

THE CORPORATION OF THE
TOWN OF PELHAM
BY-LAW #2476 (2003)

Being a by-law to authorize the Mayor & Clerk to enter into an Agreement with John & Zoriana Kit for the purposes of permitting driveway access over an unopened road allowance.

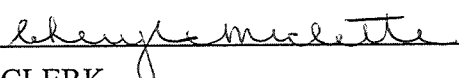
WHEREAS the Council of the Corporation of the Town of Pelham deems it desirable to enter into an Agreement with John & Zoriana Kit for the purposes of permitting driveway access over an unopened road allowance;

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

- (1) THAT the Agreement attached hereto and made part of this by-law between the Corporation of the Town of Pelham and John & Zoriana Kit 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 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 MAY, 2003 A.D.


MAYOR


CLERK

FOR OFFICE USE ONLY

778003

CERTIFICATE OF REGISTRATION
CERTIFICAT D'ENREGISTREMENT
NIAGARA SOUTH/SUD (59)WELLAND

03 10 3 11 03

[Signature]

LAND REGISTRAR

(1) Registry ☒ Land Titles ☐

(2) Page 1 of 7 pages

(3) Property Identifier(s) 64035-0174 (R) Block Property Additional: See Schedule ☐

(4) Nature of Document
ROAD ALLOWANCE ACCESS AGREEMENT

(5) Consideration
Dollars \$

(6) Description
Part Lot 6, Concession 5, Town of Pelham, formerly Township of Pelham, Regional Municipality of Niagara, being Part 1 on Plan 59R-7102, S/T BB48129 and being all of the PIN.

(7) This Document Contains: (a) Redescription New Easement Plan/Sketch ☐ (b) Schedule for: Description ☐ Parties ☐ Other ☒

New Property Identifiers

Additional: See Schedule ☐

Executions

Additional: See Schedule ☐

(8) This Document provides as follows:
SEE ROAD ALLOWANCE ACCESS AGREEMENT ATTACHED.

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
KIT, John Michael		
KIT, Zoriana Ola		
(Owners)		

(11) Address for Service 3 Circle Heights, St. Catharines, Ontario, L2T 3Y8

(12) Party(ies) (Set out Status or Interest)	Signature(s)	Date of Signature
Name(s)		Y M D
THE CORPORATION OF THE TOWN OF PELHAM	LANCASTER BROOKS & WELCH	
(Town/Applicant)	PER: <i>[Signature]</i>	2003 10 02
by its solicitors	(R. Bruce Smith)	
Lancaster Brooks & Welch		

(13) Address for Service P. O. Box 400, Fonthill, Ontario, L0S 1E0

(14) Municipal Address of Property	(15) Document Prepared by:	Fees and Tax	
Kilman Road Fonthill, Ontario L0S 1E0	R. Bruce Smith LANCASTER BROOKS & WELCH 247 East Main Street Welland, Ontario L3B 3X1	Registration Fee	
		Total	

FOR OFFICE USE ONLY

THIS AGREEMENT made in triplicate this *26th* day of *September*, 2003 A.D.
BETWEEN:

THE CORPORATION OF THE TOWN OF PELHAM
Hereinafter referred to as the "Town"

- and -

JOHN MICHAEL KIT and ZORIANA OLA KIT of the
City of St. Catharines, The Regional Municipality of Niagara
Hereinafter referred to as the "Owner"

WHEREAS the Owner warrants and covenants that they are the owners of the lands described in Schedule "A" attached hereto (the "Lands");

AND WHEREAS the Owner wishes to construct a driveway access to the Lands over a portion of the road allowance between Lots 6 and 7, Concession 5, Town of Pelham, which said portion is more particularly described in Schedule "B" (the "Road Allowance Portion");

AND WHEREAS the Town has agreed to permit the Owner to have access over the Road Allowance Portion for their driveway upon certain terms and conditions as contained herein;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. The Town hereby gives permission to the Owner to construct a driveway across the Road Allowance Portion for the purposes of access for ingress and egress to the Lands. This permission granted by the Town shall be non-exclusive and shall only be for the use of a driveway to be constructed on the Road Allowance portion.
2. The Owner covenants and agrees that they will construct the driveway and maintain the Road Allowance Portion in such manner that will permit emergency vehicles to access the Lands and will be constructed in compliance with all regulations and requirements of the Town as to grade, material and quality.
3. In consideration of the Town giving permission to the Owner as aforesaid, the Owner covenants and agrees to indemnify and save harmless the Town and its respective officers, employees, servants and agents, from and against all actions, claims, suits and demands of any kind whatsoever resulting from or in any way arising out of or connected with the construction of the aforementioned driveway and the use of the Road Allowance Portion by the Owner, their guests, invitees, family members and any other person using the driveway.
4. Without limiting the generality of paragraph 3 above, the Owner shall be fully responsible for:
 - (i) any personal injury or property damage resulting from flooding of the Lands, Road Allowance Portion or any other surrounding lands;
 - (ii) damage to utilities; and

- (iii) any other damage or injury,
attributable to the construction of the aforementioned driveway and the use of the Road Allowance Portion by the Owner.
5. The Owner further covenants and agrees to take out and keep in force throughout the term of this agreement comprehensive liability insurance with a limit of not less than \$2,000,000.00 per occurrence against claims for personal injury, death or property damage arising out of any acts or occurrence upon, in, or about the Lands and the Road Allowance Portion provided that the insurance policy shall contain a cross-liability clause protecting the Town against claims by the Owner as if the Town was separately insured and protecting the Town against claims by the Owner or any other party. The insurance policy shall further contain a clause that the insurers will not cancel or change or refuse to renew the insurance without first giving the Town thirty days prior written notice. The Owner further covenants and agrees to submit to the Town satisfactory evidence of having obtained the insurance required herein and to submit copies of such policies forthwith for approval thereof by the Town.
 6. The Owner shall at his own cost, charge and expense and to the satisfaction of the Town, keep and maintain the driveway and the Road Allowance Portion in good and proper state of repair and safety.
 7. The Owner acknowledges and agrees that the permission granted herein does not in any way whatsoever diminish the rights of the Town, or any gas, telephone, telegraph, electric light or other public utility company and their respective officers, servants, workers, employees, agents and contractors, to enter at all times upon the driveway or the Road Allowance Portion for the purpose of constructing, repairing, maintaining, replacing or removing any sewers, mains, culverts, drains, water pipes, gas pipes, poles, wires or other underground services and installations and appurtenances thereto. The Owner shall not be entitled to any damages or compensation by reason of the exercise of the Town's or any utility company's rights contained in this paragraph and the Owner at his expense shall carry out such work as the Town may direct pursuant to the exercise of the Town's or any utility company's rights. The Owner covenants and agrees at all times to observe and comply with, and endeavour to ensure strict observance and compliance with, all statutory requirements, rules, regulations and any by-laws of the Town or other authority which in any manner may affect or relate to the use of the untravelled portions of roads or road allowances under the jurisdiction of the Town.
 8. The Owner agrees to pay the sum of \$200.00 upon signing of this agreement to cover the costs incurred by the Town to erect any "HIDDEN DRIVEWAY AHEAD" signage on Kilman Road to the east or any other location near to the proposed driveway location. In addition, the Owner agrees to pay all of the Town's costs related to the preparation and registration of this agreement and any other administration costs related thereto.
 9. The Owner further covenants and agrees that he may not assign or transfer the permission for the use of the Road Allowance Portion without the prior written consent of the Town.

10. In the event that the Owner wishes to sell, transfer or assign all or any part of his interest in the Lands, the Owner agrees that he will require any purchaser, transferee or assignee to enter into an agreement with the Town on the same terms and conditions as set out herein. It is understood and agreed that the Owner shall not be released from his obligations hereunder, unless and until the purchaser, transferee or assignee enter into the agreement, which agreement shall be prepared and registered on title by the Town at the expense of the Owner.
11. The Owner hereby agrees that this agreement may be registered against the title to the Lands.
12. The invalidity of any particular provision in this agreement shall not affect any other provision of this agreement and the agreement shall be construed as if the invalid provision had been omitted.
13. This agreement and the Owner's use of the Road Allowance Portion shall continue only for so long as the Owner shall use the driveway as access for ingress and egress to the Lands and upon any abandonment of such use then this agreement shall terminate. In the event that the Owner is in default pursuant to any term, covenant or condition of this agreement and shall fail to rectify such default within fifteen days of written notice by the Town, then the Town shall be permitted to immediately terminate this agreement and the Owner shall have no further use of the driveway or the Road Allowance Portion.
14. Any notice or other writing required or permitted to be given under this agreement or for the purposes hereof (referred to in this paragraph as a "notice") to any party shall be sufficient given if delivered personally, or if sent by prepaid registered mail or if transmitted by fax or other form of recorded communication tested prior to transmission to such party:

(a) in the case of notice to the Town at:
P. O. Box 400
Fonthill ON L0S 1E0
Attn: L. J. Hodge, P. Eng.
Fax: (905) 892-5055

(b) in the case of John Kit and Zoriana Kit at:
3 Circle Heights
St. Catharines ON L2T 3Y8

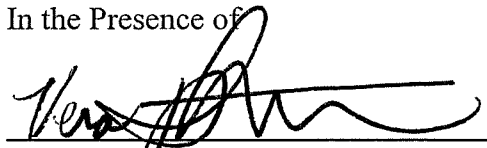
or at such other address as the party to whom such writing is to be given shall have last notified the party giving the same in the manner provided in this paragraph. Any notice delivered to the party to whom it is addressed as provided in this paragraph shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a business day then the notice shall be deemed to have been given and received on the business day next following such day. Any notice mailed as aforesaid shall be deemed to have been given and received on the third business day next following the date of its mailing. Any notice transmitted by fax or other form of recorded communication shall be deemed given and received on the first business day after its transmission. For the purpose of this agreement "business day" shall mean a day other than Saturday or Sunday on which the commercial banks are open for business during normal banking hours.

15. This agreement shall be construed pursuant to the laws of the Province of Ontario.
16. John Michael Kit and Zoriana Ola Kit are jointly and severally liable pursuant to the terms of this agreement.
17. This agreement and everything herein contained shall enure to the benefit of and be binding upon the parties, their heirs, executors, administrators, successors and assigns as the case may be and upon anyone acquiring an interest in the Lands.

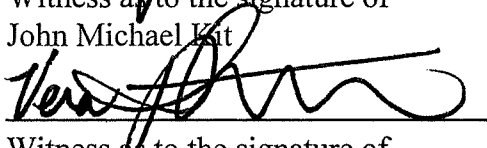
IN WITNESS WHEREOF the parties have executed and delivered this agreement as of the date first written above.

**SIGNED, SEALED AND
DELIVERED**

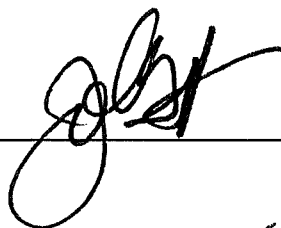
In the Presence of



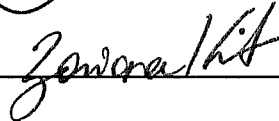
Witness as to the signature of
John Michael Kit



Witness as to the signature of
Zoriana Ola Kit



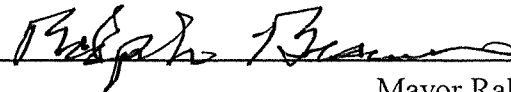
JOHN MICHAEL KIT



ZORIANA OLA KIT

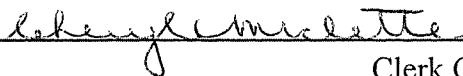
)THE CORPORATION OF THE TOWN OF PELHAM

)PER:



Mayor Ralph Beamer

)PER:



Clerk Cheryl Miclette

SCHEDULE "A"

LEGAL DESCRIPTION

Part Lot 6, Concession 5, Town of Pelham, formerly Township of Pelham, Regional Municipality of Niagara, being Part 1 on Plan 59R-7102, S/T BB48129 and being all of PIN 64035-0174 (R).

SCHEDULE "B"

BEING the twenty (20) metres of the road allowance, south of the given road known as Kilman Road, across the unopened road allowance located within Part of Lot 6, between Concessions 4 and 5, Town of Pelham, Regional Municipality of Niagara