

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

BY-LAW NO. 2204 (2000)

Being a by-law to authorize the Mayor and Clerk to enter into
an Agreement with 937776 Ontario Inc.

WHEREAS the Council of the Corporation of the Town of Pelham deems it desirable
to enter into a Development Agreement with 937776 Ontario Inc. with regard to the development
of five (5) residential lots on Canboro Road and Cream Street at Memorial Drive.

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 937776 Ontario Inc. 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
18TH DAY OF SEPTEMBER, 2000 A.D.


MAYOR RALPH BEAMER


CLERK CHERYL MICLETTE

FOR OFFICE USE ONLY

771832

CERTIFICATE OF REGISTRATION
NOTIFICATION OF REGISTRATION
NORTH YORK/SUB(50)WELLAND

00 10 18 15 47

LAND REGISTRAR

New Property Identifiers

Additional:
See
Schedule ☐

Executions

Additional:
See
Schedule ☐

(1) Registry ☒

Land Titles ☐

(2) Page 1 of 9 pages

(3) Property Identifier(s)

Block
Part of 64031 - 0173 (R)

Additional:
See
Schedule ☐

(4) Nature of Document
Development Agreement

(5) Consideration

Dollars \$

(6) Description

Part of Lot 11, Concession 9, Town of Pelham, Regional Municipality of Niagara, designated as Parts 1, 2, 3, 4 and 5 on Plan 59R-11124.
Save and except Parts 1 and 2 on Plan 59R-11174

(7) This Document Contains:

(a) Redescription
New Easement
Plan/Sketch ☐

(b) Schedule for:
Description ☐ Additional Parties ☐ Other ☒

(8) This Document provides as follows:

See Development Agreement attached.

Originals of Schedule "B" are on file at the offices of The Corporation of the Town of Pelham at 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

THE CORPORATION OF THE TOWN OF PELHAM
Town/Applicant
by its solicitors
Brooks, Bielby & Smith

BROOKS, BIELBY & SMITH

PER:

2000 10 18

R. Bruce Smith

(11) Address for Service

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

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

Name(s)

Signature(s)

Date of Signature
Y M D

937776 ONTARIO INC.
Owner

(13) Address for Service

1088 Deborah Street, Fonthill, Ontario, L0S 1E4

(14) Municipal Address of Property

Canboro Road
Fenwick, Ontario
L0S 1C0

(15) Document Prepared by:

R. Bruce Smith
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 18th day of October, 2000 A.D.
BETWEEN:

937776 ONTARIO INC.

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 Committee of Adjustment at the Town of Pelham for consent under applications B6/2000P through B9/2000P, inclusive, and has obtained such consents subject to conditions;

AND WHEREAS the decision of the Town of Pelham Committee of Adjustment 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;

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 Owners to the Town (the receipt thereof is hereby acknowledge), 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.
2. REGISTRATION:
 - (a) The Owner covenants and agrees to the registration of this Agreement against the lots which have been created by the consents granted by the Committee of Adjustment of the Town of Pelham.
 - (b) 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.
 - (c) 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.

3. GENERAL:

(a) (i) For the purpose hereof the term "works" means any and all works required to be carried out within the road allowance of Cream Street and Canboro Road as well as any grading works carried out to meet approved design grading and drainage works within the lots included under this agreement. At the time of the execution of this Agreement the Owner will pay to the Town a deposit to guarantee its compliance with this Agreement in the amount of One Hundred percent (100%) 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 \$14,000.00. Such works shall include all driveway entrances, drainage, culverts and trees.

(ii) Further, the Owner shall pay to the Town the sum of \$2,000.00 to cover the expense of engineering review and inspection of the works by the Town.

(b) Such deposits 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 Treasurer.

(c) Such deposits 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.

(d) Such deposits, 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.

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

4. BUILDING PERMIT:

No building permit will be issued until all financial requirements have been satisfied, an overall grading and drainage plan for the five (5) building lots has been approved by the Director and, where necessary, all required siltation controls installed and functioning to the satisfaction of the Director.

5. PARKS DEDICATION:

The Owner shall pay to the Town the sum of \$8,000.00 as payment of cash in lieu of dedication of 5% of the land to the Town for parks purposes pursuant to Section 53 (3) of the Planning Act.

6. DEVELOPMENT CHARGES:

At the time of issuance of a building permit, the Owner shall pay to the Town a development charge in effect at the time of issuance of a building permit in accordance with the Development Charge by-law in effect at the time of issuance of the building permit.

7. 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.

8. PAYMENT FOR UPGRADING EXISTING ROADS:

The lands described in Schedule "A" to this agreement about the existing traveled road allowance of Cream Street and Canboro Road. The Owner shall pay to the Town the cost of the future upgrading of fifty percent (50%) of the above roads along the frontages of Parts 1, 2, 3 and 4 on Reference Plan 59R-11124 as follows:

i) Canboro Road - 75 metres x \$175.00 = \$13,125.00

ii) Cream Street - 95 metres x \$75.00 = \$7,125.00

Based on the above the Owner shall be required to pay a total of \$20,250.00.

9. ROAD WIDENING

The Owner shall dedicate, at no cost, to the Town a road widening of 2.75 metres on the north side of Canboro Road along the frontages of Part 1 and 2 as described on Reference Plan 59R-11174 free and clear of any mortgages, liens or encumbrances.

10. 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 Owners 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.

11. WATER SERVICES:

The Owner shall ensure the availability of potable water supply to the satisfaction of the Niagara Regional Health Services Department. The approval of the Niagara Regional Health Services Department for potable water supply must be obtained before any building permit for a habitable structure on any lot will be issued by the Town.

Notwithstanding the above, the lots fronting on Canboro Road shall connect to the existing municipal watermain on Canboro Road.

The Owner will be required to obtain the necessary permit and pay associated permit fees, as set from time to time, from Regional Public Works Department for connection to the Regional watermain. Application for this permit shall be made through the Town.

12. SANITARY SEWERS:

(a) The Owner shall obtain approval from the Niagara Regional Health Services Department for the construction of sub-surface disposal and provide copies of all approval so obtained to the Director.

13. DRIVEWAY ENTRANCES:

The Owner shall ensure that the excavation, stoning and paving of each driveway, from the traveled 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, to the satisfaction of the Director. Paving shall consist of a hard surface such as asphalt, concrete, paving stones, paving bricks or other similar materials. Crushed brick is not a suitable alternative.

14. LOT DRAINAGE PLAN:

The Owner shall be responsible for providing, at his expense, a lot drainage grading plan for all the lands described in Schedule "A" attached hereto; said plan to meet with the approval of the Director. The said plan shall show, among other things, the intended description of flow of storm water to, within and from the lot on the plan. The said Lot Drainage Plan, dated October 4, 2000, as revised on October 12, 2000 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 the lands affected. Minor changes to the Lot Drainage Plan may be permitted subject to the approval of the Director.

15. 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 on each lot

(c) The tree as required under subsection (b) shall be 70 mm caliper (dbh - diameter at breast height) minimum wire basket and be of such varieties as follows: Norway Maple, Mountain Ash, Locust, Green Ash, Ornamental Pear or Little Leaf Linden or other such variety as approved by the Director and shall be, healthy, vigorous, balanced, with undamaged trunks and free from pests and diseases and have a healthy root system.

(d) Native species selection should be a priority and rare native species encouraged, however in all cases the choice of an appropriate tree for the planting site is imperative. Such species are as follows: Pawpaw, Cherry Birch, Sweet Pignut Hickory, Big Shellbark Hickory, American Chestnut, Honey Locust, Kentucky Coffee-Tree, Cucumber Magnolia, Red Mulberry, Black Gum, Hop Tree, Pin Oak and Shumard's Oak. Such species shall be approved by the Director and shall be, healthy, vigorous, balanced, with undamaged trunks and free from pests and diseases and have a healthy root system.

16. 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, and in an amount not less than Two Million Dollars (\$2,000,000.00) 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 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 until the development is completed to the satisfaction of the Director.

17. DEFAULT:

Upon breach by the Owner of any covenant, term, condition or requirement of this Agreement, or upon the Owner becoming insolvent or making any assignment for the benefit of creditors, the Town, at its option, may declare the Owner to be in default. Notice of such default shall be given by the Town, and if the Owner shall not remedy such default within such time as provided in the notice, the Town may declare the Owner to be in final default under this Agreement. Upon notice of default having been given, the Town may require all work by the Owner, its servants, agents, independent contractors and sub-contractors to cease (other than any work necessary to remedy such default) until such default shall have been remedied, and in the event of final default, may require all work as aforesaid, to cease. Upon final default of the Owner, the Town may, at its option, adopt or pursue any or all of the following remedies, but shall not be bound to do so:

- (a) enter upon the subject lands by its servants, agents and contractors and complete any work, service, repair or maintenance wholly or in part required herein to be done by the Owner, and collect the cost thereof from the Owner and/or enforce any security available to it; and/or collect such costs in like manner as taxes.
- (b) make any payment which ought to have been made by the Owner to the Town, for any purpose, and apply the same in payment or part payment for any work which the Town may undertake;
- (c) retain any sum of money heretofore paid by the Owner to the Town, for any purpose, and apply the same in payment or part payment for any work which the Town may undertake;
- (d) assume any work or services whether the same have been completed or not, and thereafter the Owner shall have no claim or title thereto or remuneration therefore;
- (e) bring action to compel specific performance of all or any part of this Agreement for damages;
- (f) exercise any other remedy granted to the Town under the terms of this Agreement or available to the Town in law.

18. This agreement and the provisions hereof do not give to the Owner or any person acquiring any interest in the said lands (each hereinafter in this paragraph called "such person") or any other person any rights against the Town with respect to the failure of any such person to perform or fully perform any obligation under this agreement, or the failure of the Town to force any such person to perform or fully perform any obligation under this agreement or any negligence of any such person in the performance of the said obligation.

19. Any notice, demand, acceptance or request (the "notice") 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:

1088 Deborah St.
Fonthill ON L0S 1E4

or as such other address as the party to whom such notice is to be given shall have last notified the party giving the notice in the manner provided in this paragraph 19. Any notice delivered to the party to whom it is addressed in this paragraph 19 shall be deemed to have been given and received on the day it is so delivered at such address. Any notice mailed as aforesaid shall be deemed to have been given and received on the fifth day next following the date of its mailing.

20. This Agreement shall enure to and be binding upon the parties hereto and their heirs, executors, trustees, successors, permitted assigns and anyone acquiring any interest in the lands described in Schedule "A".

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: Ralph Beamer
Mayor Ralph Beamer

PER: Cheryl Miclette
Clerk Cheryl Miclette

937776 ONTARIO INC.

PER: M. Hasani
Mike Hasani, President