

THE CORPORATION OF THE
TOWN OF PELHAM

BY-LAW NO. 2447 (2003)

Being a by-law to authorize the Mayor and Clerk to enter into a Site
Plan Agreement with 1527116 Ontario Inc.

WHEREAS the Council of the Corporation of the Town of Pelham deems it desirable to
enter into a Site Plan Agreement with 1527116 Ontario Inc. with regard to the construction of a
restaurant;

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 1527116 Ontario 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
20TH DAY OF JANUARY, 2003 A.D.


MAYOR RALPH BEAMER


CLERK CHERYL MICLETTE

FOR OFFICE USE ONLY

LT 241649

CERTIFICATE OF RECEIPT
RECEPISSE

NIAGARA SOUTH/SUD (59) WELLAND

'03 APR 17 PM 3 53

R. Goodwin

New Property Identifiers

Additional:
See
Schedule ☐

Executions

Additional:
See
Schedule ☐

(1) Registry ☐

Land Titles ☒

(2) Page 1 of 1 pages

(3) Property
Identifier(s)

Block

Property

64061-0260 (LT)

Additional:
See
Schedule ☐

(4) Nature of Document

POSTPONEMENT OF CHARGE

(5) Consideration

Dollars \$

(6) Description

Part of Township Lot 160, Thorold, being Part 1 on Plan 59R-6097,
Town of Pelham, Regional Municipality of Niagara and being all of the
PIN.

(7) This
Document
Contains:

(a) Redescription
New Easement
Plan/Sketch ☐

(b) Schedule for:

Description ☐

Additional
Parties ☐

Other ☐

(8) This Document provides as follows:

BUSINESS DEVELOPMENT BANK OF CANADA, the registered owner of Charge No. LT-227068, registered on October 31, 2002, charging the above-described lands, hereby postpones the said Charge to the site plan agreement registered as instrument No. LT-241648 on April 17, 2003 in favour of The Corporation of the Town of Pelham.

Continued on Schedule ☐

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

LT-227068 and LT-241648

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

Name(s)

BUSINESS DEVELOPMENT BANK OF CANADA

(Postponer)

Signature(s)

PER:

Date of Signature

Y M D
2003 04 15

Branch Manager St. Cath BDC

Paul Goodwin

I have authority to bind the
corporation.

(11) Address
for Service

39 Queen Street, Suite 100, P. O. Box 1193, St. Catharines, Ontario, L2R 7A7

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

Name(s)

THE CORPORATION OF THE TOWN OF PELHAM

(Postponee)

Signature(s)

Date of Signature

Y M D
2003 04 16

MAYOR Ralph Beamer

CLERK Cheryl Miclette

(13) Address
for Service

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

(14) Municipal Address of Property

219 Highway 20 East
Fonthill, Ontario
L0S 1E0

(15) Document Prepared by:

R. Bruce Smith
LANCASTER BROOKS & WELCH
247 East Main Street
Welland, Ontario
L3B 3X1

FOR OFFICE USE ONLY

Fees and Tax

Registration Fee

Total



FOR OFFICE USE ONLY

LT 241648

CERTIFICATE OF RECEIPT
RECEPISSE

NIAGARA SOUTH/SUD (59) WELLAND

03 APR 17 PM 3 53

R. Bruce Smith

New Property Identifiers

Additional:
See
Schedule

☐

Executions

Additional:
See
Schedule

☐

(1) Registry ☐

Land Titles ☒

(2) Page 1 of 12 pages

(3) Property Identifier(s)

Block

Property

64061-0260 (LT)

Additional:
See
Schedule

☐

(4) Nature of Document

NOTICE OF SITE PLAN AGREEMENT

(5) Consideration

Dollars \$

(6) Description

Part of Township Lot 160, Thorold, being Part 1 on Plan 59R-6097,
Town of Pelham, Regional Municipality of Niagara and being all of the
PIN.

(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 1527116 Ontario Inc., and hereby applies under Section 71 of the Land Titles Act for the entry of a Site Plan Agreement in the register for the said parcel.

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

1527116 ONTARIO INC.

(Owner)

(11) Address for Service

51049 Lambert Road, Wainfleet, R. R. #3, Welland, Onario, L3B 5N6

(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

LANCASTER BROOKS & WELCH

(Town/Applicant)
by its solicitors

PER:

2003 04 10

Lancaster Brooks & Welch

(R. Bruce Smith)

(13) Address for Service

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

(14) Municipal Address of Property

219 Highway 20 East
Fonthill, Ontario
L0S 1E0

(15) Document Prepared by:

R. Bruce Smith
LANCASTER BROOKS & WELCH
247 East Main Street
Welland, Ontario
L3B 3X1

FOR OFFICE USE ONLY

Fees and Tax

Registration Fee

Total

THIS AGREEMENT made in triplicate this *27th* day of March, 2003 A.D.

BETWEEN:

1527116 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" (the "Lands") attached hereto;

AND WHEREAS the Owner is desirous of constructing a one storey building for the purpose of a restaurant in accordance with Schedule "B" and Schedule "C" attached hereto, being the Site Plan, dated August 11, 2002, dated revised March 19, 2003, and numbered A-1, and the Grading Plan, dated September 2002, dated revised February 2003, 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.

(j) "LANDS" shall mean the lands described in Schedule "A" attached hereto.

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 Schedule "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 Schedule "B" and "C" attached hereto and forming part of this Agreement and to the reasonable satisfaction of the Town.

4. STORM DRAINAGE FACILITY

(a) The Owner shall, at its own expense, construct a storm drainage facility and outlet on the site to adequately serve the development proposed on the lands, such construction to be in accordance with the approved Grading Plan attached hereto as Schedule "C" and filed in the Town of Pelham offices. The Owner further undertakes, at its own expense, to repair and forever maintain the storm drainage facility located on the said lands. Minor changes to the Grading Plan may be permitted subject to the approval of the Director.

(b) The Owner shall implement the Stormwater Management Report dated October 2002, dated received by the Town of Pelham on December 19, 2002, and prepared by Mark Shoalts.

(c) The Owner shall provide siltation control fencing and maintenance during the site servicing and building construction stages.

(d) The Owner shall require the design engineer to certify that all stormwater conveyances, controls, and treatment facilities have been constructed in general conformance to the approved design drawings and the said Stormwater Management Report and that such certification be circulated to the Town of Pelham and the Niagara Peninsula Conservation Authority.

(e) The above noted stormwater drainage facility on the site shall be maintained in proper operating condition at all times and in particular during the site servicing and building construction stages.

5. GRADING:

(a) The Owner agrees to have prepared by an Ontario Land Surveyor, Professional Engineer or Professional Architect, a detailed grading plan, being the Grading Plan, attached hereto as Schedule "C", 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 "C" to this agreement have been complied with.

6. SANITARY SYSTEM:

The Owner shall, at its own expense, construct a sanitary sewer lateral on the said Lands to adequately serve the building to be erected thereon, such construction to be in accordance with specifications and a design approved by the Director and filed in the Town's offices prior to the issuance of a building permit. The Owner undertakes to repair and forever maintain the sanitary sewer system located on the said lands and, without limiting the generality of the foregoing, no storm, surface or roof water or weeping tiles shall be discharged into the sanitary sewer system.

7. WATER SUPPLY:

(a) The Owner shall, at its own expense, construct, install and forever maintain all necessary connections and all internal water supply services necessary to serve the development, such construction to be in accordance with the requirements of and with specifications and a design approved by the Director and filed in the Town's offices prior to the issuance of a building permit.

(b) The Owner shall comply with the provisions of the Ontario Water Resources Act and amendments thereto and all regulations thereunder, on all internal water supply services, which said act and regulations shall be enforced by the Town.

8. 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 Site Plan attached hereto as Schedule "B". 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 in accordance with the applicable municipal by-laws and provincial regulations.

9. 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 Peninsula West Utilities Ltd. The Owner further agrees to be responsible for the cost of maintaining and repairing the hydro system located on the said Lands in perpetuity.

10. 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.

11. 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.

12. PARKING, CURBING AND DRIVEWAYS:

The Owner shall, at its own expense, provide and at all times maintain on the said Lands asphalt parking areas and driveways and paved driveway aprons abutting Regional Road 20 in accordance with the approved Site Plan attached hereto as Schedule "B".

13. BUILDING AND SERVICES:

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

14. ADMINISTRATIVE AND CONSULTING COSTS:

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

15. 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 Thirty-five Thousand Dollars (\$35,000.00) 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.

16. 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.

17. 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.

18. 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 to and for the Town, its successors and assigns.

19. 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.

20. The Owner agrees and consents to the registration of notice of this Agreement against the said Lands.

21. 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.

22. 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.

23. 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.

24. 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
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To the Owner at:	Wolfgang Sterr 51049 Lambert Road, Wainfleet R. R. #3 Welland ON L3B 5N6
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or at 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 24. Any notice delivered to the party to whom it is addressed in this paragraph 24 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.

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

26. 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.

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

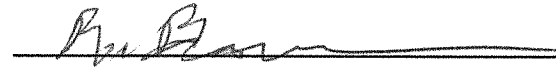
1527116 ONTARIO INC.



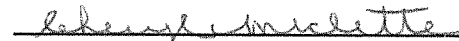
Wolfgang Sterr, President

I have authority to bind the Corporation

THE CORPORATION OF THE TOWN OF PELHAM



Mayor Ralph Beamer



Clerk Cheryl Miclette