

THE CORPORATION OF THE  
TOWN OF PELHAM

BY-LAW NO. 2491 (2003)

Being a by-law to authorize the Mayor and Clerk to enter into  
an Agreement with John Rodriguez and Encarnacion  
Rodriguez

WHEREAS the Council of the Corporation of the Town of Pelham deems it desirable  
to enter into a Development Agreement with John Rodriguez and Encarnacion Rodriguez with  
regard to the development of seven (7) residential lots on Bacon Lane.

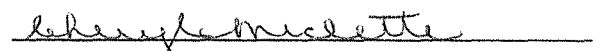
NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN  
OF PELHAM ENACTS AS FOLLOWS:

- (1) THAT the Development Agreement attached hereto and made part of this by-law  
between the Corporation of the Town of Pelham and John Rodriguez and Encarnacion Rodriguez  
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  
21ST DAY OF JULY, 2003 A.D.



ACTING MAYOR W. B. WALKER



CLERK CHERYL MICLETTE

FOR OFFICE USE ONLY

7680  
SN.....  
CERTIFICATE OF RECEIPT  
CERTIFICAT DE RÉCÉPISSE

2003 AUG 01 13:00

NIAGARA  
SOUTH/SUD  
(69) WELLAND Land Registrar / Régistrateur

(1) Registry ☐

Land Titles ☒

(2) Page 1 of 35 pages

(3) Property Identifier(s) PART OF 64072-0078 (LT)

Block

Property

Additional:  
See  
Schedule ☐

(4) Nature of Document

NOTICE OF DEVELOPMENT AGREEMENT

BL 2491

(5) Consideration

ONE----- Dollars \$ 1.00

(6) Description

Part of Township Lot 177, Town of Pelham, formerly Township of Thorold, Regional Municipality of Niagara, designated as Parts 4 - 10, inclusive, on Plan 59R-12120, being Part of PIN 64072-0078 (LT).

New Property Identifiers

Additional:  
See  
Schedule ☐

Executions

Additional:  
See  
Schedule ☐

(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 John Rodriguez and Encarnacion Rodriguez, and hereby applies under Section 71 of the Land Titles Act for the entry of a Development Agreement.

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

LANCASTER BROOKS & WELCH

(Town/Applicant)  
by its Solicitors

PER:

2003 07 24

LANCASTER BROOKS & WELCH

(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

RODRIGUEZ, John

RODRIGUEZ, Encarnacion

(Owners)

(13) Address  
for Service

1189 Pelham Road, Fonthill, Ontario, L0S 1E0

(14) Municipal Address of Property

NOT ASSIGNED

(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

**JOHN RODRIGUEZ and ENCARNACION RODRIGUEZ**  
**DEVELOPMENT AGREEMENT**  
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THIS AGREEMENT made this 29<sup>th</sup> day of July, 2003

BETWEEN:

**JOHN RODRIGUEZ and ENCARNACION RODRIGUEZ**

Hereinafter called the "Developer"

OF THE FIRST PART

- and -

**THE CORPORATION OF THE TOWN OF PELHAM**

Hereinafter called the "Town"

OF THE SECOND PART

**WHEREAS** the Developer represents that it is the owner in fee simple in possession of the Lands which are described in Schedule "A" hereto annexed;

**AND WHEREAS** the Town has granted conditional approval of applications for consent subject to the Developer entering into a development agreement with the Town concerning, among other things, the provision and installation of all municipal services;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the approval of the Development Plan by the Town of Pelham and the covenants herein contained, the parties agree as follows;

**1. DEFINITIONS**

In this Agreement:

- (a) ASSUMPTION BY-LAW means a by-law passed by the Town accepting all of the Works to be constructed hereunder.
- (b) BACON LANE ROAD WIDENING means Part of Lot 177, former Township of Thorold, more particularly shown as Parts 1 and 2 on Schedule "C-1".
- (c) BUILDER means the person engaged by the Developer or subsequent Owner to construct a Building or any other work on the Lot.
- (d) BUILDING BY-LAW means the Building By-law No. 2277 (2001) passed by the Town and amended from time to time.
- (e) BUILDING means any structure which is used or intended to be used for the shelter, accommodation or enclosure of persons, animals or chattels, and includes any structure as defined as a Building in the *Building Code Act* or in the Building By-law, but does not include any vehicles as defined herein.
- (f) BUILDING CODE ACT means the *Building Code Act*, R.S.O. 1990, c.B. 13, as amended, and all regulations thereto.
- (g) BUILDING PERMIT means a permit issued by the Chief Building Official of the Town and required pursuant to the provisions of the *Building Code Act*, as amended, or any successor thereto and the Building By-law of the Town and amendments thereto.
- (h) CERTIFICATE OF COMPLETION OF PRIMARY SERVICES means the Certificate issued by the Director upon satisfactory completion of the Primary Services for the Lands prior to commencement of the maintenance period.
- (i) CHIEF BUILDING OFFICIAL means the Chief Building Official of the Town as appointed by by-law of the Council.
- (j) CLERK means the Clerk of the Town.
- (k) COMMISSION means the applicable local governing hydro-electric commission located in the Town.

- (l) CONSTRUCTION LIEN ACT means the Construction Lien Act, R.S.O. 1990, c.C . 30, as amended, and all regulations thereto.
- (m) COST OF CONSTRUCTION means the cost of construction approved by the Director and may include engineering fees ancillary thereto.
- (n) COUNCIL means the Council of the Corporation of the Town of Pelham.
- (o) DEVELOPER means John Rodriguez and Encarnacion Rodriguez, its successors and assigns, and includes its successors in title to the Lands or a Lot shown on the Development Plan.
- (p) DEVELOPER'S CONSULTING ENGINEER means the person or persons registered with the Professional Engineers of Ontario who are employed by the Developer, at its expense, to provide engineering services.
- (q) DEVELOPMENT means the development of the Lands as shown on Schedule "B".
- (r) DIRECTOR means the Director of Operations for the Town.
- (s) FINAL CERTIFICATE OF COMPLETION OF SERVICES means the certificate issued by the Director after the end of the maintenance period certifying that all Works required by this Agreement are acceptable for assumption by the Town.
- (t) FRONT LOT LINE means the front lot line as defined in the Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (u) GRADE CONTROL PLAN shall mean a plan for the purpose of controlling the overall drainage pattern through the establishment of relative surface elevations in accordance with good engineering and drainage practices.
- (v) LOT GRADING PLAN means a drawing showing grades, swales and drainage patterns and may include catch basins and floor heights in relation to grades for each individual building Lot or Block in the Development Plan.
- (w) LANDS means the lands described in Schedule "A" hereto annexed.
- (x) LETTER OF CREDIT means a standby municipal, irrevocable Letter of Credit issued by a major chartered bank or credit union, posted with the Town pursuant to the terms of this Agreement. The Letter of Credit shall be in form satisfactory to the Town and shall contain a clause that automatically renews it from year to year, unless the Town gives written notice that it does not require the Letter of Credit to be renewed.
- (y) LOCAL IMPROVEMENT shall include utilities, fencing, sanitary sewers, storm sewers, sidewalks, curbs and gutters, pavements and such other local improvements as are defined by the *Municipal Act*, S.O. 2001, c.25, as amended, or any successor thereto.
- (z) LOT means a lot as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (aa) LOT FRONTAGE means lot frontage as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (ab) MAINTENANCE GUARANTEE means an undertaking by the Developer to the Town that all Works constructed under this Agreement will function as designed and will not fail in any manner whatsoever so as to cause a risk to public safety or private lands, building or structures within the Development Plan or immediately adjacent boundary lands, and that should the Works, or any of them, fail or not perform their intended function within the specified maintenance guarantee period, they will be replaced or repaired to the satisfaction of the Director by the Developer at its cost.
- (ac) MARYLEA STREET EXTENSION means Part of Lot 177, former Township of Thorold and more particularly described as Part 3 on Plan 59R-10358 as illustrated on Schedule "C-1".

- (ad) MUNICIPAL ACT means the *Municipal Act*, S.O. 2001, c.25, as amended, and all regulations thereto.
- (ae) ONTARIO LAND SURVEYOR shall mean a surveyor commissioned by the Province of Ontario and qualified to establish monuments that define the boundaries of a parcel or parcels of land and to prepare all necessary reference plans and surveys for the purpose of the Agreement.
- (af) OWNER means the applicant for a Building Permit for one of the Lots and includes the person on whose behalf an application for a Building Permit is made.
- (ag) PLANNING ACT means the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, and all regulations thereto.
- (ah) PLANS shall mean all drawings, plans, specifications, contracts and other documents providing for the installation, construction and erection of the Works approved by and filed in the office of the Director prior to execution of this Agreement by the Town.
- (ai) PRIMARY SERVICES means all private utilities and all municipal services including, without restricting the generality of the foregoing, storm sewers, sanitary sewers, sidewalks, fencing, watermain, roads (including base coarse asphalt and curbs and gutters), street lighting and drainage works and swales and/or such other works as detailed in Schedule "H" (Financial Obligations) attached to and forming part of this Agreement.
- (aj) PRIVATE UTILITIES means telephone, hydro electric systems and natural gas systems and cable television systems.
- (ak) REGION means the Regional Municipality of Niagara.
- (al) REGIONAL PUBLIC WORKS DEPARTMENT means the Region's Public Works Department.
- (am) SECONDARY SERVICES means all works to be installed, constructed, or erected which are not Primary Services or private utilities and/or such other works as detailed in Schedule "H" (Financial Obligations) attached to and forming part of this Agreement.
- (an) SECTION, when used in reference to a numbered part of the Agreement, means:
  - (i) a complete section including all its sections and subsections;
  - (ii) a particular subsection including its subsections; and
  - (iii) a particular subsection as the context may dictate or require.
- (ao) STORMWATER MANAGEMENT QUALITY CONTROL FACILITY means a stormwater receiving facility or structure or pond from a conveyance system, designed to treat stormwater and control pollution prior to discharge to receiving waters.
- (ap) STREET means street as defined in the Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (aq) STREET LINE means Street Line as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (ar) SUPERVISION means the full-time inspection and scrutiny of every phase of the Works for the express purpose of enforcing the provisions of this agreement and certifying that the Works have been performed and completed to Town standards in the form prescribed for this purpose and "SUPERVISE" means to carry out such Supervision.
- (as) TOWN means The Corporation of the Town of Pelham.

- (at) TREASURER means the Director of Financial Services of the Town.
- (au) UTILITY SERVICES means physical plant including but not limited to pipes, valves, conduits, cables, terminals, transformers, etc. owned and operated by communications, television, hydro, gas and oil companies or any other utility companies.
- (av) WORKS shall jointly and severally mean and include all Primary Services and Secondary Services and all other matters, both internal and external, required to be completed or performed by the Developer pursuant to this Agreement.

## **2. LAND AFFECTED**

The Lands to be subdivided are those Lands described in Schedule "A" attached hereto and the Development Agreement shall be registered against all of such Lands. The registered ownership of the Lands shall be confirmed by the Developer's solicitor by way of certificate in form satisfactory to the Town.

## **3. GENERAL PROVISIONS**

- (a) Unless the context otherwise requires, where the Developer is obligated by this Agreement or the approved Plans to make any payments or install or construct or carry out any services or action the provisions therefore contained herein shall be deemed to include the words "at the sole expense of the Developer".
- (b) The Developer hereby covenants, warrants and agrees to save harmless and keep the Town indemnified from and against all manner of actions, causes of actions, suits, claims and demands that may howsoever arise through or from the terms of this Agreement, other than claims arising from negligence by the Town of Pelham, its servants and agents.
- (c) The Developer and the Town acknowledge and agree that it is their intent that all terms, conditions and covenants contained herein:
  - (i) shall run with the Lands;
  - (ii) shall be binding upon the Developer, its heirs, executors, administrators, assigns and successors in title, from time to time; and
  - (iii) the benefits of the said covenants shall enure to the Town, its successors and assigns in title, of all roads, Streets and public Lands forming part of the Lands.
- (d) Any notices required or permitted to be given pursuant to the terms of this agreement shall be given in the manner set out in Section 28.
- (e) This Agreement and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto and upon those persons and/or corporations hereafter acquiring title to all or any part of the Lands.
- (f) The Developer shall impose restrictions as set forth in Schedule "G" annexed hereto on all the Lands so that subsequent Owners will be made aware of and shall strictly adhere to the requirements of this Agreement.
- (g) The Schedules attached hereto are deemed to be a part of this Agreement and are to be interpreted as if the contents thereof were included in this Agreement.
- (h) The Developer agrees to be bound by the penalty provisions of the *Planning Act* including, but not limited to, Section 67 of said *Act*.
- (i) Notwithstanding the provisions of this agreement, the Developer shall be subject to all the By-laws of the Town and all provincial and federal government statutes and/or regulations and amendments thereto affecting the development of land and installation of municipal services.

- (j) If any term of this agreement shall be found to be ultra vires of the Town, or otherwise unlawful, such term shall conclusively be deemed to be severable and the remainder of this agreement shall be and remain in full force and effect.
- (k) The Developer shall not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any administrative or other tribunal the right of the Town to enter into this agreement and to enforce each and every term, covenant and condition thereof and this provision may be pleaded by the Town in any such action or proceeding as a complete and conclusive estoppel of any denial of such right.
- (l) Time shall be of the essence of this agreement.
- (m) Prior to execution of this Agreement by the Town, the Developer shall deliver to the Town a Certificate of Status issued by the Ontario Ministry of Consumer and Commercial Relations verifying that the Developer is a company duly incorporated under the laws of the Province of Ontario and is in good standing.
- (n) In the event that a Mortgagee(s) exercises any rights as to sale, possession or foreclosure or takes any other steps to enforce its security against the Lands then such Mortgagee(s) agrees on behalf of itself, its heirs, executors, administrators, successors and assigns not to deal with the Lands as a development or part thereof unless and until a new agreement in the same form, mutatis mutandis, as this Agreement has been entered into with the Town.
- (o) The Developer shall notify or cause to be notified, each and every purchaser of a Lot or Lots within the Development Plan, of all Works contracted by the Developer, the Developer's obligations to maintain the Works and all other conditions covered by this Agreement and shall cause such information to be fully recorded in any offer to purchase or agreement for sale entered into by the Developer.
- (p) The Developer shall pay, before final approval of the Development Plan is requested, all arrears of taxes and all taxes for the current year owing in respect of the Lands and the Buildings situate thereon.
- (q) The Developer shall commute and pay to the Town before final approval of the Development Plan is requested any and all Local Improvement rates assessed against the Lands.
- (r) The Town shall cause this Agreement to be Registered against the title to the Lands and at its option against the title to every Lot shown on the Development Plan.
- (s) If, after this agreement is executed, the Town, the Ministry of the Environment, the Ministry of Natural Resources, the Minister of Housing or the Region shall impose any further condition or requirement which is not contained herein, then the Developer shall forthwith upon demand enter into such further Agreement or give such further assurances as the Town may require and the Developer shall not contravene any condition or requirement of the Minister of Housing or the Region notwithstanding that the same is not contained herein.
- (t) The Developer shall cause the final Development Plan, as approved by the Town of Pelham, to be registered within thirty (30) days after its approval.
- (u) The Developer shall reimburse the Town for all fees and disbursements incurred by it in connection with the preparation, approval, execution and registration of this Agreement and all related documentation in connection with the preparation and enactment of any by-law or registration of any subsequent Agreements which may be required to implement this Agreement.
- (v) All Streets and properties abutting on the Development Plan or used for access to the Lands during the installation or construction of the Works or during the construction of Buildings upon the Lots shall, at all times, be kept in a good, clean and useable condition and, if damaged or littered, shall be restored immediately to the Town's requirements.



- (w) All trucks making deliveries to or taking materials from the Lands included within the Development Agreement shall be adequately covered and not unreasonably loaded so as to scatter refuse, rubbish, dust or debris on abutting Streets or properties.
- (x) Any lands required to be conveyed by the Developer in accordance with the provisions hereof shall be in a neat and tidy condition, free of all debris and trash, and the Developer shall complete all services for the Lands in accordance with the terms of this Agreement.
- (y) The Developer shall ensure that adequate dust control and mud tracking control measures are carried out during the construction of all Works and Buildings upon the Lands.
- (z) In the event that the Developer wishes to register more than one Development Agreement over the Lands, the Developer shall first obtain the written consent of the Town to do so, which consent shall be conditional upon the Developer registering such Development Agreement in such order as determined by the Town and upon registering such Development Agreement concurrently. The Developer shall not register a Development Agreement over part of the Lands without prior written consent of the Town.

4. **LAND FOR MUNICIPAL PURPOSES**

- (a) Any dead ends and/or open sides of road allowances created by the Development Agreement may be terminated in 0.3 metre reserves as required by the Town and such reserves shall be conveyed by the Developer to the Town in fee simple, free of all encumbrances.
- (b) All of the road allowances shown on the Development Plan shall be dedicated by the Developer as public highways.
- (c) All road allowances shown on the Development Agreement shall be named to the satisfaction of the Town.
- (d) All lands required by the Town for public purposes as described in Schedule "C", hereto attached, shall be conveyed by the Developer to the Town in fee simple, free of all encumbrances.
- (e) The Developer shall convey to a private utility company or to the Commission, such easements as may be required for utility purposes in, over, across and under any part of the Lands.
- (f) The Developer shall, prior to the final approval of the Development Agreement, at their expense, obtain and convey to the Town such further easements that in the sole discretion of the Director are required for the construction of the public services to be constructed hereunder.

5. **DESIGN AND SUPERVISION OF CONSTRUCTION OF SERVICES**

- (a) The Developer shall employ, at its cost, a competent and qualified Developer's Consulting Engineer approved by the Director, to:
  - (i) carry out all soil investigations required by the Director;
  - (ii) design all of the Works required to be completed by this Agreement;
  - (iii) provide the Director with an estimate of the cost of design, construction and maintenance of all Works to be constructed under this Agreement to be used as the basis for determining the amount of security to be posted by the Developer prior to execution of this Agreement to guarantee the construction and maintenance of all Works required under this Agreement.

- (iv) prepare engineering drawings to include Plans and profiles and specifications for the Works and to submit detailed Plans, profiles and specifications to the Director for approval prior to the installation or construction of such Works;
  - (v) submit to the Director the detailed Plans in mylar matte surface for signing and provide the Director with two (2) sets of signed hard copies (24" x 36" format) and two (2) sets of signed, reduced hard copies (11" x 17" format);
  - (vi) obtain, in conjunction with the Town, all of the necessary approvals prior to installation or construction of the Works;
  - (vii) call tenders for the installation and construction of the Works;
  - (viii) obtain the approval from the Director of the contractor employed to install or construct the Works;
  - (ix) provide full-time resident Supervision, inspection and contract administration of all Works covered by this Agreement;
  - (x) maintain all of the records of the installation or construction of the Works and submit a copy of the same to the Director;
  - (xi) supply to the Director "As Constructed" drawings of all of the Works installed or constructed by the Contractor in both hard copy and DWG digitized format (AutoCad 2000 or equivalent), at the time of completion of Primary Services;
  - (xii) obtain from the Director the details regarding the form and scale of these drawings prior to their presentation;
  - (xiii) on the completion of the installation or construction of the Works, to supply the Town with a certificate, in form satisfactory to the Director, that the Works were installed or constructed in accordance with the approved Plans and specifications;
  - (xiv) provide the Director with individual record sheets for all sewer and water service locations and depths;
  - (xv) accompany the Director on the final inspection of the Works at the conclusion of the maintenance period herein specified and before the assumption of the Works by the Town;
  - (xvi) supervise the construction of any remedial work which the Director may direct;
  - (xvii) provide building levels for construction purposes as hereinafter provided;
  - (xviii) furnish the Director with the preliminary lot grading certificate for each Lot for which an application for a Building Permit is made; and
  - (xix) provide the Town with the final lot grading certificate for each Lot.
- (b) The Developer shall not install Works prior to the receipt by it in writing of the approval of the Director of the detailed Plans and specifications therefor.
- (c) All of the Works to be installed or constructed under this Agreement shall be installed or constructed under the direct Supervision of the Developer's Consulting Engineer at the expense of the Developer.
- (d) Should the Developer fail to reasonably satisfy the Director concerning the Developer's Consulting Engineer's inspection at the installation of the works, the Director may retain the services of a third party Engineer at the expense of the Developer.

6. CONSTRUCTION OF WORKS

The Developer agrees to construct and pay the whole cost of such construction and materials required for all of the Works referred to in this Agreement and the Schedules attached, and in accordance with the conditions and specifications contained in said Agreement and Schedules.

7. CONTRACTORS

Before commencement of any Works, the Developer shall show satisfactory proof to the Director, that the proposed contractors or sub-contractors, whom the Developer has retained to construct Works described in this agreement, or any part of the Works, have sufficient and valid liability insurance policies, indicating that the Town and its agents and servants, the Region and the Town Consulting Engineer are named insured; a certificate from the Workers' Safety Insurance Board showing that the contractor is in good standing; and satisfactory evidence that the contractor is qualified, experienced and has adequate equipment to successfully complete the Works. Any contractor employed by the Developer shall, as a condition of such employment, be approved by the Director.

8. ROADS, SIDEWALKS, DRIVEWAY APPROACHES, SIGNAGE

(a) ROADS

- (i) The Developer shall rough grade to the Town's specifications the full width of all road allowances as shown on the Development Agreement prior to the installation or construction of the Works. Prior to the construction of any Works, the topsoil shall be stripped and shall be stockpiled during the period of construction at a location which is approved by the Director and is conducive to the interim drainage requirements of the Development Plan. The topsoil so stockpiled shall be used to grade the Lots and boulevards after construction thereon in accordance with the Development Grade Control Plan filed with and approved by the Director. Topsoil shall not be removed from the Lands for any reason unless the prior written approval of the Director to the removal of such topsoil is received.
- (ii) The Developer shall keep all boulevards and easements clean and clear from all materials and obstructions which, in the opinion of the Director, can or may interfere with the installation or construction of gas, telephone, co-axial, hydro-electric or other services.
- (iii) The Developer shall construct, install and complete roadways, curb and gutters on the existing Bacon Lane road allowance, the Bacon Lane Road Widening, Marylea Street and the Marylea Street Extension in accordance with Town standards and in accordance with the Plans filed with and approved by the Director. The engineering drawings, on file in the Town Office, must be signed, approved and accepted by the Director.

(b) SIDEWALKS

The Developer shall construct, install and complete concrete sidewalks in accordance with the drawings on file in the Town's office. The drawings must be signed, approved and accepted by the Director. All sidewalks shall be deemed to be Primary Services for the Development and shall be completed within twelve (12) months of registration of this Development Agreement at the location shown on the approved drawings and in accordance with the approved Development Grade Control Plan.

(c) DRIVEWAY APPROACHES

- (i) The Developer shall provide driveway curb cuts and granular driveway access on the boulevard prior to occupancy of any Building. It shall be the responsibility of the Developer to ensure that driveway access is maintained at all normal times during the construction or maintenance of the Works.

- (ii) All driveway approaches between the curb line and the sidewalk, or in the absence of a sidewalk between the curb line and the Street Line, shall be paved by the Developer by no later than the 1st day of November in the year after the year in which the Buildings served by the driveway approaches are occupied.
- (iii) All driveway approaches shall be constructed to the satisfaction of the Director prior to the assumption of the Development.

(d) STREET AND TRAFFIC SIGNS

The Town shall supply and erect Street and traffic signs within the development at the Developer's expense in accordance with Schedule "H". The signs shall conform to the Town standards in place at the time of installation. The Developer's cost per installation of each sign is \$300.00 including all applicable taxes.

9. SEWERS

- (a) The Developer shall construct a storm sewer system, including manholes, catch basins, minimum one hundred and fifty (150) millimetre diameter house service connections and other appurtenances to adequately service the Lands included within the Development Plan and all or any portion of the ultimate drainage area in which the Lands are located. All storm sewers shall be constructed in accordance with the designs and Plans therefor approved by the Director and the construction and materials shall be in accordance with the requirements of the Director.
- (b) All rainwater leads shall discharge on the surface of lawns with splash pads and away from the Building and shall not be connected to the storm sewer or sanitary laterals.
- (c) The Developer shall, prior to the issuance of the Certificate of Completion of Primary Services, supply the Director with lot plans showing the location and depth of each storm lateral and sanitary lateral constructed to serve the Buildings to be erected upon the Lots.
- (d) The Developer shall construct a sanitary sewer system, including minimum one hundred (100) millimetre house service connections from the sewer to the Street Line and other appurtenances to adequately service the Lands included within the Development Plan. All sanitary sewers shall be constructed according to designs approved by the Director and the construction of such sanitary sewers and the materials used therein shall be in accordance with the specifications therefor.
- (e) The sanitary and storm sewer systems shall be flushed by high velocity sewer flushing equipment after the placement of the base course asphalt upon the Streets as shown on the Development.
- (f) The Developer shall cause the sanitary and storm sewer systems to be inspected by closed circuit television camera prior to issuance of the Certificate of Completion of Primary Services and the results thereof shall be provided to the Director for review. Prior to the issuance of the Final Certificate of Completion of Services by the Director as set out in Section 17, the Developer shall carry out a second TV inspection of the sanitary and storm sewer systems and the results thereof shall be provided to the Director. In the event that the results of either inspection are not satisfactory in the opinion of the Director, then the Developer shall take such remedial steps including re-televising the repairs as may, in the opinion of the Director, be required.
- (g) All sanitary sewer systems shall be tested either by infiltration or by exfiltration and the method of testing shall be in the sole discretion of the Director.
- (h) Foundation drains shall not be connected to the sanitary sewer system.

**10. WATERMAINS**

- (a) The Developer shall construct a complete watermain system or systems for the purpose of servicing the Development in accordance with the designs and Plans therefor approved by the Director and the construction and materials shall be in accordance with the requirements of the Director. The said watermain system or systems shall include valves, hydrants and house water service connections, complete with curb stop and box from the watermain to the Street Line.
- (b) All watermains shall be flushed, chlorinated, pressure tested and bacterial tested in accordance with the Town requirements and approved by the Director.
- (c) The operation of valves which cause the watermains within the Development to be charged from existing municipal water mains shall **ONLY** be carried out by Town Staff certified in accordance with Ontario Regulation 459/00 made under the *Ontario Water Resources Act*, R.S.O. 1990, c.O.40, as amended.
- (d) The Developer shall, prior to requesting the issuance of the Certificate of Completion of Primary Services, supply the Director with Lot plans showing the location of the water lines serving each dwelling to be erected upon the Lots.

**11. NATURAL GAS, ELECTRICAL, TELEPHONE AND CABLE TV DISTRIBUTION SYSTEMS**

The Developer shall be responsible for providing, at the Developer's expense, gas, electrical, telephone and cable TV service to each Lot and block in accordance with the approved drawings. All Utility Services shall be installed and constructed prior to the Director approving the Certificate of Completion of Primary Services.

**12. SODDING AND LANDSCAPING - LOTS, PARKLANDS AND PUBLIC LANDS**

- (a) The Developer shall grade and place a minimum of one hundred (100) millimetres of topsoil, together with No. 1 nursery sod on all portions of road allowances not covered by asphalt or sidewalks shown on the Development and along that side of the Development abutting on adjacent existing Streets. All sodding as herein described shall be considered as Secondary Services for the Development and shall be completed at the time of or within three (3) months after the final sodding of the Lot in accordance with the approved final lot grading certificate.
- (b) The Developer shall be responsible for and ensure that each Lot within the Development is:
  - (i) fine graded in accordance with the individual Lot Grading Plans for each lot and that a final lot grading certificate for each lot is prepared by the Developer's Consulting Engineer and approved by the Director; and
  - (ii) sodded with No. 1 nursery sod within twelve (12) months of initial occupancy of the Building, in all areas of the Lot including front yards, side yard and rear yards not covered by structure, driveway or walkway; and that all sodding is maintained until it has become established.
- (c) In order to maintain a high standard of amenity and appearance, the Developer shall retain the maximum number of existing trees as approved by the Director consistent with good development design and conservation practices;
- (d) In order to maintain a high standard of amenity and appearance, the Developer, its heirs, executors, administrators, successors and assigns hereby undertake and agree to plant, maintain, and replace trees, if as, and when required, in accordance with the following:

- (i) one tree per Lot Frontage and a minimum of two trees per Lot sideyard flankage shall be planted in the sodded portion of the Street allowance between the Lot line and the roadway in accordance with the Plans. Trees shall be sound, healthy, vigorous and free from plant disease with normally healthy root systems;
- (ii) trees shall be 70 mm caliper, measured 150mm above grade level, with roots enclosed in a wire basket and be of such native varieties as listed in the "Native Species of Niagara Planting Guide" published by Land Care Niagara and approved by the Town; and
- (iii) all trees shall be planted prior to the Director approving the Certificate of Completion of Secondary Services.

In accordance with Schedule "H" annexed hereto, prior to execution of this Agreement by the Town, the Developer shall post with the Town security for the planting of trees at the rate of two hundred and fifty dollars (\$250.00) per tree to be planted.

The Developer shall be solely responsible for acquiring and planting trees in accordance with the terms of this Agreement and delivering written notice to the Town that such work has been completed. The Developer shall continue to be solely responsible for maintaining all such trees so planted until such time as Council passes the Assumption By-law.

Provided, however, that in the event the Developer does not plant trees in accordance with the provisions of this agreement or within the prescribed time or to the complete satisfaction of the Director then the Town may, at its sole discretion, plant or replace or replant trees in accordance with the provisions of this agreement and apply the above mentioned security against the Town's costs and/or collect such costs in like manner as municipal taxes.

**13. TREE SAVING PLAN**

The Developer shall, at its own expense, be responsible for implementing the Recommended Tree Preservation Plan, prepared by L. Campbell Associates, dated May 27, 2003, and attached at Schedule "F".

**14. BACKLOT DRAINAGE AND EROSION AND SEDIMENT CONTROL**

- (a) Until the completion of all Buildings on the Lots, the Developer shall ensure that the rear yards and side yards of each of the Lots are properly graded and completed to prevent the ponding of surface water on the Lots or on adjacent lands outside the Development.
- (b) All drainage ditches, swales or depressions within the Development Plan shall be fine graded and maintained with approved silt traps. The Developer shall comply with the Ontario Guidelines on Erosion and Sediment Control for Urban Construction Sites, dated May 1987, to the satisfaction of the Director.

**15. PRIMARY SERVICES AND CERTIFICATE OF COMPLETION OF PRIMARY SERVICES**

- (a) The Developer shall proceed with the installation or construction of the work required hereunder with all reasonable dispatch and shall complete all of the Primary Services within twelve (12) months after the date of the registration of the Development Agreement. The Director may extend the time for the completion of the Primary Services or any of them for such length of time as he may deem expedient upon the written application of the Developer.
- (b) The performance by the Developer of their obligations hereunder to the satisfaction of the Director shall be a condition precedent to the acceptance by the Town of the Works or any of them.

- (c) Prior to the issuance by the Director of the Certificate of Completion of Primary Services, the Developer shall:
  - (i) furnish the Director with a statutory declaration in a form satisfactory to the Director that all accounts for the installation, construction and maintenance of the Primary Services required to be installed or constructed hereunder have been paid and that there are no outstanding debts, claims or liens in respect of the Primary Services or any of them; and
  - (ii) provide the Director with a Certificate signed by the Developer's Consulting Engineer certifying that the Primary Services have been fully completed, inspected, tested and maintained in accordance with the provisions hereof and the standards of the Town of Pelham and Plans and specifications as approved by the Director.
- (d) The Director shall furnish the Developer with a Certificate of Completion of Primary Services upon the completion by the Developer to the satisfaction of the Director of the installation or construction of the Primary Services and the receipt by the Director of the Maintenance Guarantee as required by Section 22 hereof, and the satisfaction by the Developer of all other requirements of this Agreement and the Plans and specifications.
- (e) The Director may, at his sole discretion, issue the Certificate of Completion of Primary Services without the complete installation of the streetlighting and Private Utilities to service the Lots subject to a satisfactory written commitment for their installation by the respective utility companies being provided and accepted by the Town.

**16. SECONDARY SERVICES**

- (a) With the exception of the final asphalt surface course and the sodding required by Sections 12(a) and 12(b), all Secondary Services shall be completed within twelve (12) months after the issuance of the Certificate of Completion of Primary Services. The Director may extend the time for completion of the Secondary Services or any of them for such length of time as he may deem necessary upon the written application of the Developer.
- (b) The final asphalt surface course shall be completed no sooner than twelve (12) months and no later than twenty-four (24) months after issuance of the Certificate of Completion of Primary Services or as directed by the Director.

**17. MAINTENANCE AND ASSUMPTION OF THE WORKS**

- (a) Until the Town issues the Final Certificate of Completion of Services, the Town agrees to provide only snow plowing and sanding services on paved roads connected by paved road to a public roadway. The Developer agrees to provide all other services including, but not limited to, maintenance and repairs of works constructed under this Development Agreement. The Developer agrees that any service provided by the Town prior to actual acceptance of the roads by the Town shall not be deemed acceptance of the roads.
- (b) The Developer shall, at its own expense and to the satisfaction of the Director, repair and maintain all Primary Services and other private services herein required to be installed or constructed for a minimum period of five (5) years from the date of issuance of the Certificate of Completion of Primary Services or until the date of issuance of the Final Certificate of Completion of Services, whichever is later.
- (c) The Developer shall guarantee all Secondary Services including any repairs and maintenance performed by it pursuant to Section 17(b) or by the Town pursuant to Section 17(d) for a minimum period of twelve (12) months from the date of completion of the said services, repairs and maintenance, notwithstanding that the five (5) year period of maintenance provided under Section 17(b) has elapsed.



- (d) The Town shall, notwithstanding the obligations to maintain herein set forth, have the right to enter on the Lands and carry out the necessary maintenance or repair
  - (i) without notice to the Developer where in the sole opinion of the Director, an emergency condition exists or where the Streets have not been kept free of mud and dust; and
  - (ii) where repairs to or maintenance of the Works have not been completed within forty-eight (48) hours after a notice requiring such repairs or maintenance has been forwarded to the Developer.
- (e) The cost of any repair or maintenance work undertaken by the Town pursuant to the provisions hereof shall be borne by the Developer and the amount thereof shall be paid to the Town within thirty (30) days after a statement of account therefor has been forwarded to the Developer at its last known address. If the Developer fails to pay the amount due to the Town within such thirty day period, then the Town may and is hereby expressly authorized to deduct the amount owing to it for such repairs or maintenance from any monies or Letters of Credit deposited by the Developer with the Town pursuant to the provisions hereof.
- (f) The decision of the Director that repairs or maintenance to the Works are required or that an emergency state exists requiring immediate repair or maintenance to such Works shall be final, conclusive and incontestable.
- (g) After the expiry of the maintenance period provided for in Section 17(c) hereof, the Town shall, subject to the compliance by the Developer with Section 17(h) hereof, issue a Final Certificate of Completion of Services upon the application of the Developer provided, however, that the Town may withhold the issuance of the Final Certificate of Completion of Services if, in the sole opinion of the Director, the Developer is in default of their obligations to repair, construct or maintain any of the Works pursuant to this Agreement.
- (h) The application of the Developer for the Final Certificate of Completion of Services shall include the following:
  - (i) a statutory declaration in a form satisfactory to the Director that all accounts for the installation, construction and maintenance of all the Works required to be installed or constructed hereunder have been paid and that there are no outstanding debts, claims or liens in respect of the Works of any of them;
  - (ii) a Certificate in a format acceptable to the Director signed by the Developer's Consulting Engineer certifying that all the Works including any repairs and deficiencies have been fully completed, inspected, tested and maintained in accordance with the provisions hereof and the standards and specifications of the Town of Pelham and the Plans as approved by the Director;
  - (iii) the original Mylar Construction Drawings in hard copy and DWG digitized format showing each of the Works "As Constructed";
  - (iv) the Certificate of an Ontario Land Surveyor certifying that he has currently found and/or replaced all one inch (1") standard bars as shown on the registered Development Plan; and
  - (v) a copy of the registered Development and all other reference plans as to easements and other matters in DWG digitized format (AutoCad 2000 or equivalent).
  - (vi) confirmation that all sanitary and storm sewers have been flushed and cleaned and reinspected by TV camera subsequent to the expiration of the maintenance period provided in Section 17(c) and acceptance of the TV inspection results by the Director.



- (i) The issuance by the Town of the Final Certificate of Completion of Services may be withheld until eighty percent (80%) of the Lots have been built upon with Buildings completed to the *Building Code Act* occupancy requirements and the final grading certificates for the Lots have been approved by the Director.
- (j) Upon the issuance by the Director of the Final Certificate of Completion of Services, the Director shall recommend to Council that an Assumption By-law be passed.

#### **18. BUILDING PERMITS AND OCCUPANCY**

The Developer agrees that, unless otherwise determined by Council, no Building Permits shall be issued on any parts of the Lands until all Primary Services, as defined elsewhere in this Agreement and reflected in the approved engineering drawings, fencing and streets are completed and operational to the satisfaction of the Director and closed circuit T.V. camera video inspection and soundness testing per Section 9(f) have been completed and results provided to and accepted by the Director and Bacon Lane has been opened by by-law as a public highway in accordance with provisions of the Municipal Act.

#### **19. FINANCIAL LIABILITY AND INSURANCE**

- (a) Before commencing any of the Works, the Developer will deposit a public liability and property damage insurance policy with the Town in the minimum sum of five million dollars (\$5,000,000.00) or such greater amount as the Town deems advisable, indemnifying the Town from any loss arising from claims for damages, injury or otherwise in connection with the Works to be performed hereunder by the Developer, their servants or agents in, on or about the Lands included within the Development or adjacent thereto.
- (b) The said policy shall be in effect for the period of this Agreement, including the maintenance guarantee period and shall not contain an exclusion for blasting.
- (c) The Developer shall submit to the Town evidence from its 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 and verification that no such policy shall expire without at least thirty (30) days prior written notice to the Town.
- (d) The Developer shall be responsible to renew the policy as may be required by the Director. The issuance of the said policy of insurance shall not be construed as limiting the liability of the Developer or relieving the Developer from responsibility for other or larger claims, if any, for which it may be held responsible.

#### **20. SECURITY DEPOSITS AND REFUNDS**

The Developer shall be responsible for the full amount of the cost for the design, servicing and maintenance of the Development together with all Town administrative, engineering and legal costs and shall be required to post security, in a form satisfactory to the Town, on accounts of aforesaid costs, charges and fees in accordance with Schedule "H" annexed hereto prior to execution of this Agreement by the Town.

Security to be posted for Primary Services and Secondary Services and Town Administrative, Engineering and Legal fees shall be calculated on the basis of the Developer's Consulting Engineer's estimated cost of design, construction and maintenance of all Works as set out in Schedule "H" annexed hereto. From time to time, upon written request, the Developer's Consulting Engineer may be required to certify in writing the actual cost of design, construction and maintenance of all Works installed and constructed to date and the estimated cost of all outstanding Works and the Director may adjust the amount of security required if the actual Cost of Construction of all Works installed and constructed to date or the estimated cost of all outstanding Works exceeds the original estimated costs as set out in Schedule "H" annexed hereto and the Developer shall be billed accordingly. Provided that in the event the Developer fails to increase the amount of security within fourteen (14) days of receipt of aforesaid written notice, then the Developer shall be deemed to be in final default of the terms and conditions of this Agreement.

(a) CASH PAYMENTS

Prior to the execution of this agreement by the Town, as security for payment of services to be rendered by the Town, its servants and its agents as required by this Agreement, and for presently outstanding payments owing to the Town, the Developer shall, in accordance with Schedule "H" annexed hereto, deposit with the Town the following non-refundable cash amounts:

- (i) a cash amount to secure the Town's administrative, engineering and legal costs incurred in connection with this Agreement, approval of the Plans and enactment of by-laws calculated on the following basis:
  - (1) where the Costs of Construction of all Works is less than \$100,000.00, the charge shall be \$4,000;
  - (2) where the Cost of Construction of all Works is between \$100,000.00 and \$400,000.00 the charge shall be \$4,000 plus 3.5% of the costs between \$100,000.00 and \$400,000.00; and
  - (3) where the Cost of Construction of all Works is in excess of \$400,000.00 the charge shall be \$14,500.00 plus 3% of the costs over \$400,000.00;
- (ii) cash deposit to secure the Town's cost to supply and install traffic signage at the rate of \$300.00 per sign;
- (iii) a cash amount to cover all arrears of taxes, all taxes for the current year and all current Local Improvement charges assessed against the Lands;
- (iv) oversizing of off-site trunk services;
- (v) credit for oversizing or front-ending trunk services for the benefit of others; and
- (vi) cash-in-lieu for parkland purposes calculated as 5% of the appraised value of the Lands to the satisfaction of the Town.

(b) LETTERS OF CREDIT

- (i) Before commencing any of the Works provided for in this Agreement, the Developer will deposit with the Town a Letter of Credit drawn upon a chartered bank in favour of the Town and in a form satisfactory to the Treasurer, in an amount approved by the Director, which Letter of Credit shall be sufficient to guarantee the satisfactory completion of the Works or any portion of the Works as established by the Town in its sole discretion, and payments or any part thereof required to be made by this Agreement, and will, without restricting the generality of the foregoing, guarantee the following:
  - (1) payment of twenty percent (20%) of the approved estimated costs of the construction of the Primary Services to service the Lands, plus one hundred and twenty percent (120%) of the approved estimated construction costs of the Secondary Services upon the Lands as shown in Schedule "H", Financial Obligations and Cost of Construction, attached; and
  - (2) payment of one hundred percent (100%) of any other payments or Works as may be required of the Developer by the Town pursuant to this Agreement.
- (ii) The amount of the Letter of Credit required hereunder shall not be reduced unless all of the conditions of this Agreement are complied with and the estimated costs of rectifying any outstanding deficiencies, as estimated in the sole discretion of the Director, plus one hundred and twenty percent (120%) of the estimated costs of the completion of all outstanding Primary Services and Secondary Services plus all other outstanding costs payable under this Agreement, plus the Maintenance Guarantee as required under Section 22 of this Agreement, plus any

*Construction Lien Act* requirements are all, in total, less than the amount of the Letter of Credit held by the Town. In such an instance, the amount of the Letter of Credit may, in the sole discretion of the Director be reduced from time to time to an amount equal to the total of all amounts set out above. Such reduction shall be based on the following:

- (1) progress certificates from the Developer's Consulting Engineer setting forth the cost of the Works completed and paid to date and the cost of unfinished Works; and
- (2) a request for reduction in the amount of the Letter of Credit in a form approved by the Director; and
- (3) proof of payment in a form satisfactory to the Director of the amounts paid on account of the completed Works to the date of the application for reduction.

Notwithstanding anything herein contained, the amount of the Letter of Credit shall at all times be sufficient to cover the balance of the costs of the completion of the unfinished Works, including Works deferred for extended periods and the requirements of the *Construction Lien Act*.

- (c) The Developer shall pay the cost of the Works and the fees of the Developer's Consulting Engineer and the Ontario Land Surveyor.

## **21. INHIBITING ORDER ON THE LANDS**

The Developer shall not transfer or otherwise deal with the Lands or any part thereof and also acknowledges and agrees that the Town will register an inhibiting order pursuant to the *Land Titles Act*, R.S.O. 1990, c.L.5, preventing transfer of all or any part of the Lands until such time as the Director has issued the Completion Certificate for Primary Services for the Lands. The Developer also acknowledges that the Town may register an inhibiting order against all or any part of the Lands for other matters to ensure compliance with this Agreement.

## **22. MAINTENANCE GUARANTEE**

- (a) The Letter of Credit deposited by the Developer pursuant to Section 20 hereof may, upon the completion of the Primary Services, and prior to the assumption of the Primary Services by the Town, at the Director's discretion, be reduced to an amount equal to ten percent (10%) of the completed Works (Schedule "H") plus one hundred and twenty per cent (120%) of the value, as estimated by the Director, of any uncompleted Secondary Services and such Letter of Credit shall be retained by the Town as a Maintenance Guarantee to guarantee the workmanship and materials of the Works until such time as the maintenance guarantee periods as provided for in Sections 17(b) and (c) have both expired.
- (b) The Letter of Credit may be realized upon by the Town if the Developer defaults in any payment or condition contained herein.
- (c) The Developer shall be conclusively deemed to be in breach of the covenant contained in Section 20(c), if, in the case of the cost of the Works or the fees of the Developer's Consulting Engineer and the Ontario Land Surveyor, a lien against the Lands or any part thereof is preserved pursuant to the *Construction Lien Act* and if, in the case of any other payment required to be made under this Agreement, a notice to that effect is forwarded to the Developer by the Director in accordance with Section 24(b) hereof.

## **23. DEFAULT**

- (a) Upon breach by the Developer of any covenant, term, condition or requirement of this Agreement, or upon the Developer becoming insolvent or making an assignment for the benefit of creditors, the Town, at its option, may declare that the Developer is in default.

- (b) Notice of such default ("Notice of Default") shall be given by the Town and if the Developer does not remedy such default within such time as provided in the notice, the Town may declare that the Developer is in final default under this Agreement and shall then forthwith give notice of final default ("Notice of Final Default") thereof to the Developer.
- (c) Upon Notice of Default having been given, the Town may require all work by the Developer, their servants, agents, independent contractors and sub-contractors to cease (other than any work necessary to remedy such default) until such default has been remedied and in the event of final default, may require all work as aforesaid to cease.
- (d) Upon Notice of Final Default having been given to the Developer, the Town may, at its option, adopt or pursue any or all of the following remedies, but shall not be bound to do so:
  - (i) Enter upon the Lands shown on the Development Plan by its servants, agents and contractors and complete any work, services repairs or maintenance wholly or in part required herein to be done by the Developer and collect the cost thereof from the Developer and/or enforce any security available to it;
  - (ii) Make any payment which out to have been made by the Developer and upon demand collect the amount thereof from the Developer and/or enforce any security available to it;
  - (iii) Retain any sum of money heretofore paid by the Developer to the Town for any purpose and apply the same in payment or part payment for any work which the Town may undertake;
  - (iv) Assume any work or services at its option, whether the same are completed or not, and thereafter the Developer shall have no claim or title hereto or remuneration therefor;
  - (v) Bring action to compel specific performance of all or any part of this Agreement or for damages;
  - (vi) Add any costs incurred by the Town to the tax collector's roll for the Lands and collect such costs by action or in like manner as municipal real property taxes; or
  - (vii) Exercise any other remedy granted to the Town under the terms of this Agreement or available to the Town in law.

**24. RESCISSION OF AGREEMENT**

- (a) In the event that the Development Plans are not Registered within one (1) year from the date hereof, then the Town may, at its option and on one (1) month's notice in writing to the Developer, declare this Agreement null and void and may Register against the title to the Lands included within the Plan of Development a notice to that effect.
- (b) The Developer shall not sell or convey any Lot or block shown on the Development Plans until this Agreement is Registered on title.

**25. RIGHT OF ENTRY**

The Developer shall obtain from any Purchaser of any of the Lots shown on the Development Plan, a licence permitting the Developer and the Town to enter upon such Lands for a period of three (3) years after the transfer thereof in order to ensure compliance with the provisions of this Agreement and shall forward an executed copy of such licence to the Town upon demand therefor.

**26. INDEMNIFICATION**

Until the Town passes a By-law assuming the Streets shown on the Plan, the Developer, on behalf of itself, its successors and assigns, including its successors in title of the Lands in the Development Plans, hereby releases and discharges and indemnifies the Town from and against all actions, causes of action, suits, claims and demands whatsoever which may arise by reason of:

- (a) any alteration of the existing grade or level of any Street or Streets on the Plan to bring the said grade or level in conformity with the grade or level required by the Director; and
- (b) any damage to the Lands abutting on any Street or Streets shown on the Plan or to any Building erected thereon arising from or in consequence of any such alteration of grade or level; and
- (c) any damages or injuries (including death) to persons or damage to property occurring or arising on any Street or Streets on the Plan, however caused.

**27. COVENANTS THAT RUN WITH THE LAND**

- (a) The Developer and the Town acknowledge and agree that it is their intent that all the terms, conditions and covenants contained herein shall be covenants that run with the land and that the burden of such covenants shall be binding upon the Developer, its successors and assigns, and successors in title, from time to time, of the Lands described in Schedule "A" of this Agreement and any part or parts thereof and that the benefits of the said covenants shall enure to the Town, its successors and assigns in title of all roads, Streets and public lands forming part of or abutting on the Lands described in Schedule "A".
- (b) The Developer agrees that it shall, upon the sale or transfer by it of the Lands included within the Development Plans or any part or parts thereof, require the Purchaser or Transferee thereof as a condition of such sale or transfer to execute an Agreement satisfactory in form to the Town's Solicitor, agreeing to assume this Agreement and to be bound by and fulfil all of the terms, conditions and covenants herein set forth and containing a like covenant to this effect. The said Assumption Agreement shall be executed by the Town, the Developer and any such Purchaser or Transferee and may, at the Town's option, be Registered upon title. Provided, however, that such Assumption Agreement shall not be required for the sale or transfer of a Lot as shown on the Development Plans for the purpose of construction.

**28. NOTICE**

All notices required or permitted to be given by one party to the other shall be given in writing either by prepaid registered mail or delivered personally addressed, in the case of the Town, to 20 Pelham Town Square, P. O. Box 400, Fonthill ON L0S 1E0, and in the case of the Developer, to 1189 Pelham Street, Welland ON L3C 3E4 or, at such other addresses as may be given by either of them to the other in writing from time to time, and such notices shall be deemed to have been received, if mailed, on the third day following that on which it was so mailed and if delivered, on the day of such delivery.

**29. POSTPONEMENT AND SUBORDINATION**

The Developer covenants and agrees at its own expense, to obtain and register such documentation in form satisfactory to the Town's solicitor from all mortgagees or encumbrancers as may be deemed necessary by the Town to postpone and subordinate their interest in the Lands to the interest of the Town to the extent that this Agreement and all related documentation to be registered shall take effect and have priority as if they had been executed and registered before the execution and registration of the document or documents giving to the mortgagees and/or encumbrancers their interest in the Lands. The Developer acknowledges that it shall not be permitted to sell any lots within the Development until such time as these postponements have been registered and that the Town shall be permitted to register an inhibiting order pursuant to the *Land Titles Act* to ensure compliance with same.

## 30. SCHEDULES

The schedules attached hereto are a part of this Agreement. All schedules are to be interpreted as if the contents thereof were included in the Agreement.

**31. SPECIAL PROVISIONS - SCHEDULE "B"**

The Developer shall undertake and complete all other special provisions to this Agreement, as outlined in Schedule "B" which forms part of this Agreement.

## 32. NUMBER AND GENDER

- (a) In this Agreement, unless there is something in the subject-matter or context inconsistent therewith,
  - (i) words in the singular number include the plural and such words shall be construed as if the plural had been used,
  - (ii) words in the plural include the singular and such words shall be construed as if the singular had been used, and
  - (iii) words importing the use of any gender shall include all genders where the context or party referred to so requires, and the rest of the sentence shall be construed as if the necessary grammatical and terminological changes had been made.

### 33. BINDING EFFECT

This Agreement shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:**

Witness as to the signature of John Rodriguez

Witness as to the signature of  
Encarnacion Rodriguez

John Rodriguez

Encarnacion Rodriguez

THE CORPORATION OF THE TOWN OF PELHAM

~~Ralph Beamer~~, Mayor, Acting W. Brian Walker

Cheryl Miclette, Clerk

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