance with the terms of the Subdivision Agreement and the approved plans on file at the Town."***
7. The Developer acknowledges and agrees that all offers and agreements of purchase and sale the following clause:  
  
***"The Developer shall be responsible for installing paved driveway aprons (maximum 6.0m wide) from curb to the property line or from the curb to the sidewalk within municipal road allowances."***
8. The following warning clause regarding all the lots within the subdivision shall hereby be registered on title to the lands:  
  
***"All persons intending to acquire an interest in the real property by purchase or lease on this development are advised of the presence of a storm water management facility which will be subject to storm water flows and periodic flooding due to seasonal rainfall and snowmelt. Portion of these lands may be impacted by fast flowing water, ponding, insect and animal habitat and odours associated with their designed use."***

9. 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 submit 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 or surface drainage pattern on a lot or block without explicit written permission from the Town's Director of Public Works. All swales are for storm water 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. 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 storm water management works, the Town shall have such rights as are prescribed by the Subdivision Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 2019 and registered the \_\_\_\_\_ day of \_\_\_\_\_, 2019."*

10. The Developer shall co-ordinate the preparation of an overall utility distribution plan and make arrangements to the satisfaction of all affected authorities for the provision of underground utility services internal and external to this development.
11. The Developer shall enter into any agreement as required by utility companies for installation of services, including street lighting, all in accordance with the standards of the Town of Pelham. All utilities servicing the subdivision shall be underground. Upon installation and acceptance by the Town, streetlights and streetlight electrical supply system will be added to the Town's inventory.
12. The Developer will consult with Canada Post to determine suitable permanent locations for the Community Mail Boxes. The developer will then indicate these locations on the appropriate servicing plans.
13. The Developer agrees, prior to offering any units for sale, to display a map on the wall of the sales office in a place readily accessible to potential home owners that indicates the location of all Community Mail Boxes within the development, as approved by Canada Post, and the location of sidewalks and land uses within the subdivision.
14. The Developer agrees to include in all offers of purchase and sale a statement which advises the purchaser that mail will be delivered via Community Mail Box. The developer also agrees to note the locations of all Community Mail Boxes within the development, and to notify affected home owners of any established easements granted to Canada Post to permit access to the Community Mail Box.
15. The Developer will provide a suitable and safe temporary site for a Community Mail Box until curbs, sidewalks and final grading are completed at the permanent Community Mail Box locations. Canada Post will provide mail delivery to new residents as soon as the homes are occupied.
16. The Developer agrees to provide the following for each Community Mail Box site and to include these requirements on the appropriate servicing plans:
  - a) A concrete pad(s) (consult Canada Post for detailed specifications); and,
  - b) Any required curb depressions for wheelchair access, with an opening of at least two metres (consult Canada Post for detailed specifications).
17. The Developer agrees that sidewalks will be constructed along all collector streets to facilitate student travel to the school/bus stop locations.

18. That the Developer obtain Work Permits from the Niagara Peninsula Conservation Authority prior to site alteration in the regulated watercourse.
19. The Developer shall acknowledge that vegetation removal associated with clearing, site access and staging should occur outside the key breeding bird period identified by Environment Canada for migratory birds to ensure compliance with the Migratory Birds Convention Act (MBCA), 1994 and Migratory Bird Regulations (MBR). Vegetation removal should be undertaken outside the breeding season for migratory birds (March 15 and August 31). For any proposed clearing of vegetation within this timeframe a nest survey should be completed by a qualified avian biologist prior to commencement of works to identify and locate active nests of species covered by the MBCA. This should include the development of a mitigation plan to address any potential impacts on migratory birds and their active nests.
20. Prior to final approval for registration of this plan, the Developer shall submit the design drawings (with calculations) for the sanitary and storm drainage systems required to service this development and obtain Environmental Compliance Approval from the Ministry of Environment and Climate Change under the Transfer of Review Program to the satisfaction of the Niagara Region Planning and Development Services Department. (Note: Any new storm sewer outlet to a creek or storm water management scheme designed for quantity control/quality improvement will require the direct approval of the Ministry of the Environment and Climate Change – Approvals Branch, Toronto Office).
21. The Developer shall provide a written acknowledgement to the Niagara Region Planning and Development Services Department stating that draft approval of this subdivision does not include a commitment of servicing allocation by the Niagara Region as servicing allocation will not be assigned until the plan is registered and that any pre-servicing will be at the sole risk and responsibility of the owner.
22. The Developer shall provide a written undertaking to the Niagara Region Planning and Development Services Department stating that all Offers and Agreements of Purchase and Sale or Lease, which may be negotiated prior to registration of this subdivision, shall contain a clause indicating that servicing allocation for the subdivision will not be assigned until the plan is registered, and a similar clause be inserted in the subdivision agreement between the owner and the Town.
23. The Developer shall not negatively impact trees on neighbouring properties.
24. The subdivision agreement between the Developer and the Town contain a provision whereby the Developer agrees to obtain a certificate from an Ontario Land Surveyor stating that all existing and new survey evidence is in place at the completion of the development.
25. The subdivision agreement between the Developer and the Town contain the following clause:

*“Should deeply buried archaeological remains/resources be found on the property during construction activities, the Heritage Operations Unit of the Ontario Ministry of Tourism, Culture and Sport (London: 519-675-7742) and Stantec Consulting [Developer’s archaeology consultant] shall be notified immediately. In the event that human remains are encountered during construction, the owner should immediately notify the police or coroner, the Register of Cemeteries of the Ministry of Small Business and Consumer Services (Toronto: 416-326-8392), the Ministry of Tourism, Culture and Sport and Stantec Consulting. [Developer’s archaeology consultant].”*
26. The road design of the subdivision and any potential staging/phasing of the plan shall ensure through access or turnaround areas in accordance with Regional waste collection policy to the satisfaction of the Niagara Region Planning and Development Services Department.

27. The Developer shall obtain a Town of Pelham Temporary Works Permit prior to any construction taking place within the Town road allowance.
28. The Developer agrees to pay its allotment for the Singer's Drain improvements at a rate of \$1 200 /ha for a total payment of \$5 396.40.
29. The Developer agrees that Block 47 for block townhouse development will require site plan control.

## **SCHEDULE "H"**

### **BUILDING RESTRICTIONS**

(To be included in all Deeds)

The Developer shall cause to be Registered against all Lots in the Subdivision the transfer restrictions and restrictive covenants outlined below.

According to the nature of the annexed instrument, the words "Vendor", "Purchaser" and "Land" shall have the following meaning:

- (a) "VENDOR" means and includes also a grantor, transferor or seller and the heirs, successors and assigns of the Vendor.
- (b) "PURCHASER" means and includes also a grantee, transferee or buyer and the heirs, successors and assigns of the Purchaser.
- (c) "LAND" means and includes the land intended to be sold, conveyed or transferred by such instrument.

The Purchaser shall, in respect of the herein described land, adhere to and comply with the Lot grading plan attached to the subdivider's agreement registered in the Land Titles Office for Niagara South and, in particular, shall do nothing to interfere with or impede the drainage patterns shown thereon. All grade elevation shown on the said Lot grading plan shall be maintained after construction of any building or structure upon the herein described land in accordance with the Town's Lot Grading Control Policy. In the event that the Purchaser fails to maintain such elevations, or to maintain the proper grades and levels herein referred to, or in the event that the Purchaser impedes any drainage system or pattern on the herein described Lands or neighbouring lands, the Purchaser shall be responsible for the immediate rectification and alteration of the land to conform with the drainage system or patterns laid out in the subdivider's agreement for any consequential damages, costs, expenses or other loss caused by the failure to maintain such grades or drainage patterns.

The Purchaser shall, in the event of requiring a different driveway entrance from that installed by the Vendor, relocate services/utilities at purchaser's expense, cut and reconstruct the concrete curb where necessary on the roadway adjacent to the land herein described. He/she shall install, keep and maintain his driveway entrance or entrances from the travelled portion of the roadway to the Lot line in good condition until the concrete sidewalk, concrete curbs and/or asphalt roadways for the said Subdivision are constructed.

The Purchaser shall, within nine (9) months of being able to occupy the home in accordance with the *Ontario Building Code* and to the satisfaction of the Chief Building Official, pave or cause to be paved the driveway upon the Lot. Paving shall consist of a hard surface such as asphalt, concrete, paving stones, paving bricks or other similar materials. Crushed brick is not a suitable alternative.

The Purchaser shall, within twelve (12) months of being able to occupy the home in accordance with the *Ontario Building Code* and to the satisfaction of the Chief Building Official, sod/hydroseed the lot.

The Purchaser shall maintain the road allowance between the Lot line and the curb nearest thereto in good condition and free from weeds and shall cut the grass thereon at frequent intervals.

The Purchaser will not remove any topsoil or strip the Lot of vegetation prior to commencing construction of a home on the Lot. Only then will the Purchaser strip and excavate to the limit approved by the Town.

## ***SCHEDULE "H"***

### ***BUILDING RESTRICTIONS***

(To be included in all Deeds)  
(Continued)

The Purchaser shall not occupy the dwelling on the Lot concerned until the Chief Building Official for the Town has certified that such of the following services, as are applicable to the property, have been installed and are operating adequately to serve the dwelling, or in the case of telephone services, are at least available to houses within the Plan: hydro, gas, water services, sanitary sewers and telephone.

The Purchaser shall not impede by the placing of fill, Buildings or other structures or Works any natural watercourse, swale, ditch, etc. which exists on the property.

The Purchaser shall not discharge by direct connection to a sanitary or storm sewer any discharge from eavestroughing, downspouts or swimming pools.

The Purchaser shall not erect any free standing tower, radio antenna, communication tower or similar structure.