



Document General

Form 4 — Land Registration Reform Act, 1984

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FOR OFFICE USE ONLY

075051
CERTIFICATE OF RECEIPT
RECEPTE
PARA 3011-10(59)WELLAND
1990 10 11 16 04
Additional:
See
Schedule ☐
EXECUTIONS
Additional:
See
Schedule ☐
LAND REGISTRATION REGISTRAR

(1) Registry <input type="checkbox"/>	Land Titles <input checked="" type="checkbox"/>	(2) Page 1 of 40 pages
(3) Property Identifier(s)		Block Property
(4) Nature of Document		Application to register Notice of Agreement Section 74 of the Land Titles Act
(5) Consideration		Dollars \$
(6) Description		Part of Parcel Plan-1, Section 59M-189 in the Town of Pelham, in the Regional Municipality of Niagara. Being Lots 1 to 46 inclusive and Blocks 47 to 57 inclusive, Plan 59M-189.
(7) This Document Contains:	(a) Redescription New Easement Plan/Sketch <input type="checkbox"/>	(b) Schedule for: Description <input checked="" type="checkbox"/> Additional Parties <input type="checkbox"/> Other <input checked="" type="checkbox"/>

(8) This Document provides as follows:
The Corporation of the Town of Pelham, being interested in the lands entered in the Parcel Register for Section 59M-189 as Parcel Plan-1, of which Fonthill Downs Limited is the registered owner, hereby makes application to have entered into the Parcel Register a Notice of Agreement dated the 10th day of July, 1990 between Fonthill Downs Limited, of the first part, and The Corporation of the Town of Pelham, of the second part, for the lands described in Box 6 above.

Continued on Schedule ☒

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

(10) Party(ies) (Set out Status or Interest)	Signature(s)	Date of Signature
Name(s)		Y M D
THE CORPORATION OF THE TOWN OF PELHAM by its agent, HARRIS, BARR (Applicant)	HARRIS, BARR per <i>Callum Shedden</i> Callum Shedden	1990 10 09

(11) Address for Service Box 400, Fonthill, Ontario, L0S 1E0

(12) Party(ies) (Set out Status or Interest)	Signature(s)	Date of Signature
Name(s)		Y M D

(13) Address for Service

(14) Municipal Address of Property	(15) Document Prepared by: HARRIS, BARR Box 366 39 Queen St. St. Catharines, Ont. L2R 6V7 CS/lg	FOR OFFICE USE ONLY	Fees and Tax
			Registration Fee
			Total

THIS INDENTURE made in triplicate this 10TH. day of JULY ,
1990 A.D.

BETWEEN:

FONTHILL DOWNS LIMITED,

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.

WHEREAS the Owner purports to be the Owner 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 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;

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

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) (A) TRANSFER TO TOWN FOR MUNICIPAL PURPOSES:

The Owner will:

(a) by certificate on the plan, dedicate to the Town, Block 55 as park, open space, walkways;

(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" (Blocks 47 to 54 inclusive); and

(d) convey to the Town the one foot reserves shown as Blocks 56 and 57.

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(2) (B) TRANSFER TO OWNER FOR RESIDENTIAL PURPOSES:

The Town will:

(a) convey to the Owner, Parts 1 & 2 on Reference Plan 59R-6897.

(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;
- (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

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- (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) tracings shall be plan-profile mylar A1 metric size 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) 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.

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- (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.

(b) Such deposit shall also include wages of the Town Inspector including overhead 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 \$22,000.00 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 without interest and if the fees and disbursements are more than \$22,000.00, 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", "M" and "N" 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 the Town Engineer sufficient and valid liability insurance policies, a certificate from the Worker's Compensation Board showing that 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 works. Any contractor employed by the Owner shall, as a condition of such employment, be approved by the Town Engineer.

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(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.

(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 28 (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 equal to 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 a 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.

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(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 material 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.

(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.

(14) ROUGH GRADING ROADS:

(a) 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.

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(15) ROUGH GRADING LOTS:

(a) 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.

(b) 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 Town of Pelham.

(c) The Owner will insert a clause in all sales contracts stating that the purchaser or builder agrees to not unnecessarily strip the lot of vegetation beyond the areas required for home construction and further, after construction of the home, to sod or seed and landscape the lot as required under Clause 15 (d). Should the Owner strip the lot beyond the areas necessary to construct the home, he will immediately either sod the overstripped areas or use other suitable approved means to stabilize the stripped area.

(d) The Owner will insert a clause in all sales contracts that the purchasers or builders will, upon completion of the homes on the lots, immediately proceed to sod or seed and landscape the lots or, in the event that the home is completed in inclement weather, at the first opportunity. In any event, the lots must be fully sodded or seeded within two (2) months of house occupancy, except during the winter when the lot must be sodded prior to June of the following year.

(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:

(a) 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. 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 23 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.

(b) The Owner shall construct a stormwater management system according to the plans and specifications which have been received and approved by the Niagara Peninsula Conservation Authority and all other applicable agencies.

(18) SANITARY SEWER:

(a) The Owner shall at his own expense construct a sanitary sewer system to serve the development in accordance with this section, Schedule "D" to this agreement and the approved engineering drawings.

(b) The Owner shall provide to the Town a Television Inspection Report prior to the commencement of the one year maintenance period mentioned in Clause 31 of this Agreement.

(19) 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.

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(20) EXPANSION AND RENEWAL FUND:

(a) The Owner shall pay the Town the sum of Sixty-Two Thousand, One Hundred Dollars (\$62,100.00) for the purpose of expanding and renewing services within the Town limits.

(21) 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 differences will be paid by the Owner to the Town in cash as a requirement of this Agreement.

(22) 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 direction 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.

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(23) 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.

(24) 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.

(25) 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, conduits, wires, pole lines, hydrants or other works.

(26) 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,

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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 31, 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 independant 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.

(27) 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.

(28) (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;
- (iii) roadways,
 - (a) of final design width;
 - (b) full granular depth;
 - (c) curb and gutter;
 - (d) base coarse asphalt;
 - (e) all manholes and catch basins to be ramped.

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- (iv) fully functioning and pressurized watermains, hydrants and appurtenances.
- (v) rough grading of lots.
- (vi) street name signs.

(b) Secondary Services:

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

(28) (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:

- Completion of the one year maintenance period following installation of primary and secondary services; or,
- Completion of construction of 34 dwelling units in the subdivision.

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

(29) CASH DEPOSITS & LETTERS OF CREDIT:

(29A) CASH DEPOSITS:

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

- (a) the expansion and renewal impost \$62,100.00
(Clause 20)

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(b)	engineering fees (Clause 5)	\$22,000.00
(c)	the cost of power and lighting installation unless other satisfactory arrangements have been made with Ontario Hydro (Clause 24)	nil
(d)	cash for park purposes (Clause 2)	nil
(e)	local improvement charges (Clause 19)	nil
(f)	pre-draft plan approval costs (Clause 21)	736.00
(g)	upgrading existing roads (Clause 40)	51,245.00
(h)	stormwater management facilities (Clause 41) (Credit)	(14,359.00)
(g)	watermain extension - Merritt Road (Clause 42)	<u>8,970.00</u>
	TOTAL	\$130,692.00 =====

(29B) LETTERS OF CREDIT:

(a)	Construction of Services (Clause 10)	\$775,900.00
(b)	Construction Lien Act Deposit (Clause 34)	71,500.00
(c)	Tax Security Deposit (Clause 33)	2,000.00
(d)	Legal Fees	<u>1,000.00</u>
	TOTAL	\$850,400.00 =====

(30) 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 paragraphs 29 (A) and 29 (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

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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 paragraphs 29 (A) & 29 (B) be insufficient to pay the inspection and administration fees or other charges payable by 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.

(31) 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 Engineers under authority of resolution of Council, shall at the expiration of the Town'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.

(32) TAXES:

The Owner agrees to pay all arrears of taxes outstanding against the property in Schedule "A" hereto annexed and pay all taxes on this property on the present basis of

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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.

The Town agrees that the Owner shall be permitted to appeal the assessment on the property described in Schedule "A".

(33) 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.

(34) 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 services within the 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.

(35) 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).

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(36) 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 parts of the lands described in Schedule "A" attached hereto, until the plan is registered and all primary services are completed and operational.

(37) 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 31 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 31 of this Agreement.

(38) SCHEDULES:

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

(39) 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 that run with the land and that the burden of such covenants 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 22 (Surface Drainage Plan), and the requirements of Schedule "E", which shall be in perpetuity.

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(40) PAYMENT FOR UPGRADING EXISTING ROADS:

The land as described in Schedule "A" to this Agreement abuts the existing travelled road allowance of Merritt Road. The Owner shall be required to pay the Town cash in the sum of \$51,245.00, being half the cost of upgrading Merritt Road as it abuts the said lands.

(41) STORMWATER MANAGEMENT FACILITIES:

The Town shall pay to the Owner cash in the sum of \$14,359.00 as payment of their contribution towards the provision of stormwater management facilities.

(42) PAYMENT FOR USE OF EXISTING WATERMAINS:

The Owner shall pay to the Town cash in the sum of \$8,970.00 as payment of his contribution towards the provision of water services to those lands as described in Schedule "A" to this Agreement which abut on Merritt Road.

(43) PARKLAND DEVELOPMENT:

The Owner hereby agrees to prepare a concept plan of the area to be dedicated as parkland showing the final topography, areas to be sodded/seeded, plantings, paths and perimeter fencing.

Following final acceptance of the concept plan by the Town, the Owner hereby agrees to grade and seed the lands dedicated as parkland, i.e. Block 55.

The Town hereby agrees to accept Block 55 as the total parkland dedication requirements for Registered Plan 59M- and for the development of the balance of the lands of Fonhill Downs Limited which are located in Lot 173.

(44) RECOMMENDATION TO THE MINISTER:

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

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

SIGNED, SEALED & DELIVERED

- In The Presence Of -

(THE CORPORATION OF THE TOWN
(OF PELHAM

(*Marsi Collins*

(MAYOR MARSI COLLINS

(*Murray Hackett*

(CLERK MURRAY HACKETT

(FONTHILL DOWNS LIMITED

(*Stella Kunda*

(STELLA KUNDA
(President

(*Edwin Kunda*

(EDWIN KUNDA
(Secretary

(

S C H E D U L E

" A "

LEGAL DESCRIPTION

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17,
18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33,
34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45 and 46;

Blocks 47, 48, 49, 50, 51, 52, 53, 54, 55, 56 and 57,
Plan 59M-189.

S C H E D U L E

" B "

EASEMENTS

Blocks 47 to 54 (inclusive), Plan 59M-_____

S C H E D U L E

" 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 25mm 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.

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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.

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SANITARY SEWERS

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.

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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 catchbasins as per the current Town Standards.

PRIVATE DRAIN CONNECTIONS -

The Owner shall construct storm connections (laterals) to each lot, save and except Lots 1-9 inclusive, from the street sewer to the street line. The storm lateral shall be a minimum 150mm diameter building sewer pipe or equal, acceptable to the Town Engineer and with the proper fittings designed by the Town Engineer's construction standards.

Foundation and weeping tile sub-surface water from the building constructed on the lot shall be discharged into the storm lateral. Roof water will not be allowed to be discharged into the storm lateral.

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STORM SEWERS & SURFACE DRAINAGE

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, 22 and 23 of this Agreement.

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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 or during the grading of 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.

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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.

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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.

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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.

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TREES AND SODDING/SEEDING

The Owner shall plan 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 or seeding from the front line, 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 -

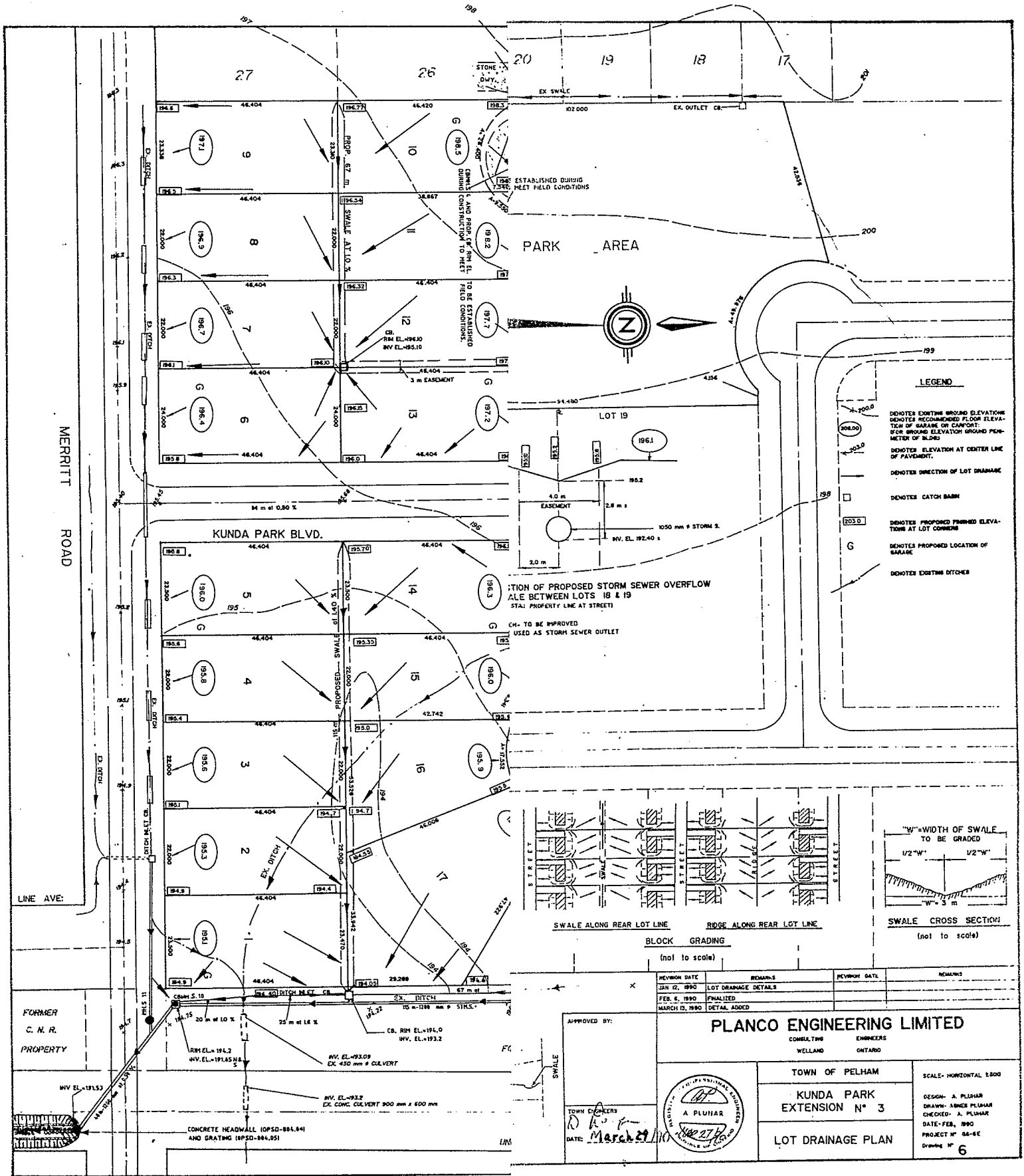
Norway Maple, Locusts and Flowering Crab, 4m to 4.5m in height with a caliper of 3.8cm to 5cm. The trees shall be sound, healthy, vigorous and free from plant diseases and insect pests or their eggs and shall have normal, healthy root systems.

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

SODDING OR SEEDING -

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, stakes or unstaked as required.

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BUILDING RESTRICTIONS

(To be included in all Deeds)

The Owner shall cause to be registered against all lots in the subdivision the transfer restrictions and restrictive covenants outlined below.

1. According to the nature of the annexed instrument, the words "Vendor", "Purchaser" and "Land" shall have the following meaning:

- (a) "VENDOR" means Fonthill Downs Limited, a corporation incorporated under the laws of the Province of Ontario.
- (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 this Agreement of Purchase and Sale.

2. The Purchaser shall, in respect of the herein described land, adhere to and comply with the lot drainage plan attached to the Subdivision Agreement registered in the Land Titles Office for Niagara South and, in particular, shall do nothing to interfere with or impede the drainage patterns shown thereon. All grade 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 Subdivision Agreement for any consequential damages, costs, expenses or other loss caused by the failure to maintain such grades or drainage patterns.

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BUILDING RESTRICTIONS

(To be included in all Deeds)

8. 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 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: hydro, gas, water services, sanitary sewers and telephone.

9. The **Purchaser** shall not impede by the placing of fill, buildings or other structures or works any natural watercourse which exists on the property and in any event shall not alter or impede the flow of surface water to an extent sufficient to cause ponding in another lot.

10. The **Purchaser** shall not discharge by direct connection to a sanitary or storm sewer any discharge from eavestroughing, downspouts or swimming pools. The **Purchasers** of Lots 1-9 inclusive shall not discharge storm water directly to the road allowance municipally known as Merritt Road.

11. The **Purchaser** shall not apply for a building permit and no erections or buildings of any kind whatsoever shall be set up or erected on any lot or any part thereof excepting such as shall be in accordance with the plans, specifications and plot plan, which shall provide that such erection or dwelling shall be built predominantly of brick or stone, or brick or stone in combination with stucco, vinyl, aluminum or steel siding, or otherwise authorized by the **Vendor**, first approved in writing by the **Vendor**, or duly authorized agent and which shall be erected or built in accordance with the lot levels, floor lot levels and lot drainage first approved by the **Vendor**, or duly authorized agent and the **Purchaser** shall provide proof of compliance therewith.

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BUILDING RESTRICTIONS

(To be included in all Deeds)

12. No dwelling shall be erected unless it has a minimum floor area excluding basement and garage in accordance with the following:

All lots, with the exception of Lots 20 to 24 inclusive, shall be a minimum of 2,200 square feet.

Lots 20 to 24 inclusive shall be a minimum of 1,800 square feet.

13. The minimum setback of any dwelling shall be seventy-three (73) feet from the centre line of the roadway for all lots.

14. No building shall be erected on the land other than one detached private dwelling house on each lot, such dwelling to be suitable for the use of and to be used by a single family only, with a private garage or carport forming part of the house and suitable only for the use of the occupants of such dwelling house.

15. The **Purchaser** shall commence building construction on the land within a period of six (6) calendar months from the date of the purchase of the land and will substantially complete all building construction thereon within a period of one (1) calendar year from the date of purchase of the land.

16. The **Purchaser** shall not park, store or permit the parking or storage of cube vans, trailers, snowmobiles and recreation vehicles on the land for a period exceeding one (1) week in any calendar year.

17. No signs, billboards, or advertising matter of any kind (except for ordinary signs offering the said lands or buildings thereon for sale or rent) shall be placed upon the said lands without the written consent thereto of the **Vendor**.

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SIDEWALKS

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

- John Street - North Side
- Kunda Park Boulevard - West Side & North Side
- Stella Street - North Side
- Beachwood Crescent - North Side & East Side

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. All sidewalks as described in the Subdivision Agreement for a residential development shall be constructed within 12 months of the installation of the last underground utility in the boulevard. The last underground utility shall not include service lines to individual homes.

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PARKLAND

The Owner shall grade and seed Block 55 to comply with the concept plan to be prepared and filed in the Municipal Office. The approved drawings shall be signed, approved and accepted by the Town Engineer.

The grading and seeding shall be completed within 6 months of the date of approval of the subdivision agreement unless an extension is granted by the Town.