



Policy Name: Development Agreement Security Deposit Policy	Policy No: S300-XX
Committee approval date:	-
Council approval date:	-
Revision date(s):	-
Department/Division:	Community Planning and Development

1. Purpose

The purpose of this policy is to establish the requirements for acceptable forms of Security for Development Agreements.

This policy replaces Policy No. S300-01, Town of Pelham Security Deposits.

2. Policy Statement

The Town of Pelham has authority under the *Planning Act*, R.S.O. 1990, c. P. 13 (“the *Planning Act*”) to enter into agreements with property owners to ensure appropriate, safe and functional land development. These agreements obligate property owners to develop lands in accordance with approved plans and conditions of the agreement. The Town requires developers to deposit financial security, which is held by the Town until the contract is complete. This enables the Town to ensure completion of the work without incurring unexpected costs.

The Town is committed to supporting community growth and development, while requiring developers to provide adequate financial security to ensure timely and satisfactory project completion. This policy sets a clear and equitable administrative framework for financial security deposits and establishes criteria for their acceptance to protect the interests of the Town and its residents.

3. Definitions

“**Developer**” means an individual, partnership or corporation that is the registered owner of lands and is engaged in the development of those lands for profit.

“**Development Agreement**” means an agreement regulating the provision of on-site and municipal works under development applications, which is entered into by the Town and a Developer under the authority of the *Planning Act*, including but not limited to a plan of subdivision, a plan of condominium, a site plan agreement, a construction agreement, a shared services agreement, a consent, or a condition of any planning approval imposed by the Town.



“Letter of Credit” means an irrevocable financial instrument issued by an accredited financial institution that guarantees payment of Security in the event of any default of a Development Agreement.

“Security” means an amount required to be provided by a Developer to the Town as a condition of a Development Agreement, which will be returned to the Developer after all terms of the Development Agreement have been executed to the satisfaction of the Town.

“Surety Bond” means an instrument issued by a Surety Provider that guarantees the assumption of responsibility for payment of Security in the event of any default of a Development Agreement.

“Surety Provider” means a corporation legally capable of acting as a surety under a Surety Bond.

4. General Provisions

4.1 Application of Policy

This policy applies where a Security is required under a Development Agreement.

4.2 Security Amounts

The amount of Security required under a Development Agreement is governed by the type of agreement and the value of the project, which is determined based on a cost estimate prepared by the Developer’s engineering consultant.

For plans of subdivision and plans of condominium, the required amounts of Security are as follows:

- i. primary services (water, sanitary sewer, storm sewer, utilities, roads, grading, etc.): 20%
- ii. secondary services (final asphalt, sidewalks, trees, etc.): 120%
- iii. off-site works: 100%

For site plans and other Development Agreements, the required amounts of Security are as follows:

- i. on-site works: 20% or \$10,000.00, whichever is greater
- ii. off-site works: 100%

In addition to Security, the Town may also require a non-refundable cash payment to compensate the Town for administrative, engineering, consulting and/or legal costs. This amount is prescribed in the annual Fees and Charges Guide of the Town.



4.3 Acceptable Forms of Security

a. Cash

Where Security is required under a Development Agreement, cash is an acceptable form of Security provided that the following terms and conditions are satisfied:

- i. the Development Agreement permits the use of cash as Security, in whole or in part;
- ii. where cash is used to provide partial Security, the balance must be provided by way of a Letter of Credit and/or a Surety Bond that meets the requirements of this policy; and
- iii. the cash must be provided in Canadian dollars.

b. Letter of Credit

Where Security is required under a Development Agreement, a Letter of Credit is an acceptable form of Security provided that the following terms and conditions are satisfied:

- i. the Development Agreement permits the use of a Letter of Credit as Security, in whole or in part;
- ii. where a Letter of Credit is used to provide partial Security, the balance must be provided by way of cash and/or a Surety Bond that meets the requirements of this policy;
- iii. the Surety Bond must be issued by an accredited bank or financial institution;
- iv. the Letter of Credit must be issued in Canadian dollars; and
- v. the Letter of Credit must be irrevocable and payable upon demand by the Town.

c. Surety Bond

The Town recognizes that some forms of security have an impact on financing capacity, which may delay or limit development. The Town can mitigate risk and promote desirable growth by accepting Surety Bonds as security for Development Agreements where the requirements of this policy are met.

Subject to section 4.4, where Security is required under a Development Agreement, Surety Bonds are an acceptable form of Security provided that the following terms and conditions are satisfied:

- i. the Development Agreement permits the use of Surety Bonds as Security, in whole or in part;



- ii. where a Surety Bond is used to provide partial Security, the balance must be provided by way of a Letter of Credit and/or cash;
- iii. the Surety Bond must be issued by a Surety Provider incorporated in Canada for not less than ten (10) years;
- iv. the Surety Provider must have a minimum credit rating of:
 - “A” or higher as assessed by Dominion Bond Rating Service Limited;
 - “A-“ or higher as assessed by Fitch Ratings;
 - “A3” or higher as assessed by Moody’s Investors Services Inc.; or
 - “A-“ or higher as assessed by Standard & Poor’s;
- v. the Surety Provider must be an active institution monitored by the Office of the Superintendent of Financial Institutions;
- vi. the Surety Bond must be issued in Canadian dollars;
- vii. the Surety Bond must be irrevocable and payable upon demand by the Town; and
- viii. the Surety Bond must be in the form attached as Appendix “A” to this policy, unless modifications are agreed to by the parties and approved by the Town Solicitor and/or the Treasurer.

4.4 Additional Limitations

Notwithstanding any other provision of this policy, the Town may, in its sole discretion, decline a Developer’s proposal to use a Surety Bond as Security and/or may decline a Surety Bond for any reason.

Where a Surety Bond has been received and is held by the Town, and for any reason the Town determines that the Surety Bond has ceased to meet the provisions of this policy, or no longer provides adequate protection, the Town may require a new form of Security from the Developer, which must be delivered within ten (10) calendar days of the demand. The Town will exchange the original Surety Bond for the replacement Security. In the event that a new Security is not received as required, the Town may draw on the original Surety Bond without further notice.

5. Attachments

Appendix A: Development Agreement Surety Bond



**Appendix “A”
Development Agreement Surety Bond**

Bond No.: _____

Bond Amount: _____

Effective Date: _____

KNOW ALL PERSONS by these presents that [DEVELOPER NAME] as Principal (hereinafter “the Principal”), and [SURETY PROVIDER NAME] as Surety (hereinafter “the Surety”), are held and firmly bound unto THE CORPORATION OF THE TOWN OF PELHAM as Obligee (hereinafter “the Obligee”), in the amount of [AMOUNT] DOLLARS (\$) in lawful money of Canada for which payment the Principal and Surety jointly and severally bind themselves and their heirs, executors, administrators, successors and assigns, firmly by this instrument (hereinafter “this Bond”).

WHEREAS the Principal and the Obligee have entered into, or will enter into, an agreement with respect to lands municipally known as [LANDS] in the Town of Pelham, (hereinafter “the Development Agreement”), which is by reference incorporated into and made a part of this Bond.

NOW THEREFORE, the condition of this obligation is such that if the Principal shall, in the opinion of the Obligee, well and faithfully perform, observe and comply with and cause those for whom the Principal is responsible in law to perform, observe and comply with all terms, conditions and requirements of the Development Agreement, then this obligation shall be void and of no effect; otherwise this obligation shall remain in full force and effect.

PROVIDED, however, that this obligation is subject to the following terms and conditions:

1. Whenever the Principal shall be declared in writing by the Obligee to be in default under the Development Agreement, and the Obligee intends to make a claim under this Bond, the Obligee shall promptly notify the Principal and the Surety of the default by making a written demand in the form attached hereto as Schedule “A”.



2. On determination by the Obligee, in its sole discretion, that the Principal is in default of its obligations under the Development Agreement, the Surety and Principal agree that the Surety will make payments to the Obligee for amounts demanded by the Obligee, to an aggregate of the amount of this Bond set out above, within ten (10) business days after the Obligee delivers a demand to the Surety by registered mail, personal delivery or courier, to the address noted herein.
3. The Obligee may make multiple demands under this Bond.
4. Each payment made by the Surety under this Bond shall reduce the Bond amount. In no event shall the Surety be liable for a greater sum than the amount of this Bond.
5. This Bond is irrevocable and payment shall be made notwithstanding any objection by the Principal.
6. Where a demand in the prescribed form has been delivered to the Surety, it shall be accepted by the Surety as conclusive evidence of its obligation to make payment to the Obligee, and the Surety shall not assert any defence or grounds of any nature or description for not making payment to the Obligee, in whole or in part, pursuant to such demand, including but not limited to the following:
 - i. that no default has occurred;
 - ii. that the Principal committed any fraud or misrepresentation in its application for this Bond; and/or
 - iii. that the amount set out in the demand is not warranted or appropriate or is otherwise not in accordance with the Development Agreement.
7. The Surety's liability under this Bond is unconditional and shall not be discharged, released or affected by any or all of the following:
 - i. arrangements made between the Obligee and the Principal;
 - ii. any dispute between the Surety and the Principal;



- iii. the taking or receiving of security by the Obligee from the Principal;
 - iv. any change, addition, modification or variation of the Principal's obligations under the Development Agreement, whether known to the Surety or not;
 - v. the exercise by the Obligee of any rights or remedies reserved to it under the Development Agreement; and/or
 - vi. forbearance by the Obligee to exercise any such rights or remedies, whether known to the Surety or not.
8. All payments by the Surety shall be made free and clear without deduction, set-off or withholding.
 9. The amount of this Bond may be reduced from time to time as advised by notice in writing given by the Obligee to the Surety. The Obligee has the ability and sole discretion to make a determination as to whether the amount of this Bond should be reduced.
 10. No right of action shall accrue upon or by reason hereof to or for the use or benefit of any person other than the Obligee.
 11. The Obligee shall return this Bond to the Surety for termination or advise the Surety in writing that this Bond is terminated, as required by the terms of the Development Agreement, upon completion of the following events:
 - i. the Principal has completed the works required under the Development Agreement to the satisfaction of the Obligee;
 - ii. all maintenance and rectification periods contained within the Development Agreement have expired; and
 - iii. the Obligee has confirmed in writing that all works have been finally assumed.



12. The Surety shall provide not less than ninety (90) days written notice to the Obligee and the Principal of any intention to terminate this obligation. Upon receipt of such notice, the Principal shall deliver to the Obligee, not less than thirty (30) days prior to the termination of this Bond, financial security in the amount of this Bond in a form satisfactory to the Obligee. If the replacement financial security is not provided by the Principal or is not accepted by the Obligee for any reason, this Bond shall remain in effect.
13. Nothing in this Bond shall limit the Principal's liability to the Obligee under the Development Agreement.
14. This Bond shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated, in all respects, as a contract entered into in the Province of Ontario, without regard to conflict of laws principles.
15. The Principal and the Surety hereby irrevocably and unconditionally attorn to the jurisdiction of the Courts of the Province of Ontario.
16. Demands and notices under this Bond shall be delivered to the Surety by registered mail, personal delivery or courier, with a copy to the Principal, at the addresses set out herein. All other correspondence may be delivered by regular mail, registered mail, personal delivery, courier or email.
17. The addresses for the Principal, the Surety and the Obligee are as follows:

Principal	[NAME] [ADDRESS] Attention: [NAME/POSITION]
Surety	[NAME] [ADDRESS] Attention: [NAME/POSITION]



Obligee

The Corporation of the Town of Pelham
20 Pelham Town Square
PO Box 400
Fonthill ON L0S 1E0

Attention: Director of Community Planning and Development

- 18. Any change of address for the Surety is publicly available on the Financial Services Regulatory Authority of Ontario website. Any change of address for the Principal or the Obligee shall be made by written notice to all parties of the new address and the effective date of the address change.

IN WITNESS WHEREOF the parties have executed this Bond by their authorized representatives and agree to be bound thereby as of the latest date set out below.

[NAME OF PRINCIPAL]

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the Corporation.

Date: _____

[NAME OF SURETY]

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the Corporation.

Date: _____



**THE CORPORATION OF THE TOWN OF
PELHAM**

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the Corporation.

Date: _____

DRAFT



**Development Charge Surety Bond Agreement
Schedule "A"**

Declaration of Default and Demand

Date:	
Surety:	
Address:	
Attention:	
Re:	Development Agreement Surety Bond No. _____
Principal:	[NAME OF PRINCIPAL] ("the Principal")
Obligee:	The Corporation of the Town of Pelham ("the Obligee")
Agreement:	[NAME/NUMBER/IDENTIFIER] ("the Development Agreement")

Dear [NAME OF SURETY CONTACT]:

Pursuant to and in accordance with the terms of the above-noted Development Agreement Surety Bond ("the Bond"), the Obligee hereby declares a default of the Principal under the Development Agreement and certifies that it is entitled to draw on the Bond pursuant to the terms of the Development Agreement.

The Obligee hereby demands payment in the amount of [AMOUNT] DOLLARS (\$) under the terms of the Bond and requires the Surety to honour its obligation to make the said payment within ten (10) business days of delivery of this demand.

Payment instructions are as follows:

Yours very truly,
The Corporation of the Town of Pelham