

RIVER ESTATES SUBDIVISION PRE-SERVICING AGREEMENT

RIVER REALTY DEVELOPMENT (1976) INC.

(SUBDIVISION FILE NO. 26T19-03014)

THIS AGREEMENT dated the _____ day of _____ June _____, 2016

BETWEEN:

RIVER REALTY DEVELOPMENT (1976) INC.

(Hereinafter called the **Developer**)

-and-

THE CORPORATION OF THE TOWN OF PELHAM

(Hereinafter called the **Municipality**)

WHEREAS:

1. The Developer is the registered owner of lands described in Schedule "A" (the **Lands**);
2. The Developer proposes to develop the Lands pursuant to a Plan of Subdivision (26T19-03014) that has been draft-approved by the Municipality on the 23RD day of February, 2016.
3. The Developer desires to commence the installation, construction and provision of certain works on the Lands within the subdivision prior to the execution of the

Subdivision Agreement with the Municipality and such works are more particularly set out in Schedule "B" (the **Works**);

4. The Municipality and the Developer are parties to an existing cost sharing agreement dated March 31, 2016 (the "CSA") which deals, inter alia, with the sharing of costs for some of the works which are described in Schedule B hereto and which works will be part of the works which the Developer will be completing hereunder.
5. The Municipality has agreed to permit the Developer to install, construct and provide the Works as requested on the following terms and conditions;
6. This Agreement will be registered on title to the Lands;
7. The parties to this Agreement declare that the recitals herein are true.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of other good and valuable consideration and the sum of **TWO DOLLARS (\$2.00)** of lawful money of Canada now paid by each of the parties hereto to each of the other parties hereto, the receipt whereof is hereby acknowledged, the parties hereto hereby covenant, promise and agree with each other as follows:

1. PERMISSION TO CONSTRUCT

The Municipality grants permission to the Developer to commence construction and installation of the Works as more particularly set out in Schedule "B" on the Lands herein in advance of the Subdivision Agreement between the Developer and the Municipality for the purposes of the development of the Plan of the Subdivision.

2. CONSTRUCTION OF WORKS

The Developer covenants and agrees to:

- (a) Retain a professional consulting engineer experienced in the municipal engineering field who will carry out all necessary engineering requirements associated with the construction, installation, and inspection of the Works;
- (b) Construct and install the Works in a good and workmanlike manner and in accordance with all of the Municipality's standards and practices and only in accordance with the approved plans for the Works;
- (c) Not undertake any construction or installation of the Works beyond the hours of 7:00 am to 6:00 pm, Monday through Saturday, or such other dates and times as may be established by the Municipality from time to time;
- (d) Not undertake work on any proposed public right-of-way, which includes any public highways, easements, or reserves, **without first obtaining the express written consent of the municipality and any other relevant governmental authority which consent will not be unreasonably denied or delayed.**

3. DEVELOPER'S ACKNOWLEDGEMENTS

The Developer acknowledges and agrees that:

- (a) It is being given permission to commence construction and installation of the Works prior to the execution of the Subdivision Agreement for the purposes of development of the Plan of Subdivision and that any work it undertakes in furtherance thereof will be at its sole and absolute risk;
- (b) It will provide all approvals required prior to construction or installation of the Works to the Director of Public Works.

- (c) It will be bound by the terms and conditions of the Subdivision Agreement for the purposes of development of the Plan of Subdivision and that nothing contained in this Agreement or in the Municipality's grant of the permission to proceed with the installation and construction of the Works will stop the Municipality from imposing any of its standard conditions and requirements pertaining to the installation of public works or from enforcing its authority to require the Developer to fully comply with all applicable Conditions of Approval of the Plan of Subdivision;
- (d) It may be required to modify, alter, relocate, and reconstruct certain of the Works based on drawings and plans as approved by the Municipality;
- (e) It will comply with every direction issued or given by the Municipality during the course of pre-servicing including but not limited to the cessation of work, the installation or carrying out of additional work, the phasing of Works construction and installation or any other matter the Municipality deems to be in the interest of the proper development of the Lands and surrounding areas;
- (f) That it is not being given any permission to carry out any works or to enter upon any lands not owned by it, except for lands owned by the Municipality, without the written consent of the other owner and that such consent shall be filed with the Municipality;
- (g) That it cannot connect any Works to any public services on any municipal right-of-way except with the approval and direction of the professional consulting engineer and with the consent of the Municipality;
- (h) The Municipality will be under no obligation whatsoever to complete all or any portion of the Works if the Developer fails to complete them and if

development ceases the Developer is to leave the Lands in a condition suitable to the Town, but that, notwithstanding the foregoing, the Municipality shall, at its sole and absolute discretion, be entitled to enter onto the Lands and complete any Works or portion of the Works and to take any action it deems necessary to safeguard the health and safety of its residents, all at the Developer's expense;

- (i) That its proceeding with the Works in advance of execution of the Subdivision Agreement for the purposes of development of the Plan of Subdivision is not based upon any representation from the Municipality as to when any remaining site servicing for the development may be provided;
- (j) That by granting this permission, the Municipality makes no representation that the Municipality is not able acting reasonably to impose further conditions of subdivision prior to final approval.

4. INSPECTION AND RIGHT OF ENTRY

- (a) The Developer covenants and agrees that the Municipality and any of its employees or agents may enter onto the Lands at any time in order to make all necessary inspections and to correct any deficiencies or remedy any other defects arising from or relating to the construction and installation of the Works.
- (b) The Developer shall forthwith upon demand pay the Municipality for all costs incurred by the Municipality in undertaking any of the foresaid actions.
- (c) For further particularity, the Developer agrees to allow the Municipality, its employees, servants and agents the right to enter the Lands at all reasonable time and for all reasonable purposes, including but not limiting

the generality of the foregoing, for all necessary inspections to correct any drainage problems or to correct or eliminate any other nuisance such as dust, garbage and debris and excavations, etc., and the costs incurred by the Municipality in so doing shall be a charge to the Developer.

5. COMPLIANCE WITH ALL LAWS AND REGULATIONS

The Developer covenants and agrees to comply with all federal, provincial and municipal laws, rules, by-laws and regulations in constructing, installing or otherwise providing the Works.

6. INSURANCE

Before commencing any of the Works, the Developer shall supply the Municipality with a liability insurance policy or a certificate of insurance evidencing liability insurance coverage in the amount of Five Million Dollars CAD (\$5,000,000.00) in a form satisfactory to the Municipality, indemnifying the Municipality from any loss arising from claims or damages, injury or otherwise in connection with the work done by or on behalf of the Developer and naming the Municipality as an additional named insured. The policy shall be maintained in full force and effect until the subdivision is assumed by the Municipality. In the event any renewal premium is not paid, the Municipality, in order to prevent the lapse of such liability insurance policy, may pay the renewal premium or premiums and the Developer agrees to pay the cost of such renewal or renewals within **sixty (60)** days of the account being rendered by the Municipality.

8. INDEMNIFICATION, RELEASE AND LIENS

- (a) The Developer covenants and agrees to indemnify and save the Municipality completely harmless from and against all actions, suits, claims or demands which may arise either directly or indirectly by reason of the

permission granted hereunder and the construction and installation of the Works on the Lands, or by reason of the maintenance or lack of maintenance of the Works, or by reason of any defect in workmanship or material. The Developer further covenants and agrees to release and forever discharge the Municipality from and against any and all actions, suits, claims or demands which may arise either directly or indirectly by reason of the permission granted hereunder and the construction and installation of the Works on the Lands in advance of the execution of any Subdivision Agreement for the purposes of development of the Plan of Subdivision.

- (b) Furthermore, the Developer shall indemnify and hold the Municipality harmless from and against liability claims, damages, or expenses due to or arising from, any claim made against the Lands and adjacent municipal lands where services are installed therein pursuant to this Agreement for all liens related to all work done by or on behalf of the Developer. Any such liability, claims, damages, or expenses incurred by the Municipality shall be paid by the Developer to the Municipality forthwith upon demand. The Developer shall further cause all registration of claims for construction liens or certificates of action under the *Construction Lien Act, R.S.O. 1990, c. C30*, as amended, and relating to any such work done by or on behalf of the Developer to be discharged or vacated, as the case may be, within **ten (10) days** of such registration **or within ten (10) days** after notice from the Municipality.

8. SECURITY

- (a) In order to guarantee compliance with all conditions contained herein, the Developer covenants and agrees to file with the Municipality, upon execution of this Agreement, security in the form of a Letter of Credit in the

amount of \$747,794.68 issued by a Canadian Schedule 1 Chartered Bank or such other financial institution approved by the Municipality with the Municipality as the designated drawee (the "Security") in accordance with the estimated costs of the Works set out in Schedule "C". The Developer acknowledges and agrees that should there be a deficiency in or a failure to carry out any work or matter required by any clause of this Agreement and the Developer fails to comply with twelve (12) days written notice with a direction to carry out such work or matter, the Municipality may draw on the Security in whole or in part and enter onto the Lands and complete all outstanding Works or associated matters, and pay all costs and expenses incurred thereby from the proceeds so drawn. The Developer acknowledges that if the costs of such completion of all outstanding Works or associated matters exceeds the sum of \$747,794.68 the Developer shall be responsible for the payment of all such excess costs. Furthermore the Developer acknowledges that the Municipality reserves the right to draw on the Security to complete any Works or associated matters required to be done by the Developer pursuant to this Agreement. Upon execution of the Subdivision Agreement the parties agree that the Security will be transferred as Security under the Subdivision Agreement and it will stand for the same purposes as provided herein. This deposit shall also be used to cover any Engineering, Inspection, and/or Legal costs incurred by the Municipality in accordance with Section 4 of this Agreement.

- (b) Security required shall be held by the Municipality as security in accordance with this Agreement and the Subdivision Agreement. The Developer acknowledges that upon the transfer of ownership of any of the subject Lands, the Municipality will not return any Security required under this Agreement until the new Developers file substitute security in the required amounts.

9. WITHDRAWAL OF PERMISSION

The Developer acknowledges and agrees that the Municipality is entitled to withdraw its permission granted herein for the installation and construction of the Works if it is determined, in the sole and absolute discretion of the Municipality that the Developer is in breach of its covenants hereunder and such withdrawal is in the best interests of the Municipality. Upon notification of such withdrawal of permission, the Developer covenants and agrees to immediately cease any further construction, installation or other work in respect of the Works. The Developer acknowledges that it shall have no claim against the Municipality if it exercises its right to withdraw the permission granted under this Agreement and it specifically waives and disclaims its rights to make any claim in connection therewith.

10. TRANSFER OF LANDS

The Developer covenants and agrees that in the event it transfers or conveys the Lands to a third party prior to the execution of the Subdivision Agreement, that it shall, prior to completing the transfer, provide the Municipality with an executed Agreement from the third party in a form satisfactory to the Municipality whereby the third party agrees to a complete assumption of the terms of this Agreement and to be bound by this Agreement as if it had been the original signatory.

11. NOTICE

- (a) If any notice is required to be given by the Municipality to the Developer with respect to this Agreement, such notice shall be mailed, delivered or sent by facsimile transmission:

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

or such other address of which the Developer has notified the Clerk, in writing, and any such notice mailed or delivered shall be deemed good and sufficient notice under the terms of this Agreement.

- (b) If any notice is required to be given by the Developer to the Municipality with respect to this Agreement, such notice shall be mailed, delivered or sent by facsimile transmission:

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

or such other address of which the Municipality has notified the Developer, in writing, and any such notice mailed or delivered shall be deemed good and sufficient notice under the terms of this Agreement.

12. TERMINATION OF AGREEMENT

If the Works proposed to be installed or constructed pursuant to this Agreement are not commenced or a Subdivision Agreement between the Developer, any relevant Mortgagee or Encumbrancer and the Municipality for the purposes of development of the Plan of Subdivision relating to the Lands has not been executed between the Developer and the Municipality and any other relevant Signatory within **two (2)** years from the date of execution of this Agreement, the Municipality may, at its option and on **thirty (30)** days written notice to the Developer in accordance with paragraph 11, declare this Agreement to be null and void and of no further effect.

13. REGISTRATION OF AGREEMENT

The Developer covenants and agrees that this Agreement and any Schedules attached hereto, may be registered upon the title to the Lands and that such registration shall be at the instance of the Municipality and at its sole and absolute discretion. The Developer further covenants and agrees to pay all costs associated with the preparation and registration of this Agreement, as well as all other costs incurred by the Municipality as a result of the registration of any other documents pertaining to this Agreement, including but not limited to, any amendment thereto.

14. COST SHARING AGREEMENT (“CSA”)

The parties have entered into a prior agreement dealing with sharing of costs for the provision of lands, services, utilities and other matters. Some of the works outlined in Schedule “B” hereto fall into and are dealt with in the CSA wherein the primary or partial responsibility for such works are the responsibility of the Municipality. The parties hereto agree that notwithstanding the provisions of this Agreement nothing herein will derogate from, diminish or otherwise alter the respective obligations of each party under the provisions of the CSA and the provisions of the CSA will continue to apply notwithstanding this Agreement.

15. NO FETTERING OF DISCRETION

Notwithstanding any other provision of this Agreement, the Developer expressly acknowledges and agrees that none of the provisions of this Agreement (including a provision stating the parties intention) is intended to operate, nor shall have the effect of operating, in any way to fetter the discretion of the Municipality and its Council in the exercise of any of its discretionary power, duties or authorities, including without limitation, the authority to approve, approve with conditions, or deny, draft plan approval of the application for approval of a Draft Plan of Subdivision filed by the Developer or to provide final approval therefor. The Developer expressly acknowledges and agrees that it will not obtain any advantageous planning or other consideration or treatment, including

approval of a Draft Plan of Subdivision for the Lands by virtue of it having entered into this Agreement.

16. APPLICABLE LAW

This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.

Furthermore, it is acknowledged and agreed by the parties that this Agreement shall be interpreted without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

17. SUCCESSORS AND ASSIGNS

It is hereby agreed by and between the parties hereto that this Agreement shall be enforceable by and against the parties hereto, their heirs, executors, administrators, successors and assigns and that the Agreement and all the covenants by the Developer herein contained shall run with the Lands.

18. SEVERABILITY

If any clause or clauses, or part or parts of clauses, in this Agreement are determined to be illegal or unenforceable, they shall be considered separate and severable from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties to this Agreement as though the said clause or clauses, or part or parts of clauses, have never been included in this Agreement.

19. ENCUMBRANCERS OR MORTGAGEES

The Developer agrees to provide postponements or discharges as the Municipality may direct of any mortgages, liens, or other encumbrances on the Lands in order to ensure

that this Agreement is registered on title prior to any such mortgage, lien, or other such encumbrance. Any Encumbrancer or Mortgagee affixing their signature to this Agreement by so doing agrees to be bound by all terms of this Agreement in the event that such Encumbrancer or Mortgagee forecloses or goes into possession of the Lands. Further, such Encumbrancer or Mortgagee, by signing this Agreement, agrees to postpone any rights they might have of any nature or kind regarding the Lands so that this Agreement shall have full force and effect in priority to any claim to the said Lands by any said Encumbrancer and Mortgagee.

20. PERFORMANCE

(a) Cumulative Remedies

No remedy herein conferred upon or reserved to the Municipality shall exclude any other remedy, but each remedy shall be cumulative and in addition to every other remedy given hereunder or hereafter existing at law or in equity or by statute.

(b) Non-Waiver

The failure of the Municipality at any time to require, or decision not to require, performance by the Developer of any obligation under this Agreement shall not constitute a waiver by the Municipality to require full and complete performance of such obligation, or any other obligation of the Developer under this Agreement, and shall in no way affect the Municipality's rights thereafter to enforce such obligation.

(c) Specific Performance

The Developer acknowledges that any breach of this Agreement by it would not

be adequately compensated by payment of damages and, accordingly, the Developer admits that specific performance is an appropriate form of remedy in the event of default by the Developer.

IT IS HEREBY DECLARED that this Agreement and the covenants, provisions, conditions and Schedules herein contained shall be binding upon the parties hereto, their successors and assigns.

WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals duly attested to by their proper signing officers in that behalf.

SIGNED, SEALED AND DELIVERED
in the presence of

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

) Name:
) Title:
) I/We have authority to bind the
) Corporation

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

)
)
)
) _____
) Dave Augustyn, Mayor

)
)
) _____
) Nancy J. Bozzato, City Clerk
)

SCHEDULE "A"
DESCRIPTION OF LANDS

64063-0257

Part Township Lot 166 Thorold Part 1 Plan 59R-15499, Part 1 59R-12792, Part 1 59R-12792, Part 1 59R-13882; Subject to Easement over Part 1 59R-13156 as in SN153223; Pelham.

SCHEDULE "B"
WORKS TO BE CONSTRUCTED

1. General Notes and Details Plan, prepared by Upper Canada Consultants, dated February 26, 2016, revised _____, 2016 as Drawing No. 0482-GND, or the latest revision thereof.
2. General Services Plan, River Estates, prepared by Upper Canada Consultants, dated February 26, 2016, revised _____, 2016 as Drawing No. 0482-GSP, or the latest revision thereof.
3. Lametti Dr – Plan and Profile 1, Port Robinson Road to 25m East of Marissa St, River Estates, prepared by Upper Canada Consultants, dated February 26, 2016, revised _____, 2016 as Drawing No. 0482-PP1, or the latest revision thereof.
4. Lametti Dr – Plan and Profile 2, 25m East of Marissa St to Summersides Boulevard, River Estates, prepared by Upper Canada Consultants, dated February 26, 2016, revised _____, 2016 as Drawing No. 0482-PP2, or the latest revision thereof.
5. Bergenstein Cres – Plan and Profile 3, Lametti Dr to 140m East of Lametti Dr, River Estates, prepared by Upper Canada Consultants, dated February 26, 2016, revised _____, 2016 as Drawing No. 0482-PP3, or the latest revision thereof.
6. Bergenstein Cres – Plan and Profile 4, 70m West of Marissa St to 85m East of Riley Ave, River Estates, prepared by Upper Canada Consultants, dated February 26, 2016, revised _____, 2016 as Drawing No. 0482-PP4, or the latest revision thereof.
7. Bergenstein Cres – Plan and Profile 5, 175m east of Lametti Dr to Lametti Dr, River Estates, prepared by Upper Canada Consultants, dated February 26, 2016, revised _____, 2016 as Drawing No. 0482-PP5, or the latest revision thereof.
8. Marissa St – Plan and Profile 6, Lametti Dr to Bergenstein Cres, River Estates, prepared by Upper Canada Consultants, dated February 26, 2016, revised _____, 2016 as Drawing No. 0482-PP6, or the latest revision thereof.
9. Riley Ave – Plan and Profile 7, Lametti Dr to Bergenstein Cres, River Estates, prepared by Upper Canada Consultants, dated February 26, 2016, revised _____, 2016 as Drawing No. 0482-PP7, or the latest revision thereof.

_____, 2016 as Drawing No. 0482-PP7, or the latest revision thereof.

10. Storm Water Management Facility- Plan and Profile, from (STA 0+000) to (STA 0+320), River Estates, prepared by Upper Canada Consultants, dated February 26, 2016, revised _____, 2016 as Drawing No. 0482-SWM, or the latest revision thereof.
11. Channel- Channel Plan and Profile 1, from (STA 0+580) to (STA 0+900), River Estates, prepared by Upper Canada Consultants, dated February 26, 2016, revised _____, 2016 as Drawing No. 0482-CH1, or the latest revision thereof.
12. Channel- Channel Plan and Profile 2, from (STA 0+320) to (STA 0+580), River Estates, prepared by Upper Canada Consultants, dated February 26, 2016, revised _____, 2016 as Drawing No. 0482-CH2, or the latest revision thereof.
13. Grading Plan 1, River Estates, prepared by Upper Canada Consultants, dated February 26, 2016, revised _____, 2016 as Drawing No. 0482-GP1, or the latest revision thereof.
14. Grading Plan 2, River Estates, prepared by Upper Canada Consultants, dated February 26, 2016, revised _____, 2016 as Drawing No. 0482-GP2, or the latest revision thereof.
15. SWM Landscaping Plan 1, River Estates, prepared by Upper Canada Consultants, dated February 26, 2016, revised _____, 2016 as Drawing No. 0482-LS1, or the latest revision thereof.
16. Channel Landscaping 2, from (STA 0+640) to (STA 0+900), River Estates, prepared by Upper Canada Consultants, dated February 26, 2016, revised _____, 2016 as Drawing No. 0482-LS2, or the latest revision thereof.
17. Storm Water Drainage Area Plan, River Estates, prepared by Upper Canada Consultants, dated February 26, 2016, revised _____, 2016 as Drawing No. 0482-STMDA, or the latest revision thereof.
18. Sanitary Drainage Area Plan, River Estates, prepared by Upper Canada Consultants, dated February 26, 2016, revised _____, 2016 as Drawing No. 0482-SANDA, or the latest revision thereof.

SCHEDULE "C"
ESTIMATED COST OF WORKS

| | Total Tender Cost |
|----------------------------------------------------------------|-----------------------------|
| PRIMARY SERVICES | |
| Water mains and services | \$ 327 240.00 |
| Storm sewers, services | \$560 500.00 |
| Drainage Channel Works | \$481 000.00 |
| Sanitary sewers and services | \$315 500.00 |
| Storm and sanitary sewer video inspections (preliminary) | \$20 000.00 |
| Preliminary Roads | \$514 000.00 |
| General grading | \$517 200.00 |
| Hydroseeding of disturbed areas | \$7 800.00 |
| Hydroseeding of Drainage Channel Works | \$14 000.00 |
| Street lights | \$120 000.00 |
| | |
| Sub-Total for Primary Security Purposes | <hr/> \$2 877 240.00 |
| Contingencies (5%) | \$143 862.00 |
| Engineering (10%) | \$287 724.00 |
| Subtotal Primary Servicing, Engineering and Contingency | <hr/> \$3 308 826.00 |
| 13% HST | <hr/> \$430 147.38 |
| TOTAL PRIMARY SERVICES COST | <hr/> \$3 738 973.38 |
| | |
| Letter of Credit for Primary Services (20%) | \$747 794.68 |