

DEVELOPMENT AGREEMENT

LAWRENCE SCHILSTRA

1334 PELHAM STREET

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THIS AGREEMENT made this _____ day of _____, 2019

BETWEEN:

LAWRENCE SCHILSTRA

Hereinafter called the "Developer"

OF THE FIRST PART

- and -

THE CORPORATION OF THE TOWN OF PELHAM

Hereinafter called the "Town"

OF THE SECOND PART

WHEREAS the Developer covenants and warrants that it is the owner of the Lands which are described in Schedule "A" hereto annexed;

AND WHEREAS the Town has granted approval to the Developer for the extension of the Municipal Sanitary Sewer on Pelham Street (which extension is shown on the Plans), subject to the Developer entering into a development agreement with the Town concerning, among other things, the provision and installation of a municipal sewer;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the Town approving the said proposed development, and in consideration of the sum of One Dollar (\$1.00) of lawful money of Canada now paid by the Developer to the Town (the receipt thereof is hereby acknowledged), the Parties hereto mutually covenant and agree as follows:

1. DEFINITIONS

In this Agreement:

- (a) **BUILDER** means the person engaged by the Owner or subsequent Owner to construct a Building or any other work on the Lot.
- (b) **BUILDING BY-LAW** means the Building By-law No. 3728 (2016) passed by the Town and amended from time to time.
- (c) **BUILDING** means any structure which is used or intended to be used for the shelter, accommodation or enclosure of persons, animals or chattels, and includes any structure as defined as a Building in the *Building Code Act* or in the Building By-law, but does not include any vehicles as defined herein.
- (d) **BUILDING CODE ACT** means the *Building Code Act*, R.S.O. 1992, c.B. 23, as amended, and all regulations thereto.
- (e) **BUILDING PERMIT** means a permit issued by the Chief Building Official of the Town and required pursuant to the provisions of the *Building Code Act*, as amended, or any successor thereto and the Building By-law of the Town and amendments thereto.
- (f) **CHIEF BUILDING OFFICIAL** means the Chief Building Official of the Town as appointed by by-law of the Council.
- (g) **CLERK** means the Clerk of the Town.
- (h) **COMMISSION** means the applicable local governing hydro-electric commission located in the Town.
- (i) **CONSTRUCTION LIEN ACT** means the *Construction Lien Act*, R.S.O. 1990, c.C . 30, as amended, and all regulations thereto.
- (j) **COST OF CONSTRUCTION** means the cost of construction approved by the

Director and may include engineering fees ancillary thereto.

- (k) **COUNCIL** means the Council of the Corporation of the Town of Pelham.
- (l) **DEVELOPER** means Lawrence Schilstra, its successors and assigns, and includes its successors in title to the Lands or a Lot shown on the Development Plan.
- (m) **DEVELOPER'S CONSULTING ENGINEER** means the person or persons registered with the Professional Engineers of Ontario who are employed by the Developer, at its expense, to provide engineering services.
- (n) **DEVELOPMENT CHARGES** means the development charges as prescribed by the *Development Charges Act*, R.S.O. 1997, S.O. 1997, c. 27, as amended, or any successor thereto.
- (o) **DEVELOPMENT PLAN** means the Development (Survey) Plan attached hereto as Schedule "A" over the Lands pursuant to the provisions of the *Planning Act*, R.S.O. 1990, c.P.13, as amended, or any successor thereto.
- (p) **DIRECTOR** means the Director of Public Works or Director of Community of Planning and Development or designate for the Town.
- (q) **FRONT LOT LINE** means the front lot line as defined in the Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (r) **GRADE CONTROL PLAN** shall mean a plan for the purpose of controlling the overall drainage pattern through the establishment of relative surface elevations in accordance with good engineering and drainage practices.
- (s) **LANDS** means the lands described in Schedule "A" hereto annexed.
- (t) **LETTER OF CREDIT** means a standby municipal, irrevocable Letter of Credit issued by a major chartered bank or credit union, posted with the Town pursuant to the terms of this Agreement. The Letter of Credit shall be in form satisfactory to the Town and shall contain a clause that automatically renews it from year to year, unless the Town gives written notice that it does not require the Letter of Credit to be renewed.
- (u) **LOCAL IMPROVEMENT** shall include utilities, fencing, sanitary sewers, storm sewers, sidewalks, curbs and gutters, pavements and such other local improvements as are defined by the *Municipal Act*, as amended, or any successor thereto.
- (v) **LOT** means a lot as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (w) **LOT FRONTAGE** means lot frontage as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (x) **LOT GRADING PLAN** means a drawing showing grades, swales and drainage patterns and may include catch basins and floor heights in relation to grades for each individual building Lot or Block in the Development Plan.
- (y) **MAINTENANCE GUARANTEE** means an undertaking by the Developer to the Town that all Works constructed under this Agreement will function as designed and will not fail in any manner whatsoever so as to cause a risk to public safety or private lands, building or structures within the Development Plan or immediately adjacent boundary lands, and that should the Works, or any of them, fail or not perform their intended function within the specified maintenance guarantee period, they will be replaced or repaired to the satisfaction of the Director by the Developer at its cost.
- (z) **MUNICIPAL ACT** means the *Municipal Act*, 2001, S.O. 2001, c.25, as

amended, and all regulations thereto.

- (aa) **ONTARIO LAND SURVEYOR** shall mean a surveyor commissioned by the Province of Ontario and qualified to establish monuments that define the boundaries of a parcel or parcels of land and to prepare all necessary reference plans and surveys for the purpose of the Agreement.
- (bb) **OWNER** means either Lawrence Schilstra or the applicant for a Building Permit for one of the Lots and includes the person on whose behalf an application for a Building Permit is made.
- (cc) **PLANNING ACT** means the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, and all regulations thereto.
- (dd) **PLANS** shall mean all drawings, plans, specifications, contracts and other documents providing for the installation, construction and erection of the Works approved by and filed in the office of the Director prior to execution of this Agreement by the Town.
- (ee) **PRIMARY SERVICES** means all private utilities and all municipal services including, without restricting the generality of the foregoing, storm sewers, sanitary sewers, sidewalks, fencing, watermain, roads (including base coarse asphalt and curbs and gutters), street lighting and drainage works and swales and/or such other works as detailed in Schedule "E" (Financial Obligations) attached to and forming part of this Agreement.
- (ff) **PRIVATE UTILITIES** means telephone, hydroelectric systems and natural gas systems and cable television systems.
- (gg) **REGION** means The Regional Municipality of Niagara.
- (hh) **REGIONAL PUBLIC WORKS DEPARTMENT** means the Region's Public Works Department.
- (ii) **SECONDARY SERVICES** means all works to be installed, constructed, or erected which are not Primary Services or private utilities and/or such other works as detailed in Schedule "E" (Financial Obligations) attached to and forming part of this Agreement.
- (jj) **SECTION**, when used in reference to a numbered part of the Agreement, means:
 - (i) a complete section including all its sections and subsections;
 - (ii) a particular subsection including its subsections; and
 - (iii) a particular subsection as the context may dictate or require.
- (kk) **STREET** means street as defined in the Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (ll) **STREET LINE** means Street Line as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (mm) **SUPERVISION** means the full-time inspection and scrutiny of all Works for the express purpose of enforcing the provisions of this Agreement and certifying that the Works have been performed and completed to Town standards in the form prescribed for this purpose and "SUPERVISE" means to carry out such Supervision.
- (nn) **TREASURER** means the Director of Corporate Services of the Town.
- (oo) **UTILITY SERVICES** means physical plant including but not limited to pipes, valves, conduits, cables, terminals, transformers, etc. owned and operated by communications, television, hydro, gas and oil companies or any other utility companies.

- (pp) **WORKS** shall jointly and severally mean and include all Services and all other matters, both internal and external, required to be completed or performed by the Developer pursuant to this Agreement.

2. LANDS AFFECTED

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

3. GENERAL PROVISIONS

- (a) Unless the context otherwise requires, where the Developer is obligated by this Agreement or the approved Plans to make any payments or install or construct or carry out any services or action the provisions therefore contained herein shall be deemed to include the words "at the sole expense of the Developer".
- (b) The Developer hereby covenants, warrants and agrees to save harmless and keep the Town indemnified from and against all manner of actions, causes of actions, suits, claims and demands that may howsoever arise through or from the terms of this Agreement, other than claims arising from negligence by the Town of Pelham, its servants and agents.
- (c) The Developer and the Town acknowledge and agree that it is their intent that all terms, conditions and covenants contained herein:
 - (i) shall run with the Lands;
 - (ii) shall be binding upon the Developer, its heirs, executors, administrators, assigns and successors in title, from time to time; and
 - (iii) the benefits of the said covenants shall ensure to the Town, its successors and assigns in title, of all roads, Streets and public Lands forming part of the Lands.
- (d) Any notices required or permitted to be given pursuant to the terms of this agreement shall be given in the manner set out in Section 25.
- (e) This Agreement and everything herein contained shall ensure to the benefit of and be binding upon the successors and assigns of the parties hereto and upon those persons and/or corporations hereafter acquiring title to all or any part of the Lands.
- (f) The Developer shall impose restrictions as set forth in Schedule "C" annexed hereto on all the Lands so that subsequent Owners will be made aware of and shall strictly adhere to the requirements of this Agreement.
- (g) The Schedules attached hereto are deemed to be a part of this Agreement and are to be interpreted as if the contents thereof were included in this Agreement.
- (h) The Developer agrees to be bound by the penalty provisions of the *Planning Act* including, but not limited to, Section 67 of said *Act*.
- (i) Notwithstanding the provisions of this agreement, the Developer shall be subject to all the By-laws of the Town and all provincial and federal government statutes and/or regulations and amendments thereto affecting the development of land and installation of municipal services.
- (j) If any term of this agreement shall be found to be ultra vires of the Town, or otherwise unlawful, such term shall conclusively be deemed to be severable

and the remainder of this agreement shall be and remain in full force and effect.

- (k) The Developer shall not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any administrative or other tribunal the right of the Town to enter into this agreement and to enforce each and every term, covenant and condition thereof and this provision may be pleaded by the Town in any such action or proceeding as a complete and conclusive estoppel of any denial of such right.
- (l) Time shall be of the essence of this agreement.
- (m) In the event that a Mortgagee(s) exercises any rights as to sale, possession or foreclosure or takes any other steps to enforce its security against the Lands then such Mortgagee(s) agrees on behalf of itself, its heirs, executors, administrators, successors and assigns not to deal with the Lands as a development or part thereof unless and until a new agreement in the same form, mutatis mutandis, as this Agreement has been entered into with the Town.
- (n) The Developer shall notify or cause to be notified, each and every purchaser of a Lot or Lots within the Development Plan, of all Works contracted by the Developer, the Developer's obligations to maintain the Works and all other conditions covered by this Agreement and shall cause such information to be fully recorded in any offer to purchase or agreement for sale entered into by the Developer.
- (o) The Developer shall pay, before final approval of the Development Plan is requested, all arrears of taxes and all taxes for the current year owing in respect of the Lands and the Buildings situate thereon.
- (p) The Developer shall commute and pay to the Town before final approval of the Development Plan is requested any and all Local Improvement rates assessed against the Lands.
- (q) The Town shall cause this Agreement to be Registered against the title to the Lands.
- (r) If, after this agreement is executed, the Town, the Ministry of the Environment, the Ministry of Natural Resources, the Minister of Housing or the Region shall impose any further condition or requirement which is not contained herein, then the Developer shall forthwith upon demand enter into such further Agreement or give such further assurances as the Town may require and the Developer shall not contravene any condition or requirement of the Minister of Housing or the Region notwithstanding that the same is not contained herein.
- (s) The Developer shall cause the final Development Plan, as approved by the Town of Pelham, to be registered within thirty (30) days after its approval.
- (t) The Developer shall reimburse the Town for all fees and disbursements incurred by it in connection with the preparation, approval, execution and registration of this Agreement and all related documentation in connection with the preparation and enactment of any by-law or registration of any subsequent Agreements which may be required to implement this Agreement.
- (u) All Streets and properties abutting on the Development Plan or used for access to the Lands during the installation or construction of the Works or during the construction of Buildings upon the Lots shall, at all times, be kept in a good, clean and useable condition and, if damaged or littered, shall be restored immediately to the Town's requirements.
- (v) All trucks making deliveries to or taking materials from the Lands included within the Development Agreement shall be adequately covered and not unreasonably loaded so as to scatter refuse, rubbish, dust or debris on abutting Streets or properties.

- (w) Any lands required to be conveyed by the Developer in accordance with the provisions hereof shall be in a neat and tidy condition, free of all debris and trash, and the Developer shall complete all services for the Lands in accordance with the terms of this Agreement.
- (x) The Developer shall ensure that adequate dust control and mud tracking control measures are carried out during the construction of all Works and Buildings upon the Lands.
- (y) The Developer shall, during construction, ensure all construction vehicles that are not carrying out the Works are parked on the Lands and are not parked within the municipal road allowance.
- (z) In the event that the Developer wishes to register more than one Development Agreement over the Lands, the Developer shall first obtain the written consent of the Town to do so, which consent shall be conditional upon the Developer registering such Development Agreement in such order as determined by the Town and upon registering such Development Agreement concurrently. The Developer shall not register a Development Agreement over part of the Lands without prior written consent of the Town.

4. DESIGN AND SUPERVISION OF CONSTRUCTION OF SERVICES

- (a) The Developer shall employ, at its cost, a competent and qualified consulting engineer approved by the Director, to:
 - (i) carry out all soil investigations required by the Director;
 - (ii) design all of the works required to be completed by this Agreement;
 - (iii) provide the Director of Public Works with an estimate of the cost of design, construction and maintenance of all works to be constructed under this Agreement to be used as the basis for determining the amount of security to be posted by the Developer prior to execution of this Agreement to guarantee the construction and maintenance of all works required under this Agreement;
 - (iv) prepare engineering drawings to include plans and profiles and specifications for the works and to submit detailed plans, profiles and specifications to the Director for approval prior to the installation or construction of such works;
 - (v) submit to the Director of Public Works the detailed plans for signing and provide the Director with two (2) sets of full-sized, signed hard copies and two (2) sets of signed hard copies reduced to 11" x 17" size;
 - (vi) obtain, in conjunction with the Town, all of the necessary approvals prior to installation or construction of the works;
 - (vii) call tenders for the installation and construction of the works;
 - (viii) obtain the approval from the Director of Public Works of the contractor employed to install or construct the works;
 - (ix) provide full-time resident supervision, inspection and contract administration of all works covered by this Agreement; or in the event that full-time inspection cannot or is not being provided, the Town will provide inspection services at a per diem rate of \$1100.00 per day;
 - (x) provide the Director of Public Works, or designate, forty-eight (48) hours' notice prior to commencing construction on the Works. Failure

to do so will result in a stop work order being placed on the Lands;

- (xi) have a pre-construction meeting with the Director of Public Works, or designate, prior to commencing construction on the Works. Failure to do so will result in a stop work order being placed on the Lands;
 - (xii) maintain all of the records of the installation or construction of the works and submit a copy of the same to the Director of Public Works and Utilities;
 - (xiii) supply to the Director "As Constructed" drawings of all of the works installed or constructed by the contractor in both hard copy and DWG digitized format (AutoCad 2010 or equivalent), at the time of completion of primary services;
 - (xiv) obtain from the Director of Public Works the details regarding the form and scale of these drawings prior to their presentation;
 - (xv) on the completion of the installation or construction of the works, to supply the Town with a certificate, in form satisfactory to the Director of Public Works, that the works were installed or constructed in accordance with the approved plans and specifications;
 - (xvi) provide the Director of Public Works with individual record sheets for all sewer and water service locations and depths;
 - (xvii) accompany the Director of Public Works on a final inspection of the works at the conclusion of the maintenance period herein specified and before the assumption of the works by the Town;
 - (xviii) supervise the construction of any remedial work which the Director of Public Works may direct;
 - (xix) provide building levels for construction purposes as hereinafter provided;
 - (xx) furnish the Director of Public Works with the preliminary lot grading certificate for each Lot for which an application for a building permit is made; and
 - (xxi) provide the Town with the final lot grading certificate for each lot.
- (b) The Developer shall not install Works prior to the receipt by it in writing of the approval of the Director of Public Works of the detailed Plans and specifications therefor.
 - (c) All of the works to be installed or constructed under this Agreement shall be installed or constructed under the direct supervision of the Developer's Consulting Engineer at the expense of the Developer.
 - (d) The Developer shall not close/restrict any public road allowance prior to receipt by it in writing of the approval of the Director of Public Works for such activity. In the event that construction works require lane restrictions and/or full road closures, a min of 48 hours' notice must be given to the Director of Public Works. In addition, the Developer must submit a traffic management plan and is responsible for notification of all affected emergency and non-emergency agencies.

5. CONSTRUCTION OF WORKS

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

6. CONTRACTORS

Before commencement of any works, the Developer shall show satisfactory proof to the Director of Public Works, that the proposed contractors or sub-contractors, whom the Developer has retained to construct works described in this Agreement, or any part of the works, have sufficient and valid liability insurance policies, indicating that the Town and its agents and servants are named insured; a certificate from the Workers' Safety Insurance Board showing that the contractor is in good standing; and satisfactory evidence that the contractor is qualified, experienced and has adequate equipment to successfully complete the Works. Any contractor employed by the Developer shall, as a condition of such employment, be approved by the Director of Public Works.

7. SANITARY SEWERS

- (a) The Developer shall, at no expense to the Town, except as hereinafter provided, construct and install all sanitary sewers to the 200 mm diameter PVC sanitary main, complete with manholes and other accessories both within and outside the development area which may, in the opinion of the Town, be required to serve the development area and that the servicing works shall include 1334 Pelham Street to be individually serviced with a sanitary sewer lateral to the property line, in accordance with Town standards and approved drawings by the Director of Public Works and filed in the Town's offices prior to the issuance of a Building Permit. The design of such services shall be approved by the Director of Public Works prior to commencing construction and installation of the services.
- (b) If required by the Town, and prior to the execution of this Agreement by the Town, the Developer shall undertake review of the existing downstream sanitary sewer system to ensure the capacity of the system is sufficient for the increase in flows from the Development Agreement. In the event the downstream system is inadequate for the flow increase from this development, upgrading of those facilities will be the financial responsibility of the Developer and the Work required and/or necessary to upgrade such facilities shall be completed by the Developer as part of development of this Development Agreement to the complete satisfaction of the Director of Public Works.
- (c) The Developer shall, at no expense to the Town, construct a sanitary sewer system, including service laterals from the sewer main to the property line and other appurtenances, to adequately service the Lands. All sanitary sewers, including upgrading of downstream facilities if deemed necessary by the Town, shall be constructed according to the approved Plans and specifications. Plans must be approved by the Director of Public Works, the Region of Niagara Public Works Department and the Ministry of the Environment and Climate Control, and the construction and materials used therein shall be in accordance with the Town's most recent specifications therefore.
- (d) After the installation of sewer main, all the main shall be flushed in a method acceptable to the Town to ensure that no debris has been left in the main during construction.
- (e) No storm, surface or roof water or weeping tiles shall be discharged into the sanitary sewer system. The sanitary sewer lateral shall be in accordance with the Town's Engineering Standards, as amended.
- (f) Domestic waste from any building constructed on any lot shall be discharged into the sanitary sewer system through a drain connected to the sanitary sewer system via a sanitary sewer lateral servicing each lot.

- (g) The location of the sanitary sewer laterals shall be illustrated on a detailed Site Servicing and Grading Plan including calculations and restoration of affected road and boulevard surfaces. The Site Servicing and Grading Plan shall be attached to this Agreement as Schedule "B".
- (h) After construction of individual dwelling unit service is connected, the Developer shall, at no cost to the Town, perform a video camera inspection on the connected sewer. Should the tested lines fail to meet the Town's standards as outlined in the Town's standards, the Developer shall be responsible for the repair and the necessary re-inspection to the satisfaction of the Town prior to issuance of the Construction Completion Certificate.

8. SITE SERVICING AND GRADING PLAN

The Developer shall be responsible for providing, at their expense, a Site Servicing and Grading Plan for the land described in Schedule "B" attached hereto; said plan to meet with the approval of the Director of Public Works. Building restrictions shall be imposed upon each Lot and included in each deed prohibiting a subsequent owner thereof from altering such flow or from impeding the same to an extent sufficient to cause ponding in another Lot or adjacent property. Said Site Servicing and Grading Plan shall be attached to this Agreement as Schedule "B". All elevations shown on Schedule "B" shall be maintained after construction of any building or structure upon the lands affected, and this provision shall be included in the Building Restrictions hereinbefore referred to. Minor changes to the storm drainage system may be permitted subject to the approval of the Director of Public Works and Utilities.

9. DRIVEWAYS

- (a) The Developer shall provide granular driveway access on the boulevard prior to occupancy of any Building. It shall be the responsibility of the Developer to ensure that driveway access is maintained at all normal times during the construction or maintenance of the Works.
- (b) All driveway approaches between the edge of the road and the sidewalk, or in the absence of a sidewalk between the edge of the road and the Street Line, shall be paved by the Developer by no later than the 1st day of November in the year after the year in which the buildings served by the driveway approaches are occupied.
- (c) All driveway approaches shall be constructed in accordance with Town standards to the satisfaction of the Director of Public Works.

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

- (a) The Developer shall be responsible for providing, at its sole expense, gas, electrical, telephone and cable TV service to the Lands in accordance with the approved Plans. All Utility Services shall be installed and constructed prior to the Director approving the Certificate of Completion of Primary Services.

11. SOD, TREES AND LANDSCAPING

- (a) The Developer shall grade and place a minimum of one hundred (100) millimetres of topsoil, together with No. 1 nursery sod on all portions of road allowances not covered by asphalt or sidewalks shown on the plans, as required, to the satisfaction of the Director of Public Works.
- (b) In order to maintain a high standard of amenity and appearance, the Developer, its heirs, executors, administrators, successors and assigns hereby undertake and agree to plant, maintain and replace trees, if, as, and when required, in accordance with Town standards and approved drawings.

- (c) In accordance with Schedule "E" affixed hereto, prior to execution of this Agreement by the Town, the Owner shall post with the Town security for the planting of trees at the rate of five hundred dollars (\$515.00) per tree to be planted.

The Developer shall be solely responsible for acquiring and planting trees at a rate of one per building lot in accordance with the terms of this Agreement. Tree species and planting location shall be to the satisfaction of the Director of Public Works. Written notice shall be provided to the Town that such work has been completed.

Provided, however, that in the event the Developer does not plant trees in accordance with the provisions of this Agreement or within the prescribed time or to the complete satisfaction of the Director of Public Works then the Town may, at its sole discretion, plant or replace or replant trees in accordance with the provisions of this Agreement and apply the above mentioned security against the Town's costs and/or collect such costs in like manner as municipal taxes.

12. PRIMARY SERVICES AND CERTIFICATE OF COMPLETION OF PRIMARY SERVICES

- (a) The Developer shall proceed with the installation or construction of the Works required hereunder with all reasonable dispatch and shall complete all of the Primary Services within one (1) year of execution of this agreement. The Director may extend the time for the completion of the Primary Services or any of them for such length of time as he may deem expedient upon the written application of the Developer.
- (b) The performance by the Developer of its obligations hereunder to the satisfaction of the Director shall be a condition precedent to the acceptance by the Town of the Works or any of them.
- (c) Prior to the issuance by the Director of the Certificate of Completion of Primary Services, the Developer shall:
 - (i) Supply to the Director "As Constructed" drawings of all of the works installed or constructed by the contractor prepared by a qualified consulting engineer approved by the Director in both hard copy and DWG digitized format (AutoCAD 2010 or equivalent), at the time of completion of primary services;
 - (ii) On the completion of the installation or construction of the works, supply the Town with a certificate, in form satisfactory to the Director of Public Works, that the works were installed or constructed in accordance with the approved plans and specifications;
 - (iii) Provide the Director with a Certificate signed by the Developer's Consulting Engineer certifying that the Primary Services have been fully completed, inspected, tested and maintained in accordance with the provisions hereof and the standards of the Town of Pelham and approved drawings;
 - (iv) Employ, at its cost, a competent and qualified consulting engineer approved by the Director to supervise the construction of any remedial work which the Director of Public Works may direct; and
 - (v) Employ, at its cost, a competent and qualified consulting engineer approved by the Director to accompany the Director of Public Works on a final inspection of the works at the conclusion of the maintenance period herein specified and before the assumption of

the works by the Town;

- (d) The Developer's Consultant shall furnish the Developer with a Certificate of Completion of Primary Services upon the completion by the Developer to the satisfaction of the Director of the installation or construction of the Primary Services and the receipt by the Director of the Maintenance Guarantee as required by Section 13 hereof, and the satisfaction by the Developer of all other requirements of this Agreement and the approved drawings.
- (e) The maintenance period for Primary Services will be one year following receipt of Certificate of Completion of Primary Services or following the expiration of the maintenance period for Secondary Services, whichever is longer.

13. SECONDARY SERVICES AND CERTIFICATE OF COMPLETION OF SECONDARY SERVICES

- (a) The performance by the Developer of its obligations hereunder to the satisfaction of the Director shall be a condition precedent to the acceptance by the Town of the Works or any of them.
- (a) Prior to the issuance by the Director of the Certificate of Completion of Secondary Services, the Developer shall:
 - (i) Supply to the Director "As Constructed" drawings of all of the works installed or constructed by the contractor prepared by a qualified consulting engineer approved by the Director in both hard copy and DWG digitized format (AutoCAD 2010 or equivalent), at the time of completion of secondary services;
 - (ii) On the completion of the installation or construction of the works, supply the Town with a certificate, in form satisfactory to the Director of Public Works, that the works were installed or constructed in accordance with the approved plans and specifications;
 - (iii) Furnish the Director with a statutory declaration in a form satisfactory to the Director that all accounts for the installation, construction and maintenance of the Secondary Services required to be installed or constructed hereunder have been paid and that there are no outstanding debts, claims or liens in respect of the Secondary Services or any of them; and,
 - (iv) Provide the Director with a Certificate signed by the Developer's Consulting Engineer certifying that the Secondary Services have been fully completed, inspected, tested and maintained in accordance with the provisions hereof and the standards of the Town of Pelham and approved drawings.
 - (v) Employ, at its cost, a competent and qualified consulting engineer approved by the Director to supervise the construction of any remedial work which the Director of Public Works may direct;
 - (vi) Employ, at its cost, a competent and qualified consulting engineer approved by the Director to accompany the Director of Public Works on a final inspection of the works at the conclusion of the maintenance period herein specified and before the assumption of the works by the Town;
- (c) The Developer's Consultant shall furnish the Developer with a Certificate of Completion of Secondary Services upon the completion by the Developer to the satisfaction of the Director of the installation or construction of the Secondary Services and the receipt by the Director of the Maintenance Guarantee as required by Section 17 hereof, and the satisfaction by the

Developer of all other requirements of this Agreement and the approved drawings.

- (d) The maintenance period for Secondary Services will be one year following receipt of Certificate of Completion of Secondary Services.

14. **SECURITY DEPOSITS AND REFUNDS**

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

Security to be posted for Services and to cover the Town administrative, engineering and legal costs shall be calculated on the basis of the Developer's estimated cost of design, construction and maintenance of all Works as set out in Schedule "E" annexed hereto. These costs will be subject to modification upon final approval of the details Plans and Specifications by the Director of Public Works.

(a) **CASH PAYMENTS**

Prior to the execution of this Agreement by the Town, for payment of services to be rendered by the Town, its servants and its agents as required by this Agreement, and for presently outstanding payments owing to the Town, the Developer shall, in accordance with Schedule "E" annexed hereto, deposit with the Town the following non-refundable cash amounts:

- (i) a cash amount to secure the Town's engineering, administrative consulting and legal costs for this Agreement, approval of the Plans, and enactment of by-laws calculated on the following basis:
 - (1) where the Cost of Construction of all Works is less than one hundred thousand dollars (\$100,000.00), the charge shall be ten thousand seven hundred and ninety dollars (\$10,790.00);
 - (2) where the Cost of Construction of all Works is less than four hundred thousand dollars (\$400,000.00) but in excess of one hundred thousand dollars (\$100,000.00), the charge shall be ten thousand seven hundred and ninety dollars (\$10,790.00) plus four percent (4.0%) of the cost of the works between one hundred thousand dollars (\$100,000.00) and four hundred thousand dollars (\$400,000.00);
 - (3) where the Cost of Construction of all Works is in excess of four hundred thousand dollars (\$400,000.00), the charge shall be twenty-three thousand four hundred and thirty-eight dollars (\$23,438.00) plus three and a half percent (3.5%) of the costs exceeding four hundred thousand dollars (\$400,000.00);
- (ii) a cash amount to cover all arrears of taxes, all taxes for the current year and all current Local Improvement charges assessed against the Lands; and

(b) **LETTERS OF CREDIT**

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

- (1) payment of twenty percent (20%) of the approved estimated costs of the construction of the Primary Services to service the Lands, plus one hundred and twenty percent (120%) of the approved estimated construction costs of the Secondary Services upon the Lands as shown in Schedule "E" attached; and
 - (2) payment of one hundred percent (100%) of any other payments or Works as may be required of the Developer by the Town pursuant to this Agreement.
- (ii) The amount of the Letter of Credit required hereunder shall not be reduced unless all of the conditions of this Agreement are complied with and the estimated costs of rectifying any outstanding deficiencies, as estimated in the sole discretion of the Director, plus one hundred and twenty percent (120%) of the estimated costs of the completion of all outstanding Primary Services and Secondary Services plus all other outstanding costs payable under this Agreement, plus the Maintenance Guarantee as required under Section 14 of this Agreement, plus any *Construction Lien Act* requirements are all, in total, less than the amount of the Letter of Credit held by the Town. In such an instance, the amount of the Letter of Credit may, in the sole discretion of the Director be reduced from time to time to an amount equal to the total of all amounts set out above. Such reduction shall be based on the following:
- (1) progress certificates from the Developer's Consulting Engineer setting forth the cost of the Works completed and paid to date and the cost of unfinished Works; and
 - (2) a request for reduction in the amount of the Letter of Credit in a form approved by the Director; and
 - (3) proof of payment in a form satisfactory to the Director of the amounts paid on account of the completed Works to the date of the application for reduction.

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

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

15. **BUILDING PERMITS AND OCCUPANCY**

- (a) The Developer agrees that no Building Permit shall be issued until the building drawings are approved to the satisfaction of the Chief Building Official.
- (b) The Developer agrees that, unless otherwise determined by Council, no Building Permits shall be issued on any parts of the lands until all Primary Services as defined elsewhere in this Agreement are completed and operational to the satisfaction of the Director of Public Works and soundness testing have been completed and results provided to and accepted by the Director of Public Works.
- (c) In addition to paying the building permit fee, the Owner of a lot shall:
 - (i) Pay the amount of the development charges which are applicable at the time of application for building permit; and

- (ii) Pay the amount of the cash-in-lieu of lands for parks purposes.

16. MAINTENANCE GUARANTEE

- (a) The Letter of Credit deposited by the Developer pursuant to Section 14 hereof may, upon the completion of the Primary Services, and prior to the assumption of the Primary Services by the Town, at the Director's discretion, be reduced to an amount equal to ten percent (10%) of the completed Works (Schedule "E") plus one hundred and twenty per cent (120%) of the value, as estimated by the Director, of any uncompleted Secondary Services and such Letter of Credit shall be retained by the Town as a Maintenance Guarantee to guarantee the workmanship and materials of the Works until such time as the Works are completed.
- (b) The Maintenance Guarantee as required under subsection 16(a) hereof, may be reduced further to five percent (5%) subject to the Developer meeting all requirements of the *Construction Lien Act*.
- (c) The Letter of Credit may be realized upon by the Town if the Developer defaults in any payment or condition contained herein.
- (d) The Developer shall be conclusively deemed to be in breach of the covenant contained in Section 15(c), if, in the case of the cost of the Works or the fees of the Developer's Consulting Engineer and the Ontario Land Surveyor, a lien against the Lands or any part thereof is preserved pursuant to the *Construction Lien Act* and if, in the case of any other payment required to be made under this Agreement, a notice to that effect is forwarded to the Developer by the Director in accordance with Section 22 hereof.

17. INHIBITING ORDER ON THE LANDS

The Developer shall not transfer or otherwise deal with the Lands or any part thereof and also acknowledges and agrees that the Town will register an inhibiting order pursuant to the *Land Titles Act*, R.S.O. 1990, c.L.5, preventing transfer of all or any part of the Lands until such time as the Director of Public Works and Utilities has issued the Completion Certificate for Primary Services for the Lands. The Developer also acknowledges that the Town may register an inhibiting order against all or any part of the Lands for other matters to ensure compliance with this Agreement.

18. DEFAULT

- (a) Upon breach by the Developer of any covenant, term, condition or requirement of this Agreement, or upon the Developer becoming insolvent or making an assignment for the benefit of creditors, the Town, at its option, may declare that the Developer is in default.
- (b) Notice of such default ("Notice of Default") shall be given by the Town and if the Developer does not remedy such default within such time as provided in the notice, the Town may declare that the Developer is in final default under this Agreement and shall then forthwith give notice of final default ("Notice of Final Default") thereof to the Developer.
- (c) Upon Notice of Default having been given, the Town may require all work by the Developer, their servants, agents, independent contractors and sub-contractors to cease (other than any work necessary to remedy such default) until such default has been remedied and in the event of final default, may require all work as aforesaid to cease.
- (d) Upon Notice of Final Default having been given to the Developer, the Town may, at its option, adopt or pursue any or all of the following remedies, but shall not be bound to do so:

- (i) Enter upon the Lands shown on the Plan by its servants, agents and contractors and complete any work, services repairs or maintenance wholly or in part required herein to be done by the Developer and collect the cost thereof from the Developer and/or enforce any security available to it;
- (ii) Make any payment which out to have been made by the Developer and upon demand collect the amount thereof from the Developer and/or enforce any security available to it;
- (iii) Retain any sum of money heretofore paid by the Developer to the Town for any purpose and apply the same in payment or part payment for any work which the Town may undertake;
- (iv) Assume any work or services at its option, whether the same are completed or not, and thereafter the Developer shall have no claim or title hereto or remuneration therefor;
- (v) Bring action to compel specific performance of all or any part of this Agreement or for damages;
- (vi) Add any costs incurred by the Town to the tax collector's roll for the Lands and collect such costs by action or in like manner as municipal real property taxes; or
- (vii) Exercise any other remedy granted to the Town under the terms of this Agreement or available to the Town in law.

19. RESCISSION OF AGREEMENT

(a) In the event that the Development Agreement is not registered within one (1) year from the date hereof, then the Town may, at its option and on one (1) months' notice in writing to the Developer, declare this Agreement null and void and may Register against the title to the Lands included within the Development Plan a notice to that effect.

(b) The Developer shall not sell or convey any Lot shown on the Development Plan until this Agreement is registered on title.

20. RIGHT OF ENTRY

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

21. WARNING CLAUSES

(a) The Developer acknowledges and agrees to insert into all offers and agreements of purchase and sale the following clause: "All Works within the Plan, including but not limited to storm sewers, storm water management facilities, sanitary sewers, watermain, roads, curbs and gutters, street lighting and drainage works and swales, are contracted by the Developer. The Developer is obligated to maintain the Works in accordance with the Agreement and Plans registered on title."

(b) The Developer acknowledges and hereby agrees to insert into all offers and agreements of purchase and sale the following clause: "The lands in the Plan are subject to the payment of development charges which are payable prior to the issuance of a building permit."

(c) The Developer acknowledges and hereby agrees to insert into all offers and agreements of purchase and sale the following clause: "The lands in the Plan are subject to the payment of cash-in-lieu of the dedication of land for park purposes prior to the issuance of a building permit."

22. INDEMNIFICATION

Until the expiration of the Maintenance Guarantee, the Developer, on behalf of itself, its successors and assigns, including its successors in title of the Lands in the Development Plan, hereby releases and discharges and indemnifies the Town from and against all actions, causes of action, suits, claims and demands whatsoever which may arise by reason of:

- (a) Any alteration of the existing grade or level of any Street or Streets on the Plan to bring the said grade or level in conformity with the grade or level required by the Director of Public Works; and
- (b) Any damage to the Lands abutting on any Street or Streets shown on the Plan or to any Building erected thereon arising from or in consequence of any such alteration of grade or level; and
- (c) Any damages or injuries (including death) to persons or damage to property occurring or arising on any Street or Streets on the Plan however caused.

23. COVENANTS THAT RUN WITH THE LAND

- (a) The Developer and the Town acknowledge and agree that it is their intent that all the terms, conditions and covenants contained herein shall be covenants that run with the land and that the burden of such covenants shall be binding upon the Developer, their successors and assigns, and successors in title, from time to time, of the Lands described in Schedule "A" of this Agreement and any part or parts thereof and that the benefits of the said covenants shall enure to the Town, its successors and assigns in title of all roads, Streets and public lands forming part of or abutting on the Lands described in Schedule "A".
- (b) The Developer agrees that it shall, upon the sale or transfer by it of the Lands included within the Development Plan or any part or parts thereof, require the Purchaser or Transferee thereof as a condition of such sale or transfer to execute an Agreement satisfactory in form to the Town's Solicitor, agreeing to assume this Agreement and to be bound by and fulfil all of the terms, conditions and covenants herein set forth and containing a like covenant to this effect. The said Assumption Agreement shall be executed by the Town, the Developer and any such Purchaser or Transferee and may, at the Town's option, be registered upon title. Provided, however, that such Assumption Agreement shall not be required for the sale or transfer of a Lot as shown on the Development Plan for the purpose of construction.

24. NOTICE

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

in the case of the Town to:

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

and in the case of the Developer to:

Lawrence Schilstra
2141 Highway 3 East
Haldimand, Ontario
N0A 1K0

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

25. POSTPONEMENT AND SUBORDINATION

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

26. SCHEDULES

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

27. NUMBER AND GENDER

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

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

28. DEVELOPMENT CHARGES

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

29. BINDING EFFECT

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

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

	)	LAWRENCE SCHILSTRA
	)	
	)	
_____	)	_____
Witness	)	Signature
	)	
_____	)	_____
(Print Name)	)	(Print Name)
	)	
	)	☐ I have the authority to bind the Corporation
	)	
	)	THE CORPORATION OF THE TOWN OF PELHAM
	)	
	)	
	)	_____
	)	Marvin Junkin, Mayor
	)	
	)	
	)	_____
	)	Nancy J. Bozzato, Clerk

SCHEDULE "A"

LEGAL DESCRIPTION

PIN 64066-0737 (LT)

Part Lot 18 Plan 724 as in BB12706; PELHAM

SCHEDULE "B"

SITE SERVICING AND GRADING PLAN

1334 Pelham Street Site Grading Plan and Plan & Profile, Dwg. No. 1436, prepared by Upper Canada Consultants

1334 Pelham Street Sanitary Drainage Area Plan, Dwg. No. 1436 SANDA, prepared by Upper Canada Consultants

SCHEDULE "C"

SPECIAL PROVISIONS

1. Recognizing that the lands are primarily comprised of sand and silt surficial soils which, when disturbed or exposed, are susceptible to airborne and waterborne erosion mechanisms; therefore:
 - all areas of the land disturbed by servicing work and/or stripped of topsoil cover shall be hydroseeded immediately upon completion of constructions of works;
 - the Developer shall, throughout servicing and building phases of this development, construct and maintain siltation control ponds, as required, at locations determined acceptable by the Director of Public Works and Utilities;
 - airborne erosion of sands and silts from disturbed areas shall be controlled by application of water as required in the sole discretion of the Director of Public Works and Utilities;
 - the Developer agrees to implement, as required, other reasonable measures as determined by the Director of Public Works and Utilities for purposes of controlling and mitigating air and/or water borne sand and/or silt erosion;
 - the Developer shall immediately remove waterborne sands and silts which may be carried from the lands and restore such off-site impacted lands;
 - silt control devices, including silt fences shown on approved engineering drawings and as may be further installed or constructed at the request of the Director of Public Works and Utilities, shall be continuously inspected and maintained by the Developer throughout all servicing and residential building development; and
 - the Developer shall ensure that house building activities do not encroach upon the road allowance. This includes the storage of excavated materials and house building materials.

SCHEDULE "D"

BUILDING RESTRICTIONS

(To be included in all Deeds)

The Developer shall cause to be registered against all Lots in the Development Plan the transfer restrictions and restrictive covenants outlined below.

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

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

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

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

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

The Purchaser shall maintain the road allowance between the Street line and the edge of the road in good condition and free from weeds and shall cut the grass thereon at frequent intervals.

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

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

SCHEDULE "D"

BUILDING RESTRICTIONS

(To be included in all Deeds)

(Continued)

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

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

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

SCHEDULE "E"

FINANCIAL OBLIGATIONS AND COST OF CONSTRUCTION

SUMMARY		QTY.	UNIT	UNIT PRICE	COST
SECTION A	SANITARY SYSTEM (200 dia.)				
a)	extend sewer	60 m	250	\$	15,000.00
b)	manhole	1 ea	5500	\$	5,500.00
c)	service	2 ea	3000	\$	6,000.00
d)	moe appilication	1 ea	1200	\$	1,200.00
e)	design (ucc)	1 ea	5000	\$	5,000.00
f)	Town fees	1 ea	2000	\$	2,000.00
SECTION B	WATER SERVICES	2 ea	2500	\$	5,000.00
SECTION C	ASPHALT DRIVEWAY APRONS	2 ea	2000	\$	4,000.00
SECTION D	ESTIMATED SURVEY COSTS			\$	2,000.00
SUBTOTAL					\$ 45,700.00
10% ENGINEERING & 5% CONTINGENCY					\$ 6,855.00
SUBTOTAL					\$ 52,555.00
5% GST					\$ 2,627.75
TOTAL					\$ 55,182.75
20% SECURITY TOTAL					\$ 11,036.55
agency clearance fees, hydro and utilities not inlcuded					