

FOR OFFICE USE ONLY

NUMBER LT 43381
CERTIFICATE OF RECEIPT
100-100-1000

ASS. DEP. LAND REGISTRAR
NIAGARA SOUTH No. 59.
WELLAND

New Property Identifiers

Additional:
See
Schedule

☐

Executions

Additional:
See
Schedule

☐

(1) Registry ☐ Land Titles ☒

(2) Page 1 of 31 pages

(3) Property Identifier(s)

Block

Property

Additional:
See
Schedule

☐

(4) Nature of Document

Application to register Notice of Agreement

(5) Consideration

NIL

Dollars \$

(6) Description

Lots 1 to 12, both inclusive, Blocks 13, 14 and 15 and Mussari Court on Plan 59M-112 for the Town of Pelham, in the Regional Municipality of Niagara, being parcels 1-1, 2-1, 3-1, 4-1, 5-1, 6-1, 7-1, 8-1, 9-1, 10-1, 11-1, 12-1 and 15-1, Section 59M-112.

(7) This Document Contains:

(a) Redescription
New Easement
Plan/Sketch

(b) Schedule for:

Description

Additional Parties

Other

☐

(8) This Document provides as follows:

Joseph Mussari and Saverio Mussari, the registered owners as partnership property of the above lands, hereby apply under Section 74 of the Land Titles Act for the entry of a Notice of Agreement in the register for the said parcels.

(9) This Document relates to Instrument number(s)

Continued on Schedule ☐

(10) Party(ies) (Set out Status or Interest)

Name(s)

MUSSARI, Joseph

MUSSARI, Saverio
(applicants/owners)

Signature(s)

Joseph Mussari
Saverio Mussari

Date of Signature

Y M D

1986 12 03

1986 12 03

(11) Address
for Service

195 East Main St., Welland, Ont. L3B 3W7

(12) Party(ies) (Set out Status or Interest)

Name(s)

THE CORPORATION OF THE TOWN
OF PELHAM

Signature(s)

Date of Signature

Y M D

(13) Address
for Service

20 Pelham Town Square, Box 400, Fonthill, Ont. L0S 1E0

(14) Municipal Address of Property

Mussari Court (multiple)
Fonthill, Ont.
LOS 1E0

(15) Document Prepared by:

C. D. Beccario, Q.C.
190 Division St., Box 340,
Welland, Ont. L3B 5P9

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Fees and Tax

Registration Fee

1000

Total

Document General

REPORT AIRT NOTICE

- I It is a serious offence under the Criminal Code to make a false statement in this document.
- II This document should be registered or deposited in the proper Land Registry Office.
- III When registered or deposited, this document is the property of the Land Registry Office.

INSTRUCTIONS FOR COMPLETION

- (1) **Registry/Land Titles** — Mark "X" in the appropriate box.
- (2) **Pages** — Enter total number of pages of document, including this form.
- (3) **Property Identifier(s)** — If identifier(s) has/have been assigned by the Land Registry Office, insert a maximum of two here. If the land affected by this document has more than two identifiers, enter two here and mark the "Additional See Schedule" box with an "X" and attach the schedule with remaining identifier(s). If document is to be a General Registration, enter "G.R."
- (4) **Nature of Document** — Enter brief description (e.g. Deposit, By-law, Notice of Lease, Construction Lien etc.)
- (5) **Consideration** — Enter consideration if any in both words and numbers.
- (6) **Description** — Begin with parcel and section (Land Titles), part, lot or unit on plan or concession lot (e.g. Unit 13, Level 13 York Condominium Plan 140-26 or Part Lot 6, Concession 6). Include also the township, municipality etc. If a nuclear and bounds description is required, mark "X" in box 7(b) and attach schedule with full description. For condominium properties, enter a reference to the Land Registry Office in which the plan is registered. A description is not necessary if the document is to be a general registration only. If document divides an existing property, enter "Property Division" beside the title. Description: If the property described is to be consolidated with an adjoining property, enter "Consolidation" beside the title. "Description" and attach to handle with the existing description of the adjoining property and its identification (i.e. Property Identifier Number, title entry under section 77 of the Registry Act, parcel and section for Land Titles properties) and the proposed description for the consolidated property.
- (7) **This Document Contains** — Mark either box (a) or (b) with an "X" as required.
 - (a) **This Document provides as follows** — **Complete document by:**
 - attaching an existing document (e.g. lease) as a schedule; or
 - inserting text in space provided, where additional space is required, mark the "Continued on Schedule" box with an "X" and attach a schedule.
 - (b) **Forms prescribed under other Acts must be attached to a schedule.**
- (8) **This Document relates to instrument number(s)** — If this document relates to previous instruments, enter the instrument number(s) and document of (1)-(3) here.

- (9) **Parties** — For natural persons, enter names of parties with last name first, in capitals, followed by the first and at least one initial. For corporations, enter either each party on a separate line. If a corporation, enter entire name in capitals. Describe the nature of interest of each party to the document (e.g. plaintiff, applicant, registered owner, lien claimant, etc.) If there is only one party, use first word. If the document has the effect of transferring or charging land, for natural persons, at least one of the following conditions is pending compliance with the Family Law Reform Act must be entered by the transferor or chargee:
 - (1) We are spouses or common-law partners (2) The person consenting below is my spouse. (3) I am/am not a spouse (4) The property, land, interest (though I have never been occupied by me and my spouse as our matrimonial home. (5) The property is not a scheduled unit. (6) It is part of the Family Law Reform Act and there is an instrument designating another property as our matrimonial home. (7) I have been registered and has not been cancelled. (8) My spouse has released all rights under Part III of the Family Law Act and there is a separation agreement. (9) This transaction is authorized by court order under section 4 of the Family Law Act. (10) The property is registered as instrument no. (insert no.) which has not been stayed. (11) A court order has been made releasing the property as a matrimonial home registered as instrument no. (insert no.) which has not been stayed. (12) The date of each party, who is a natural person and a transferee is required. If space is insufficient, mark "X" in box 7(d) and attach a schedule. If the document is a part of the document, the proper parties must execute the form. For corporate parties, the name of the corporation, in capitals, must be set out as well as the name of the person authorized to sign on behalf of the corporation. If the corporation has not used a seal, add "I/We have authority to bind the corporation". If a document is signed by a solicitor or agent, the parties must sign the document and the form must be signed by one party or a solicitor or agent on behalf of one of the parties. A solicitor or agent must be identified as such.

- (11) **Address for Service of Process** — Enter address including postal code.
- (12) **Address of Property** — Enter full municipal address of property. State as follows: street number, suffix (e.g. "West" or "East"), street name, in English, suffix (apt., suite, etc.), unit number, municipality, postal code. If property dealt with has more than one address, enter each address on a separate line. If "114 E", information entered does NOT affect the validity of this document.
- (13) **Document Prepared by** — Enter name and address including postal code.

FOR OFFICE USE ONLY	
This document has been	
Registered/Received	Verified/Certified
Abstracted	Filed
FOR OFFICE USE ONLY	

Duplicate for:	
Name and Address	C. D. Beccario 190 Division St. Welland, Ont.

FOR OFFICE USE ONLY

THIS INDENTURE MADE IN TRIPLICATE THIS 18TH DAY OF August, 1986 A.D.

BETWEEN:

JOSEPH MUSSARI & SAVERIO MUSSARI

Hereinafter called the "Owner",
OF THE FIRST PART;

- and -

THE CORPORATION OF THE TOWN OF PELHAM,

Hereinafter called the "Town",
OF THE SECOND PART.

DEFINITIONS in this Agreement:

- (a) "TOWN CLERK" shall mean the Clerk of the Corporation of the Town of Pelham.
- (b) "COUNCIL" shall mean the Council of the Corporation of the Town of Pelham.
- (c) "TOWN ENGINEER" shall mean the Engineer of the Corporation of the Town of Pelham.
- (d) "TREASURER" shall mean the Treasurer of the Corporation of the Town of Pelham.
- (e) "MINISTER" shall mean the Minister of Municipal Affairs & Housing.

WHEREAS the Owners purport to be the Owners of the lands in the Town of Pelham, described in Schedule "A" attached hereto and have applied, or propose to apply to the Minister of Municipal Affairs & Housing for approval of a plan of subdivision thereof, hereinafter called "The Plan" for the purpose of registering the same in the Land Registry Office (No. 59), Land Titles Division of Niagara South;

AND WHEREAS the Town requires the Owner, before final approval of the proposed plan of subdivision, to agree to pay for the construction and installation of certain municipal services hereinafter described to serve such a subdivision or that part of such subdivision for which approval is sought and to agree to the other provisions herein contained;

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NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the Town approving the said proposed plan of subdivision, and in consideration of the sum of ONE DOLLAR (\$1.00) of lawful money of Canada now paid by the Owner to the Town (the receipt thereof is hereby acknowledged), the Parties hereto mutually covenant and agree as follows:

(1) REGISTRATION:

The Owner covenants and agrees:

- (a) to register this Agreement against every lot and parcel of land within "The Plan" at the same time as "The Plan" is registered, and
- (b) to register "The Plan" in the Land Registry Office (No. 59), Land Titles Division of Niagara South, within one (1) month after approval of "The Plan" is granted by the Minister.

(2) TRANSFER TO TOWN FOR MUNICIPAL PURPOSES:

The Owner will:

- (a) pay to the Town the sum of \$10,543.45 as payment of cash in substitution for the conveyance of 5% of the land to the Town pursuant to Section 41 (6) of the Planning Act; and,
- (b) by certificate on the Plan, dedicate to the Town the road allowances; and,
- (c) grant by way of easement to the Town those areas as shown on the Plan, and as described in Schedule "B".

(3) ENGINEERING SERVICES & INSPECTION:

(a) The works herein shall be undertaken by the Owner who will engage at their own expense the services of Professional Engineers who are registered under the Professional Engineers Association of Ontario to perform the following engineering services, subject to the approval thereof by the Town Engineer and the Council:

- (i) preliminary investigation;
- (ii) layout drawings and design criteria of roads and services;
- (iii) detailed estimates of cost;
- (iv) contract drawings and specifications;
- (v) application to the Ministry of the Environment for necessary approvals;
- (vi) calling of tenders if so requested by the Owner;
- (vii) analysis of bids and recommendations to the Owner;

con't.....

(viii) setting out the work;

(ix) supervision of construction; and

(x) preparation of progress certificates on the works undertaken by the Owner and supply copies of each progress certificate to the Town Engineer (having regard to utility agencies, e.g. hydro, gas, telephone, etc.)

(b) The said Professional Engineer shall file with the Town Engineer prior to registration of this Agreement, a written undertaking:

(i) that he has been engaged by the Owner to supervise the work;

(ii) that the work will be done in accordance with the contract drawings and specifications and all other provisions of this Agreement;

(iii) that all phases of the work will be subject to the approval of the Town Engineer; and

(iv) that he will provide the Town Engineer, prior to the acceptance of the works by the Town Engineer on behalf of the Town, with a complete set of linen tracings or certified true copies thereof suitable for making reproductions of the works as constructed pursuant to this Agreement, as well as detailed engineering data. The tracings or certified true copies or detailed engineering design shall be in the following form:

(1) tracing shall be plan-profile linen 24" x 42" sheets and ink lettering;

(2) title blocks (5" x 3") to be placed in lower right-hand corner and shall indicate nature of work, location, limits and scales;

(3) a complete copy of design details of storm and sanitary sewer layouts which said design details shall be based on design formula provided by the Town Engineer;

(4) plan profiles shall be fully detailed and where reference is made to other construction drawings, specific reference to those drawing numbers shall be made;

5"

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(5) horizontal ties shall be made to property lines;

(6) levels shall be to datum and all field surveys shall be tied into Geodetic Bench Marks..

(v) that he understands that any contractor employed by the Owner shall, as a condition of such employment, be approved by the Town Engineer.

(vi) that he will provide a certificate at the completion of the construction indicating that the works have been installed according to the Town Standards.

(4) INSPECTION BY TOWN ENGINEER:

All works undertaken by the Owner pursuant to this Agreement shall be inspected by the Town Engineer from time to time and so often as he shall deem necessary.

(5) ENGINEERING:

(a) The Owner shall deposit with the Town, cash in an amount equal to the estimated fees and disbursements billed to the Town by its Engineers for services performed by its Engineer in connection with the subdivision including waterworks, which will include the costs of administration, engineering and supervision. All such fees shall be as set out in the Schedule of Fees for Consulting Engineers Services recommended by the Association of Professional Engineers of Ontario attached as an addendum to this Agreement.

(b) Such deposit shall also include wages of the Town Inspector including overhead and shall be at the rate as set out on the Schedule of Fees attached hereto, during the duration of construction. The Town Inspector as part of his duties shall pick up all measurements of pipe and material installed as well as the location of manholes, catchbasins and laterals.

(c) The fees and disbursements are estimated to be \$7,000.00, however, it is agreed that if the actual fees and disbursements are less than the estimated amount, the balance will be returned to the Owner together with any interest accrued on the deposit and if the fees and disbursements are more than \$7,000.00, the difference will be paid by the Owner to the Town within 30 days of receiving the account.

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(d) Any work performed by the Town Engineer pursuant to the provisions of this agreement shall not be deemed to be an assumption by the Town Engineer of any liability of any nature or kind in connection with such work or a release of the Owner by the Town of the obligations of this agreement.

(6) REGIONAL INSPECTION:

The Regional Municipality of Niagara shall have the right at any time to inspect any of the works in progress, at no cost to the Owner.

(7) CONSTRUCTION OF SERVICES:

The Owner agrees to construct and pay the whole cost of such construction and materials required for all of the works referred to in Schedules "C", "D", "E", "F", "G", "H", "I", "J", "K", "L" and "M" attached hereto, and in accordance with the conditions and specifications contained in such Schedules.

(8) CONTRACTORS:

Before commencement of any works, the Owner shall show satisfactory proof to the Town Engineer that the proposed contractors or sub-contractors to whom the Owner proposes to let or submit any part of the works, have in the opinion of Town Engineer sufficient and valid liability insurance policies, a certificate from the Workmen's Compensation Board showing that the contractor is in good standing; and, evidence satisfactory to Town Engineer that the contractor is qualified, experienced and has equipment to successfully complete the works. Any contractor employed by the Owner shall, as a condition of such employment, be approved by the Town Engineer.

(9) PERFORMANCE BOND:

The Owner shall obtain from their contractors, performance bonds guaranteeing all of the construction required by the Town and by this Agreement, and each bond shall include maintenance of the work involved for a period of twelve months after acceptance by the Town of all such construction. Each bond shall be in the amount of 100 percent (100%) of construction value of all of the municipal services, except hydro electric distribution plant and street lights..

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(10) LETTER OF CREDIT:

The Owner shall provide the Town with an irrevocable Letter of Credit from a Canadian Chartered Bank or Trust Company for an amount equal to 100% of the estimated costs of construction of the primary and secondary services as set out in Clause 27 (a). The Letter of Credit shall be valid for a period of at least one year. Upon application by the Owner, the Town may reduce the amount of the Letter of Credit from time to time, provided that the security held by the Town remains at least equals 110% of the estimated cost of the primary and secondary services still to be constructed. The Letter of Credit shall be renewed by the subdivider from year to year as necessary, such renewal shall be confirmed at least 14 days prior to the expiry, if such renewal is not confirmed, the Town shall draw on the letter of credit. At the time of final acceptance of the subdivision services by the Town, the Letter of Credit shall be returned to the Owner.

(11) MATERIALS:

All the works required hereunder shall be done and performed to the satisfaction of the Town Engineer, and all materials required for the said works shall be supplied to the specifications and directions of the Town Engineer.

(12) STRIPPING TOPSOIL:

The Owner shall not remove any topsoil from the lands described in Schedule "A" attached hereto without first obtaining written approval from the Town.

(13) STRIPPING AND TREE REMOVAL:

(a) The Owner shall remove from all road allowances, any trees, brush, growth, or surplus, or other materials as may be designated by the Town Engineer and further shall remove from all the lands any unkempt, diseased or infested trees, vines or bushes. If such removal is not carried out within fourteen (14) days of written notice delivered to the Owner by the Town, the Town may cause the unkempt, diseased or infested trees, vines or bushes to be removed and the Owner agrees to pay to the Town the cost incurred thereby.

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(b) The Owner agrees that before any trees are removed to facilitate the installation of the works required to be installed by it herein, they will arrange a site inspection of the development with representatives of the Town, the Owner, the Town Engineer, the Owner's contractor, the Ministry of Natural Resources' and the utility companies. The representatives present will designate tree growths of major importance, which will be marked, and all efforts will be made during construction of services to preserve these specimens.

(c) The Owner agrees to insert a clause in all sales contracts that purchasers or builders will not remove topsoil or vegetation from the lots prior to making applications for building permits unless approval is otherwise granted by the Niagara Peninsula Conservation Authority and the Ministry of Natural Resources and the Town of Pelham.

(14) ROUGH GRADING ROADS:

The Owner agrees to rough grade all roads connected with the development of the land to the Town Engineer's specifications prior to the installation or construction of water and sewer systems and other ground systems as may be required by this Agreement. The Owner further agrees to keep boulevards and easements clear and free of all material and obstructions which might interfere with the construction of telephone, gas, water and hydro installations.

(15) ROUGH GRADING LOTS:

The Owner agrees to level all lots in the subdivision after the construction of services and remove any debris which would prevent the mowing of weeds by means of a tractor and mower.

(16) CLEANING SEWERS AFTER ROAD CONSTRUCTION:

Upon completion of paving of roads, the Town shall inspect the storm and sanitary sewers, and if it is deemed necessary clean the storm and sanitary sewers serving the lands described in Schedule "A" attached hereto at the expense of the Owner.

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(17) STORM SEWER:

The Owner shall be responsible for determining and providing, at their own expense, a storm sewer system with appropriate drains and outlets adequate for the ultimate drainage area, and for the future servicing of such area as shown on the engineering drawing. The final acceptance of the subdivision shall not be made unless and until design studies satisfactory to the Town Engineer shall have been furnished to him by the Owner and accepted by him on behalf of the Town, or alternatively prepared by the Town Engineer at the cost of the Owner. Except for the storm water discharging from the subdivision into the Drapers Creek Detention Pond Stormwater Management System, the Owner shall remain responsible for the impact on the surrounding drainage area occasioned by the operation of the storm sewers and on the natural watercourses as set out in paragraph 22 of this Agreement, to the date of final acceptance of the subdivision by the Town, or for a period of twelve months after final paving of the roads and roofing of the dwellings on 75 percent (75%) of the lots in the subdivision, whichever date is later.

(18) LOCAL IMPROVEMENT CHARGES:

The Owner hereby agrees to commute and pay to the Town before the final approval of the said plan of subdivision is requested, any and all frontage charges with respect to the existing local improvements assessed against such of the property as shown on this plan.

(19) EXPANSION AND RENEWAL FUND:

(a) The Owner shall pay the Town the sum of Thirteen Thousand, Four Hundred & Forty Dollars (\$13,440.00) for the purpose of expanding and renewing services within the Town limits.

(20) PRELIMINARY ENGINEERING AND PLANNING COSTS:

It is agreed that if the fees for preliminary engineering and planning are less than the amount of the monies on deposit, as per Town Policy, the balance will be returned to the owner and if the fees for preliminary engineering and planning exceed the monies on deposit, the difference will be paid by the Owner to the Town in cash as a requirement of this Agreement.

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(21) SURFACE DRAINAGE PLAN:

The Owner shall be responsible for providing, at their expense, a surface drainage plan for all lands described in Schedule "A" attached hereto; said plan to meet with the approval of the Town Engineer. The said plan shall show inter alia the intended description of flow of storm water to, within and from each lot on the plan. 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. The said drainage plan shall be attached to this Agreement as Schedule "K". All elevations shown on Schedule "K" 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.

(22) NATURAL DRAINS:

The Owner shall not change or do any work that will prejudicially affect any natural watercourse or drainage ditch without making full and proper provisions for the continuance of such drainage facilities. The proposed proper provision to be made by the Owner shall be subject to approval of the Town Engineer. In the event changes are made, after having been approved by the Town Engineer, the Owner nevertheless shall be solely responsible for any damage caused thereto, and shall indemnify and save harmless the Town therefrom.

(23) HYDRO:

(a) The Owner shall pay the whole cost of and install street lights to the Town of Pelham Standards and in accordance with plans and specifications approved by Ontario Hydro. The said work is to be carried out in accordance with Schedule "G" attached hereto, and prior to the final approval of the proposed subdivision plan, the Owner shall deposit with the Treasurer an amount estimated to cover the cost thereof, unless otherwise satisfactory arrangements are made with Ontario Hydro.

(b) The Owner shall have the option of designing their own power distribution system, calling the tenders, and letting the contract for said work, subject to approval of all engineering design layouts by Ontario Hydro and subject to Ontario Hydro inspecting the installation.

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(24) REPLACING UTILITIES, ETC.:

The Owner shall assume complete responsibility and make all necessary arrangements for the moving or disturbance of any water, sewer, hydro-electric, gas or telephone pipes, conduits, wires or pole lines, or any other public utility works as required or approved by the Town Engineer, and shall be solely responsible for any damage caused to the said pipes, conduit, wires, pole lines, hydrants or other works.

(25) LIABILITY INSURANCE:

Before commencing any of the work provided for herein, the Owner shall supply the Town with a Liability Insurance Policy (with no exclusions) in a form satisfactory to the Town, and in an amount not less than One Million Dollars (\$1,000,000.00), indemnifying the Town until the issue of the certificate referred to in Clause 29, from any loss arising from claims for damage, injury or otherwise in connection with the work done by the Owner, their employees, servants or agents, or any independent contractor to serve the lands described in Schedule "A" attached hereto. The Owner shall submit to the Town evidence from the Insurer that the premium for the said Policy has been paid for a period of one (1) year and so on from year to year during the currency of the work provided for herein.

(26) RE-STAKING LOTS ON THE PLAN:

Upon completion of all works required under this Agreement and prior to the issuance of the final certificate, the Owner shall be responsible for re-staking all one-inch key bars in the subdivision. It is further understood and agreed that no lot may be severed by sale or conveyance until such sale or conveyance has been approved, pursuant to the provisions of the Planning Act.

(27) (A) DEFINITION OF PRIMARY & SECONDARY SERVICES:

(a) Primary Services:

- (i) sanitary sewers and appurtenances complete,
- (ii) drainage facilities sufficient, in the opinion of the Town Engineer, to provide safety and protection from undue inconvenience to residents and their visitors, both within and beyond the area of land which is the subject of this Agreement;

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(ii) roadways,

(a) of final design width;

(b) full granular depth;

(c) curb and gutter;

(d) base coarse asphalt

(e) all manholes and catchbasins ramped;

(iii) fully functioning and pressurized watermains, hydrants and appurtenances.

(iv) rough grading of lots.

(b) Secondary Services:

All services as required not considered "Primary Services". These include top course roadway asphalt, sodding, electrical distribution, street lighting, gas, telephone, etc. where applicable.

(27) (B) ACCEPTANCE OF SUBDIVISION SERVICES:

The Town of Pelham agrees to pass the necessary by-law to authorize acceptance of the subdivision services upon rectification of any deficiencies discovered at an inspection by the Town Engineer immediately following substantial completion of the subdivision.

Substantial completion of the subdivision means the later of:

- Completion of the one year maintenance period following installation of primary and secondary services;
- Completion of construction of 80% of houses in the subdivision.

Should the developer not be able to meet all of the above criteria, he may apply to the Town for acceptance of the development and the Town, in its discretion, may modify the above criteria.

(28) CASH DEPOSITS & LETTERS OF CREDIT:

(28A) CASH DEPOSITS

The Owner will be required to deposit cash equal to the sum of:

- (a) the expansion and renewal impost (Clause 19) \$13,440.00
- (b) engineering fees, as estimated in Clause 5 7,000.00

cont.....

(c) the cost of power and lighting installation unless other satisfactory arrangements have been made with Ontario Hydro (Clause 23) Nil

(d) cash for park purposes (Clause 2) 10,543.45
(e) Local improvement charges (Clause 18) Nil

(f) Preliminary Engineering & Planning
Costs (Clause 20) (Credit subject to change) -2,085.78
(g) Welland Road Extension (Clause 39) 22,554.00
(h) Sanitary Sewer Oversizing (Clause 40) 5,276.94

TOTAL \$ 56,728.61

(28B) LETTERS OF CREDIT -

(a) Construction of Services (Clause 10) \$107,000.00
(b) Construction Lien Act Deposit (Clause 33) 10,700.00
(c) Tax Security Deposit (Clause 32) 2,000.00
(d) Legal Fees (Clause 34) 1,000.00

TOTAL \$120,700.00

(29) RETURN OF PORTION OF DEPOSIT:

Unless otherwise directed by the Council, the Town shall, upon satisfactory completion of ALL of the works and subject to the provisions of this Agreement authorizing deductions therefrom and subject to providing the Town with a satisfactory Maintenance Bond of 100% of the cost thereof for a period of one (1) year from the date of final acceptance of the services, return upon the written application of the Owner the remainder of the cash deposit or letter of credit provided in paragraph 28A (b) herein. The Treasurer, after receipt of satisfactory securities shall, from and out of monies on deposit, pay firstly any engineering fees and maintenance costs still owing; secondly, any arrears of taxes; thirdly, the taxes for the current year whether levied or unlevied, based on the assessment applicable; and finally, shall return the balance, if any, to the Owner. Should the deposit provided in paragraph 28A (b) be insufficient to pay the inspection and administration fees or other charges payable to the Owner, the Town shall invoice the Owner for the balance and the Owner shall pay such balance within thirty (30) days of the invoice date.

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(30) MAINTENANCE:

The Owner guarantees for a period of one (1) year from the date of final acceptance, proper functioning of all of the primary and secondary services in a manner satisfactory to the Town Engineer, and undertake and agree with the Town to indemnify it from any and all costs, expenses, fees, disbursements or charges of any manner whatsoever whether direct or indirect incurred by the Town and occasioned by the failure or partial failure of any or all of the services during the guarantee period.

Upon compliance with the terms of this Agreement, and upon completion of all the said work in accordance with the specifications and direction of and to the satisfaction of the Town Engineer, and upon payment of all financial requirements herein, the Town Engineer under authority of resolution of Council, shall at the expiration of the Owners' maintenance period above defined, and upon written application by the Owner, issue a certificate so stating to the Owner. Upon the said certificate being issued, ownership of all the services referred to herein shall be vested in the Town.

(31) TAXES:

The Owner agrees to pay all arrears of taxes outstanding against the property described in Schedule "A" hereto annexed and shall pay all taxes on this property on the present basis of assessment, whether previously levied or not, until such time as the lands being subdivided have been assessed according to the Registered Plan, before final approval of the Plan is requested. The Owner further agrees that when the said lands have been re-assessed, the Owner agrees to pay all current taxes as established by the re-assessment, or any additional amounts as thereby required.

(32) TAX SECURITY DEPOSIT:

The Owner agrees to deposit with the Treasurer the sum of Two Thousand Dollars (\$2,000.00) as security which may be drawn upon in the event the taxes are not paid by their due dates.

(33) CONSTRUCTION LIEN ACT SECURITY DEPOSIT:

In order to secure the Town with respect to its obligations under the Construction Lien Act, the Owner shall deposit with the Treasurer, upon the execution of this Agreement, a letter of credit in the amount of 10% of the cost of the design and construction of all primary services within the

5:

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subdivision as estimated by the Engineer. Upon the receipt of claims for liens filed pursuant to the provisions of the Construction Lien Act with respect to the construction of primary services, the Town shall be entitled to call upon, the said letter of credit in order to meet the Town's obligations as Owner pursuant to the provisions of the Construction Lien Act.

(34) LEGAL COSTS:

The Owner shall pay to the Town all legal costs incurred by the Town in connection with the registration, consideration and final preparation of this document and of the plan of subdivision. It is estimated that the legal fees will be approximately One Thousand Dollars (\$1,000.00).

(35) BUILDING PERMITS & OCCUPANCY:

The Owner agrees that unless otherwise determined by Council, no building permits shall be issued nor any excavation or building commenced on any part of the lands described in Schedule "A" attached hereto, until the plan is registered and all primary services are completed and operational.

(36) INDEMNIFICATION:

The Owner hereby agrees and undertakes to save harmless and keep indemnified the Town, its successors and assigns from and against all manner of actions or claims for loss, costs, charges, damages, injuries, expenses or otherwise, arising before the issue of the certificate referred to in Clause 29 hereof, in connection with the work required to be done herein by the Owner, their contractors, servants or agents during the period of construction and during the guarantee period provided in paragraph 29 of this Agreement.

(37) SCHEDULES:

The provisions of all Schedules attached hereto shall form part of this Agreement.

(38) COVENANTS TO RUN WITH THE LAND:

The Owner and the Town acknowledge and agree that it is their intent that all the terms, conditions and covenants contained in this Agreement shall be covenants that run with the land and that the burden of such covenants

cont....

shall be binding upon the Owner, their assigns and successors in title and owners from time to time of the lands described in Schedule "A" attached to this Agreement and any part or parts thereof and that the benefit of the said covenants shall enure to the Town, and its successors in title of all roads, streets and public lands forming part of or abutting on the said lands described in Schedule "A" and the said covenants shall continue in force for a period of ten (10) years from the date of this Agreement, except for Clause 19 (Surface Drainage Plan), which shall be in perpetuity.

(39) WELLAND ROAD EXTENSION:

The Owner agrees to pay to the Town the sum of Twenty-Two Thousand, Five Hundred and Fifty-Four Dollars (\$22,554.00) as his share of the cost of the construction of Welland Road easterly from its former terminus at Haist Street.

(40) QUAKER ROAD SANITARY SEWER OVERSIZING:

The Owner agrees to pay to the Town the sum of Five Thousand, Two Hundred & Seventy-Six Dollars and Ninety-Four Cents (\$5,276.94) being his share of the cost for oversizing of the Quaker Road sanitary sewer.

(41) RECOMMENDATION TO THE MINISTER:

Upon receipt of the payments required and execution of this Agreement, the Council will recommend to the Minister or his designate that the Plan be approved.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement by affixing their respective Corporate Seals duly attested by the proper officers in that behalf.

SIGNED, SEALED AND DELIVERED

- In the Presence Of -

(THE CORPORATION OF THE TOWN OF PELHAM

(

E.S. Bergenstein

(MAYOR

(

Mary H. H. H.

(CLERK

(

Joseph Mussari

(JOSEPH MUSSARI

(

Saverio Mussari

(SAVERIO MUSSARI

AFFIDAVIT OF SUBSCRIBING WITNESS

I, Carlo Daniel Beccario,
of the City of Welland,
in the Regional Municipality of Niagara, solicitor,

make oath and say:

*See footnote I am a subscribing witness to the attached instrument and I was present and saw it executed
at the City of Welland by Joseph Mussari and Saverio Mussari.

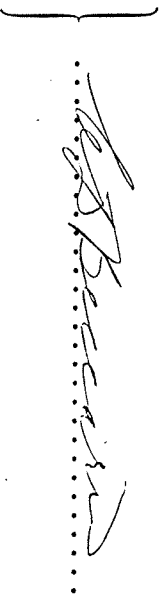
*See footnote I verily believe that each person whose signature I witnessed is the party of the same name referred
to in the instrument.

SWORN before me at the City of Welland,
in the Regional Municipality of
Niagara,

this 2nd day of December, 19 86.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.



* Where a party is unable to read the instrument or where a party signs by making his mark or in foreign characters add "after instrument had been read to him and he appeared fully to understand it". Where executed under a power of attorney insert "(name of attorney) as attorney for (name of party)"; and for next clause substitute "I verily believe that the person whose signature I witnessed was authorized to execute the instrument as attorney for (name)".

AFFIDAVIT AS TO AGE AND SPOUSAL STATUS

I / WE

of the
in the

• If attorney,
see footnote (severally) make oath and say: When I / WE executed the attached instrument,

I WAS / WE WERE EACH at least eighteen years old;

and within the meaning of clause 1(f) of the Family Law Reform Act,

(a) I WAS / I WAS NOT a spouse.

Strike out
inapplicable
clauses. (b) was my spouse.

(c) We were spouses of one another.

** Not a
matrimonial
home, etc.,
see footnote.

Resident of
Canada, etc.

(SEVERALLY) SWORN before me at the

this day of 19 }
}

* Note: Where affidavit is made by an attorney, the attorney must depose, (a) that the party was at least eighteen years of age at the time of execution of the power of attorney; (b) as to the party's status as a spouse at the time of execution of the instrument; and (c) that the power of attorney is in full force and effect and has not been revoked.

** Note: See clauses 42(3) (b) (c) and (d) of the Family Law Reform Act. If spouse does not join in or consent, either insert explanation or complete a separate affidavit.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

15

SCHEDULE

" A "

LEGAL DESCRIPTION

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the Town of Pelham, in the Regional Municipality of Niagara, in the Province of Ontario and being composed of Part of Lot 2 in the Tenth Concession of the former Township of Pelham formerly in the County of Welland and which said parcel or tract of land is more particularly described as follows:

COMMENCING at the north-west corner of the said Lot 2;

THENCE easterly along the northerly limit of the said Lot 20.117 metres to its intersection with the easterly limit of Haist Road;

o
THENCE N 89 02'30" E along the northerly limit of the said lot 80.467 metres to a standard iron bar planted at the place of beginning of the parcel to be described;

o
THENCE continuing N 89 02'30" E along the northerly limit of the said lot 121.323 metres to a standard iron bar;

o
THENCE S 0 54'30" E 125.904 metres to a standard iron bar;

o
THENCE S 89 02' W 123.307 metres to a standard iron bar;

THENCE North 125.936 metres to the place of beginning.

AND CONTAINING by admeasurement an area of 1.540 hectares.

SCHEDULE
" B "

EASEMENTS

Easterly 2.5m of Lot 6 - Storm Sewer & Sanitary Sewer
Westerly 2.5m of Lot 7 - Storm & Sanitary Sewer Purposes

SCHEDULE

" C "

ROADWAYS

PAVEMENT -

The road shall be designated in accordance with the C.G.R.A. publication "A Guide to the Standard Design of Flexible and Rigid Pavements in Canada". Pavements shall be designed for ADT = 1000 vehicles and an anticipated life of 20 years.

CROSS-SECTION -

The roadway cross-section shall be curb and gutter section, as outlined in the current Town Standards.

SUB-SURFACE DRAINAGE -

Adequate sub-surface drainage shall be provided in soils where the percolation rate at road earth grade is slower than 25 mm per hour.

DRIVEWAY ENTRANCES -

The Owner shall ensure that the excavation, stoning and paving of each driveway, from the travelled portion of the road to the lot line and to the full width of the driveway, is completed either by himself or by the builder before acceptance of the subdivision, to the satisfaction of the Town Engineer.

DUST CONTROL -

The Owner will be required to provide dust control adequate in the opinion of the Town Engineer during the period of road usage prior to the placing of the asphalt surface.

SCHEDULE

" D "

SANITARY SEWERS

The Owner shall construct a sanitary sewer system or systems including all trunk sewer extensions, to proper outlets or approved sewage disposal site, which shall be sufficient to service the proposed development. The Town Engineer shall determine if the system proposed by the Owner is sufficient prior to commencement of construction.

All sewers shall be installed in the locations and at the grades and elevations the Town Engineer may direct. Capacity shall be provided in the sanitary sewer system for all domestic wastes in accordance with the Town design criteria.

The pipe sizes selected shall have sufficient capacity to serve the ultimate drainage area in which the subdivision is located and as designed or approved by the Town Engineer.

Sewer pipe acceptable to the Town Engineer shall be used for all local and minor collector sewers where otherwise specified by the Town Engineer.

Minimum pipe size for local sewers (200mm) diameter, standard manholes of a type approved by the Town Engineer, shall be poured or placed at a maximum spacing of 91.5m or as directed by the Town Engineer.

PRIVATE DRAIN CONNECTIONS -

The Owner shall construct sanitary connections (laterals) to each lot from the street sewer to the street line. The sanitary sewer lateral shall be a minimum 125mm diameter building sewer pipe or equal, acceptable to the Town Engineer, and with the proper fittings designed by the Town Engineer's construction standards.

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 lateral servicing each lot. Roof water, foundation and weeping tile sub-surface water from any building constructed on any lot shall not be discharged into the sanitary sewer.

SPECIFICATIONS -

The sewer system will comply with the engineering contract drawings on file in the Municipal Office. The approved engineering drawings will be signed, approved and accepted by the Town Engineer.

22

SCHEDULE

" E "

STORM SEWERS & SURFACE DRAINAGE

The Owner shall construct a storm sewer system and outlet or such extensions as necessary to provide a connection to existing trunk sewers where applicable. All sewers shall be installed in such locations, grades and depths as the Town Engineer may direct and such pipe sizes as are required to serve the subdivision lands and all or any portion of the ultimate drainage area that the proposed development is located in. The storm sewers shall be designed to accommodate surface runoff from roads and properties within the area described in Schedule "A" of this Agreement.

Concrete pipe of the mortar-joint type or other approved type, shall be used. The minimum pipe size for storm sewers shall be 250mm diameter, except where otherwise specified by the Town Engineer. Surface drainage shall be collected by means of roadside ditches and/or catch basins as per the current Town Standards.

SPECIFICATIONS -

The storm sewers will be constructed in accordance with the engineering contract drawings on file in the Municipal Office. When approved the engineering drawings will be signed, approved and accepted by the Town Engineer. Nothing contained herein, however, derogates or detracts from the responsibility of the Owner as provided in paragraphs 17, 21 and 22 of this Agreement.

SCHEDULE

" F "

WATERMAINS

The Owner shall construct a complete watermain system or systems and all necessary appurtenances, including hydrants and house water service connections from the watermain to the street line. The design shall be as approved by the Town Engineer and constructed in accordance with his specifications. Connection to the existing watermain system at the cost of the Owner, shall be made at such point in such system as is designated by the Town Engineer. All watermains shall be a minimum of 150mm in diameter, or in the opinion of the Town Engineer a sufficient size to service the subdivision and structures therein.

The Owner shall be responsible for any damage caused to such watermains and appurtenances that may occur during construction of buildings on the land and during the grading of the same.

Town Standard hydrants and valves must be used in all cases. All required hydrants shall be located on the lot line within the registered plan of subdivision.

SPECIFICATIONS -

The watermains will be constructed in accordance with engineering contract drawings to be filed in the Municipal Office. The approved engineering drawings will be signed, approved and accepted by the Town Engineer.

14
SCHEDULE

" G "

UNDERGROUND WIRING

Such easements as may be required by Ontario Hydro for underground hydro purposes shall be granted by the Owner without cost.

Underground wiring to the lots and houses shall be mandatory.

All existing primary overhead hydro services on Haist Street and Quaker Road shall be permitted to remain.

SCHEDULE

" H "

STREET SIGNS

The Owner shall supply and erect street signs within the development to the satisfaction of the Town. The signs shall conform to the present Town Standard street sign being used by the Town.

17
SCHEDULE

" J "

TREES AND SODDING

The Owner shall plant one (1) tree per lot frontage and two (2) trees per lot flankage on each lot specified by the Town. Trees shall not be considered as primary or secondary services in regard to security or cash deposit returns.

The type and location of trees is to be subject to the approval of the Works Committee. This work shall be completed within six (6) months after the laying down of curbs.

Trees shall be planted in locations as determined by the Works Committee and of the types as specified below.

The Owner shall provide that sodding from the front lot lines, and in addition in applicable cases, from the appropriate side lot lines abutting any street, to the back of the curb, is completed either by themselves or by the builder before acceptance of the subdivision by the Town.

SPECIFICATIONS -

Number & Type of Trees -

Norway Maple, Mountain Ash, Locusts, and Flowering Crab, 4m to 4.5m in height with a caliper of 3.8cm to 5cm. The trees shall be sound, healthy, vigorous and free from plant diseases and insect pests or their eggs and shall have normal, healthy root systems.

Proposals for other species will be reviewed by the Town upon request.

SODDING -

After completion of the roads, a minimum of 50mm of topsoil shall be applied from the curb to the property line. The Owner shall use nursery sod or seed. Certain areas of extreme erosion such as swales and steep banks (3:1 slope or steeper) must be sodded using No. 1 quality sod, staked or unstaked as required.

S C H E D U L E

" I "

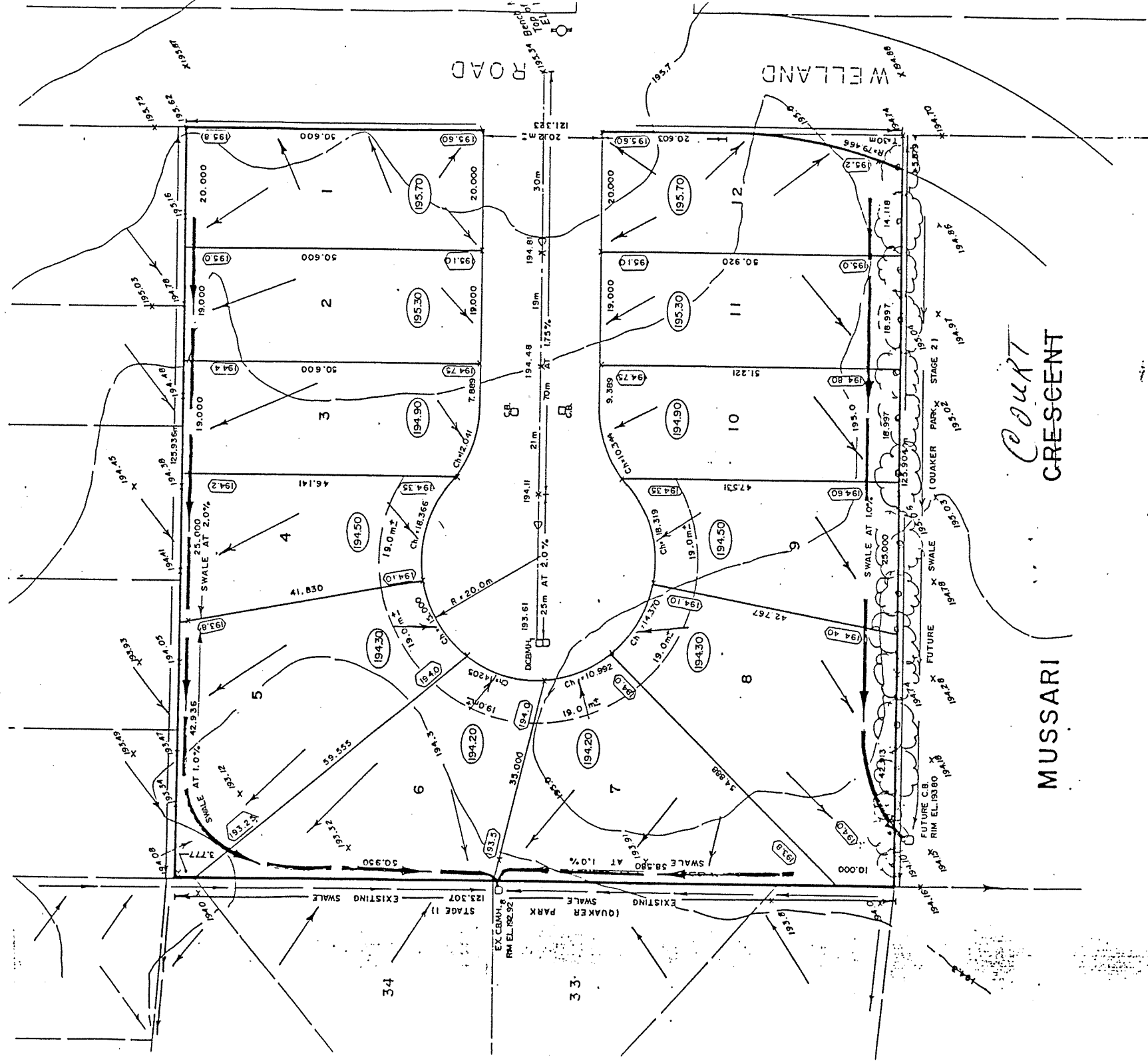
TELEPHONE SERVICE & CABLE TELEVISION SERVICE

The Owner shall, as requested by the Bell Telephone Company of Canada, grant such easements as may be required to provide for the construction and installation of telephone power lines and facilities, and Cable Television facilities.

The Owner and the Town shall jointly endeavour to have the Bell Telephone Company of Canada install underground services.

SCHEDULE
" K "

DRAINAGE PLAN



SCHEDULE

" L "

BUILDING RESTRICTIONS

(To be included in all deeds)

The Owner shall cause to be registered against all lots in the subdivision the Deed 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 lot drainage plan attached to the Subdivider's Agreement registered in the Land Titles Office for Niagara South and, in particular, shall do nothing to interfere with or impede the drainage pattern shown thereon. All grade elevations shown on the said lot drainage plan shall be maintained after construction of any building or structure upon the herein described land. 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 Subdivider's 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, 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 travelled portion of the roadway to the lot line in good condition until the concrete sidewalk, concrete curbs and/or asphalt roadways for the said subdivision are constructed.

con't.....

SCHEDULE

" L "

(con't)

The Purchaser shall maintain the road allowance between the lot line and the curb nearest thereto in good condition and free from weeds and shall cut the grass thereon at frequent intervals.

The Purchaser will not remove topsoil or vegetation from the lots prior to making application for building permits unless approval is otherwise granted by the Niagara Peninsula Conservation Authority and the Ministry of Natural Resources.

The Purchaser shall not occupy the dwelling on the lot concerned until the Building Inspector for the Town of Pelham 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 Plan:

- (i) hydro;
- (ii) gas;
- (iii) telephone;
- (iv) sanitary sewers;
- (v) water service.

The Purchaser shall not impede by the placing of fill, buildings or other structures or works, any natural watercourse which exists on the property.

SCHEDULE

" M "

SIDEWALKS

The Owners shall construct sidewalks within and/or adjacent to the subdivision in the following locations:

Welland Road - South Side - Across entire frontage of lands as they abut Welland Road

SPECIFICATIONS -

The concrete sidewalks will comply with engineering contract drawings to be prepared and filed in the Municipal Office. The approved engineering drawings will be signed, approved and accepted by the Town Engineer.