

THIS AGREEMENT made in triplicate this 8TH day of MARCH ,
1988 A.D.

BETWEEN:

TERRY CONNOLLY

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 commercial-residential development and related facilities in accordance with Schedules "B" & "C" attached hereto, being site plans including servicing, grading and building 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 One Dollar (\$1.00) now paid by the Owner to the Town (the receipt whereof is hereby acknowledged) the Parties hereto mutually covenant and agree as follows:-

(1) The Owner agrees to develop and maintain the lands only in accordance with the terms and conditions contained herein and any other applicable by-law of the Town.

(2) (a) 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" & "C" attached hereto and forming part of this agreement to the reasonable satisfaction of the Town.

(b) 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" & "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 his own expense, construct a storm sewer system and outlet on the site to adequately serve the development proposed on the said lands, such construction to be in accordance with specifications and a design approved by the Town Engineer, the Ministry of Transportation and the Niagara Peninsula Conservation Authority and filed in the Town of Pelham offices prior to the issuance of a building permit. The Owner further undertakes at his own expense, to repair and forever maintain the storm sewer system located on the said lands.

(b) It is understood and agreed that roof water drainage from all of the buildings located on the said lands shall not be directed, via eavestroughs and roof water leaders, directly to the underground storm sewer system but shall be directed away from the building and towards the storm drainage collection system.

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(c) The Owner shall, at his own expense, construct the parking lot and storm sewer system such that on site storage of stormwater occurs in order that reduced flows acceptable to the Niagara Peninsula Conservation Authority are achieved.

(d) The above noted stormwater management facility on the site shall be maintained in proper operating condition at all times.

(e) The Owner shall obtain the approval of the Ontario Ministry of Transportation for the construction of the storm drainage outlets to Highway #20.

(4) SANITARY SEWERS:

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

(5) HYDRO:

(a) The Owner shall cause to be installed, at his own expense, an underground hydro system to serve 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 his own expense, provide and at all times maintain on the said lands, paved asphalt parking areas or such other form of hard surfacing acceptable to the Town capable of accommodating 43 parking spaces for motor vehicles. One of the said parking spaces shall be designated and signed for the exclusive use of the handicapped, and 18 shall be designated for the sole use of the residential units and visitors thereto.

(b) The Owner, at his own expense, shall construct and maintain asphalt paved driveways or such other hard surfacing acceptable to the Town to serve the said parking areas at such locations and in accordance with design and specifications approved by the Town Engineer, the Ministry of Transportation and the approved plans and schedules attached hereto as filed in the Town of Pelham offices prior to the issuance of a building permit. Without limiting the generality of the foregoing and whether or not detailed on the Approved Plans, all driveways and parking areas shall be bordered by curbs of either concrete or rolled asphalt.

(c) The Owner shall, at his 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.

(d) The Owner shall provide his 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.

(7) GRADING AND LANDSCAPING:

(a) The Owner agrees to have prepared by an Ontario Land Surveyor or Consulting Engineer, 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.

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(b) The Owner agrees to submit, a certificate signed by an Ontario Land Surveyor or Engineer which indicates that the grades as stipulated on Schedule "B" to this agreement have been complied with.

(c) The Owner shall, at his 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.

(d) 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 his 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.

(9) SIDEWALKS:

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

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(b) The Owner shall, at his 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.

(b) The Owner shall, provide a sufficient number of enclosed metal garbage containers for waste generated within the development, in a location or locations approved by the Town as shown on Schedule "B". 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" & "C" attached hereto to permit the commercial-residential 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.

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(b) The Owner agrees that all signage on the lands described in Schedule "A" shall be of the type and in the locations as shown on Schedules "B" and "C" to this Agreement.

(c) The Owner shall pay to the Town the sum of Nine Thousand, Seven Hundred and Eighty Dollars (\$9,780.00) as developmental lot levies pursuant to By-law #995 (1985), as amended, from time to time.

(12) UPGRADING RICE ROAD:

(a) The Owner shall at his own expense upgrade Rice Road for its full width from its intersection with the pavement of Highway #20 to the north boundary of the lands as described in Schedule "A".

(b) The said upgrading shall include the following minimum requirements and works shall be to the satisfaction of the Town Engineer:

(i) Scarification of existing surface treated surface and addition of 100-150mm compacted Granular "A" for full platform width of 7.9 metres.

(ii) Placement of 75mm hot mix asphalt (37.5mm HL8 base, 37.5mm HL3 surface) for the full platform width of 6.7 metres.

(iii) Granular "A" shouldering to match new road grade.

(iv) Cleaning/grading of roadside ditches.

(c) In the event that the west side of Rice Road is developed in a commercial manner, the Town will endeavour to collect, on a frontage basis, an amount equal to one half of the cost of upgrading Rice Road and any monies collected will be paid to the Owner.

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(13) GENERAL:

(a) The Owner shall cause to be installed telephone cables to serve all 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 shall at all times keep posted 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.

(d) (i) At the time of the execution of this Agreement or at the time of the issuance of a building permit, the Owner will 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 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 \$15,000.00.

(ii) For the purpose hereof the term "works" means "all works to be performed on lands outside of the ownership as described in Schedule "A" to this agreement.

(e) 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.

(f) 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.

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(g) 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.

(h) 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.

(i) 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.

(14) (a) If in the opinion of the Town Engineers the Owner fails to carry out the provisions of this Agreement according to reasonable Engineering practices, then the Town, its agents or servants 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.

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(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.

(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.

(15) 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.

(16) The Owner covenants for himself, his 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 said Schedule "A" to and for the Town, its successors and assigns.

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

(18) 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.

(19) Notwithstanding any of the provisions of this Agreement, the Owner, his 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.

(20) 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.

THE CORPORATION OF THE
TOWN OF PELHAM

PER: _____

E.S. Bergensten
Mayor

PER: _____

Mary Hackett
Clerk

TERRY CONNOLLY

Sheryl Milette
WITNESS

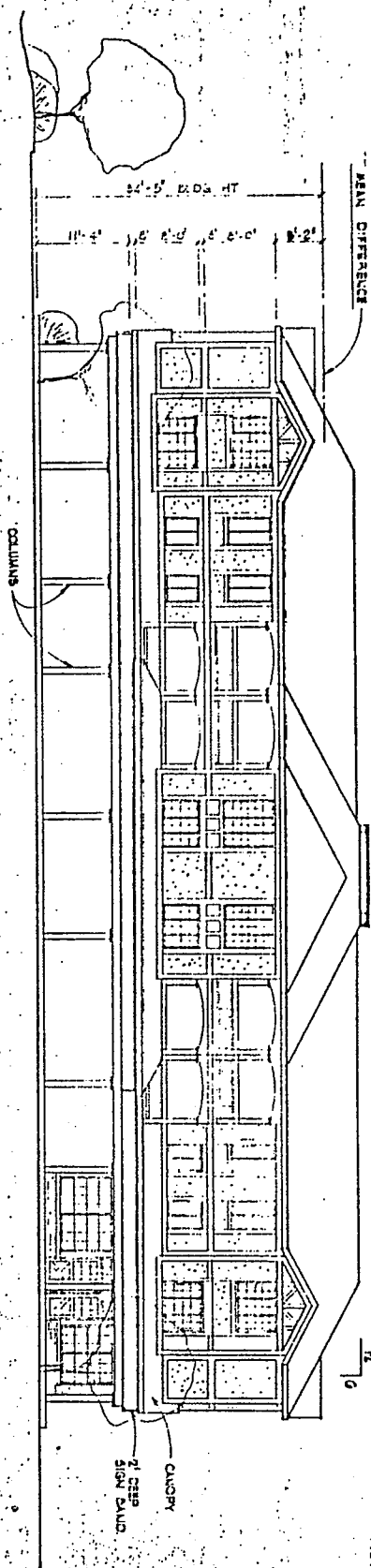
Terry Connolly

S C H E D U L E

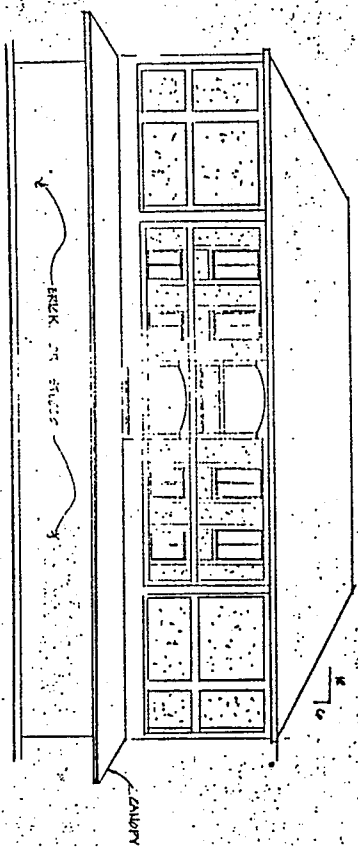
" A "

IN THE TOWN OF PELHAM, REGIONAL MUNICIPALITY OF NIAGARA, AND
BEING COMPOSED OF PART OF LOT 160, FOR THE TOWNSHIP OF THOROLD,
DESIGNATED AS PART 3 ON REFERENCE PLAN DEPOSITED AS NO. 59R-4632.

Schedule "C"



NORTH & SOUTH ELEVATION
SCALE 1/8" = 1'-0"



EAST AND WEST ELEVATIONS
SCALE 1/8" = 1'-0"

NO.	REVISIONS	DATE	BY

PROPOSED
COMMERCIAL PLAZA
FOR MR. T. CONNELLY

JOSEPH T. K. IIA ENGINEERING INC.

CONSULTING ENGINEERS

33 Laurel Dr., P.O. Box 1175, St. Catharines, Ont. M1 3Y1-7146

DATE 1/5/77 DRAWN BY SGT - Q1

CHECKED BY A.I.

DATE 1/5/77