

THE CORPORATION OF THE
T O W N O F P E L H A M

BY-LAW NO. 2079 (1999)

Being a by-law to authorize the Mayor and Clerk to enter
into an Agreement with 527786 Ontario Limited

WHEREAS the Council of the Corporation of the Town of Pelham deems it desirable
to enter into a Development Agreement with 527786 Ontario Limited with regard to the
development of nine (9) residential lots on Line Avenue.


NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN
OF PELHAM ENACTS AS FOLLOWS:

(1) THAT the Development Agreement attached hereto and made part of this by-law
between the Corporation of the Town of Pelham and 527786 Ontario Limited be and the same
is hereby approved.

(2) THAT the Mayor and Clerk be and each of them is hereby authorized and instructed
on behalf of the Corporation of the Town of Pelham to execute the said Development Agreement
and the Clerk is hereby authorized to affix the Corporate Seal thereto.

READ A FIRST, SECOND AND THIRD TIME
AND FINALLY PASSED BY COUNCIL THIS
3RD DAY OF MAY, 1999 A.D.


MAYOR RALPH BEAMER


DEPUTY CLERK CHERYL MICLETTE

FOR OFFICE USE ONLY

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CERTIFICATE OF RECEIPT
RECEPISSE

NIAGARA SOUTH/SUD (S9) WELLAND

'99 MAY 10 PM 2 15

Choddy

LAND REGISTRAR/REGISTRATEUR

New Property Identifiers

Additional:
See
Schedule ☐

Executions

Additional:
See
Schedule ☐

(1) Registry ☐

Land Titles ☒

(2) Page 1 of 9 pages

(3) Property Identifier(s) 64072-0126 (LT)

Block

Property

Additional:
See
Schedule ☐

(4) Nature of Document

Notice of Development Agreement

(5) Consideration

nil

Dollars \$ 0.00

(6) Description

Part Lot 177, Town of Pelham, formerly Township of Thorold,
Regional Municipality of Niagara, being designated as Parts 1 & 10,
inclusive, on Plan 59R-10621 and being all of the P.I.N.

(7) This Document Contains:

(a) Redescription
New Easement
Plan/Sketch ☐

(b) Schedule for:

Description ☐ Additional Parties ☐ Other ☒

(8) This Document provides as follows:

The Corporation of the Town of Pelham has an unregistered estate, right, interest or equity in the land registered in the name of 527786 Ontario Limited, and hereby applies under Section 71 of the Land Titles Act for the entry of a Development Agreement.

The original of the grading and drainage plan attached to the Development Agreement as Schedule 'B' is available at the offices of the Applicant being 20 Pelham Town Square, Fonthill Ontario.

Continued on Schedule ☐

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

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

Name(s)

Signature(s)

Date of Signature
Y M D

527786 ONTARIO LIMITED
(Developer)

(11) Address

for Service 1959 Fruitbelt Parkway, Niagara Falls, Ontario, L2E 6S4

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

Name(s)

Signature(s)

Date of Signature
Y M D

THE CORPORATION OF THE TOWN OF PELHAM BROOKS, BIELBY & SMITH

(Town/Applicant)

By its Solicitors

Brooks, Bielby & Smith

PER: *[Signature]*

(R. Bruce Smith)

1999 05 07

(13) Address

for Service P. O. Box 400, Fonthill, Ontario, L0S 1E0

(14) Municipal Address of Property

not assigned

(15) Document Prepared by:

Brooks, Bielby & Smith
247 East Main Street
Welland, Ontario
L3B 3X1

FOR OFFICE USE ONLY

Fees and Tax

Registration Fee

Total

THIS AGREEMENT made in triplicate this 4TH day of MAY, 1999 A.D.
BETWEEN:

527786 ONTARIO 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

WHEREAS the Owner purports to be the owner of the lands in the Town of Pelham described in Schedule "A" and has applied to the Land Division Committee of the Regional Municipality of Niagara for consent under applications B446/98 to B454/98, inclusive, and has obtained such consents subject to conditions;

AND WHEREAS the decision of the Land Division Committee was conditional upon, among other things, the entering into an Agreement by the Owner and the Town;

AND WHEREAS the Town requires the Owner, before final approval of the consents, to agree to certain terms and conditions for the development for which approval is sought;

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

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the Town approving the said proposed development, 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. 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) "DIRECTOR" shall mean the Director of Operations of the Corporation of the Town of Pelham.

(d) "TREASURER" shall mean the Director of Financial Services of the Corporation of the Town of Pelham.

(e) "CHIEF BUILDING OFFICIAL" shall mean the Director of Building and Enforcement Services of the Corporation of the Town of Pelham.

(f) "PROFESSIONAL ENGINEER" shall mean a Professional Engineer registered with the Professional Engineers of Ontario.

2. REGISTRATION:

(a) The Owner covenants and agrees to register this Agreement against the lots which have been created by the consents granted by the Land Division Committee of the Regional Municipality of Niagara.

(b) 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 said Schedule "A" to and for the Town, its successors and assigns.

3. PARKS DEDICATION:

The Owner shall pay to the Town the sum of Three Thousand One Hundred Dollars (\$3,100.00) as payment of cash in lieu of dedication of 5 % of the land to the Town for parks purposes.

4. RE-CONSTRUCTION OF EXISTING ROAD:

The land as described in Schedule "A" of this agreement abuts the existing travelled road allowance of Line Avenue. The cost of reconstructing Line Avenue in accordance with the Town approved Grading and Drainage Plan, being Drawing No. S1-475-01, dated March 1999, revised April 15, 1999, and prepared by the V & S Engineering Group Ltd., and attached hereto as Schedule "B", has been estimated at Forty Thousand Nine Hundred Dollars (\$40,900.00). The Owner is required to perform its share of the road reconstruction which has been estimated at Eight Thousand Four Hundred Dollars (\$8,400.00) and represents the road frontage which corresponds with lots 1 to 5, inclusive, lots 6 to 9, inclusive, and the vacant lands between lots 7 and 8. The Owner shall also construct the storm sewer, in accordance with the approved Plan noted above, which has been estimated at Twelve Thousand Five Hundred Dollars (\$12,500.00). The Town shall pay and the Owner shall perform the Town's share of road reconstruction which has been estimated at Twenty Thousand Dollars (\$20,000.00), which includes 100% of road reconstruction along the entire frontage, being 25.56 metres, of the lands municipally known as 1100 Line Avenue. The Town's share of said road construction shall be paid from the Town's Development Charges fund.

5. 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 Director. In the event changes are made, after having been approved by the Director, the Owner nevertheless shall be solely responsible for any damage caused thereto, and shall indemnify and save harmless the Town therefrom.

6. TAXES:

The Owner agrees to pay all arrears of taxes outstanding against the property described in Schedule "A" to this agreement and shall pay all taxes on this property on the present basis of assessment, whether previously levied or not, until such time as the lands being subdivided have been assessed according to the parcels created by the consent. The

Owner further agrees that when the said lands have been reassessed, to pay all current taxes as established by the reassessment, or any additional amounts as thereby required.

7. ENGINEERING:

(a) (i) For the purpose hereof the term "works" means any and all works required to be carried out within the road allowance of Line Avenue *in accordance with paragraph (4) of this agreement*.

(ii) At the time of execution of this agreement the Owner shall provide the Town with an irrevocable Letter of Credit from a Canadian Chartered Bank, Trust Company or Credit Union in a form satisfactory to the Treasurer in the amount of Fifteen Thousand Dollars (\$15,000.00) to guarantee the completion of the works required pursuant to this agreement. Such works shall include all service laterals and driveway entrances.

(b) Such deposit may be used to pay for the cost of any work performed by the Town in accordance with sub-paragraph (a) above in the event of the failure of the Owner to comply with any terms of this agreement.

(c) 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 have been fulfilled to the reasonable satisfaction of the Director.

(d) Upon application by the Owner and upon completion and acceptance of the final asphalt and storm sewer construction, the Town may reduce the amount of the Letter of Credit to Five Thousand Dollars (\$5,000.00).

(e) 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.

(f) If, in the opinion of the Director, 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.

(g) 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 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.

(h) The cost of such work shall be calculated by the Director 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.

8. 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 Director, and in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence, indemnifying the Town, the Town's employees and consultants, from any loss arising from claims for damage, injury or otherwise in connection with the work done by the Owner, the Owner's employees, servants or agents, or any independent contractor to service the lands described in Schedule "A" and Schedule "B" attached hereto. The Owner shall submit to the Director, 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 until the works are accepted by the Town. The Liability Insurance Policy shall not be allowed to lapse without written approval of the Town.

9. 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, in connection with the work required to be done herein by the Owner, its contractors, servants or agents during the period of construction.

10. SITE SUPERVISION:

(a) The Town shall be responsible for the site supervision for the works associated with the plan described in Clause 4.

11. 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.

12. SANITARY SEWERS:

(a) The Owner shall at its own expense construct sanitary connections (laterals) to the lot from the street sewer to the street line. Such laterals shall be constructed to Town standards and be approved by the Director.

(b) 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 the 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.

13. WATER SERVICES:

The Owner shall at its own expense construct water connections (laterals) to the lot from the street main to the street line. Such laterals shall be constructed to Town Standards and be approved by the Director.

14. STORM LATERALS:

The Owner shall at its own expense construct storm laterals and sump pumps to each lot from the street storm sewer to the street line. Such laterals shall be constructed to Town Standards and be approved by the Director.

15. SURFACE DRAINAGE PLAN:

The Owner shall be responsible for providing, at its expense, a Surface Drainage Plan for the land described in Schedule "A" attached hereto, said plan to meet with the approval of the Director. 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 "B". All elevations shown on Schedule "B" shall be maintained after construction of any building or structure upon said lands affected, and this provision shall be included in the building restrictions hereinbefore referred to. Minor changes to the lot grading plan may be permitted subject to the approval of the Director.

16. 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 itself or by the builder, to the satisfaction of the Director.

17. TREES:

(a) The Owner agrees to maintain as much of the existing tree cover on the lands as is practically possible.

(b) The Owner shall plant one (1) tree per lot frontage and two (2) trees per lot flankage on each lot specified by the Director.

(c) The tree as required under subsection (b) shall be of the following type: Norway Maple, Mountain Ash, Locust or Flowering Crab; 4.5m in height with a calliper of 3.8 cm to 5 cm and shall be sound, healthy, vigorous and free from plant diseases and insect pests or their eggs and shall have a normal healthy root system.

18. Any notice, demand, acceptance or request provided for in this agreement shall be in writing and shall be deemed to be sufficiently given if personally delivered or sent by registered mail (postage prepaid) as follows:

To the Town at:


Town Clerk
Town of Pelham
P. O. Box 400
20 Pelham Town Square
Fonthill ON L0S 1E0


To the Owner at:

527786 Ontario Limited
Metro Development, Eric Henry
1959 Fruitbelt Parkway
Niagara Falls ON L2E 6S4

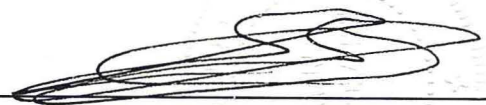
IN WITNESS WHEREOF the parties hereto have executed this agreement as of the date and year first above written.

THE CORPORATION OF THE TOWN OF PELHAM

PER: 
Mayor Ralph Beamer

PER: 
Deputy Clerk Cheryl Miclette

527786 ONTARIO LIMITED

PER: 
Eric Henry, President