

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made this ____ day of _____, 2020.

Between:

The Corporation of the Town of Pelham

(the "Town")

- and -

Barber Family Holdings

(the "Owner")

WHEREAS:

(a) The Owner represents that he is the registered owner of certain lands and premises, being Part Lot 27 on Plan No. 717 in the Town of Pelham, Regional Municipality of Niagara, known municipally as 1423 Pelham Street, (the "Owner's Property"), which abuts the Pelham Street road allowance (the "Town Lands");

(b) The Owner has installed two bike rings which encroach 0.2 m onto the Town Lands as shown on the sketch attached as **Schedule "A"** (the "Encroachment");

(c) The Owner has applied to the Town so that he may be allowed to maintain and use the Encroachment for an indefinite period.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the terms and conditions herein and the sum of Two (\$2.00) Dollars now paid by the Owner to the Town, the receipt and sufficiency of which is hereby acknowledged, the Owner and the Town covenant and agree as follows:

1. The Town and the Owner acknowledge and agree that the Encroachment shall be permitted on the Town Lands subject to the terms and conditions herein.
2. The Owner acknowledges that no representation has been made by the Town of any authority to grant the privilege to use and maintain the Encroachment and such use and maintenance by the Owner shall at all times be at the Owner's risk.
3. The Owner and the Town covenant and agree as follows:
 - (a) The Owner shall make no alteration to the Town Lands, including without limitation the removal of trees or grade changes, and shall not erect any

building or structures on the Town Lands without the Town's written permission;

- (b) The Owner shall obtain and maintain insurance in accordance with the following:
 - (i) Comprehensive general liability insurance, in a form satisfactory to the Town Clerk in an amount not less than Two Million Dollars (\$2,000,000.00) inclusive per occurrence for bodily injury, death and damage to property, including loss of use thereof, in the joint names of the Owner and the Town of Pelham;
 - (ii) To ensure that the above-mentioned insurance is not cancelled, amended or permitted to lapse, the policy shall contain an endorsement to provide all named insureds with thirty (30) days prior notice of changes or the cancellation of the policy; and
 - (iii) A Certificate of Insurance evidencing the above insurance coverage shall be provided to the Town prior to the Town signing the Agreement and thereafter promptly on the insurance renewal date;
- (c) Subject to section 3(e) herein, if the Encroachment is rebuilt, altered or removed in any way for any reason, the Owner shall remove the Encroachment from the Town Lands;
- (d) If the Encroachment is moved, altered or changed in any manner during the lifetime of this Agreement, the Owner shall apply for a new Encroachment Agreement if the Encroachment will remain on Town lands after such movement, alteration or change;
- (e) The Owner of the premises to which an Encroachment is appurtenant shall at all times maintain and keep the Encroachment and adjacent surface in proper repair at the Owner's expense, in a proper and safe condition for the traffic thereon, and to Town standards. If the Encroachment is not kept in good repair, upon written notice from the Town, the Owner of the premises to which the Encroachment is appurtenant shall repair the Encroachment and the adjacent surface at his own expense and to the Town's specifications. If the notice is not complied with within ten (10) days from the date that the notice is sent, the Town may renew or repair the highway at the expense of the Owner, add the cost to the tax roll and collect same in like manner as municipal taxes;
- (f) Upon removal of the Encroachment from the Town Lands, the Owner shall maintain and restore the Town Lands to the condition that the Town Lands were in prior to the date of the Encroachment or in compliance with the standards of the Town at the Owner's sole expense. In the event such restoration is not made, the Town may complete such restoration work at the expense of the Owner and recover the expense by any legal means available including the addition of the cost to the tax roll. The Town shall have the right to collect such expenses in like manner as municipal taxes.

4. The Owner will at all times indemnify and save harmless the Town from and against all loss, liability, claims, demands, damages, costs and expenses, including reasonable legal fees and disbursements, which the Town may suffer, be put to or incur for or by reason of or on account of the existence of the Encroachment or the entering into of this Agreement or the maintenance of the Encroachment or any other matter or thing relating to the Encroachment.
5. If the Owner defaults in performing any of its obligations under this Agreement, the Town shall give written notice to the Owner of such default giving the Owner ten (10) days to remedy the default, failing which the Town may terminate this Agreement. Any waiver by the Town of any breach by the Owner or any provisions of this Agreement shall be without prejudice to the exercise by the Town of all or any of its rights or remedies in respect of any continuance or repetition of such breach.
6. The Town or Owner may terminate this Agreement on sixty (60) days written notice for any reason.
7. The Owner and the Town hereby agree that this Encroachment Agreement shall cover the Encroachment described in any Application submitted by the Owner and this Encroachment Agreement shall not grant any permission to erect any new part of any new building and shall not provide any implied right on the part of the Owner to alter, reconstruct or otherwise change the Encroachment approved by the Town in the Encroachment Application.
8. This Encroachment Agreement shall not be assigned by the Owner to any third party without the prior written consent of the Town, which consent may be unreasonably withheld. For clarity, in the event that the Owner sells the property to which the Encroachment is appurtenant, the Owner shall instruct the purchaser of the said property to submit a new Encroachment Application to the Town for the Town's review and approval.
9. In the event that the Encroachment represents a danger or detrimentally impacts: (i) the safety of persons using the Town Lands; (ii) traffic flow; (iii) safety of the public (iv) encroaches on the rights of others to use the road allowance; or (v) interferes with future road improvements, the Owner and the Town acknowledge that the Town shall have a right to terminate this Agreement. Such termination of this Agreement shall be by written notice to the Owner, except in the case of an emergency. In the case of an emergency, the Encroachment Agreement may be terminated forthwith by the Town.

10. In the event that this Agreement is terminated, the Owner shall remove the Encroachment within thirty (30) days of the date of termination. If the Owner fails to remove the Encroachment on the date of termination, the Town shall provide the Owner with a notice requiring the Owner to remove the Encroachment within ten (10) days. If the Owner fails to remove the Encroachment within the ten (10) day period, the Town shall have the right to remove the Encroachment at the expense of the Owner and add the cost of removal to the tax roll and shall also have the right to collect such costs in like manner as municipal taxes. In the case of an emergency, the Town shall have the right to remove the Encroachment forthwith on the date of termination of the Agreement at the expense of the Owner and such costs shall be added to the tax roll and collected in like manner as municipal taxes.
11. Any notice required to be given to the Town or the Owner under this Agreement shall be sufficiently given if delivered or mailed postage prepaid to the addresses below. Such notice shall be deemed to have been received on the date of its delivery or in the case of mailing, three (3) business days after it was delivered to the post office.
- Town of Pelham
20 Pelham Town Square
P.O. Box 400 Fonthill,
ON L0S 1E0
- Barber Family Holdings
12 Giles Crescent
Fonthill, ON L0S 1E0
12. This Agreement shall enure to the benefit of, and be binding upon the parties and their respective heirs, administrators, estate trustees, successors and (where permitted) assigns.
13. The Owner and the Town hereby agree that this Agreement shall be registered on title to the Owner's Property at the Owner's expense. The Owner and the Town shall take such further deeds, actions and execute such further documents that may be necessary to effect such registration.

WITNESS my hand and seal at Fonthill, Ontario, this ____ day of _____, 2020. __

Owner

IN WITNESS WHEREOF the Corporation of the Town of Pelham has hereunto caused to be affixed its Corporate Seal attested by the hands of its proper signing officers.

THE CORPORATION OF THE TOWN OF PELHAM

Marvin Junkin, Mayor

Nancy Bozzato, Town Clerk

FOR-
S-IG-
SEN

FORESTGREEN CREATIONS INC.
DESIGN + BUILD
1423 Pelham Street
Fonthill, Ontario
L0S 1E0
T: 905 892 9737
F: 905 892 4940
E: info@forestgreencreations.com

1423 + 1421 Pelham Street, Fonthill, ON

Contract documents are the copyright of the consultants and shall be used or reproduced without authorization. Documents are to be returned upon completion of the project.

#	Revision Description	Date
1	Issued for SitePlan Agreement and C of A	09.14.2019
2	Issued for Final Site Plan Agreement	03.03.2018
4	Issued for Final Site Plan Agreement	04.08.2018
5	ISSUED FOR AS BUILT SPA CLEARANCE	10/24/2019



NOTE: THE ANSWERS, NAMES AND LOCATIONS GIVEN IN THE PLAN SHOULD BE RECORDED BY THE REFEREE AND OFFICIALS. THE REFEREE SHOULD BE PREPARED TO EXPLAIN THE REASON FOR THE CHOICE. THE REFEREE SHOULD BE PREPARED TO EXPLAIN THE REASON FOR THE CHOICE. ALL SETBACKS, GAMING AND TRAVEL SHOULD BE IN ACCORDANCE WITH PLANS PROVIDED BY THE

NAME	LOCATION
OVERSEA	
STADIUM	
THE TOWN OF PULAU	
CITY	STATE



P.O. Box 218
FENWICK, ONTARIO
L0S 1C0

P 905-892-2110
C 905-933-1239
E MARK@BHDALTS.CA

DATE	4/11/2016 3:25:45 PM
SCALE	As indicated
DRAWN	MAB
CHECKED	TJB

The undersigned has reviewed and takes responsibility for this design, and has the qualifications and meets the requirements set out in the Ontario Building Code to be a Designer

Todd Barber	22666	SIGNATURE
FULL NAME	BCIN	

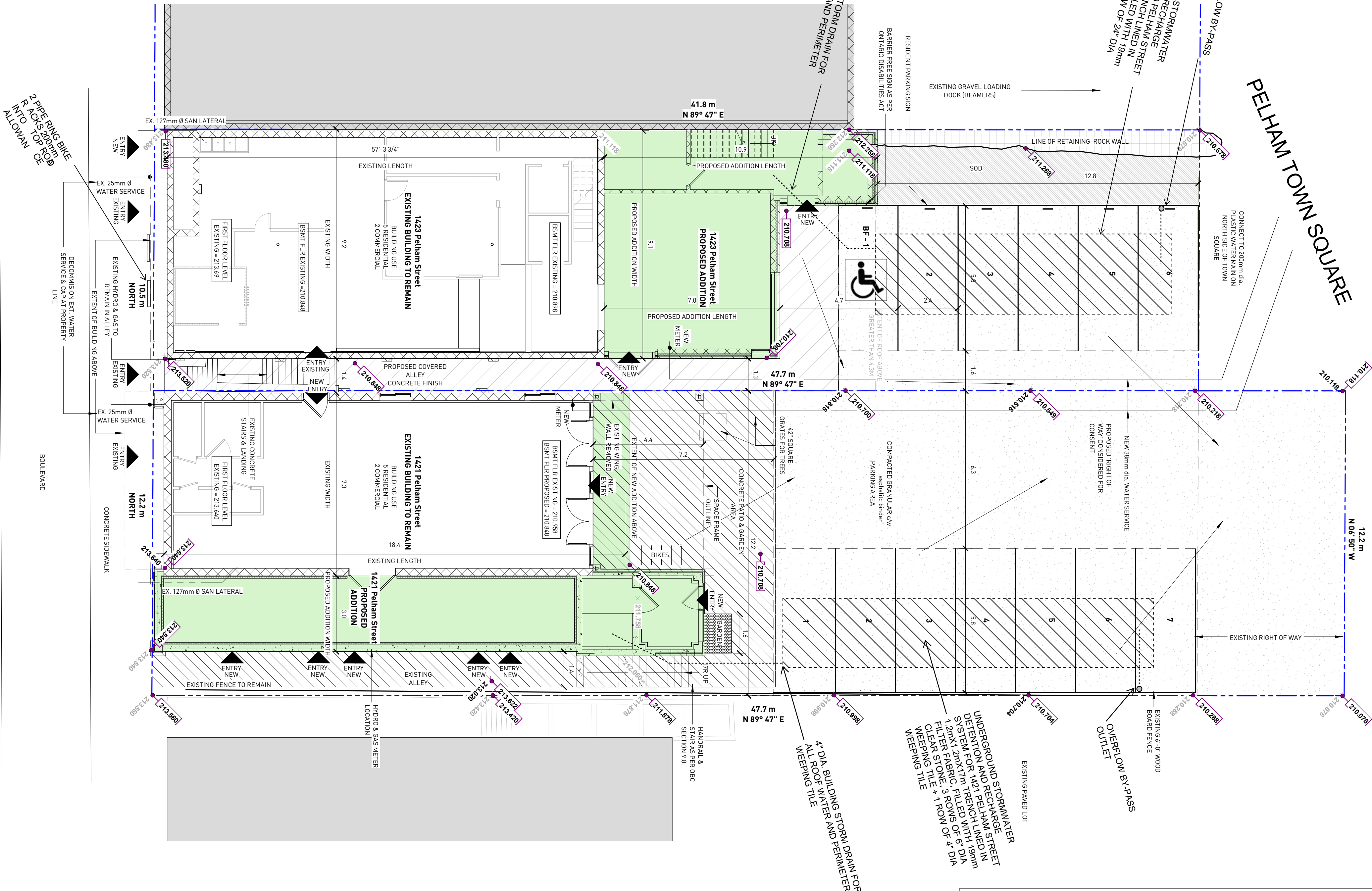
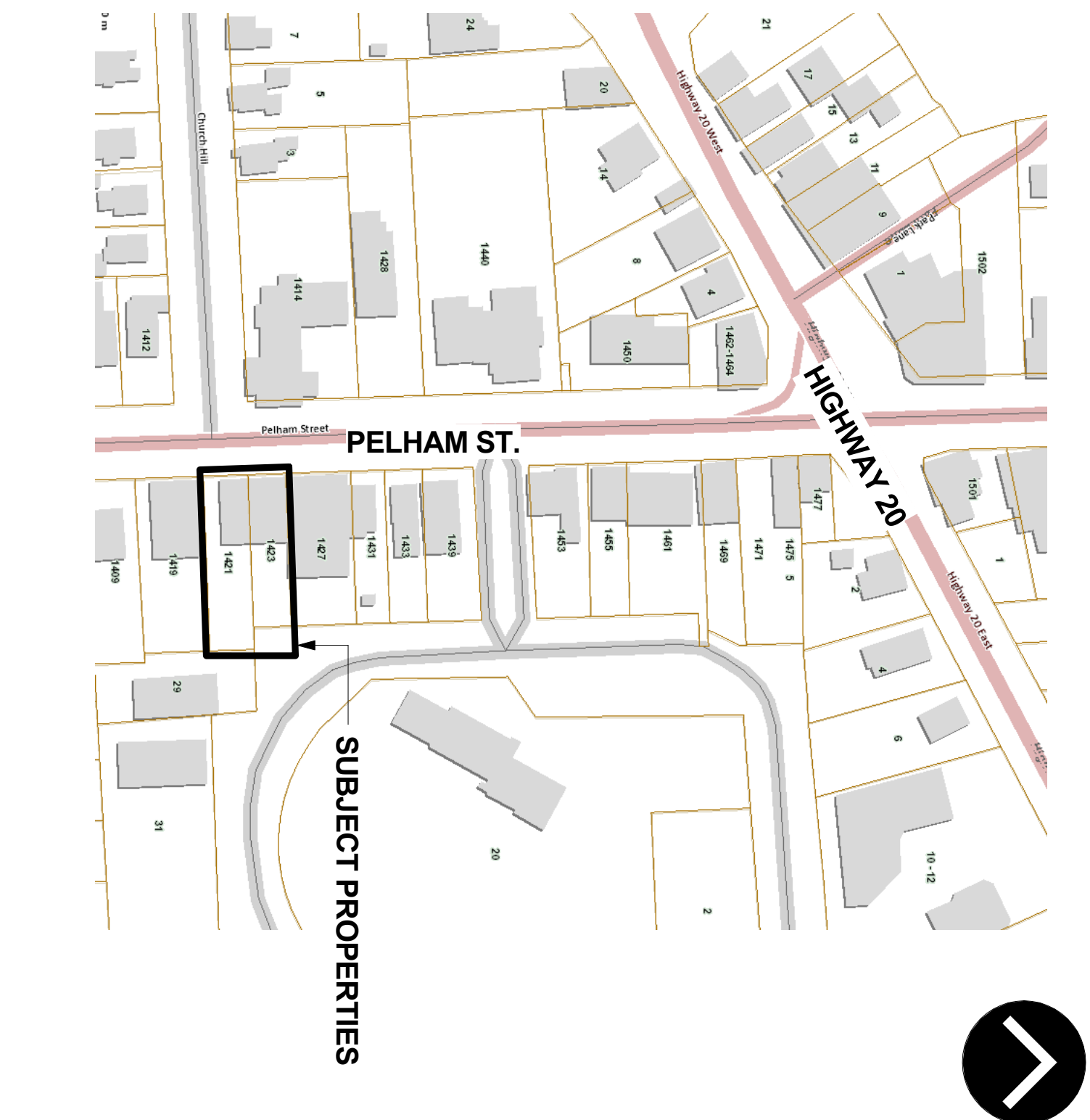
code		
Forestgreen Creations Inc.	30817	
FULL NAME	BCIN	SIGNATURE

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DRAWING	DRAWING NO.
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Servicing/Grading Plan

1 Grading Plan
1 : 100



LEGEND	
	PROPOSED GRADE
$\times 213,000$	EXISTING GRADE
	EXISTING ENTRY
	NEW ENTRY
	WATER SERVICE
	EXISTING SANITARY SERVICE
	PROPERTY LINE
	RESIDENT PARKING SIGNAGE
	COMPACTED GRANULAR DW asphalt binder
	WALL & PATIO (CONCRETE)
	COVERED ALLEY (CONCRETE)
	GARDEN
	SOD
	PROPOSED ADDITION

1421 COVERAGES		
COVERAGE AREA	AREA M2	% OF TOTAL AREA
LOT COVERAGE	581	100%
BUILDING COVERAGE	203	35%
PARKING COVERAGE	271	47%
LANDSCAPED AREAS	100	15%

1423 COVERAGES		
COVERAGE AREA	AREA M2	% OF TOTAL AREA
LOT COVERAGE	426	100%
BUILDING COVERAGE	228	52%
PARKING COVERAGE	119	28%
LANDSCAPED AREAS	86	20%

1. ALL DISPOSITIONS AND INFECTIONS MUST BE REPORTED PRIOR TO CONSTRUCTION IF THERE IS ANY SUSPICION THE CONNECTION IS TO NOTIFY THE ENGINEER PROBABLY
2. THE CONNECTIONS ARE RESPONSIBLE FOR LOCATING AND PROTECTING ALL UTILITIES BASED ON THE RECORD DRAWINGS AND FIELD SURVEY. THE CONTRACTOR SHALL BE RESPONSIBLE ON THE SITE OR WHEN THE STREET LINES MUST BE LOCATED BY ITS OWN MEANS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL UTILITIES AND REPORTED PRIOR TO CONSTRUCTION WHEN KNOWN OR DISCOVERED OF THE POSITION OF SUCH UTILITIES OR WHEN SUCH ARE NOT SHOWN.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL UTILITIES IN ACCORDANCE WITH THE LATEST 905-5.5 (905-5.5 STANDARDS) AND CODES OF THE MUNICIPALITY.
4. PRIOR TO GRADING SHALL NOT COMBUSTIBLE FLAMMABLE PATTERNS OF ADJACENT LOTS.
5. ALL DRAINAGE TO BE WITHIN 3.1% MAX. SLOPE AT PROPERTY LINE.
6. CONCRETE DRAINAGE ON A MINIMUM BE 150 mm THICK INCLUDING WIRE MESH REINFORCEMENT ON 100 mm CONCRETE GRANULAR 25 mm.

1. ALL ASPHALT PARKING LOT AREAS TO BE GRADED AT A MINIMUM OF 0.8%

- NOTES:
- 1) ALL DIMENSIONS ARE IN METRES
 - 2) GARAGE & RECYCLING STORAGE FACILITIES ARE INTERNAL
 - 3) SOFFIT DOWN LIGHTING IN ALLEY & ENTRANCE CANOPIES

GEODETIC ELEVATIONS BASED ON
STATION: 00819708358
DHO PRECISE BM 358-70
ELEV. 217.705 m
LAT. 43-02.8, LONG. 79.17.2

A1.0