

THIS AGREEMENT made in triplicate this 7th. day of May, 1990
A.D.

ZYGMUNT SOJKA & SHEILA SOJKA,
of the Town of Pelham, in the
Regional Municipality of Niagara
HEREINAFTER called the "Owners"
OF THE FIRST PART

- and -

THE CORPORATION OF THE TOWN OF
PELHAM,
a Municipal Corporation,
HEREINAFTER called the "Town"
OF THE SECOND PART

WHEREAS the Parties hereto wish to enter into an
agreement for the purposes of supply and sale by the Town of
water to the Owners for a water loading station;

AND WHEREAS the Owners of the lands described in
Schedule "A" to this agreement are in agreement with the
location of the water loading station on their property in
accordance with the terms of this agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in
consideration of the mutual covenants and agreements herein
contained, the Parties hereto agree as follows:

(1) BUILDING:

The Owners shall, at their own expense, construct and
arrange to be located in a position satisfactory to the Town's
Chief Building Official, one aluminum clad building, to be
termed a water station to receive the supply of water from the
Town. Such building shall be located in the northeast quadrant
of the lands described in Schedule "A", and shall be at least
fourteen metres south of the north limit of the lands described
in Schedule "A", and at least four and a half metres west of
the east limit of the said lands. Such building shall be
adequately secured with locking door, and shall be used solely
for the purpose of housing the water standpipe, the water
meter, all necessary appurtenances thereto and an electrical
supply adequate to heat the building and water line.

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(2) INSTALLATION OF WATER SERVICE:

(a) The Owners shall pay all costs of the installation of a fifty (50) millimetre water line to the north limit of the lands described in Schedule "A" hereto, and shall, at their own expense, construct and install the fifty (50) millimetre water line from the said property line to the building, a Clayton Valve Model 50g pressure sustaining valve and water meter, all under the direction of, and to the satisfaction of the Town's Works Superintendent.

(b) The pressure sustaining valve and water meter shall be entirely housed in the water station and the water supply shall be used solely by the Owners, their servants and employees except in cases of emergency as hereinafter provided.

(c) The loading of water from the water loading station into any container, tank or other vessel which is designed or otherwise able to carry water and which has been used to carry anything other than potable water shall be prohibited.

(3) DRAINAGE:

(a) The Owners shall ensure that the lands associated with the water loading station and used for the purpose of vehicular traffic associated with the water station, or for accommodating the building, are graded in such a manner as to prevent any accumulation of water on the surface of the lands adjacent thereto.

(b) The Town's Works Superintendent shall inspect the property periodically to determine that such grading has been undertaken to his satisfaction and any regrading shall be carried on by the Owners forthwith upon the request of the Works Superintendent.

(4) CASH DEPOSIT:

The Owners shall, upon the signing of the agreement, deposit with the Town's Treasurer the sum of Five Hundred Dollars (\$500.00) in trust to indemnify the Town against any outstanding accounts which may be owed and due to the Town or related to any matters covered by this agreement. The Town is

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hereby authorized to deduct from the said deposit any unpaid balance resulting from the purchase of water from the Town by the Owners, and in the event that there are no unpaid accounts by the Owners at the time of the termination of this agreement, the deposit shall be returned to the Owners by the Town without interest.

(5) WATER BILLING:

(a) The Owners shall be billed by the Town on a monthly basis for all water consumed and delivered under the provisions of this agreement during the previous month at the rate of \$1.69 per 4.55 cubic metres (1,000 gallons), provided that this charge will be subject to adjustments in direct proportion to the adjustment of the rate charged to the Town by the Regional Municipality of Niagara from time to time, and in direct proportion to the adjustment of the rate charged by the Town to its water users generally.

(b) The Owners shall have fifteen (15) days after mailing of the bill provided for in subparagraph (a) by the Town, to make full remittance in payment of such account to the Town's Treasurer. In the event of any default in making of payment by the Owners, the Town shall notify the Owners of the default and if such default is not rectified within ten (10) days next after notification by the Town, this agreement shall forthwith be at an end.

(c) The Town does not hereby guarantee or undertake the furnishing of any minimum or other amount of water, and reserves the right in times of emergency, as defined by the Town, to limit or terminate the supply of water temporarily during the duration of such emergency.

(6) GENERAL:

(a) The Owners shall indemnify the Town against any damage sustained by the Town and from any action, cause of action, claim, demand, loss, costs, damage or injury which the Town may suffer or be put to, for or by reason of, or on account of the construction, maintenance, or any work done by the Owners, their contractors, servants, employees or agents in connection with the installation or operation of the water

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station on the lands described in Schedule "A". The Owners agree that they shall produce evidence of liability insurance covering their own liability and the liability of the Town in the amount of at least \$1,000,000.00 in connection with their operations upon, and from the lands described in Schedule "A" at all times during the term of the agreement. Nothing herein contained shall require the Owners to indemnify the Town with respect to any loss or damage caused by, and as a result of the entry upon the premises by the servants, agents, employees of the Town or of its Fire Department.

(b) In the event of the failure of the Owners to carry out any of the provisions of this agreement, the Town may give to the Owners ten (10) days notice, in writing, of the nature of such default, and after such period of notice, or forthwith in cases of emergency as defined by the Town, shall have the right to enter upon the said lands and at the expense of the Owners to do any such work as is required therein, and shall further have the right to recover the costs of such remedial work by action or from the cash deposit hereinbefore referred to, or by a combination thereof, and in addition or in the further alternative to treat the non-payment of such costs by the Owners as a breach warranting termination of this agreement.

(c) The Owners shall, at all times, keep posted on the front of the water station or otherwise prominently displayed, a notice indicating the ownership of the said water station, and mailing address and telephone number of the persons having authority to deal with all matters relating to the said water station.

(d) The Owners shall not call into question directly or indirectly in any proceedings whatsoever in law or in equity, or before any court or administrative tribunal, the right of the Town to enter into this agreement and to enforce each and every term, covenant and condition herein described and this agreement shall be pleaded as an estoppel against the Owners in any such proceedings.

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(e) The Owners agrees that they shall during the currency of this agreement or any successor thereto, upon the sale and transfer of the lands described in Schedule "A" attached hereto, require the purchaser or transferee thereof, to concur in and approve the provisions of this agreement by letter delivered to the Town and in the event that they cannot or does not produce evidence of such approval, then this agreement shall terminate at the option of either party.

(7) TERM OF AGREEMENT:

(a) This agreement shall come into force upon the 7th. day of May, 1990. This agreement shall remain in force and effect for a definite period of one year from the date of this agreement and thereafter shall continue in force for an indefinite period provided that either party may, by giving at least three months prior written notice to the other, terminate this contract upon the expiry of the original terms or at any time thereafter.

(b) Any notice required under the terms of this agreement shall be given, in writing, by either party to the other of them as follows: To the Town at the Municipal Offices, P. O. Box 400, Fonthill, Ontario, L0S 1E0; and, to the Owners, 698 Canboro Road, Fenwick, Ontario, L0S 1C0.

Any such notice shall be deemed to have been received by the other party at the time of personal service upon such other party, or on the third business day next after the mailing of such notice by prepaid first class mail.

(c) This agreement, or any extension or renewal thereof shall not be transferrable to any party without the express concurrence and agreement of the other party to this agreement. The agreement shall take effect only upon receipt by the Town of the approval, in writing, of the present registered owner of the lands described in Schedule "A", to the terms of this agreement.

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(8) FIRE DEPARTMENT:

Notwithstanding anything contained in this agreement, nothing shall prohibit or interfere with the right of the Pelham Fire Department from utilizing the water loading station for emergency purposes. Any water consumed by the Fire Department in pursuance of this paragraph shall not be charged to the Owners.

In this agreement where a specific employee or officer of the Town is mentioned, such employee shall be interpreted to mean the incumbent of such office at such time or times as are applicable to give effect to the terms of the agreement.

IN WITNESS WHEREOF the Owners have hereunto affixed their hands and the Town has hereunto affixed its Corporate Seal, duly attested by its proper officers in that behalf.

SIGNED, SEALED AND DELIVERED (ZYGMUNT & SHEILA SOJKA

- In The Presence Of -

William Robins
Witness

(Zygmunt Sojka
(ZYGMUNT SOJKA

William Robins
Witness

(Sheila Sojka
(SHEILA SOJKA

(
(
(THE CORPORATION OF THE
(TOWN OF PELHAM

(Paul Collins
(MAYOR

(Mary Wickett
(CLERK

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S C H E D U L E

" A "

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the former Township of Pelham, now in the Town of Pelham, in the former County of Welland, now the Regional Municipality of Niagara, and being composed of Part of Lot Number 13, Concession 9 of the said former Township, and being more particularly described as follows:

COMMENCING at the intersection of the western limit of the said lot with the southern limit of the Canboro Road which crosses said lot, said southern limit being one thousand, three hundred and eighty-six feet (1,386') more or less northerly from the south-western angle of said Lot Number 13;

THENCE southerly along the western limits of said lot one hundred and ten (110') feet to a stake;

THENCE north-easterly parallel with the southern limit of said Canboro Road one hundred (100') feet to a stake;

THENCE northerly parallel with the western limits of said lot one hundred and ten (110') feet to a stake in the southern limit of the said Canboro Road;

THENCE south-westerly along the said southern limit of the said Canboro Road one hundred (100') feet to the place of beginning, and containing by admeasurement one-quarter (1/4) of an acre more or less.