

Development Agreement
Jonathan Sinke, Amy Sinke
997 Canboro Road (Part 1 on RP 59R-500)

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THIS AGREEMENT made this 3rd day of February, 2020.

BETWEEN:

JONATHAN SINKE, AMY SINKE

Hereinafter called the "Owner"

OF THE FIRST PART

- and -

THE CORPORATION OF THE TOWN OF PELHAM

Hereinafter called the "Town"

OF THE SECOND PART

WHEREAS the Owner represents and warrants that it is the owner of the lands in the Town of Pelham described in Schedule 'A' attached hereto (the "Lands");

AND WHEREAS the Owner has assumed and agreed to be bound by the terms and conditions of the Development Agreement;

AND WHEREAS the Owner is looking forward to develop the parcel to a residential use in accordance with Schedule 'B' attached hereto, being a Conceptual Site Plan filed in the Town's offices;

AND WHEREAS the Town has agreed to permit the said construction subject to certain terms and conditions;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One Dollar (\$1.00) now paid by the Owner to the Town (the receipt whereof is hereby acknowledged), the Parties hereto mutually covenant and agree as follows:

1. Definitions

In this Agreement:

- (a) **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.
- (b) **Chief Building Official** shall mean the Chief Building Official of the Corporation of the Town of Pelham.
- (c) **Clerk** shall mean the Clerk of the Corporation of the Town of Pelham.
- (d) **Cost of Construction** means the cost of construction approved by the Director and may include engineering fees ancillary thereto.
- (e) **Council** shall mean the Council of the Corporation of the Town of Pelham.
- (f) **Director of Community Planning & Development** shall mean the Director

of Community Planning & Development of the Corporation of the Town of Pelham.

- (g) **Director of Corporate Services** shall mean the Director of Corporate Services of the Corporation of the Town of Pelham.
- (h) **Director of Public Works** shall mean the Director of Public Works of the Corporation of the Town of Pelham.
- (i) **Facilities and Works** shall mean and includes those facilities and works which are shown on or referred to in any one or more of the plans, drawings and schedules to this Agreement.
- (j) **Lands** shall mean the lands described in Schedule 'A' attached hereto.
- (k) **Professional Engineer** shall mean a Professional Engineer registered in good standing with the Association of Professional Engineers.
- (l) **Surveyor** shall mean an Ontario Land Surveyor registered in good standing with the Association of Ontario Land Surveyors.

2. General Provisions

- (a) The Owner shall develop and maintain the Lands only in accordance with the terms and conditions contained herein and any other applicable by-law of the Town.
- (b) Unless the context otherwise requires, where the Owner is obligated by this Agreement or the approved plans to make any payments or install, 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 Owner".
- (c) The Owner shall not perform any construction or installation on the Lands except in accordance with the terms and conditions contained herein and to the reasonable satisfaction of the Town. And further, that the single detached dwelling shall only be located within the developable area shown on Schedule 'B' attached hereto and forming part of this Agreement and in compliance with the current Zoning By-law, as amended from time to time. Other permitted non-residential uses of the Zoning By-law are not prohibited within the prescribed *Minimum Distance Separation* setbacks.
- (d) The Owner shall obtain the required Driveway Entrance & Culvert Permit in accordance with Section 7, prior to any building permit issuance and any construction works taking place within the Town road allowance.
- (e) During construction, the Owner shall ensure all construction related vehicles that are not carrying out the works are parked on the subject lands and are not parked within the municipal road allowance.
- (f) All delivery / construction trucks taking materials from the subject lands included within this Agreement shall be adequately covered and not unreasonably loaded so as to scatter refuse, rubbish, dust or debris on

neighbouring properties or public roadways.

- (g) Should deeply buried archaeological remains / resources be found on the property during construction activities, all activities impacting archaeological resources must cease immediately, notify the Archaeology Programs Unit of the Ontario Ministry of Heritage, Sport, Tourism & Culture Industries (416-212-8886) and the Owner's archaeology consultant is required to carry out an archaeological assessment in accordance with the *Ontario Heritage Act* and the *Standards and Guidelines for Consultant Archaeologists*.

In the event that human remains are encountered during construction, all activities must cease immediately and the local Police as well as the Cemeteries Regulation Unit of the Ministry of Government & Consumer Services (416-326-8800) must be contacted. In situations where human remains are associated with archaeological resources, MTCS should also be notified to ensure that the site is not subject to unlicensed alterations which would be in contravention of the *Ontario Heritage Act*.

- (h) The Owner grants to the Town, its servants, agents, and assigns permission to enter upon the Lands for the purpose of inspection of any Facilities and Works referred to in this Agreement and for the purpose of the completion of any Facilities and Works in accordance with this Clause and this Agreement.
- (i) The Owner will, at all times, indemnify and save harmless the Town from all loss, costs, damages and injuries which the Town may suffer or be put to for or by reason of the construction, maintenance, or existence of any Facilities and Works done by the Owner, its contractors, servants or agents on the Lands or which the Town may suffer or be put to for, or by reason of the completion by the Town of any of the required Facilities and Works in accordance with this clause and this Agreement.
- (j) The Owner and the Town acknowledge and agree that it is their intent that all terms, conditions and covenants contained herein:
 - i. Shall run with the subject lands on title;
 - ii. Shall be binding upon the Owner, its heirs, executors, administrators, assigns and successors in title, from time to time; and
 - iii. The benefits of said covenants shall ensure to the Town, its successors and assigns in title, of all roads, streets, and public lands forming part of the subject lands.
- (k) 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 16.
- (l) The Owner shall not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any administrative tribunal the right of the Town to enter into this Agreement and to enforce each and every term, covenant, and condition herein contained and this Agreement may be pleaded as an estoppel against the Owner in any such proceeding.
- (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 subject 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) Notwithstanding the provisions of this Agreement, the Owner shall be subject to all of the Town's By-laws and all Provincial and Federal government statutes and / or regulations and amendments thereto affecting the site's development and installation of municipal services.

3. Grading

- (a) Unless otherwise approved or required by the Town, the Owner shall not alter the grades of the said Lands until such time as a Building Permit is issued for the construction of the buildings contemplated herein on the said Lands.

4. Sanitary Sewer System

- (a) Domestic waste water from any proposed building(s) shall be discharged into a private sanitary sewer system approved by the Region of Niagara at the time of building permit approval, as applicable.

5. Water Supply

- (a) The Owner shall, at its own expense, provide and maintain an internal private water supply necessary to serve the lands.

6. Storm Sewer System

- (a) The Owner shall ensure that all storm water runoff is maintained so as not negatively impact adjacent properties.

7. Driveways / Entrances

- (a) The Owner shall obtain approval for a Driveway Entrance & Culvert Permit issued through the Public Works Department at its own expense, provide and at all times utilize said driveway(s) necessary to serve the residential dwelling and / or the continued agricultural operation upon the lands. The driveway entrance specifications are detailed on Schedule 'C' of this Agreement, and shall be to the satisfaction of the Director of Public Works.

8. Building Permit & MDS Restrictions

- (a) The Owner may construct and the Town shall permit the construction of the buildings and other structures on the Lands in accordance with the Schedules attached hereto to permit the development provided that all such uses shall comply with all building and zoning requirements of the Town. The precise location of the future residential dwelling is not tied to Schedule 'B' other than that it must be located outside of the calculated MDS setback within the 'developable area' as shown on Schedule 'B', and in accordance with the Zoning By-law. Other permitted, non-residential uses may be located within the MDS setback and shall comply with the Zoning By-law, as amended from time to time, with an approved building permit(s).

9. Administrative & Consulting Costs

The Owner shall pay the Town's reasonable costs, **\$2,700** (Two-thousand, seven hundred dollars) in connection with this Agreement for preparation, processing, administration and supervision including, but not limited to, all administrative, legal, inspection and consulting expenses.

10. Default

Upon breach by the Owner of any covenant, term, condition or requirement of this Agreement, or upon the Owner becoming insolvent or making any assignment for the benefit of creditors, the Town, at its option, may declare the Owner to be in default. Notice of such default shall be given by the Town, and if the Owner shall not remedy such default within such time as provided in the notice, the Town may declare the Owner to be in final default under this Agreement. Upon notice of default having been given, the Town may require all work by the Owner, its servants, agents, independent contractors and sub-contractors to cease (other than any work necessary to remedy such default) until such default shall have been remedied, and in the event of final default, may require all work as aforesaid, to cease. Upon final default of the Owner, 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 subject Lands by its servants, agents and contractors and complete any work, service, repair or maintenance wholly or in part required herein to be done by the Owner, and collect the cost thereof from the Owner and/or enforce any security available to it;
- ii. Make any payment which ought to have been made by the Owner to the Town, for any purpose, and apply the same in payment or part payment for any work which the Town may undertake;
- iii. Retain any sum of money heretofore paid by the Owner to the Town, for any purpose, and apply the same in payment or part payment for any work which the Town may undertake;
- iv. Bring action to compel specific performance of all or any part of this Agreement for damages; and
- v. Exercise any other remedy granted to the Town under the terms of this Agreement or available to the Town in law.

11. Covenants

The Owner covenants for itself, its successors and assigns and the Owners from time to time of the said Lands and the burden of the covenants contained in this Agreement shall be deemed to be negative and shall run with and be binding upon the Lands to and for the Town, its successors and assigns.

- (a) The following clauses shall be included in all *Agreements of Purchase and Sale*, in perpetuity:
 - i. *"Purchasers are advised and acknowledge that the property is located within a 300 metre baseline radius setback – Minimum*

Distance Separation spatial requirement in the Town of Pelham Zoning By-law No. 1136 (1987), as amended, and that they may potentially, from time to time, experience unpleasant odours from an existing nearby livestock operation.”

- ii. *“Purchasers are advised and acknowledge that any attached garage, or detached accessory building, located within the calculated MDS radius (as determined by the Ministry of Agriculture, Food & Rural Affairs), is perpetually forbidden from being converted into, or developed for residential living space purposes.”*

12. Registration

The Owner agrees and consents to the registration of notice of this Agreement against the said Lands.

13. Obligation

This Agreement and the provisions hereof do not give to the Owner or any person acquiring any interest in the said Lands (each hereinafter in this paragraph called "such person") or any other person any rights against the Town with respect to the failure of any such person to perform or fully perform any obligation under this Agreement, or the failure of the Town to force any such person to perform or fully perform any obligation under this Agreement or any negligence of any such person in the performance of the said obligation.

14. Building Permit

Notwithstanding any of the provisions of this Agreement, the Owner, its successors and assigns, shall be subject to all of the by-laws, as amended, of the Town at the time of the issuance of a Building Permit required pursuant to the terms of the Agreement or at the time of the execution of this Agreement, whichever is applicable.

The Owner shall pay applicable parkland dedication fees and Town & Regional development charges at the time a building permit is issued for the residential dwelling conceptually shown on Schedule 'B' and any future building(s) requiring the payment of such fees, as applicable.

15. Plans

The Owner agrees that all plans shall be drawn by a Qualified Designer or by a Professional Engineer and all surveys by an Ontario Land Surveyor, subject to the reasonable satisfaction of the Town.

16. Notices

Any notice, demand, acceptance or request provided for in this Agreement shall be in writing and shall be deemed to be sufficiently given if personally delivered or sent by registered mail (postage prepaid) as follows:

To the Town at: Clerk

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

To the Owner at: Jonathan and Amy Sinke
1158 Regional Road 24,
Fenwick, ON L0S 1C0

or as such other address as the party to whom such notice is to be given shall have last notified the party giving the notice in the manner provided in this Section. Any notice delivered to the party to whom it is addressed in this Section 16 shall be deemed to have been given and received on the day it is so delivered at such address. Any notice mailed as aforesaid shall be deemed to have been given and received on the fifth day next following the date of its mailing.

17. Schedules

The originals of the plans set out in Schedule 'B' and 'C' are available at the offices of the Town at the address set out in Section 16.

18. Binding Effect

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

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

WITNESS

JONATHAN SINKE

(printed name)

(printed name)

(signature)

(signature)

(date)

(date)

WITNESS

AMY SINKE

(printed name)

(printed name)

(signature)

(signature)

(date)

(date)

**THE CORPORATION OF THE TOWN OF
PELHAM**

Mayor Marvin Junkin

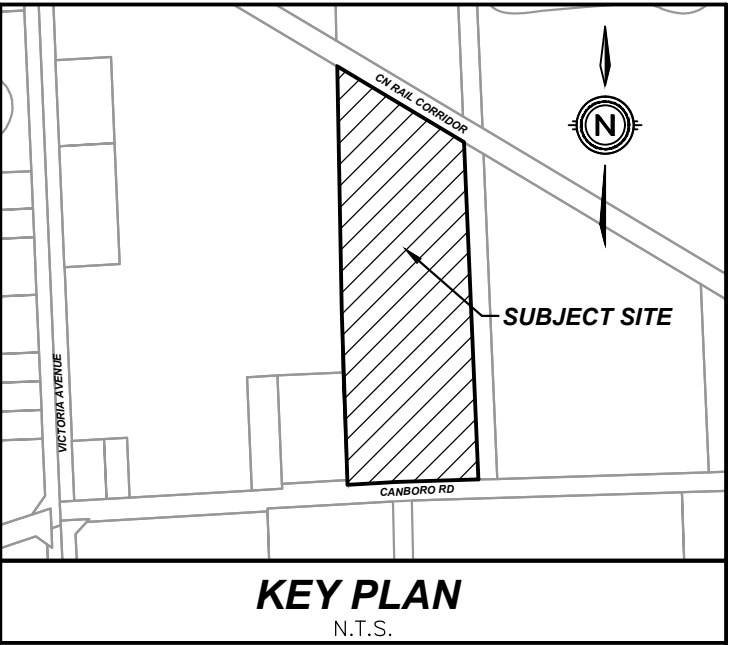
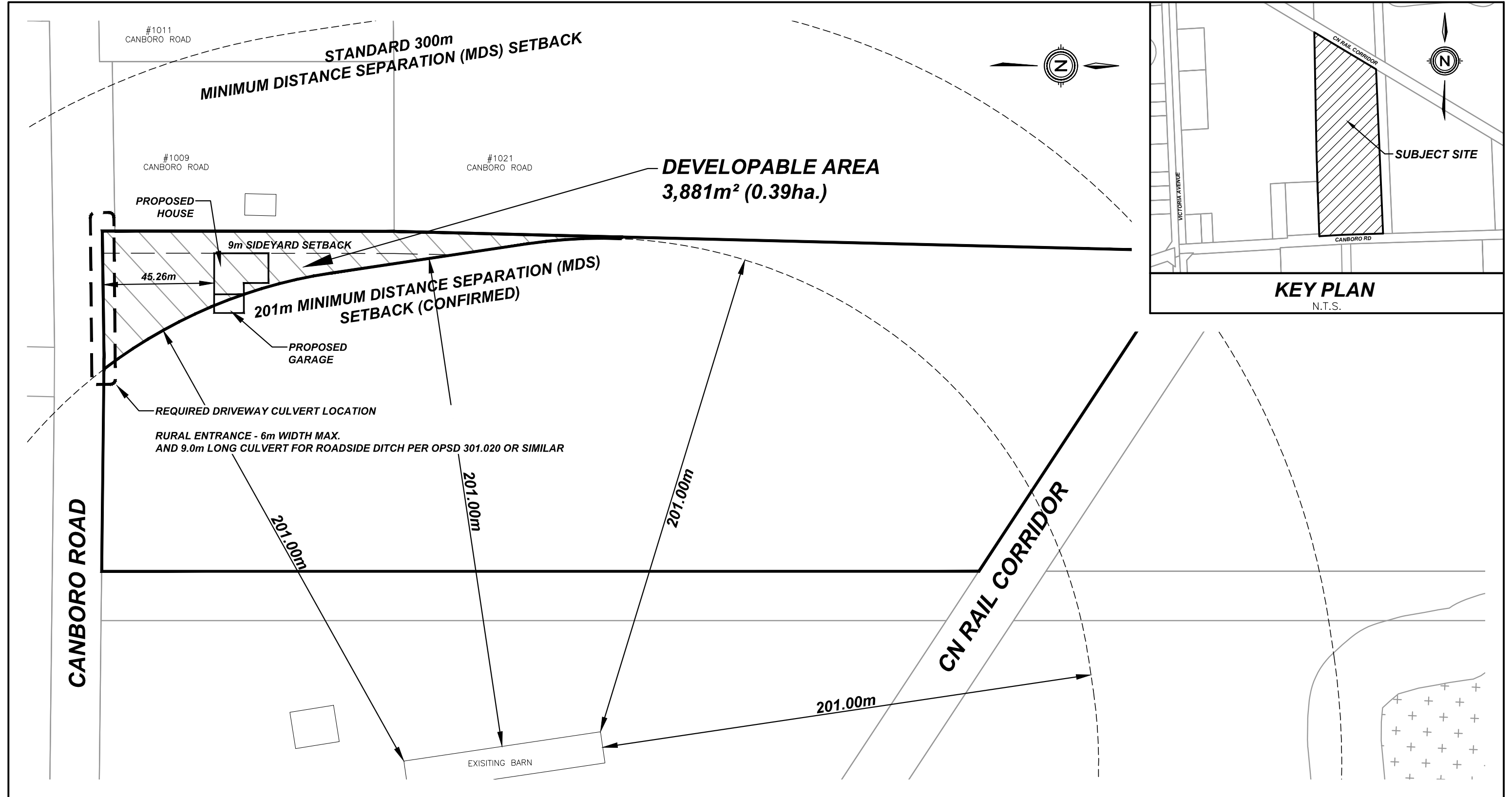
Clerk Nancy J. Bozzato

SCHEDULE 'A'

LEGAL DESCRIPTION

Part Lot 20, Concession 9 and being Part 1 on RP 59R-500; Town of Pelham

PIN: _____ (LT)
Municipal: 997 Canboro Road
Roll Number: 2732 010 016 10903



CONCESSION 9, PART OF LOT 20, RP 59R-500, PART 1
CANBORO ROAD
TOWN OF PELHAM
DEVELOPMENT AGREEMENT

DATE	2019-12-09
SCALE	1:1500 m
REF No.	.
DWG No.	19100-DA

