

DEVELOPMENT AGREEMENT

HOMES BY HENDRIKS INC.

PART LOT 16 CONCESSION 14 PELHAM PARTS 1 & 2 59R-9153; PELHAM

839 RIVER ROAD, PELHAM

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THIS AGREEMENT made this 6th day of March, 2017

BETWEEN:

HOMES BY HENDRIKS INC.

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 purports to be the owner of the lands in the Town of Pelham described in Schedule "A" and has applied to the Town of Pelham Committee of Adjustment for minor variances under application A4/2017P and has obtained such minor variances subject to conditions;

AND WHEREAS the Town requires the Developer, before a building permit is issued, to agree to certain terms and conditions for the development for which approval is sought;

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. 2686 (2005) as amended by 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 Homes by Hendriks, 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 Homes by Hendriks 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 to be subdivided are those 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 enure 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 13.
- (e) This Agreement and everything herein contained shall enure 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 Town shall cause this Agreement to be Registered against the title to the Lands.
- (o) 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.
- (p) All Streets and properties abutting on the Lands or used for access to the Lands during the installation or construction of the Works or during the construction of Buildings upon the Lot 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.
- (q) 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.
- (r) The Developer shall ensure that adequate dust control and mud tracking control measures are carried out during the construction of all Buildings upon the Lands.
- (s) 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.

4. SPECIFIC PROVISIONS

- (a) The Developer shall obtain an Entrance Permit from the Town's Public Works Department for the installation of a driveway/culvert, as applicable in accordance with Town standards. The applicant shall bear all costs associated with such, to the satisfaction of the Director of Public Works.

5. SITE SERVICING AND GRADING PLAN

- (a) The Developer shall submit a lot grading plan to the satisfaction of the Director of Public Works prior to the issuance of a Building Permit.

6. DRIVEWAYS

- (a) 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 shall be constructed to the satisfaction of the Director of Public Works.

7. 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) 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 pursuant to Section 8 of this Agreement.

8. CASH-IN-LIEU OF PARKLAND DEDICATION

Prior to the issuance of a building permit, the Developer agrees to pay five percent (5%) of the value of the lands to the Town in lieu of lands for parks purposes pursuant to the provisions of Subsection 42(6) of the *Planning Act*. The Developer shall have the Lots appraised by a qualified appraiser to determine the value of each Lot pursuant to Subsection 42(6) the *Planning Act*.

9. 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) Bring action to compel specific performance of all or any part of this Agreement or for damages;
- (iii) 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,
- (iv) Exercise any other remedy granted to the Town under the terms of this Agreement or available to the Town in law.

10. 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 the Lot shown on the Development Plan until this Agreement is registered on title.

11. WARNING CLAUSES

- (a) 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."
- (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 cash-in-lieu of the dedication of land for park purposes 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 owner acknowledges that their property is located within a calculated radius as determined by the Ministry of Agriculture, Food and Rural Affairs Minimum Distance Separation formulae and the Town's Zoning By-law Minimum Distance Separation spatial requirement and that they may potentially, from time to time, experience unpleasant odours from the existing adjacent poultry barn operation."

12. 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".

13. 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, Ontario
L0S 1E0

and in the case of the Developer to:

Homes by Hendriks Inc.
4618 Sandy Cove Drive
Beamsville, Ontario
L0R 1B1

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.

14. 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.

15. 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.

16. 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.

17. 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:**

)	HOMES BY HENDRIKS INC.
)	
_____)	_____
Witness)	Signature
)	
_____)	_____
(Print Name))	(Print Name)
)	
)	<input type="checkbox"/> I have the authority to bind the Corporation
)	
)	
)	
)	
)	
)	THE CORPORATION OF THE TOWN OF PELHAM
)	
)	
)	_____
)	Dave Augustyn, Mayor
)	
)	
)	_____
)	Nancy J. Bozzato, Clerk

SCHEDULE "A"

LEGAL DESCRIPTION

PIN 64399-0177 (LT) and 64399-0194 (LT)

Part Lot 16 Concession 14 Pelham Parts 1 and 2 59R-9153; Pelham

SCHEDULE "B"

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 and/or stripped of topsoil cover shall be hydroseeded immediately upon completion of constructions of works;
 - 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;
 - the Developer agrees to implement, as required, other reasonable measures as determined by the Director of Public Works 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;
 - 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 "C"

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. 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.

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 "C"

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 erect any free standing tower, radio antenna, communication tower or similar structure.