

THIS AGREEMENT made in triplicate this 19TH day of MAY ,
1987 A.D.

BETWEEN:

JOSEPH RYBIAK,
Hereinafter called the "Owner",
OF THE FIRST PART

- and -

THE CORPORATION OF THE TOWN OF PELHAM,
Hereinafter called the "Town",
OF THE SECOND PART

1. 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 ENGINEERS" shall mean the Engineers of the Corporation of the Town of Pelham.

(d) "TREASURER" shall mean the Treasurer of the Corporation of the Town of Pelham.

2. WHEREAS the Owner purports to be the Owner of the lands in the Town of Pelham described in Schedule "A" attached hereto;

AND WHEREAS the Owner is desirous of constructing a multiple family housing development and related facilities in accordance with Schedules "B" and "C", attached hereto, being site plans including servicing and grading and elevations respectively filed in the Office of the Town;

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

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NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of Fifteen Dollars (\$15.00) now paid by the Owner to the Town (the receipt whereof is hereby acknowledged) the Parties hereto mutually covenant and agree as follows: -

(1) The Owner agrees to use the lands only in accordance with the terms and conditions contained herein and for no other purpose.

(2) The Owner agrees to perform any and all construction and installation on the said lands in accordance with the terms and conditions contained herein and as shown on Schedules "B" and "C" attached hereto and forming part of this agreement to the reasonable satisfaction of the Town.

And further, the Owner agrees not to perform any construction or installation on the said lands except in accordance with the terms and conditions contained herein and shown on said Schedules "B" and "C" attached hereto and forming part of this Agreement and to the reasonable satisfaction of the Town.

(3) STORM DRAINAGE FACILITIES:

(a) The Owner shall, at its own expense, carry out storm drainage works on the lands described in Schedule "A". These storm drainage works are to adequately disperse storm water from the development to the satisfaction of the Town, and the Owner undertakes to repair and maintain the storm drainage works located on the lands described in Schedule "A" as may be required from time to time.

(b) The Owner further agrees to assume full responsibility in the event that the development should interfere with any existing natural watercourse or municipal drain.

(4) SANITARY SEWER:

(a) The Owner shall, at its own expense, construct a sanitary sewer system on the said lands to adequately

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serve the building to be erected thereon, such construction to be in accordance with specifications and a design approved by the Town Engineer and filed in the Town of Pelham Offices prior to the issuance of a building permit. The Owner undertakes to repair and forever maintain the sanitary sewer system located on the said lands and, without limiting the generality of the foregoing, no storm, surface or roof water or weeping tiles shall be discharged into the sanitary sewer system.

(b) The Owner shall, at his own expense, if required by the Town, construct a sanitary sewer forcemain from the property line to the most westerly manhole of the Town's sanitary sewer on Foss Road. The construction of the forcemain shall be in accordance with specifications and a design approved by the Town Engineer and filed in the Town of Pelham Offices prior to the issuance of a building permit. The Owner undertakes to repair and forever maintain the sanitary sewer forcemain system located within the Foss Road road allowance and, without limiting the generality of the foregoing, no storm, surface or roof water or weeping tiles shall be discharged into the sanitary sewer forcemain system.

(5) HYDRO:

(a) The Owner shall cause to be installed, at its own expense, an underground hydro system to serve all the dwelling units in the development, in accordance with the plans and specifications approved by Ontario Hydro. The Owner further agrees to be responsible for the cost of maintaining and repairing the underground hydro system located on said lands in perpetuity.

(6) PARKING AND DRIVEWAYS:

(a) The Owner shall, at its own expense, provide and at all times maintain on the said lands, gravel parking areas or such other form of surfacing acceptable to the Town capable of accommodating 20 parking spaces for motor vehicles.

(b) The Owner, at its own expense, shall construct and maintain gravel driveways or such other form of surfacing acceptable to the Town to serve the said parking areas
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at such locations and in accordance with design and specifications approved by the Town Engineer, and the approved plans and schedules hereto as filed in the Town of Pelham Offices prior to the issuance of a building permit.

(c) The Owner shall, at its own expense, take measures to ensure the control of dust which may be created by the parking and driveways areas.

(d) The Owner shall, at its own expense, adequately light all driveways and parking areas, and such lighting shall be so arranged as to deflect away from adjacent properties and shall be in accordance with specifications and a design approved by the Town Engineer, plans to be filed in the Town of Pelham Offices prior to the issuance of a building permit.

(e) Before any dwelling unit is occupied, there shall be available for use in connection therewith, the parking area required herein for each such occupied dwelling unit.

(f) Surface parking shall be limited to 21.2% of the area of the said lands.

(g) The Owner shall place "No Parking" signs, approved by the Town of Pelham as to wording, colour, size and design, along the main driveway route and agree to enforce the "No Parking" restrictions.

(h) The Owner agrees to assign and at all times maintain on the said lands, one parking space for each apartment unit and in addition shall maintain a minimum of seven (7) parking spaces for the use of visitors.

(i) The Owner shall provide its own road cleaning and snow removal services for all driveways, sidewalks, parking areas, emergency accesses, service entrances, etc. and undertake that snow removal will commence three hours after the termination of any snowfall requiring removal, to provide access for fire, police and utility vehicles. And further that no snow or ice shall be deposited on any public lands or streets.

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(7) GRADING AND LANDSCAPING:

(a) The Owner agrees to have prepared by an Ontario Land Surveyor, Consulting Engineer or Architect, a detailed grading plan for the site, said plans to clearly indicate the existing drainage pattern on all adjacent lands and provide for the direction of all surface drainage, including water from adjacent lands originally flowing through, into or over the area of the site, to the street storm sewer system or other outlet approved by the Town Engineer. This grading plan shall be approved by the Town Engineer prior to the execution of this agreement.

(b) The Owner shall, at its own expense, adequately fence, landscape, plant and maintain all of the lands not required for building, parking or roads so as at all times to provide effective green areas enhancing the general appearance of the development contemplated herein, said planting and landscaping shall be in accordance with the approved plans attached hereto and designated Schedule "B" to this agreement.

(c) Unless otherwise approved or required by the Town, the Owner agrees not to alter the grades of or remove trees or other vegetation from the said lands until such time as a building permit is issued for the construction of the buildings contemplated herein on the said lands.

(8) WATER SUPPLY:

(a) The Owner shall, at its own expense, construct, install and forever maintain all necessary connections and all internal water supply services necessary to serve the development, such construction to be in accordance with the requirements of and with specifications and a design approved by the Town Engineer and filed in the Town of Pelham Offices prior to the issuance of a building permit.

(b) The Owner shall comply with the provisions of the Ontario Water Resources Commission Act, R.S.O. 1970, Chapter 332, any amendments thereto and all regulations thereunder, on all internal water supply services, which Act and Regulations shall be enforced by the Town of Pelham Building Department.

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(c) The Owner shall, at its own expense, construct within the road allowance of Foss Road a new 150mm diameter watermain from the terminus of the existing 150mm diameter waterline at or near the intersection of Church Street and Foss Road to serve this development to the satisfaction of the Town Engineer and in accordance with plans and specifications approved by the Town Engineer and on file with the Town.

(d) The Town shall, at its own expense, provide and install a steamer hydrant at the westerly terminus of the 150mm diameter watermain required to be constructed by the Owner.

(e) The Town agrees to make its best efforts to collect a portion of the costs of the watermain from developers of multiple family developments which require the use of the above noted watermain, when they are developed and to pay the sums collected to the Owner. The amount of construction cost is to be accurately determined by the Owner, verified by the Town Engineer and the final amount is to be placed on record with the Town.

(9) SIDEWALKS:

(a) The Owner shall, at its own expense, construct and maintain sidewalks within the development according to Schedule "B".

(b) The Owner shall, at its own expense, and at all times, clear all sidewalks both within and abutting the proposed development of snow and ice in such a manner as to ensure the safety of the general public. The Owner further agrees not to deposit snow or ice on any public property or street.

(10) GARBAGE DISPOSAL:

(a) The Owner shall at all times provide adequate collection and disposal of garbage and sanitary refuse in accordance with the requirements and to the satisfaction of the Town of Pelham and in accordance with the Town's Policy for all other developments of similar size and nature and in the event of failure to do so, the Town, its servants or agents shall have the right to enter on the said lands and, at the expense of the Owner, do such collection and disposal and further shall have the right to recover the costs thereof by action or in a like manner as municipal taxes.

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(b) The Owner shall, when and if required by the Town of Pelham, provide a sufficient number of enclosed metal garbage containers for waste generated within the development, in a location or locations approved by the Town. Said containers shall be properly screened on three sides in accordance with the design approved by the Town and every effort shall be made to shield the containers from the view of the occupants, adjacent property owners and/or the passing public.

(11) BUILDING AND SERVICES:

(a) The Owner shall construct and the Town shall permit the construction of the buildings and other structures on the lands described in Schedule "A" in accordance with Schedules "B" and "C" attached hereto to permit the multiple family housing development and related facilities provided that all such uses shall comply with all building and zoning requirements of the Town. Without limiting the generality of the foregoing, the material used in the exterior finish of the buildings shall be in accordance with Schedule "C" to this agreement, being building elevations.

(12) EXPANSION & RENEWAL:

The Owner shall pay to the Town the sum of (Seven Thousand, Seven Hundred and Fifty Dollars (\$7,750.00) as payment of Expansion & Renewal fees.

(13) MAINTENANCE:

(a) The Owner guarantees for a period of one (1) year from the date of completion of the external services herein required, as certified by the Town Engineer, the proper functioning of said external services in a manner satisfactory to the Town Engineer, and undertakes and agrees 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.

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(b) 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. The Town Engineer under authority of a resolution of Council, shall at the expiration of the Owner's 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.

(14) CONTRACTORS:

Before commencement of any external 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 the Town Engineer sufficient and valid liability insurance policies, a certificate from the Workers' Compensation Board showing the contractor is in good standing; and, evidence satisfactory to the Town Engineer that the contractor is qualified, experienced and has equipment to successfully complete the external works. Any contractor employed under this section, by the Owner shall, as a condition of such employment, be approved by the Town Engineer.

(15) GENERAL:

(a) The Owner shall cause to be installed telephone cables to serve all dwelling units in the development in accordance with the plans approved by the Bell Telephone Company of Canada.

(b) The Owner shall maintain and keep in repair driveways and access servicing the building located in the development.

(c) The Owner agrees to place the street number identification sign on the south wall of the new apartment building so that such number can be readily recognized when viewed from Foss Road.

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(d) The Owner shall at all times keep posted on or in the building, or otherwise prominently displayed, a notice indicating ownership of the said building, a mailing address and telephone number of a person having authority on all matters relating to the said building.

(e) (i) At the time of the execution of this Agreement or at the time of the issuance of a building permit, the Owner shall pay to the Town a deposit to guarantee its compliance with this Agreement in the amount of One Hundred (100%) per cent of the estimated value of the external works required pursuant to this Agreement, as such estimate is provided by the Owner and accepted by the Town, such estimated value being the sum of \$.

(f) Such deposit shall be paid to the Town in cash or in the form of an Irrevocable Letter of Credit from a chartered bank or a recognized lending institution, subject to the approval of the Town Treasurer.

(g) Such deposit may be used to pay for the cost of any work performed by the Town in accordance with subparagraph (e) above in the event of the failure of the Owner to comply with any terms of this agreement.

(h) Such deposit, less any amounts expended to enforce compliance with this agreement and any amounts refunded or reduced as the work required by this agreement progresses, shall be returned to the Owner, without interest, when all the terms and provisions of this Agreement, except those relating to maintenance have been fulfilled to the reasonable satisfaction of the Town.

(i) The Town may, from time to time, demand an increase in the sum of the deposit in accordance with increases in the cost of performing the works required herein to be completed.

(j) The release of the deposit by the Town does not release the Owner from its obligation to maintain all on site works pursuant to this Agreement.

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(k) The Owner shall make and the Town shall allow the making of staged payments of the monies required to be paid to the Town pursuant to this agreement and the Owner further agrees that no building permits will be issued by the Town for any development until it is certified by the Treasurer of the Town that all monies and deposits have been received.

In the event that the development does not proceed within 12 months of the signing of the agreement, the deposits received by the Town will be returned to the Owner and any accrued interest shall be retained by the Town.

(16) (a) In the event of the failure by the Owner in the opinion of the Town Engineers or its agents exercising reasonable engineering practices to carry out any provisions of this Agreement, then the Town, its servants or agents, may notify the Owner or its agent in writing of the nature of the failure.

(b) If such default or failure is not remedied within thirty (30) days of such notice, then the Town shall have full authority, power and right to enter upon the said lands, to employ such workmen, and to use such equipment and machinery as is deemed necessary to complete and perform the work required to remedy the failure or default. In case of emergency or public safety, such work may be done without prior notice, but the Owner shall be notified forthwith thereafter.

(c) The cost of such work shall be calculated by the Town Engineers or authorized agent whose decision shall be final. The cost of such work shall be at the expense of the Owner and may be recovered from the deposits paid to the Town pursuant to this Agreement.

(d) The Owner grants to the Town, its servants, agents and assigns permission to enter upon the said lands for the purpose of inspection of any work referred to in this agreement and for the purpose of the completion of any works in accordance with this clause and this Agreement.

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(e) The Owner will, at all times, indemnify and save harmless the Town from all loss, costs, damages and injuries which the Town may suffer or be put to for or by reason of the construction, maintenance or existence of any work done by the Owner, its contractors, servants or agents on the land described in Schedule "A" annexed hereto or which the Town may suffer or be put to for or by reason of the completion by the Town of any of the required works in accordance with this clause and this Agreement.

(f) In the event of the failure by the Owner to carry out any provision of this Agreement within the time set out in the notice, the Town may terminate this Agreement and repeal forthwith any permit, by-law or by-laws authorizing or accommodating the development to which this Agreement relates, including any amending rezoning by-law. Any non-conforming use resulting from the repeal or amendment of any applicable zoning by-law shall be discontinued within three (3) months of the date of the passage of such by-law.

(17) The Owner shall not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any administrative tribunal the right of the Town to enter into this Agreement and to enforce each and every term, covenant and condition herein contained and this Agreement may be pleaded as an estoppel against the Owner in any such proceeding.

(18) The Owner covenants for itself, its successors and assigns and the Owners from time to time of the said lands and the burden of the covenants contained in this Agreement shall be deemed to be negative and shall run with and be binding upon the lands described in Schedule "A" to and for the Town, its successors and assigns.

(19) The Owner agrees and consents to the registration of notice of this Agreement against the said lands described in said Schedule "A" attached hereto.

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(20) The Owner agrees that it shall, upon the sale or transfer by it of the said lands or any part or parts thereof, require the purchaser or transferee thereof, as a condition of such sale or transfer, to execute an agreement satisfactory in form to the Town Solicitor, agreeing to assume this Agreement and be bound by and to fulfill the terms, conditions and covenants herein set forth and containing a like covenant to this effect. The said assumption agreement shall be executed by the Town, the said Owner and any such purchaser or transferee and any mortgagee.

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

(22) The Owner agrees that all plans shall be drawn by a registered professional architect or by a registered professional engineer and all surveys by an Ontario Land Surveyor, subject to the reasonable satisfaction of the Town.

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their Corporate Seals duly attested to by the proper officers in that behalf.

Signed, Sealed & Delivered
- In The Presence Of -

(THE CORPORATION OF THE TOWN
(OF PELHAM

(
(E.S. Bergenstern
(MAYOR

(
(Mary Hackett
(CLERK

(
(JOSEPH RYBIAK
(Joseph Rybiak
(
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