

Attachment 1: By-law to Authorize Execution of Draft Subdivision Agreement

THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE
BY-LAW NO. XX/2021

*Being a By-law to Authorize Execution of a Subdivision Agreement
Between Michael Battaglia Enterprises Inc. and the Corporation of the Municipality of Port
Hope*

WHEREAS Section 51 of the *Planning Act* provides authority for the Municipality regarding Subdivision Approval;

AND WHEREAS Council deems it expedient to enter into a Subdivision Agreement with Michael Battaglia Enterprises Inc. for the development of 20 residential dwellings on 20 lots.

NOW THEREFORE IT IS ENACTED AS A BY-LAW OF THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE AS FOLLOWS:

- THAT the Mayor and Municipal Clerk are hereby authorized to execute on behalf of the Corporation a Subdivision Agreement with Michael Battaglia Enterprises Inc. with the terms and conditions as set out in Schedule “A” attached hereto comprising part of this By-law.
- THAT the Mayor and Municipal Clerk are hereby authorized and directed to sign any related documentation to carry out the purpose of this By-law including registration of the Subdivision Agreement on title at the Land Registrar Office.

READ a FIRST, SECOND and THIRD time and finally passed in Open Council this day of, 2021.

Bob Sanderson, Mayor

Brian Gilmer, Municipal Clerk

Schedule A to By-law XX/2021

THIS AGREEMENT made in sextuplicate this _____, **2021.**

B E T W E E N:

THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE

(hereinafter called the "Municipality")

Party of the FIRST PART

- and -

MICHAEL BATTAGLIA ENTERPRISES INC.

(hereinafter called the "Owner")

Party of the SECOND PART

WHEREAS the lands affected by this Agreement are described in Schedule "A" hereto and are hereinafter called the "Subdivision Lands";

AND WHEREAS the Owner warrants that it is the sole owner of the Subdivision Lands subject to the interest of the Mortgagee, if any;

AND WHEREAS the Owner has applied to the Municipality for approval of a plan of subdivision for the Subdivision Lands;

AND WHEREAS to comply with one or more of the Municipality's conditions for such approval, the Owner has agreed to enter into this Agreement with the Municipality;

NOW THEREFORE in consideration of the mutual agreements, covenants and promises herein contained, and other good and valuable consideration, (the receipt and sufficiency of which is acknowledged by the parties hereto), the parties hereto agree as follows:

1. DEFINITIONS

a) "Director, Works and Engineering"

Director, Works and Engineering shall mean the Director, Works and Engineering for the Municipality or such person or persons designated in writing from time to time by the said Director.

b) "Maintenance Guarantee Period"

Maintenance Guarantee period means the period of 24 months from the date of the Completion or such longer period as may be specified for certain Materials or some or all of the Work.

c) "Owner"

Owner shall mean the Party of the Second Part and shall include any and all subsequent owners of the Subdivision Lands or any part thereof.

d) "Substantial Completion"

The Work is substantially completed,

- i) when the Work to be performed under the Contract or a substantial part thereof is ready for use or is being used to the purpose intended; and
- ii) when the Work to be performed under the Contract is capable of completion or, where there is a known defect, the cost of correction, is not more than
 - 3% of the first \$500,000 of the Contract price,
 - 2% of the next \$500,000 of the Contract price, and

- 1% of the balance of the Contract price

e) "Works"

Includes but is not limited to all underground services, culverts, street signs, street lighting, Storm Water Management Facilities, grading, granular road base, base asphalt, surface asphalt, fencing, topsoil and sod and pavement markings as illustrated on the engineering drawings forming Schedule 'C' and 'F'.

2. CERTIFICATION OF OWNERSHIP AND ENCUMBRANCES

The Owner shall, at the time of execution of this Agreement by the Owner and again upon registration of the Plan, provide the Municipality's Director, Community Development or Manager, Planning with a letter, addressed to the Municipality and signed by an Ontario Solicitor in good standing, certifying that the Owner is the sole owner of the Subdivision Lands and that the Mortgagee, if applicable, is the sole encumbrancer having an interest in the Subdivision Lands.

3. PLAN OF SUBDIVISION

The Owner warrants and covenants that the plan of subdivision attached hereto as Schedule "B" (herein called "the Plan") has been prepared for the Subdivision Lands by a registered Ontario Land Surveyor, and has been given draft approval by the Municipality and all approved amendments to the draft Plan have been shown thereon. At the time of registration of this Agreement, Schedule "B" shall be replaced by a written description of the Subdivision Lands referring to all lots, blocks, streets, etc. described in accordance with the Plan as registered.

4. SCHEDULES TO AGREEMENT

The following Schedules which are attached hereto together with all provisions contained therein are hereby made a part of this Agreement as fully and for all intents and purposes as though recited in full herein:

Schedule "A" -	Legal Description of Subdivision Lands
Schedule "B" -	Plan of Subdivision
Schedule "C" -	Approved Engineering Design Drawings
Schedule "D" -	Easements to be conveyed
Schedule "E" -	Lands to be conveyed
Schedule "F" -	Works
Schedule "G" -	Not Applicable
Schedule "H" -	Duties of Owner's Engineer
Schedule "I" -	Works Cost Estimate
Schedule "J" -	Regulations for Construction
Schedule "K" -	Approved Form of Letter of Credit
Schedule "L" -	Insurance Policies Required

The original drawings for the above-noted Schedules are available at the municipal offices for inspection during regular business hours.

5. PAYMENT OF TAXES AND OTHER CHARGES

The Owner shall, prior to the execution of this Agreement by the Municipality, pay all arrears of taxes, levies, charges, assessment, rates, etc. outstanding against the Subdivision Lands. The Owner further undertakes and agrees to continue to pay all taxes levied on the Subdivision Lands or any part or parts thereof on the basis of and in accordance with the assessment and collector's roll entries as revised from time to time. The Owner agrees to pay municipal taxes for the full year in which any transfer of lands within the Plan or any part thereof takes place if such transfer results in the lands being exempt from taxation for any part of that year unless the Municipality receives grants in lieu of the taxes which would otherwise be payable. The Owner also agrees that any local improvement charges or other designated charges or imposed rates outstanding against the Subdivision Lands shall be commuted for payment and paid in full by the Owner prior to the execution of this Agreement by the Municipality.

6. GRANTS OF EASEMENTS

The Owner shall, at the time of registration of this Agreement by the Owner, execute and deliver to the Municipality the grants of easements set out in Schedule "D" hereto, free and clear of all mortgages, liens, charges and encumbrances. If, subsequent to the registration of the Plan, further easements are required for drainage, the Owner agrees to grant such easements forthwith upon demand at no expense to the Municipality.

7. CONVEYANCE OF TEMPORARY TURNING CIRCLE LANDS

NOT APPLICABLE

8. CONVEYANCE OF RESERVES, ROAD WIDENING AND/OR PARK LANDS

The Owner, at the time of registration of Plan of Subdivision, shall execute and deliver to the Municipality deeds or transfers sufficient to vest in the Municipality as set out in Schedule "E" hereto, free and clear of all mortgages, liens, charges and encumbrances.

9. CASH IN LIEU OF PARKLAND

The Owner covenants and agrees that prior to the execution of this Agreement by the Municipality, the Owner shall have paid to the Municipality cash-in-lieu of the dedication of parkland equal to 5% of the appraised value of the Land. Such value shall be determined by an experienced and qualified land appraiser (CRA or AACI). The appraisal report shall accompany the cash-in-lieu payment. Said amount is thirty-three thousand, seven hundred and fifty dollars (\$33,750.00) based on the appraisal of the entire draft approved plan dated May 6, 2021.

10. BLOCK 21

The Owner agrees to convey to the Municipality Block 21, which will facilitate the future establishment of an in-ground municipal water cistern intended for fire-fighting water access purposes. The Owner is not obligated to construct the cistern or access road. The Municipality agrees not to charge any future maintenance fee or to add any other condition prior to accepting the Block.

11. PREPARATION AND REGISTRATION OF DOCUMENTS

All deeds, grants of easements and other conveyances required herein shall be prepared, executed and registered at the Owner's expense and shall be approved by the Municipality's solicitor prior to execution and registration. The registered number of the Plan shall be left blank in the description in each document to be registered so that such number may be inserted after the Plan has been registered.

12. WORKS REQUIRED

Subject to Clause 49, the Owner shall be responsible, at its own expense, for the design, construction, installation and maintenance of the works, services and facilities generally set out in Schedules "C" and "F" hereto, and collectively hereinafter called the "Works".

13. UTILITIES

The Owner shall be responsible, at its own expense, for making design and installation arrangements with all utility companies using the municipal road allowance (hereinafter collectively called the "Utilities"). The Municipality shall not be responsible for any costs of Utilities required for the Subdivision Lands.

The Owner shall grant such easements as may be required for utility purposes to the appropriate authority as set out in Schedule "D".

14. OWNER'S ENGINEER

The Owner shall retain a Professional Engineer, or firm of Professional Engineers, registered by and in good standing with the Professional Engineers of Ontario (PEO)

(possessing a current Certificate of Authorization issued by the PEO) satisfactory to the Director, Works and Engineering and hereinafter called the "Owner's Engineer", for the purposes as set out in Schedule "H" hereto and for the other purposes required by this Agreement. The Owner agrees to continue to retain the services of a Professional Engineer until the Works provided for in this Agreement have been completed and accepted by the Municipality. The Owner's agreement with the Owner's Engineer shall require a full-time resident inspector, who shall be directed by a qualified professional engineer, and will be on-site at all times to inspect work and certify it has been completed in accordance with the Engineering drawings including conformance with all the applicable Municipal standards, Ontario Provincial Standards and Specifications (OPSS), Ontario Provincial Standards and Drawings (OPSD) and other specifications and standards outlined in the drawings.

15. DESIGN OF WORKS

The Owner agrees that the design and installation of all of the Works shall strictly comply with the approved engineering drawings as set out in Schedule "C" hereto and to the OPSS and OPSD.

16. APPROVED ENGINEERING DESIGN DRAWINGS

The Owner shall, prior to commencement of the work and no later than 90 days following the registration of this Agreement, have the written approval of the Director, Works and Engineering for all drawings of all of the Works hereinafter called the "Approved Engineering Design Drawings" which are appended hereto as Schedule "C" and which shall include the Grading, Drainage and Erosion Control Plans. If, in the sole opinion of the Director, Works and Engineering, no substantial construction of the Works has commenced within twelve (12) months of the date of the registration of this Agreement, the Approved Engineering Design Drawings, for the works that have not been installed, shall be resubmitted to the Director, Works and Engineering for review, revision and further approval.

The Director, Works and Engineering may require the Owner's Engineer to provide supplemental plans and/or specifications where, in the course of construction, an absence of detail in the plans and/or specifications appears and/or where unforeseen circumstances arise. The said supplemental plans and/or specifications shall be subject to the written approval of the Director, Works and Engineering. Upon such approval being obtained, the Owner covenants to strictly comply with such supplemental plans and/or specifications.

The approval of the Approved Engineering Design Drawings by the Director, Works and Engineering shall not absolve the Owner of the responsibility for any errors and/or omissions with respect to such Drawings.

17. GRADING, DRAINAGE AND EROSION CONTROL PLANS

The Owner hereby agrees that the Grading, Drainage and Erosion Control Plans shall provide for the proper drainage of the Subdivision Lands and the drainage of all adjacent lands which drain through the Subdivision Lands. Until the roads laid out according to the Plan have been expressly assumed by the Municipality as part of the Municipal road system, the Owner shall provide adequate drainage of surface water from the Subdivision Lands. The Owner shall construct all services in such a manner that no damage shall result by reason of the drainage therefrom or in connection therewith to persons or to adjacent lands. In the event that drainage problems occur prior to the formal acceptance of the Works by the Municipality, the Owner agrees to correct, at its sole expense, the drainage problems by such re-grading and/or construction of swales or other appurtenances as may be necessary in the opinion of the Director, Works and Engineering.

Prior to the commencement of any work, including grading or regrading, on the Subdivision Lands, the Owner shall take all erosion control measures and construct all erosion control works as set out and described in the Approved Engineering Design Drawings. Such erosion control measures may, without limiting the generality of the foregoing, include:

- a) temporary sodding or seeding;
- b) temporary grading measures;
- c) use of barriers, fencing and embankments;
- d) permanent planting, seeding, or sodding;
- e) use of rip-rap or other similar methods;

- f) construction of culverts, drains and spillways;
- g) sedimentation ponds, retention ponds, detention ponds or siltation ponds; and
- h) The Owner agrees to maintain all erosion and siltation control devices in good repair during the construction period in a manner satisfactory to the GRCA.

18. LOT GRADING AND DRAINAGE

All lots and blocks within the Plan shall be graded, at no expense to the Municipality, to drain in accordance with the Grading, Drainage and Erosion Control Plans and the provisions of this Agreement.

No person shall change the grade of any lot or block on the Plan contrary to the provisions of this Agreement prior to the assumption by the Municipality of the Subdivision Lands without the prior written approval of the Director, Works and Engineering.

The Owner acknowledges and agrees that prior to assumption by the Municipality of the Subdivision Lands, the Owner shall, at its sole expense, be responsible for the drainage of all lots and blocks and shall, on the sale of any such lots or blocks, reserve such rights as may be necessary to enable the Owner and/or the Municipality to enter on such lands and to undertake modifications to the surface drainage features of the said lots or blocks in accordance with the provisions of this Agreement or for the purpose of correcting any grading and drainage problems relative to the development of the Subdivision Lands prior to assumption of the Subdivision Lands.

All building construction within the Subdivision Lands shall be in conformity with the elevation and spot grades shown on the Grading, Drainage and Erosion Control Plans approved by the Municipality. All areas of engineered fill shall be certified by the Owner's qualified Geotechnical Engineer licensed to practice in the Province of Ontario.

No building permit will be issued for any lot or block within the Plan until an individual drainage plan for such lot or block has been submitted to the Municipality showing the proposed final grade elevation, the building location and the immediate points of grade change, all of which must be in conformity with the Grading, Drainage and Erosion Control Plans and related road grades.

Upon receiving notice from the builder that a lot is ready for inspection, the Owner's Engineer shall inspect the subject lot and provide a written confirmation of grading certification or the presence of any deficiencies in writing to the Municipality. The lot grading certificate shall include elevations for lot corners, swales, low and/or and high points on split drainage lots as applicable to demonstrate general conformance with the approved Grading, Drainage and Erosion Control Plans. The Municipality shall review a lot grading certification within fifteen (15) days from receipt of same and provide comments or acceptance of the certification to the Owner and Owner's Engineer within that time.

The Owner acknowledges that any drainage complaints received by the Municipality prior to completion of a lot certification will be the responsibility of the Owner to rectify.

The Municipality agrees that any revisions made to the grading of a lot or block which affects the drainage of such lot or block or other lands after the occupancy of the dwelling unit constructed on such lot or block and after certification of the lot grading by the Owner's engineer and acceptance by the Municipality, shall not be the responsibility of the Owner but shall be the responsibility of the then owner of such lot or block.

19. ROUGH GRADING

The Owner agrees to complete rough grading of the Subdivision Lands such that all surface water is controlled through temporary or permanent erosion and sediment control measures that are implemented prior to and maintained throughout construction to prevent the entry of sediment laden water into waterbodies or onto adjacent lands to the satisfaction of the Director, Works and Engineering.

20. CONSTRUCTION TRAFFIC

The Owner agrees that all streets to be used for access during the construction of Services and/or buildings on the Subject Lands shall be kept in good and usable condition and free of dirt, mud and other debris during the said construction, and if

damaged or not kept free as aforesaid, will be restored immediately by the Owner. All trucks making deliveries to, or taking materials from the Subdivision Lands shall be adequately covered and not unreasonably loaded so as to scatter refuse, rubbish or debris on any streets, as well as to prevent the tracking of dirt, mud or other debris onto adjacent streets. If the Owner after being given 24 hours' notice by the Municipality by email, refuses to repair and remedy the aforesaid damage or condition to the streets, the Municipality may remedy the situation and charge the cost thereof to the Owner, who shall forthwith pay the same upon demand, failing which the money shall be deducted from the Performance Guarantee.

The Owner agrees to restrict the hours of the construction route by "heavy construction vehicles" as defined herein from 7:00 am to 7:00 pm, Monday to Friday inclusive and from 7:00 am to 5:00 pm on Saturday, provided exemptions to this restriction may be approved by the Director, Works and Engineering or the Chief Building Official in case of emergencies or any other events justifying such an exemption. For the purposes of this agreement, a "heavy construction vehicle" means a "vehicle with multiple rear axles".

21. COST ESTIMATES

The estimated cost of construction and installation of all of the Works (hereinafter called the "Works Cost Estimate") shall be prepared by the Owner's Engineer and approved by the Director, Works and Engineering prior to the registration of this Agreement and shall be included as Schedule "I" to this Agreement.

22. PERFORMANCE GUARANTEE

In order to guarantee that the Works will be constructed and installed in accordance with the provisions of this Agreement, the Owner shall, prior to the execution of this Agreement by the Municipality, lodge with the Municipality a "Performance Guarantee" consisting of an irrevocable Bank Letter of Credit in the amount of **\$446,493.25** which is Fifty Percent (50%) of the Works Cost Estimate for On-Site Works and One Hundred Percent (100%) of the Works Cost Estimate for Off-Site Works as shown on Schedule "I" to this Agreement. The form and wording of the Performance Guarantee shall be in the form attached hereto as Schedule "K". The Owner covenants and agrees that the Letter of Credit shall be for a minimum term of one (1) year and shall provide that the Letter of Credit shall be automatically renewed or extended without the need for written notice from the Municipality requesting such extension.

23. USE OF PERFORMANCE GUARANTEE

The Owner agrees that the Municipality may, in its sole discretion, at any time and from time to time, authorize the use of all or any part of the Performance Guarantee for such purposes as the Municipality deems fit if the Owner:

- a) in any way makes or permits default in the Owner's obligations under this Agreement; or
- b) fails to pay any costs, charges, expenses, premiums, liens or other monies whatsoever payable by the Owner arising out of or in connection with or in any way relating to the construction and installation of the Works and/or Utilities or the other provisions of this Agreement.

The provisions of this section shall be in addition to all other provisions in this Agreement relating to the use of the Performance Guarantee.

In the event that the Municipality uses all or any part of the Performance Guarantee at any time or times, the Owner hereby agrees that construction and installation of the Works by or on behalf of the Owner within the Subdivision Lands shall cease until the Performance Guarantee has been restored by the Owner to an amount satisfactory to the Director, Works and Engineering and consistent with the provisions of this Agreement regarding the purpose and use of the Performance Guarantee.

24. REQUIREMENTS FOR RELEASE OF PERFORMANCE GUARANTEE

The Performance Guarantee can be reduced periodically by the amount of Works which are certified to be Substantially Complete to a maximum of 90% of said Works, less the value of deficiencies, less statutory lien requirements, less the value of other fees owing.

The owner may submit a request for reduction of the Performance Guarantee which will include:

- (a) the value of Work performed to the date;
- (b) the value of outstanding or incomplete Work;
- (c) the amount of the statutory holdback, allowing for any previous releases of statutory holdback to the Contractor in respect of completed subcontracts and deliveries of pre-selected equipment;
- (d) the amount of maintenance security required; and
- (e) the amount due to the Contractor.

The Owner may submit a request for release of the Performance Guarantee upon Substantial Completion of the works which will include:

- (a) a release by the Contractor in a form satisfactory to the Contract Administrator releasing the Owner from all further claims relating to the Contract, qualified by stated exception such as outstanding work or matters arising out of any claims, negotiations, and/or mediation as outlined in the OPS General Conditions of Contract and Specifications for Construction;
- (b) a statutory declaration in a form satisfactory to the Contract Administrator that all liabilities incurred by the Contractor and the Contractor's Subcontractors in carrying out the Contract have been discharged except for statutory holdbacks properly retained;
- (c) a satisfactory Certificate of Clearance from the Workplace Safety and Insurance Board; and
- (d) proof of publication of the Certificate of Substantial Completion.

For purposes of this section, a certificate prepared by the Owner's Engineer and approved in writing by the Director, Works and Engineering shall be conclusive evidence as to the cost of completing all of the Works.

- a) The Owner agrees that the Municipality shall not release to the Owner the balance of the Performance Guarantee until the Owner has deposited with the Municipality the Maintenance Guarantee as hereinafter described..

25. CONSTRUCTION LIENS

The Owner will remove any lien, in accordance with the Construction Act, R.S.O. 1990, c. C.30, as amended from time to time, within 30 days of written notice from the Municipality, failing which it is agreed that the registration of a claim for lien or the giving of a copy of a claim for lien to the clerk of the Municipality shall entitle the Municipality, in addition to any other remedies available to it, to use all or any part of the Performance Guarantee (or the Maintenance Guarantee, as the case may be) to satisfy the liabilities and obligations of the Municipality as may arise pursuant to the Construction Act, R.S.O. 1990, c. C.30, as amended from time to time.

26. INDEMNIFICATION

The Owner hereby covenants and agrees to indemnify and save harmless the Municipality, its employees, workmen, agents, consultants, elected officials and advisors from and against all actions, causes of action, losses, liens, damages, suits, judgments, orders, awards, claims and demands whatsoever, and from all costs to which the Municipality may be put in defending or settling any such action, causes of action, suits, claims or demands, which may arise either directly or indirectly by reason of, or as a consequence of, or in any way related to the Owner undertaking the development of the Subdivision Lands (including without limitation any or all of the Works) or any provision or breach of any provision of this Agreement and relating to an occurrence which happened prior to assumption of the subdivision development, save and except any action, causes of action, suits, claims or demands which are solely attributable to the acts of the Municipality or any of its authorized agents, servants or employees.

27. INSURANCE

The Owner covenants and agrees to maintain insurance in accordance with the provisions of Schedule "L" of this Agreement at least until the Subdivision Lands have

been assumed by the Municipality in accordance with this Agreement.

The Owner shall from time to time, at the request of the Municipality, furnish proof to the Municipality that all premiums on such policy or policies of insurance have been paid and that the insurance continues in full force and effect. In the event that any premium is not paid, the Municipality, in order to prevent the lapse of such policy or policies of insurance, may pay the premium or premiums and the Owner shall reimburse the Municipality within ten (10) days of written demand being given by the Municipality.

The Owner hereby covenants at its own expense, to obtain prior to the execution of this Agreement by the Municipality a letter from the Owner's insurance company(ies) addressed to the Municipality certifying that the policy or policies of insurance provided pursuant to this Agreement are in full force and in accordance in all respects with the provisions of Schedule "L" of this Agreement. The Owner hereby acknowledges that the Municipality intends to rely on the said letter from the Owner's insurance company(ies).

28. APPROVAL OF CONTRACTORS / INSPECTION OF WORKS

The owner agrees that any contractor employed by the owner to construct, install and/or maintain any of the work shall be approved by the Director, Works and Engineering in writing prior to the contract being made. The Owner agrees that the Director, Works and Engineering or the employees or agents of the Municipality may, at any time, and from time to time, inspect the work and shall have the power to stop any such work in the event that the work is being performed by an unapproved contractor or in a manner that is not satisfactory to the Director, Works and Engineering. The Director, Works and Engineering shall, except in cases of urgency or emergency as determined by the Director, Works and Engineering in his sole and absolute discretion, take all reasonable steps to notify in writing either the Owner or the Owner's Engineer of the situation complained of and to provide a minimum 72 hours to remedy the situation complained of prior to exercising the above-noted power to stop any such work.

As noted above, the Owner's Engineer shall provide a full-time resident inspector who will be on-site at all times to inspect work and certify that it has been completed in accordance with the Engineering drawings including conformance with all the applicable Municipal standards, OPSS and other specifications and standards outlined in the drawings. The inspector shall be under the direction of a qualified Professional Engineer.

29. REQUIREMENTS FOR AUTHORIZATION TO COMMENCE WORKS

The Owner agrees not to commence the construction or installation of any of the Works in the Subdivision without the written permission of the Municipality, referred to herein as an "Authorization to Commence Works" or through a pre-servicing agreement agreed to by the Municipality. In addition to any other requirements contained herein, no Authorization to Commence Works shall be issued for any of the Works until:

- a) This Agreement has been signed by all Parties or the Owner has entered into a pre-servicing agreement, agreed to by the Municipality;
- b) The Owner has received final approval for the Engineering Drawings from the Municipality;
- c) The preliminary M-plan has been endorsed reflecting the draft approved plan;
- d) The Owner has paid to the Municipality all outstanding charges against the Subdivision Lands;
- e) The Owner has deposited with the Municipality the Performance Guarantee applying to the plan for which the Owner is seeking such Authorization to Commence Construction Services;
- f) The Owner has deposited with the Municipality the required policy(ies) of insurance;
- g) The Owner has obtained and provided to the Director, Works and Engineering written approval for those Services which require approval from the Ministry of the Environment and/or the Ganaraska Region Conservation Authority and/or other statutory bodies; and
- h) The Owner, at its sole expense, has provided and erected signs at each entrance for every road on the Plan within the Subdivision measuring at least 1.2 m by 1.8

m reading as follows:

- i. "Road not assumed by Municipality - Use at your own Risk"
- ii. The aforesaid signs shall be properly maintained and erected until the Subdivision Lands have been assumed in accordance with the provisions of this Agreement.

In addition to the foregoing, the Owner shall notify the Director, Works and Engineering in writing at least 96 hours prior to the commencement of work. If for any reason there is a cessation or interruption of construction, the Owner shall provide similar notice to the Director, Works and Engineering before work is resumed.

30. PROVISIONS FOR CONSTRUCTION AND INSTALLATION

The Owner shall, upon the issuance of Authorization to Commence Works, proceed to construct and install all of the Works continuously and expeditiously and in accordance with the time limits specified in this Agreement, subject to the overriding direction of the Director, Works and Engineering. All of the Works shall be constructed and installed in accordance with the Approved Engineering Design

Drawings and other approved plans and drawings. No variation from the Approved Engineering Design Drawings and other approved plans and drawings shall be permitted unless such variation is authorized in writing by the Director, Works and Engineering. All construction on the Subdivision Lands shall be carried out in accordance with the regulations for construction as set out in Schedule "J" hereto. The Owner's Engineer shall file with the Municipality, prior to the commencement of construction, a written undertaking with respect to the Works, which undertaking shall include a covenant that the Owner's Engineer has been retained to provide upon completion the Owner's Engineer's Certificate that the construction and installation of the Works has been completed in accordance with the Approved Engineering Design Drawings and the terms of this Agreement.

31. COMPLETION TIME AND SEQUENCE OF CONSTRUCTION AND INSTALLATION

The Owner agrees to complete the construction of all Works on schedule in consultation with the Municipality in accordance with the approved Engineering Drawings attached as Schedule "C".

The Owner shall not commence the placement of granular materials until the subgrade/subbase has been proof rolled in the presence of the Director, Works and Engineering, the Owner's Engineer and Geotechnical Consultant and further until such time as the Geotechnical Consultant has certified under the signature of a Professional Engineer that the service trenches and road subgrade/subbase have been backfilled, compacted and tested in accordance with the Municipality's testing criteria and the road subgrade/subbase is suitable for the placement of granular materials. The Owner further agrees that it will not commence with the placement of concrete base curb (or concrete curb and gutter) and hot mix binder asphalt until such time as the Geotechnical Consultant has certified under the signature of a Professional Engineer that the granular base has been compacted in accordance with the Municipality's testing criteria and the granular base is suitable for the placement of concrete curb and hot mix binder asphalt.

32. SIDEWALKS

NOT REQUIRED

33. PERMANENT SIGNAGE

The Owner agrees to install appropriate signs as per the approved engineering drawings and to the satisfaction of the Director, Works and Engineering within the subdivision lands prior to first occupancy.

34. ADDITIONAL FACILITIES OR WORK REQUIRED

If, in the opinion of the Director, Works and Engineering, any additional facilities or work is required to ensure the Works are satisfactorily completed or function properly, the Owner shall promptly construct or install such additional facilities or perform such additional work as the Director, Works and Engineering may reasonably require from

time to time and at any time prior to assumption of the Subdivision Lands.

35. INCOMPLETE OR FAULTY WORK

The Municipality may, at its sole discretion, at any time and from time to time, inspect the Works to be constructed pursuant to this Agreement.

If, in the opinion of the Director, Works and Engineering, the Owner:

- a) is not proceeding with or causing the work to proceed as required by this Agreement within the time limits specified in this Agreement, or in order that it may be completed within the specified time limits;
- b) is improperly performing work required by this Agreement;
- c) has abandoned or neglected work required by the Agreement;
- d) refuses, fails or neglects to maintain any of the Works or to replace or repair any part or parts of the Works that may be rejected by the Director, Works and Engineering as defective or unsuitable; and/or
- e) defaults in performance of the terms of this Agreement;

then the Director, Works and Engineering shall promptly notify the Owner in writing of the situation complained of, and if the Owner fails to remedy the situation complained of within ten (10) business days after the mailing of such notice, the Municipality shall have full authority and power to enter upon the Subdivision Lands, to purchase, lease, or otherwise acquire such materials, tools and machinery and to employ such workman as in the opinion of the Director, Works and Engineering shall be required for the proper completion of such work, including without limitation, the repair or the reconstruction of faulty work and the replacement of materials not in accordance with the specifications, all at the cost and expense of the Owner. In cases of emergency, in the sole opinion of the Director, Works and Engineering, such entry and work may be done without prior notice, but the Owner shall be notified thereafter.

The Owner agrees that the Municipality may, in addition to any other remedies it may have, use all or any part of the Performance Guarantee, to pay for the costs incurred by the Municipality and/or its agents in furtherance of the provisions of this section.

It is understood and agreed between the parties hereto that such entry upon the Subdivision Lands shall be as agent for the Owner and shall not be deemed, for any purpose whatsoever, as an acceptance or assumption of the Works by the Municipality.

The cost incurred by the Municipality and/or its agents in furtherance of the provisions of this section shall be calculated by the Director, Works and Engineering whose decision shall be final and binding on all parties hereto. It is understood and agreed by the Owner that such costs shall include a management fee of Fifteen Percent (15%) of the costs of the labour and materials. It being herein declared and agreed that the assumption by the Owner of the obligations imposed by this section is one of the considerations without which the Municipality would not have registered this Agreement.

Nothing herein contained shall be taken to limit the powers, rights, remedies, actions and/or proceedings whatsoever available to the Municipality arising from or out of any breach of the provisions and terms of this Agreement.

36. DAMAGE OR RELOCATION OF EXISTING SERVICES

The Owner agrees to pay the cost of repairing any damage to any existing services and/or roads and the cost of relocating any existing services caused by the development of the Subdivision Lands or any of the Works required by this Agreement, provided all work is to be done to the satisfaction of the Director, Works and Engineering and/or the authorities responsible for such services. The Owner further agrees to pay the cost of moving or altering any of the Works installed in driveways or so close thereto, in the opinion of the Director, Works and Engineering, as to interfere with the use of the driveway.

37. USE OF WORKS BY MUNICIPALITY

The Owner agrees that any of the Works may be used by the Municipality or other authorized persons for the purposes for which the Works are designed. Such use of any of the Works shall not be deemed an acceptance of any of the Works by the

Municipality, nor an assumption by the Municipality of any liability in connection therewith, nor a release of the Owner from any of its obligations under this Agreement.

38. DEVELOPMENT CHARGES

The Owner agrees to pay to the Municipality development charges as required by the By-law in effect at the time of application for each building permit.

39. REQUIREMENTS FOR BUILDING PERMITS

Neither the registration of this Agreement by the Municipality, nor the issuance by the Municipality of any Certificate of Acceptance shall be deemed to give any assurance that building permits, when applied for, will be issued in respect of any of the subject lands. The Owner agrees that no application for any building permit in respect of any of the subject lands shall be made until:

- a) The Municipality is satisfied with adequate road access, hydro service, and storm drainage facilities are available to service the proposed Subdivision.
- b) The grade of the street in front of the proposed building has been established to the satisfaction of the Director, Works and Engineering and all drainage work completed, and base course of asphalt laid, unless otherwise expressly permitted by the Director, Works and Engineering.
- c) The Owner is not in violation of any of the provisions of this Agreement.
- d) All charges applicable to any lot or lots for which building permits are sought, have been paid.
- e) Soil tests, when required by the Chief Building Official, conducted by an independent testing laboratory, confirm the stability of the soil and stability to sustain superimposed loads from building and filling operations.
- f) The Owner has conveyed to the Municipality all lands and easements as provided in this Agreement to the satisfaction of the Municipality.
- g) Notwithstanding provisions to the contrary in this Section, the Owner may seek building permits for two (2) model dwelling units, provided the Owner has fulfilled its obligations to date with respect to paragraph 39c, 39d and 39e inclusive, and the Owner hereby undertakes and agrees:
 - i. not to permit occupancy of any model home until all obligations under paragraph 38 are fulfilled; and
 - ii. to maintain such model homes in a good state of repair.

40. REQUIREMENTS FOR AUTHORIZATION TO OCCUPY

The Owner shall not permit any building on the said lands to be occupied without the written permission of the Municipality, referred to herein as an "Authorization to Occupy". In addition to any other requirements contained herein, no Authorization to Occupy shall be issued for any building until:

- a) The base course asphalt is laid on the road immediately in front of the dwelling and such asphalt road has been extended to County Road 65, in a manner satisfactory to the Director, Works and Engineering.
- b) All of the Public Services, other than such roads, required to be constructed and installed to service such building, have been constructed and installed to the approval of the Director, Works and Engineering.
- c) All the Private Services required to be constructed and installed to service such building have been constructed and installed to the satisfaction of the Director, Works and Engineering and any authorities who have jurisdiction over such Private Services.

41. DUST CONTROL

The Owner agrees to develop a dust control plan to the satisfaction of the Director, Works and Engineering to mitigate the generation and transmission of dust and particles from the Subdivision Lands.

The Owner agrees to comply with the directions of the Director, Works and Engineering from time to time with respect to the suppression of dust and particles from the

Subdivision Lands and shall comply with the directions of the Director, Works and Engineering from time to time with respect to removal or cleanup of dust and particles from any affected properties or any buildings, structures, equipment or belongings located thereon.

The Owner undertakes the regular cleaning of the streets within the Subdivision as well as adjacent streets, as impacted by construction activity, all to the satisfaction of the Director, Works and Engineering.

42. MARKING OF LOTS

All building lots shall be plainly marked with their lot number from the time building construction starts within the Subdivision Lands. This can be done initially with a printed marker on the stake at the front of the lot and when the building has progressed sufficiently, the marker can be fastened to the front wall of the building so as to be legible from the roadway on which the lot fronts.

43. SALES TRAILER

The Owner covenants and agrees that any placement or construction of a sales trailer pertaining to the Subdivision Lands must be approved by the Director, Works and Engineering as it pertains to location, specifications, timing and other matters as deemed appropriate by the Director, Works and Engineering prior to the construction and/or placement of said trailer. The Owner shall ensure that the trailer(s) is maintained in a manner acceptable to the Director, Works and Engineering. The Owner agrees to remove or relocate the trailer(s) at its sole expense within thirty (30) days of written notification by the Director, Works and Engineering.

44. BUILDING PERMIT RESTRICTIONS FOR FIRE BREAKS

The Owner covenants and agrees that no building permits will be applied for or issued for more than seven (7) consecutive lots until such time as the external finishing including cladding, roofing and windows on the units abutting each side lot line has been completed, unless otherwise approved by the Director of Fire and Emergency Services for the Municipality.

45. LIABILITY OF OWNER

Notwithstanding the sale of any part or all of the Subdivision Lands the Owner shall remain bound by all obligations, covenants and agreements whatsoever created by this Agreement, including those assumed by a purchaser, and shall remain jointly and severally liable therefore to the Municipality PROVIDED THAT upon the sale of each lot or block on the Plan by the Owner, the Owner shall cease to have any responsibility for the obligations created in the section entitled "Weed Control and Removal of Debris" of this Agreement for such lot or block and the Municipality shall be entitled to enforce the provisions of the aforesaid sections of this Agreement against the owners from time to time of every such lot(s) or block(s).

The Owner hereby acknowledges and agrees that neither the Performance Guarantee, Maintenance Guarantee, individual lot grading deposit or any policy of insurance which the Owner is required to provide or maintain according to this Agreement shall in any way be deemed to limit the liability of the Owner.

46. REQUIREMENTS TO SOD

The Owner, prior to sodding, shall place clean, weed-free topsoil, as defined by the latest OPSS, in all areas to be sodded. The Owner further agrees that:

- a) the minimum depth of topsoil required shall be such that the settled, combined thickness of the topsoil and sod is a minimum of 200 mm;
- b) Number 1 nursery sod shall be used;
- c) all stones and debris shall be removed and disposed of prior to the sod being placed;
- d) for building lots, sod work must be completed as soon as practically possible following occupancy of the particular lot, taking into consideration the date of completion of abutting dwellings and seasonal conditions; and

- e) all sod work on municipal property must be completed prior to Substantial Completion, save where not permitted by seasonal condition, in which case sodding must be completed as soon as possible, and in any event prior to the release of the Maintenance Guarantee.

47. MAINTENANCE OF ROADS AFTER OCCUPANCY

The Owner agrees that the Municipality shall not be required to provide any road maintenance within the Subdivision lands prior to the formal assumption of the Subdivision thereof by the Municipality.

48. REQUIREMENTS FOR SUBSTANTIAL COMPLETION

The Owner agrees that the construction and installation of the Works for the subdivision shall not be deemed to be substantially complete for the purposes of this Agreement until:

- a) all of the Works for the Subdivision have been inspected and approved by the Director, Works and Engineering;
- b) the Owner has provided the Director, Works and Engineering with satisfactory evidence that there has been complete compliance with the requirements of The Construction Act, R.S.O. 1990, c. C.30, as amended from time to time, that no liens have been preserved and no notices of lien received, and that the period for preserving liens has expired with respect to all work on and development of the Subdivision Lands for which the Municipality or property vested in the Municipality may, in the sole and absolute opinion of the Director, Works and Engineering, be subject or liable;
- c) the Owner has provided the Director, Works and Engineering with satisfactory evidence that all Utilities have been installed, inspected and approved by the utility companies having jurisdiction for the Utilities;
- d) the Owner has provided the Director, Works and Engineering a copy of advertisement in the Daily Commercial News of the Notice of Completion;
- e) the Owner has provided the Director, Works and Engineering two sets of printed as-constructed drawings signed and sealed by a Professional Engineer licensed to practice in the Province of Ontario, as well as one digital copy of said drawings. The drawings shall include all underground utilities and above ground appurtenances, utility pedestals, and transformers;
- f) the Owner has provided the Director, Works and Engineering a Certificate of Completion signed and sealed by a Professional Engineer licensed to practice in the Province of Ontario confirming that the Works have been constructed in accordance with the approved drawings and specifications and identifying any and all deficiencies in the Works;
- g) the Owner has provided all of the inspector's field notes, inspection and testing reports to the satisfaction of Director, Works and Engineering, including but not limited to geotechnical reports for engineered fill areas, soil laboratory analysis and other reports as applicable; and,
- h) For greater certainty, the date of submission of the items set out in subparagraphs (b) to (g) above shall be deemed to be the Date of Substantial Completion.

49. PERIOD OF REQUIRED MAINTENANCE OF WORKS

The Owner shall, from the Date of Substantial Completion, maintain and keep in good repair all of the Works for the Subdivision Lands until the Subdivision has been assumed. The Owner acknowledges and agrees that the Subdivision will not be assumed until the Works have been maintained and kept in good repair for a period of 24 months from the date of the Substantial Completion.

50. SUMP PUMPS/ROOF LEADERS

The Owner covenants and agrees that any sump pumps or roof leaders installed within the Subdivision Lands shall have the sump pump or roof leader discharge directed to a rear yard swale or other location satisfactory to the Director, Works and Engineering

and at no time shall the sump pump or roof leader discharge to within 7.5 metres of the front lot line of any lot within the Subdivision Lands.

51. MAINTENANCE GUARANTEE REQUIRED

In order to ensure that the Works will be properly maintained and that all defects will be replaced and/or repaired, the Owner shall, prior to the release by the Municipality of the Performance Guarantee, lodge with the Municipality a "Maintenance Guarantee" consisting of an irrevocable bank Letter of Credit in an amount equal to 10% of the original Works Cost Estimate or such greater amount as the Director, Works and Engineering, in his sole and absolute discretion, determines is advisable. The form and wording of the Maintenance Guarantee shall be in the form attached hereto as Schedule "K". The Owner covenants and agrees that the Letter of Credit shall be maintained in full force and effect until the assumption of the Subdivision Lands.

52. USE OF THE MAINTENANCE GUARANTEE

The Owner agrees that the Municipality may, in its sole discretion, at any time and from time to time, authorize the use of all or any part of the Maintenance Guarantee for such purposes as the Municipality deems fit:

- a) if the Owner fails to properly maintain, repair or replace any or all of the Works; or
- b) if a claim for lien is registered or a copy thereof given to the Clerk of the Municipality pursuant to Construction Act, R.S.O. 1990, c. C.30 as amended from time to time; or
- c) if the Owner fails to pay any costs, charges, expenses, premiums, liens or other monies whatsoever payable by the Owner arising from or in connection with or in any way relating to:
 - i) the maintenance, repair or replacement of any or all of the Works; and/or
 - ii) the other provisions of this Agreement.

In the event that the Municipality uses all or any part of the Maintenance Guarantee at any time or times, the Owner hereby agrees to forthwith restore the Maintenance Guarantee to an amount satisfactory to the Director, Works and Engineering consistent with the provisions of this Agreement regarding the purpose and use of the Maintenance Guarantee.

53. REQUIREMENTS FOR RELEASE OF MAINTENANCE GUARANTEE

The Maintenance Guarantee shall be retained by the Municipality until:

- a) The Works have been Assumed through the Municipal By-law for the Subdivision Lands; and
- b) the Owner has provided the Director, Works and Engineering with satisfactory evidence there has been full compliance with the requirements of Construction Act, R.S.O. 1990, c. C.30, and that the time for preserving liens has expired in relation to such work, services or materials for which the Municipality may, in the sole and absolute opinion of the Director, Works and Engineering, be liable.

54. REQUIREMENTS FOR ASSUMPTION OF WORKS

The Owner agrees that none of the Works shall be deemed to be accepted/ assumed by the Municipality until the following requirements have been fulfilled:

- a) The Municipal Council has received a written report from the Director, Works and Engineering indicating that the Maintenance Period has expired and all of the Works have been completed and all deficiencies have been addressed to the satisfaction of the Director, Works and Engineering
- b) The Municipal Council has passed a by-law assuming the works;
- c) The Director, Works and Engineering has been advised in writing that all Utilities have been maintained for the required period of time to the satisfaction of the applicable utility company;

- d) The Owner has paid to the Municipality all outstanding costs and expenses as generally described in the section of this Agreement entitled "Owner's Costs";
- e) The Owner has provided the Municipality "As-Constructed" Drawings documenting any changes to the original approved drawings on such materials as approved by the Director, Works and Engineering;
- f) The Owner has supplied a written statement from a registered Ontario Land Surveyor that after the completion of the subdivision work, all survey monuments have been found or replaced as shown on the registered Plan of Subdivision and that a Real Property Survey shall be completed demonstrating that all property bars have been found and are at the final grade;
- g) The owner has completed the transfer of ownership of in accordance with the ECA owner change process; and
- h) The Owner's Engineer has provided the Municipality with a copy of the Final Payment Certificate in Excel format so that the Municipality can assign a value to the assumed assets.

Notwithstanding anything contained in this agreement to the contrary, no streets will be assumed until at least 50% of the lots in the Plan have occupied dwellings thereon.

55. OWNERSHIP OF WORKS BY MUNICIPALITY

The Owner agrees that, upon the assumption of the Works through Municipal By-law, the ownership of the Works specified in such by-law shall vest in the Municipality and the Owner shall have no right or claim thereto, other than as an owner of land abutting a road in which such Works are installed.

56. INTEREST IN SUBDIVISION LANDS

- a) The Owner hereby charges and subordinates all its interest in the Subdivision Lands with and to the obligations contained in this Agreement.
- b) The Mortgagee hereby subordinates all its interest in the Subdivision Lands to the obligations contained in this Agreement. The Mortgagee agrees that, in the event that it transfers any interest in the Subdivision Lands or any part thereof pursuant to its mortgage security, the title to the Subdivision Lands shall continue to be subject to the terms and provisions of this Agreement. In the event that the Mortgagee becomes a Mortgagee in possession of the Subdivision Lands or any part thereof, or obtains the equity of redemption in the Subdivision Lands or any part thereof, then the Mortgagee acknowledges and agrees that, in addition to all of the foregoing, it will be charged with all of the obligations of the Owner contained in this Agreement.

57. OWNER'S COSTS

- a) Every provision of this Agreement by which the Owner is obligated in any way shall be deemed to include the words "at the expense of the Owner".
- b) The Owner shall reimburse the Municipality for all reasonable administrative, planning, legal, engineering, inspection and/or other costs or expenses whatsoever incurred by the Municipality in connection with the development of the Subdivision Lands or in respect of this Agreement, including the preparation thereof.
- c) In the event that the Owner does not reimburse the Municipality as aforesaid, the Municipality may, at its sole discretion, on thirty (30) days written notice to the Owner, use the Performance Guarantee or Maintenance Guarantee (as the case may be), or any part thereof for the payment in full of such costs or expenses.
- d) The Owner shall pay the Municipality Public Works User Fees in the amount of 4.5% of the first \$200,000 of the Total Development Cost (Schedule "I") plus 2.5% on the amount above \$200,000, resulting in a value of \$25,967.66.

58. UNPAID CHARGES

The due dates of any sum of money payable herein shall be forty-five (45) days after the date of the invoice. Interest at the rate established from time to time by resolution

of the Council of the Municipality for monies owed to the Municipality shall be payable by the Owner to the Municipality on all sums of money payable herein, which are not paid on the due dates, calculated from such due dates.

59. NOTIFICATION OF OWNER

All notices, requests, demands or other communications by the terms hereof required or permitted to be given by one party to another shall be given in writing by personal delivery or by fax or by first class mail, postage prepaid, addressed to such other party or delivered to such other party as follows:

a) to the Municipality at:

The Corporation of the Municipality of Port Hope
56 Queen Street
Port Hope, Ontario
L1A 3Z9

Attn: Brian Gilmer, Municipal Clerk
Email: bgilmer@porthope.ca

b) to the Owner at:

Michael Battaglia Enterprises Inc.
2109 Katchewanooka Court
Lakefield ON
K0L 2H0

Attn: Michael Battaglia
Email: battagliahomesinc@gmail.com

c) Mortgagee (if applicable)

or at such other address as may be given by any of them to the others in writing from time to time and such notices, requests, demands or other communications shall be deemed to have been received when faxed or delivered, or, if mailed seventy-two (72) hours after 12:01 a.m. on the day following the day of the mailing thereof.

60. REGISTRATION OF AGREEMENT

The Owner and the Mortgagee hereby consent to the registration of this Agreement against the title of the Subdivision Lands.

61. CANCELLATION OF AGREEMENT

In the event that the Plan has not been registered within twelve (12) months of the date of execution of this Agreement by the Municipality, the Municipality may, at its option, on fifteen (15) days written notice to the Owner, declare this Agreement to be null and void and the Municipality may withdraw its final approval of the Plan.

62. RENEGOTIATION OF AGREEMENT

The Owner agrees that the Municipality may, at time or times, at its sole option, on fifteen (15) days written notice to the Owner, declare this Agreement to be subject to renegotiation (whereupon the Owner hereby agrees that construction or installation of the Works by or on behalf of the Owner shall cease until this Agreement has been renegotiated) in the event that:

- a) construction or installation of the Works has not been substantially commenced within one (1) year from the date of this Agreement; or
- b) construction or installation of the Works has been commenced but no substantial construction or installation of the said Works has occurred for a period of twelve (12) consecutive months.

In such event, the Owner agrees that the Municipality shall be entitled to register on title to the Subdivision Lands an Inhibiting Order or any other form of registration as may be appropriate to notify all persons having an interest in the Subdivision Lands (or any part thereof) of the situation described above and to control the sale or further sale

of lots or blocks within the Subdivision Lands.

63. ASSIGNMENT OF AGREEMENT

The Owner shall not assign this Agreement or any of its obligations hereunder without the prior written consent of the Municipality.

64. HEADINGS

The headings in this Agreement are for the use of reference only and shall not be read or construed so as to abridge or modify the meaning of any provision in the main text of this Agreement.

65. NO WAIVER

The failure of the Municipality to insist on strict performance of any of the terms, provisions, covenants or obligations herein shall not be deemed to be a waiver of any rights or remedies that the Municipality may have and shall not be deemed to be a waiver of any subsequent breach or default of the terms, provisions, covenants and obligations herein contained.

66. TIME OF ESSENCE

Time shall be of the essence of this Agreement and every part hereof and no extension or variation of the provisions of this Agreement shall operate as a waiver of this provision.

67. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to all persons other than those to whom it was held to be invalid or unenforceable shall not be affected thereby and each term and provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

68. PLANNING ACT

It is acknowledged that the Municipality is entitled, by virtue of *The Planning Act*, R.S.O. 1990, c.P.13, as amended, to enforce the provisions of this Agreement not only against the Owner but also against any and all subsequent owners of the Subdivision Lands or any part thereof.

69. WEED CONTROL AND REMOVAL OF DEBRIS

All weeds, grass and other similar growth on each lot and block on the Subdivision Lands shall be kept cut and under control by the Owner at its own expense. Further, the Owner shall keep each lot or block free from debris, waste building materials, tree stumps, discarded boulders and other similar materials. In the event that the Owner fails to comply with the requirements of this Section within seven (7) days of notice from the Director, Works and Engineering, then in such case the Municipality shall have the right to enter on the applicable lands to undertake the necessary works and to deduct the costs of same from the Performance Guarantee or Maintenance Guarantee or to seek any other remedy available to the Municipality including the provisions of Section 446 of the Municipal Act, 2001, S.O. 2001, c.25 as amended.

70. SPECIAL PROVISIONS

- a) The Owner shall, prior to final approval of the Plan, enter into any servicing agreements as may be required by utility companies for the installation of any of the Utilities to serve the Subdivision Lands, to the satisfaction of the Municipality and the appropriate utility company.
- b) All Utilities serving the Subdivision Lands shall be located underground. A Utilities Coordination Plan shall be submitted to the Municipality prior to execution of this agreement and will be made available at the sales centre for public viewing.
- c) The Owner shall provide and install, to the satisfaction of the Municipality, all

- permanent traffic signage and markings required within the Plan.
- d) The Owner agrees that, street names and civic addresses shall be assigned by the Municipality and the civic addresses shall be appropriately posted by the Owner in accordance with the Municipality's requirements.
 - e) The Owner covenants to notify the Ministry of Tourism, Culture and Sport immediately if, during the development of the Subdivision Lands, the presence of any archaeological resources is revealed.
 - f) Prior to final approval, the Owner shall:
 - i) Management of soils is an important consideration for the protection of the Environment. It is agreed that the Owner shall prepare a Soils Management Plan (SMP) in accordance with MOE regulations and to the satisfaction of the Director, Works and Engineering to ensure that all soils leaving or entering the subject lands will be certified by a Professional Engineer licensed to practice in the Province of Ontario and demonstrate that the soils are being managed to protect the environment. The SMP shall be provided to the Municipality of Port Hope prior to commencement of any on or off site works and the Owner agrees to provide QA/QC verification documentation to the Municipality and/or MOE when requested.
 - ii) Provide written confirmation from a telecom company that satisfactory arrangements, financial and otherwise, have been made with Bell Canada for any Bell Canada facilities servicing this plan of subdivision which facilities are required by the Municipality of Port Hope to be installed underground.
 - iii) Prepare a composite utility plan that allows for the safe installation of all utilities, including required separation between utilities, to the satisfaction of the utility providers.
 - iv) The Owner agrees to carry out, or to cause to be carried out all of the works, controls and other matters recommended in the report titled "Functional Servicing Report, Rural Subdivision, Hope Concession 5" prepared by D.M. Wills Associates Ltd., dated September 2018. The Owner covenants and agrees that all such works and controls shall be in place and operational prior to the initiation of any grading or construction on the Subdivision Lands and shall remain in place and in good repair during construction within the Subdivision Lands, until such time as the site has been adequately stabilized and re-vegetated. The Owner further agrees to maintain all erosion and siltation control devices in good repair during the construction period in a manner satisfactory to the GRCA.
 - v) The Owner covenants and agrees to provide the Municipality of Port Hope with evidence that satisfactory arrangements, financial and otherwise, have been made with Canada Post Corporation for the installation of Community Mail Boxes (CMB) as required by Canada Post Corporation and as shown on the approved engineering design drawings/Draft Plan, at the time of asphalt installation. The Owner further covenants and agrees to provide notice to prospective purchasers of the locations of CMBs and that home/business mail delivery will be provided via CMB, provided the Owner has paid for the activation and equipment installation of the CMBs.
 - vi) The Owner agrees to satisfy the following requirements of Canada Post Corporation and the Municipality with respect to the provision of mail delivery to the Subdivision Lands and the provision of community mailbox locations.
 - a. Developer timeline, obligations and installation:
 - i. The owner shall advise Canada Post as to the excavation date for the first foundation as well as the date development work is scheduled to begin.
 - ii. If applicable, the Owner shall ensure that any street facing installs have a pressed curb or curb cut.
 - iii. The Owner shall advise Canada Post as to the expected first occupancy date and ensure the future site is accessible to Canada Post 24 hours a day.
 - b. Additional Developer Requirements:
 - i. The Owner 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 homeowners that indicates the location of all Community Mail Boxes within the development, as approved by Canada Post.
- ii. The Owner agrees to include in all offers of purchase and sale a statement which advises the purchaser that mail will be delivered via Community Mail Boxes or Lock Box Assemblies (Mail Room). The developer also agrees to note the locations of all Community Mail Boxes or Lock Box Assemblies (Mail Room), within the development.
 - iii. The Owner will be responsible for officially notifying the purchasers of the exact Community Mail Boxes location prior to closing of any home sales with specific clauses in the Purchase offer, on which the homeowner does a sign off.
 - iv. The Owner will provide a suitable and safe temporary site for a Community Mail Boxes upon approval of the Municipality of Port Hope (that is levelled with appropriately sized patio stones and free of tripping hazards), until asphalt and final grading are completed at the permanent locations. Canada Post will provide mail delivery to new residents as soon as the homes or units are occupied.
- g) The Owner covenants and agrees that all Agreements of Purchase and Sale for every lot and block within the Subdivision Lands shall contain the following clauses:
- i) **WARNING:** Purchasers are advised that it is unlikely that there will be door-to-door mail delivery within this subdivision. Canada Post intends to service this property through the use of community mailboxes that may be located in several locations within this subdivision;
 - ii) **WARNING:** Through provisions of the initial and any ensuing purchase and sale agreements, purchasers are advised of the existing aerodrome located to the south of the Subdivision Lands;
 - iii) **WARNING:** Purchasers are advised that the subject lands are located within an area of new development and the construction of services and new homes may result in dust, noise and vibrations which may affect the living environment of residents in the vicinity during such construction.
 - iv) **WARNING:** Purchasers are advised that the grading and drainage of the subdivision including all individual lots are designed utilizing sheet flow, side yard swales, and rear yard swales. It is the purchaser's responsibility to not block drainage by the construction of any fencing, decks, landscaping etc. Any proposed changes to the grading, by the purchaser, must be approved by the Municipality.
 - v) **NOTE: Environmentally Protected Lands** – The Purchaser is advised that the lot contains natural heritage features that are considered environmentally sensitive. No alterations to watercourses or wetlands are permitted. No buildings, structures or site alteration including the placement or removal of fill or debris, or tree cutting is permitted.
 - vi) **NOTE: Surrounding agricultural operations** – The Purchaser is advised that the lot is in proximity to an agricultural area and thus is subject to the usual noise, dust and odours associated with both existing and future agricultural operations.
 - vii) **NOTE:** *Purchasers are advised that there is a registered aerodrome located to the south of the subdivision*
- h) The Owner acknowledges and agrees to provide to the Municipality, a letter signed by each purchaser of lots acknowledging that portions of the subject lot contain natural heritage features considered to be environmentally sensitive. The homeowner acknowledges and agrees that no alterations to watercourses or

wetlands are permitted. No buildings, structures, or site alteration, including the placement or removal of fill or debris or tree cutting is permitted.

- i) The Owner covenants and agrees that should the well or private water supply of any person be impaired as a result of construction or the development of the subdivision, the Owner shall at its expense, provide a new well or private water system so that water supplied to the affected party shall be of a quality and quantity at least equal to the quality and quantity of water enjoyed by the affected party prior to the interference. All existing drilled and dug wells must be decommissioned by a licensed water well contractor and existing septic systems shall be commissioned in accordance with current regulations. Proof of decommissioning for all wells and septic systems shall be provided to the Municipality.
- j) The Owner acknowledges and agrees to install a continuous black chain-link fence with top wire as per OPSD-972.130 with a reduced height to 1.2 metres along rear of Lots 1 – 6, 10 –12 inclusive; and the rear limit of the residential zoned portion of lots backing onto lands zoned Environmental Protection ‘EP’ Zone (Blocks 6-10, 12-14). Such fence shall be constructed to the satisfaction of the Director, Works and Engineering Department.
- k) The Owner agrees to follow the MAINTENANCE GUIDELINES FOR NEWLY PLANTED AND YOUNG TREES:

Timing:

- Annually for two years after planting when included as part of a tender document

Scope of Work:

- Removal of broken, damaged, dead or hazardous branches
- Elevation of branches (pruning of lower branches to a height of approximately 2 meters)
- Proper framing of crown (including but not limited to the pruning of double leaders and crossover branches)
- Removal of root and trunk suckers
- Removal of tree support stakes, wires and ties during the second year
- Removal of trunk protective guards and wrapping on the day of planting
- Leveling of water saucers and mulch where they still exist (except where maintained by adjacent landowners) and removed at the end of the second year (in the fall)
- Removal of weeds and grass
- Maintain or replace cedar mulch in a 1 meter circle, 10 cm thick in the form of a water saucer (except where maintained by adjacent landowner)
- Collection and removal from the site of pruned material, sod or other debris

Conditions:

- All pruning to be done to a standard normally accepted in the landscape and arboriculture trades or under the direct supervision of a qualified arborist
- l) Any easements that may be required by utility, telecommunication services, drainage, or servicing purposes shall be conveyed to the appropriate authority.
 - m) The Owner agrees to design and construct all servicing requirements (roads, water, storm, electrical, etc.) to the specifications of the approving authorities and the cost thereof shall be paid by the Owner.
 - n) The Owner shall provide proof of an “Offer to Connect” from Hydro One, and agrees to protect any existing Hydro One facilities during the construction of this Subdivision.
 - o) Without limiting the generality of the foregoing, the Owner shall, in writing, satisfy all the requirements, financial and otherwise, of the Municipality, including the provisions of roads, sidewalks, boulevards, installation of services, stormwater management and drainage.

71. STREET SIGNS

Street signs and regulatory signs shall be erected by the Owner at the Owner’s sole

cost.

72. INHIBITING ORDER

The Owner hereby consents to the registration of an Inhibiting Order pursuant to Section 23 of The Land Titles Act, R.S.O. 1990, c. L.5, as amended from time to time, on the following terms and conditions:

- i) The Inhibiting Order shall be registered against the lands described in Schedule A;
- ii) The Inhibiting Order shall not be registered until this Agreement has been executed by all parties hereto; and
- iii) The Inhibiting Order shall provide that the said Order is to be discharged forthwith upon the presentation by the Municipality to the Land Registrar of this Subdivision Agreement in registerable form and the registration of such transfers of lands and easements as may be required by this Subdivision Agreement.

It is acknowledged by the parties hereto that the purpose of this section is to prevent the conveyance of any lots within the Subdivision Lands until this Agreement has been registered on title and all easements, reserves and other lands to be conveyed in accordance with the provisions of this Agreement have also been registered on title.

73. GOVERNING LAW

This Agreement shall be read and construed in accordance with the laws of the Province of Ontario.

74. GENDER

In this Agreement, words importing the neuter gender shall include the feminine gender and masculine gender and vice versa and words importing the singular shall include the plural and vice versa where the context requires.

75. SUCCESSORS

This Agreement shall enure to the benefit of and be binding upon each of the parties hereto and its, his or her respective heirs, executors, administrators, successors, successors in title and permitted assigns.

IN WITNESS WHEREOF the parties hereto have hereunder set their hands and seals the day and year first above written, and the corporate parties hereto have hereunto affixed their corporate seals attested to by the hands of their proper officers duly authorized in that behalf.

SIGNED, SEALED & DELIVERED
in the presence of:

) **THE CORPORATION OF THE**
) **MUNICIPALITY OF PORT HOPE**
)
)
)
) Per: _____ R. J. Sanderson, Mayor
)
)
)
) Per: _____ Brian Gilmer, Clerk
) *I have authority to bind the Corporation.*
)
)
)
)
) **MICHAEL BATTAGLIA ENTERPRISES INC.**
)

)
)
) Per: Michael Battaglia, President
) *I have authority to bind the Corporation.*
)
)
)
)
)
)

SCHEDULE "A"
LEGAL DESCRIPTION

Part of Lot 27, Concession 5 Township of Hope; Being (Parts 1 and 3 on Plan 39R-12373;) (Save and Except Part 1 on Plan 39R-13528;) being Lots 1 to 20, both inclusive; Block 21, Block 22; the Street namely, Winfield Drive of Plan 39M-_____; Municipality of Port Hope; County of Northumberland.

SCHEDULE “B”
PLAN OF SUBDIVISION

Lots 1 to 20, both inclusive; Block 21; Block 22; the Street namely, Winfield Drive of Plan 39M-_____; Municipality of Port Hope; County of Northumberland.

SCHEDULE “C”

APPROVED ENGINEERING DESIGN DRAWINGS

Drawing	Prepared by	Drawing No.	Final Revision Date
Civil Works			
Cover & Index	D.M. Wills Associates Limited		05/31/2021
General Notes and Specifications	D.M. Wills Associates Limited	100	04/01/2021
Details	D.M. Wills Associates Limited	101	05/31/2021
Erosion and Sediment Control	D.M. Wills Associates Limited	200	04/01/2021
Stormwater Management Details	D.M. Wills Associates Limited	300	04/01/2021
Plan and Profile Sta. 0+000 to Sta. 0+110	D.M. Wills Associates Limited	400	04/01/2021
Plan and Profile Sta. 0+110 to Sta. 0+260	D.M. Wills Associates Limited	401	04/01/2021
Plan and Profile Sta. 0+260 to Sta. 0+360	D.M. Wills Associates Limited	402	04/01/2021
Plan and Profile Sta. 0+360 to Sta. 0+510	D.M. Wills Associates Limited	403	04/01/2021
Plan and Profile Sta. 0+510 to Sta. 0+570	D.M. Wills Associates Limited	404	04/01/2021
Overall Grading	D.M. Wills Associates Limited	500	05/31/2021
Composite Utility Plan	D.M. Wills Associates Limited	700	05/31/2021
Landscape Works			
Landscape Plan and Details	Basterfield & Associates Ltd.	L1	02/12/2021
Wetland Setback Landscape Plan	Basterfield & Associates Ltd.	L2	02/12/2021

SCHEDULE "D"

EASEMENTS TO BE CONVEYED

3.0m wide Utility Easement in favour of Hydro One Networks Inc., Enbridge Gas Distribution and Canada Post Facility Access on both sides of the Municipal right-of-way within the Subdivision Lands.

Part of Lots 1-20 Plan 39M- _____
Being Parts 1-20 Plan 39R- _____

SCHEDULE "E"
LANDS TO BE CONVEYED

Municipality of Port Hope
Block 21 Plan 39M-_____

County of Northumberland
Block 22 of Plan 39M-_____

SCHEDULE "F"
WORKS

Drawing	Prepared by	Drawing No.	Final Revision Date
Civil Works			
Cover & Index	D.M. Wills Associates Limited		05/31/2021
General Notes and Specifications	D.M. Wills Associates Limited	100	04/01/2021
Details	D.M. Wills Associates Limited	101	05/31/2021
Erosion and Sediment Control	D.M. Wills Associates Limited	200	04/01/2021
Stormwater Management Details	D.M. Wills Associates Limited	300	04/01/2021
Plan and Profile Sta. 0+000 to Sta. 0+110	D.M. Wills Associates Limited	400	04/01/2021
Plan and Profile Sta. 0+110 to Sta. 0+260	D.M. Wills Associates Limited	401	04/01/2021
Plan and Profile Sta. 0+260 to Sta. 0+360	D.M. Wills Associates Limited	402	04/01/2021
Plan and Profile Sta. 0+360 to Sta. 0+510	D.M. Wills Associates Limited	403	04/01/2021
Plan and Profile Sta. 0+510 to Sta. 0+570	D.M. Wills Associates Limited	404	04/01/2021
Overall Grading	D.M. Wills Associates Limited	500	05/31/2021
Composite Utility Plan	D.M. Wills Associates Limited	700	05/31/2021
Landscape Works			
Landscape Plan and Details	Basterfield & Associates Ltd.	L1	02/12/2021
Wetland Setback Landscape Plan	Basterfield & Associates Ltd.	L2	02/12/2021

All of the above to the satisfaction of the Director, Works and Engineering

SCHEDULE "G"

PHASING

Not Applicable

Schedule "H"

DUTIES OF OWNER'S ENGINEER

1. DESIGN WORKS

The Owner's Engineer shall design all of the Works.

2. PREPARE DRAWINGS, PLANS AND DOCUMENTS

The Owner's Engineer shall prepare the following for the approval of the Director, Works and Engineering:

- a) the Approved Engineering Design Drawings;
- b) the Grading and Erosion Control Plans; and,
- c) the Works Cost Estimates.

The approval of the Director, Works and Engineering shall not absolve the Owner or the Owner's Engineer of the responsibility for any errors or omissions in the above drawings, plans or documents.

3. REPRESENT OWNER AND OBTAIN APPROVALS

The Owner's Engineer shall act as the Owner's representative in all matters pertaining to the construction and installation of the Works and shall cooperate with the Municipality to obtain the necessary approvals for construction and installation.

4. PROVIDE RESIDENT LAYOUT AND FULL TIME RESIDENT INSPECTION

The Owner's Engineer shall provide fully qualified layout and inspection staff to provide continuous service of the construction and installation of the Works and to perform the following:

- a) provide field layout including the provision of line and grade to the contractors and, where required, re-staking;
- b) full time inspection of the construction and installation to ensure that all work is being performed in accordance with the contract documents;
- c) arrange for or carry out all necessary field testing of materials and equipment installed or proposed to be installed;
- d) investigate and report to the Director, Works and Engineering any construction changes and/or unusual circumstances which may arise during the construction and installations; and,
- e) obtain field information, during and upon completion of the construction and installation, required to produce the Final "As Built" Engineering Drawings.

5. MAINTAIN RECORDS

The Owner's Engineer shall maintain all records pertaining to the construction and installation.

6. PROVIDE PROGRESS REPORTS

The Owner's Engineer shall provide the Director, Works and Engineering with reports on the progress of the construction and installation on a monthly basis, or at such other interval as required by the Director, Works and Engineering.

7. PREPARE FINAL ENGINEERING DRAWINGS

The Owner's Engineer shall prepare the Final "As Constructed" Engineering Drawings for the approval of the Director, Works and Engineering on such material and in such format as the Director of

Works and Engineering shall require, included paper copy and digital copy.

8. LETTER FROM ENGINEER

The Owner shall obtain a written acknowledgement from the Owner's Engineer addressed to the Municipality and filed with the Director, Works and Engineering to the following effect:

- a) that the Owner's Engineer has received a copy of this Agreement and has been retained by the Owner to comply with all of the terms and conditions contained herein;
- b) that the Owner's Engineer will perform his or her services for the Owner in accordance with the terms of this Agreement; and
- c) that the Owner's Engineer will keep the Director, Works and Engineering advised of any and all material facts, changes or developments, pertaining to the Subdivision Lands, the Plan, this Agreement or any default hereunder, and the contravention of any statute, regulation or by-law pertaining to the foregoing to the extent that he or she is aware of such contravention.

SCHEDULE “I”

WORKS COST ESTIMATE

ITEM NO.	DESCRIPTION	COST ESTIMATE		
		ON-SITE		OFF-SITE
1	Road Construction to Base Asphalt	\$272,199.00		\$7,500.00
2	Stormwater Management Facilities	\$106,440.00		
3	Landscaping	\$197,584.50		
4	Rough Grading	\$118,861.00		\$3,100.00
5	Erosion and Sediment Controls	\$30,776.00		
6	Site Preparation and Remediation	\$85,803.00		
7	Top Asphalt	\$51,863.00		\$4,580.00
A	SUB-TOTAL (Sum of Items 1 to 7)	\$863,526.50		\$15,180.00
	TOTAL ON-SITE and OFF-SITE COST			\$878,706.50
NOTES:	1. Costs have been prepared by a Professional Engineer			
	2. Costs shown reflect the estimated / tendered / actual value of constructed works (i.e. supply and installation)			
	3. On-site works exclude dwellings			

SCHEDULE "J"

REGULATIONS FOR CONSTRUCTION

1. REQUIREMENTS FOR BLASTING

The Owner shall, prior to commencing any blasting, obtain from the Director, Works and Engineering, permission to carry out the blasting operation. Any blasting operation shall be supervised on site by a qualified person. In addition, the Owner shall, prior to commencing any blasting, provide the Director, Works and Engineering with proof of insurance, which insurance shall comply with the requirements of this Agreement including the Schedule hereto entitled "Insurance Policies Required". The issuance of such a policy or policies of insurance shall not be construed as relieving the Owner from responsibility for other or larger claims, if any, for which it may be held responsible.

2. DUMPING OF FILL OR DEBRIS

The Owner agrees to neither dump, or permit to be dumped, any fill, debris or other material, nor to remove or permit to be removed, any topsoil or fill from any lands presently owned by or to be conveyed to the Municipality, without the written consent of the Director, Works and Engineering.

3. DISPOSAL OF CONSTRUCTION GARBAGE

All construction garbage and debris from the Subdivision Lands must be disposed of in an orderly and sanitary fashion, at the expense of the Owner. The Owner agrees to deliver a copy of this Schedule entitled "Regulations for Construction" to each and every builder prior to obtaining a building permit within the Subdivision Lands.

4. QUALITATIVE AND QUANTITATIVE TESTS

The Owner agrees that the Municipality may have qualitative or quantitative tests made of any materials or equipment installed or proposed to be installed on public lands. The costs of such tests shall be paid by the Owner.

5. MAINTENANCE, CLOSING AND USE OF EXTERNAL ROADS

The Owner shall, at all times during the term of this Agreement, ensure that all public roads abutting the Subdivision Lands and all public roads used for access to the Subdivision Lands, during any construction on the Subdivision Lands, shall be maintained in a condition equal to that now existing and to the approval of the Director, Works and Engineering. If damaged, the Owner agrees to restore immediately, at its expense, such road to a condition equal to that existing at the time of such damage and to the approval of the Director, Works and Engineering. No public road shall be closed without the prior written approval of the authority having jurisdiction over such public road. The Owner agrees not to use or occupy any untraveled portion of any public road allowance without the prior written approval of the authority having jurisdiction over such public road allowance. All trucks making delivery to, or taking materials from, the Subdivision Lands shall be covered or loaded so as not to scatter such materials on any public road. In the event that any mud, dust, refuse, rubbish and/or other litter of any type resulting from the development of the Subdivision Lands is found upon highways outside of the Subdivision Lands, the Owner shall clean up same to the satisfaction of the Municipality within 24 hours of the giving of written notice to the Owner or its agent by the Municipality. If the Owner has not caused same to be cleaned up within 24 hours as aforesaid, it is agreed that the Municipality may, at its sole option, carry out the required clean-up work at the Owner's expense plus thirty percent (30%) of the total cost thereof for inconvenience caused to the Municipality. All construction vehicles going to and from the Subdivision Lands shall use the access routes, if any, designated by the Director, Works and Engineering.

6. LAWN REPAIR

Any damage to existing lawns whether on private or public property shall be reinstated by the Owner at its expense with nursery sod in accordance with the Municipality's specifications and to the satisfaction of the Director, Works and Engineering.

7. PONDING CONTROL

The Owner agrees to carry out such grading and/or drainage works as may be necessary to prevent or eliminate the ponding of surface water or other conditions which may, in the opinion of the Medical Officer of Health, be favourable to the breeding of mosquitoes. This work shall be done before the month of June each year. No work shall be required from October to May.

SCHEDULE "K"

APPROVED FORM OF LETTER OF CREDIT

NAME OF BANK: _____ **Date Issued:** _____

Letter of Credit No. _____ **Amount:** _____

**ISSUED SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICES FOR
DOCUMENTARY CREDITS BEING ICC PUBLICATION UCP 500**

**TO: THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE
56 Queen Street,
Port Hope, ON L1A 3Z9**

WE HEREBY AUTHORIZE YOU TO DRAW ON THE _____
(Bank)

(Address)
for the account of MICHAEL BATTAGLIA ENTERPRISES INC. up to an aggregate amount of
_____ \$ _____ (Canadian)
available on demand.

PURSUANT TO THE REQUEST OF our customer, MICHAEL BATTAGLIA ENTERPRISES
INC _____ we the

(Bank)

(Address)
hereby establish and give you an Irrevocable Letter of Credit in your favour in the above amount
which may be drawn on by you at any time and from time to time, upon written demand for
payment made upon us by you, which demand we shall honour without enquiring whether you
have the right as between yourself and our said customer to make such demand, and without
recognizing any claim of our said customer, or objection by our said customer to payment by
us. Partial drawings are permitted.

DEMAND shall be made by way of a letter signed by the Clerk of your Municipality under the
corporate seal of the Municipality. Presentation shall be made to the

at, _____ (Bank)

(Address)

We acknowledge that this Letter of Credit relates to those works, services and financial
obligations set out in an Agreement between Michael Battaglia Enterprises Inc., and the
Corporation of the Municipality of Port Hope relating to the development of lands in the
Municipality of Port Hope, County of Northumberland.

This Letter of Credit will continue in force up to _____ (Date), 202_____
(subject to the condition hereinafter set out) and you may call upon payment of the full or any
partial amount outstanding under this Letter of Credit at any time or times up to that date. It is
a condition of this Letter of Credit that it shall be deemed to be automatically extended without
amendment from year to year from the aforementioned or any future expiration date hereof,
unless thirty days prior to any such date we notify you in writing by registered mail that we elect
not to consider this Letter of Credit to be renewed for any additional period. After receipt by
you of such notice, you may draw on this Letter of Credit in full or in part.

Dated at _____ this _____ day of _____, 202...

(NAME OF BANK)

(Authorized Signing Officer)

(Authorized Signing Officer)

SCHEDULE "L"

INSURANCE POLICIES REQUIRED

1. TYPES AND AMOUNTS OF COVERAGE REQUIRED

Without restricting the scope of the indemnities required by this Agreement, the Owner shall obtain and maintain insurance of the character commonly referred to as public liability and property damage with an insurance company approved by the Municipality duly authorized by law to underwrite such insurance in the Province of Ontario. Such policy or policies of insurance shall indemnify the Municipality against all claims for loss, damage, injury or death directly or indirectly arising from or as a consequence of or in any way relating to any act or omission of the Owner or any officer, agent, servant, employee, workman, consultant, advisor or contractor of the Owner in the development of the Subdivision Lands, including without limiting the generality of the foregoing:

- a) any loss or damage that happens to any of the Works or to any part or parts thereof; and
- b) any loss or damage that happens to any of the materials or any of the equipment or vehicles or any other things used in the construction or installation of any of the Works or any part or parts thereof respectively; and
- c) any injury or death to any person or persons; and
- d) any loss or damage whatsoever that results from the storage, use or handling of explosives; and
- e) any loss or damage that results from the drainage of surface waters on or from the Subdivision Lands; and
- f) any loss or damage that happens to any public road or to any other property of the Municipality or to the property of any person.

The policy or policies of insurance shall name the Municipality as an Additional Insured and shall provide a minimum coverage of Five Million Dollars **(\$5,000,000.00)** per occurrence for bodily injury, death, and damage to property including the loss thereof.

The policy or policies of insurance shall provide "occurrence type" coverage, that is to say, the policy(ies) will cover any claims which may be presented at any time (subject to the Statute of Limitations) arising from an occurrence that happened within the policy period.

The policy shall not contain a deductible clause, provided however, if the policy does contain a deductible clause, the same shall be approved by the Municipality and the Owner shall provide an additional cash deposit to the Municipality in an amount to be determined by the Municipality. In the event of claims made against the Municipality to which the deductible applies, the Municipality shall appoint an independent adjuster to investigate such claim, and the finding of the independent adjuster shall authorize the Municipality to pay such claims deemed valid by such adjuster out of the additional cash deposit posted with the Municipality. In the event such additional cash deposits are deemed to be insufficient by the Municipality at any time and from time to time, the Owner hereby agrees to pay such additional cash deposits forthwith to the Municipality. All costs of the adjuster shall be borne by the Owner.

The said policy or policies of insurance shall be maintained at least until Certificates of Assumption for the Subdivision has been issued by the Municipality.

The issuance of such policy or policies of insurance shall not be construed to relieve the Owner from responsibility for other or larger claims for which it may be held responsible.

2. EXEMPTIONS OF COVERAGE PROHIBITED

The policy or policies of insurance shall contain no coverage exemptions or limitations for:

- a) any shoring, underpinning, raising or demolition of any building or structure; or
- b) any pile driving or caisson work; or
- c) any collapse or subsidence of any building, structure or land from any cause.

If explosives are to be stored, handled or used in the development of the subdivision, then the policy or policies of insurance shall contain no coverage exemptions or limitations for storage, handling or use of explosives.

3. OTHER CONDITIONS REQUIRED

The policy or policies of insurance shall be endorsed to provide that the policy will not be altered, cancelled or allowed to lapse without sixty (60) days' written notice to the Municipality and the Owner.

The said policy or policies of insurance shall have no exclusion for blasting and must contain a twenty-four (24) month "completed operations" clause and "cross-liability" clause.