

THE CORPORATION OF THE
TOWN OF PELHAM

BY-LAW NO. 2313 (2001)

Being a by-law to authorize the Mayor and Clerk to enter into a Site
Plan Agreement with Willowbrook Nurseries Inc.

WHEREAS the Council of the Corporation of the Town of Pelham deems it desirable to enter into a Site Plan Agreement with Willowbrook Nurseries Inc. with regard to the construction of a nursery and greenhouse.

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

- (1) THAT the Site Plan Agreement attached hereto and made part of this by-law between the Corporation of the Town of Pelham and Willowbrook Nurseries Inc. be and the same is hereby approved.
- (2) THAT the Mayor & 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 Site Plan 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
4TH DAY OF SEPTEMBER, 2001 A.D.


MAYOR RALPH BEAMER


CLERK CHERYL MICLETTE

FOR OFFICE USE ONLY

774061

CERTIFICATE OF REGISTRATION
CERTIFICAT D'ENREGISTREMENT
NIAGARA SOUTH/SUD(SO)WELLAND

'01 09 24 15 00

[Signature]

LAND REGISTRAR

New Property Identifiers

Additional:
See
Schedule ☐

Executions

Additional:
See
Schedule ☐

(1) Registry ☒

Land Titles ☐

(2) Page 1 of 11 pages

(3) Property Identifier(s)

Block

64029

-

Property

0335 (R)

64029

-

0021 (R)

Additional:
See
Schedule ☐

(4) Nature of Document
Site Plan Agreement

(5) Consideration

Dollars \$

(6) Description

FIRSTLY:

Part Lot 20, Concession 10, Town of Pelham, formerly Township of Pelham, designated as Part 1 on Plan 59R-11404 and being all of PIN 64029-0335 (R).

SECONDLY:

Part Lot 20, Concession 10, Town of Pelham, formerly Township of Pelham, being all of PIN 64029-0021 (R) and more particularly described in Schedule "A".

(7) This Document Contains:

(a) Redescription
New Easement
Plan/Sketch ☐

(b) Schedule for:

Description ☒ Additional Parties ☐ Other ☒

(8) This Document provides as follows:

See Site Plan Agreement attached.

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: *[Signature]*
R. Bruce Smith

2001 09 21

(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

WILLOWBROOK NURSERIES INC.
Owner

(13) Address for Service

1000 Balfour Street, Fenwick, Ontario, L0S 1C0

(14) Municipal Address of Property

Vineland Townline Road
Regional Road No. 24
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 19 day of September, 2001 A.D.

BETWEEN:

WILLOWBROOK NURSERIES 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" attached hereto;

AND WHEREAS the Owner is desirous of constructing a greenhouse with an accessory office for the purpose of a nursery and greenhouse operation in accordance with Schedule "B" attached hereto, being the Site Plan, dated revised September 7, 2001, and numbered 90339-4 and Schedule "C" attached hereto, being the Landscape Design, dated July 4, 2001, and filed in the Town's offices;

AND WHEREAS the Town has agreed to permit the said construction subject to certain terms and conditions;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One Dollar (\$1.00) now paid by the Owner to the Town (the receipt whereof is hereby acknowledged), the Parties hereto mutually covenant and agree as follows: -

1. 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) "DIRECTOR OF PLANNING SERVICES" shall mean the Director of Planning Services of the Corporation of the Town of Pelham.

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

(h) "PROFESSIONAL ARCHITECT" shall mean a Professional Architect registered with the Ontario Association of Architects.

(i) "FACILITIES AND WORKS" means and includes those facilities and works which are shown on or referred to in any one or more of the plans, drawings and schedules to this Agreement.

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

3. (a) The Owner agrees to perform any and all construction and installation on the lands in accordance with the terms and conditions contained herein and as shown on Schedules "B" and "C" attached hereto and forming part of this Agreement to the reasonable satisfaction of the Town.

(b) And further, the Owner agrees not to perform any construction or installation on the lands except in accordance with the terms and conditions contained herein and shown on said Schedules "B" and "C" attached hereto and forming part of this Agreement and to the reasonable satisfaction of the Town.

4. PRIVATE SEWAGE SYSTEM:

The Owner shall obtain approval from the Niagara Regional Health Services Department or the Ministry of the Environment, whichever is applicable, for the construction of sub-surface disposal systems.

5. PRIVATE WATER SUPPLY:

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 Health Services Department for potable water supply must be obtained before any building permit will be issued by the Town.

6. GRADING:

(a) The Owner agrees to have prepared by an Ontario Land Surveyor, Professional Engineer or Professional Architect, a detailed grading plan, being the Site Plan, for the site, said plan to clearly indicate the existing drainage pattern on the said lands originally flowing through, into or over the area of the site, to the street storm sewer system or other outlet approved by the Director. This said Site Plan shall be approved by the Director prior to the execution of this agreement. Minor changes to the said Site Plan may be permitted subject to the approval of the Director.

(b) The Owner shall not change or do any work that will prejudicially affect any natural watercourse or drainage ditch without making full provisions for the continuance of such drainage facilities. The proposed proper provision to be made by the Owner shall be subject to the 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.

(c) Unless otherwise approved or required by the Town, the Owner agrees not to alter the grades of the said lands until such time as a building permit is issued for the construction of the building contemplated herein on the said lands.

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

7. Landscaping:

(a) The Owner shall, at its own expense, adequately landscape, plant and maintain all of the lands not required for buildings, parking or roads so as at all times to provide effective green areas enhancing the general appearance of the development contemplated herein, said planting and landscaping shall be in accordance with the approved Landscape Design attached hereto as Schedule "C". Minor changes to the landscaping may be permitted subject to the approval of the Director of Planning Services.

(b) Unless otherwise approved or required by the Town, the Owner agrees not to remove trees or other vegetation from the said lands until such time as a building permit is issued for the construction of the buildings contemplated herein on the said lands.

(c) Notwithstanding paragraph (a) above the Owner shall also, at its own expense, maintain all of the remaining lands beyond the main building and fenced areas in accordance with the applicable municipal by-laws and provincial regulations.

8. HYDRO:

The Owner shall cause to be installed, at its own expense, a hydro system to serve the development, in accordance with the plans and specifications approved by Hydro 1. The Owner further agrees to be responsible for the cost of maintaining and repairing the hydro system located on said lands in perpetuity.

9. GARBAGE DISPOSAL:

(a) The Owner shall at all times provide adequate collection and disposal of garbage and sanitary refuse. The garbage and sanitary refuse shall be located outside the building in accordance with the approved Site Plan attached hereto as Schedule "B".

(b) If it is the intention of the Owner to provide for Regional solid waste collection services within the proposed development, the Owner shall follow the Regional Policy entitled Waste Collection By Way Of Entry On Private Property and attachments thereto.

10. FLOODLIGHTING:

The Owner shall ensure that any lighting facility used to illuminate any building or parking area shall be designed and installed as to deflect from adjacent buildings and streets.

11. PARKING AND DRIVEWAYS:

The Owner shall, at its own expense, provide and at all times maintain on the said lands dust free granular parking areas and driveways and a paved driveway apron abutting Townline Road (Regional Road No. 24) in accordance with the approved Site Plan attached hereto as Schedule "B".

12. BUILDING AND SERVICES:

The Owner shall construct and the Town shall permit the construction of the building on the lands described in Schedule "A" in accordance with Schedules "B" and "C" attached hereto to permit the development provided that all such uses shall comply with all building and zoning requirements of the Town.

13. ADMINISTRATIVE AND CONSULTING COSTS:

The Owner shall pay the Town's processing and administrative expenses associated with the registration of this agreement on title.

14. DEPOSIT FOR FACILITIES AND WORKS:

(a) At the time of execution of this Agreement the Owner shall pay to the Town a deposit to guarantee its compliance with this Agreement in an amount equal to the lesser of:

- (i) the estimated cost of completing the facilities and works; or
- (ii) \$60,000.00

The parties have calculated that the estimated cost for completion is approximately Forty Two Thousand Five Hundred Dollars (\$42,500.00) as set out in Schedule "D" attached hereto and forming part of this Agreement.

(b) The deposit shall be paid to the Town in cash or in the form of an irrevocable letter of credit from a chartered bank or from a recognized lending institution, subject to the approval of the Treasurer and shall be held as security to ensure the completion of the facilities and works until such time as the Town permits its release as ordered herein. The deposit may be used to pay for the cost of any work performed by the Town in accordance with the following clause in the event of the failure of the Owners to comply with the terms of this Agreement..

(c) Upon completion of the facilities and works, the Owner shall provide to the Town at the Owner's expense confirmation in writing by the Owner's Professional Architect or Professional Engineer or both, that the approved plans appended hereto have been complied with. When such confirmation has been received, the Chief Building Official shall confirm such compliance and the deposit, less any amounts expended to enforce compliance with the agreements and any amounts refunded or reduced as the work required by this agreement progresses, shall be returned to the Owner, without interest.

(d) 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 and the Owner covenants and agrees to make such increase. At the sole discretion of the Chief Building Official the amount of the deposit may be reduced at any time after the Owner has reached the stage where the costs to complete the facilities and works is less than the amount of the deposit.

(e) The release of the deposit by the Town does not release the Owners from their obligation to maintain all of the facilities and works pursuant to this Agreement.

(f) The Owner agrees that all of the facilities and works required to be provided by the Owner shall be provided, installed or constructed by the Owner within one hundred and eighty (180) days after the date of substantial completion of the proposed development as determined by the Chief Building Official and shall be maintained at all times in good condition.

15. GENERAL:

(a) The Owner shall maintain and keep in repair, driveways and access servicing the buildings located in the development.

(b) The Owner grants to the Town, its servants, agents and assigns permission to enter upon the lands for the purpose of inspection of any facilities and works referred to in this Agreement and for the purpose of the completion of any facilities and works in accordance with this clause and this Agreement.

(c) The Owner will, at all times, indemnify and save harmless the Town from all loss, costs, damages and injuries which the Town may suffer or be put to for or by reason of the construction, maintenance or existence of any facilities and works done by the Owner, its

contractors, servants or agents on the lands or which the Town may suffer or be put to for or by reason of the completion by the Town of any of the required facilities and works in accordance with this clause and this Agreement.

16. The Owner shall not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any administrative tribunal the right of the Town to enter into this Agreement and to enforce each and every term, covenant and condition herein contained and this Agreement may be pleaded as an estoppel against the Owner in any such proceeding.

17. 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.

18. 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;
- (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) bring action to compel specific performance of all or any part of this Agreement for damages;
- (e) exercise any other remedy granted to the Town under the terms of this Agreement or available to the Town in law.

19. The Owner agrees and consents to the registration of notice of this Agreement against the said lands described in said Schedules "A" attached hereto.

20. 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.

21. Notwithstanding any of the provisions of this agreement, the Owner, its successors and assigns, shall be subject to all of the by-laws, as amended, of the Town at the time of the issuance of a building permit required pursuant to the terms of the agreement or at the time of the execution of this agreement, whichever is applicable.

22. The Owner agrees that all plans shall be drawn by a Professional Architect or by a Professional Engineer and all surveys by an Ontario Land Surveyor, subject to the reasonable satisfaction of the Town.

23. 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: John and Jocelyn Langendoen
 1000 Balfour Street
 Fenwick, Ontario
 L0S 1C0

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 23. Any notice delivered to the party to whom it is addressed in this paragraph 23 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.

24. The originals of the plans set out in Schedules "B" attached are available at the offices of the Town at the address set out in paragraph 23.


25. 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

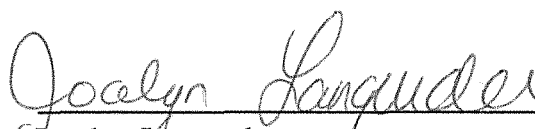


Mayor Ralph Beamer



Clerk Cheryl Miclette

WILLOWBROOK NURSERIES INC.



Jocelyn Langendoen