

THE CORPORATION OF THE  
TOWN OF PELHAM  
BY-LAW #2719 (2005)

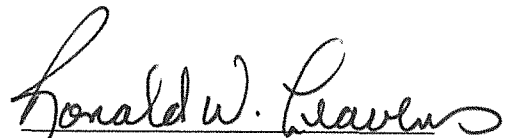
Being a by-law to authorize the Mayor & Clerk to enter into a Maintenance Agreement with Nancy Pasko regarding a condition of severance.

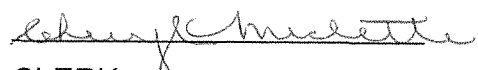
WHEREAS the Council of the Corporation of the Town of Pelham deems it desirable to enter into a Maintenance Agreement with Nancy Pasko regarding access to her lands at the corner of Pelham Street and Quaker Road in order to satisfy a condition of severance;

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

- (1) THAT the Maintenance Agreement attached hereto and made part of this by-law between the Corporation of the Town of Pelham and Nancy Pasko 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 maintenance 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  
21<sup>st</sup> DAY OF NOVEMBER, 2005 A.D.

  
MAYOR

  
CLERK

**NANCY MARY PASKO**  
**MAINTENANCE AGREEMENT**  
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THIS AGREEMENT made this 21st day of November, 2005

BETWEEN:

**NANCY MARY PASKO**

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") and has applied to the Town of Pelham Committee of Adjustment for consent under application B04/2005 and has obtained said consent subject to conditions;

**AND WHEREAS** the decision of the Town of Pelham Committee of Adjustment was conditional upon, among other things, the entering into of an Agreement by the Owner and the Town;

**AND WHEREAS** access to the lands is restricted by an existing 0.3 metre reserve ("The reserve") located at the Homestead Boulevard frontage of the Lands;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the Town approving the said proposed maintenance access agreement, and in consideration of the sum of One Dollar (\$1.00) of lawful money of Canada now paid by the Owner to the Town (the receipt thereof is hereby acknowledged), the Parties hereto mutually covenant and agree as follows:

#### **1. DEFINITIONS**

In this Agreement:

- a) OWNER means Nancy Mary Pasko, her successors and assigns, and includes her successors in title to the Lands described in Schedule "A"
- b) DIRECTOR means the Director of Operations for the Town.
- c) 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.
- d) LANDS means the lands described in Schedule "A" hereto annexed, and more specifically the lands described as being the 2.36 more or less acre as shown as Part 1 on Schedule A-1.
- e) LOT means a lot as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- f) LOT FRONTAGE means lot frontage as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- g) MAINTENANCE is limited to grass cutting, tree trimming and the removal of fallen trees and/or branches, unless otherwise approved in writing by the Director.
- h) MUNICIPAL ACT means the *Municipal Act*, S.O. 2001, c.25, as amended, and all regulations thereto.
- i) PLANNING ACT means the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, and all regulations thereto.

- j) RESERVE means the 0.3 metre reserve abutting the Lands and more particularly described as Block 52 Plan 59M-235.
- k) STREET means street as defined in the Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- l) STREET LINE means Street Line as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- m) TOWN means The Corporation of the Town of Pelham.

## 2. LANDS AFFECTED

This agreement shall be registered against title to the Lands. The registered ownership of the Lands shall be confirmed by the Owner's solicitor by way of certificate in form satisfactory to the Town.

## 3. GENERAL PROVISIONS

- (a) Unless the context otherwise requires, where the Owner is obligated by this Agreement 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 Owner".
- (b) The Owner 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 Owner 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 Owner, her 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 14.
- (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 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.
- (g) Notwithstanding the provisions of this agreement, the Owner 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.
- (h) 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.

- (i) The Owner 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.
- (j) 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.
- (k) All Streets and properties abutting the Lands or used for access to the Lands during maintenance, 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.
- (l) All trucks making deliveries to or taking materials from the Lands included within this Agreement shall be adequately covered and not unreasonably loaded so as to scatter refuse, rubbish, dust or debris on abutting Streets or properties.

#### **4. ACCESS**

The Town hereby grants the Owner access over the Reserve for ingress and egress to the lands only for the purpose of maintenance of the Lands.

The Owner shall not be permitted access to the Lands over the Reserve for any other purpose except with the written consent of the Director.

#### **5. DEVELOPMENT**

The Owner acknowledges that no structural development of any kind is permitted on the Lands or on the Reserve.

#### **6. CONSTRUCTION OF WORKS**

The Owner agrees to construct and pay the whole cost of such construction and materials that may be required for alterations to the barricade located at the southerly limit of the Tanner Drive road allowance referred to in this Agreement and the Schedules attached for any access to the Lands that the owner may require, and in accordance with the conditions and specifications contained in said Agreement and Schedules.

#### **7. DAMAGE**

The Owner agrees to fully repair any damage incurred to the Town's property as a result of carrying out the construction of works and/or in accessing the reserve to the satisfaction of the Director. The Owner agrees that should the repair not be completed in a timely manner, that the Town shall be permitted to complete the works at the Owner's full expense.

#### **8. RIGHT TO ENTER**

- (a) The Town shall, notwithstanding the Owner's obligations to maintain services herein set forth, have the right to enter on the Lands and carry out any necessary maintenance or repairs:
  - (i) without notice to the Owner, where in the sole opinion of the Director, an emergency condition exists; and
  - (ii) where repairs to or maintenance of the Lands have not been completed within seventy-two (72) hours after a notice requiring such repairs or maintenance has been forwarded to the Owner.

- (b) The cost of any repair or maintenance work undertaken by the Town pursuant to the provisions hereof shall be borne by the Owner 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 Owner at its last known address. If the Owner fails to pay the amount due to the Town within such thirty day period, then the Town may place a lien on the property in the amount of the cost of the repair, or collect the costs in the same manner as municipal taxes or take what ever steps necessary to recover such costs.
- (c) 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.

## **9. DEFAULT**

- (a) Upon breach by the Owner of any covenant, term, condition or requirement of this Agreement, or upon the Owner becoming insolvent or making an assignment for the benefit of creditors, the Town, at its option, may declare that the Owner is in default.
- (b) Notice of such default ("Notice of Default") shall be given by the Town and if the Owner does not remedy such default within such time as provided in the notice, the Town may declare that the Owner is in final default under this Agreement and shall then forthwith give notice of final default ("Notice of Final Default") thereof to the Owner.
- (c) Upon Notice of Default having been given, the Town may require all work by the Owner, 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 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:
  - (i) Enter upon the Lands shown on Schedule "A" 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 Owner and collect the cost thereof from the Owner and/or enforce any security available to it;
  - (ii) Make any payment which ought to have been made by the Owner and upon demand collect the amount thereof from the Owner and/or enforce any security available to it;
  - (iii) 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;
  - (iv) Assume any work or services at its option, whether the same are completed or not, and thereafter the Owner 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.

**10. INDEMNIFICATION**

The Owner, on behalf of itself, its successors and assigns, including its successors in title of the Lands in this Agreement, 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 any damages or injuries (including death) to persons or damage to property occurring or arising on Tanner Drive and, or Homestead Boulevard, however caused.

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

The Owner 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 Owner, their 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".

**12. ADMINISTRATIVE COSTS**

The Owner shall pay the Town for all fees and disbursements incurred in connection with this agreement including, but not limited to, all administrative, preparation, legal, inspection and consulting expenses, or any by-law or registration of any subsequent agreements which may be required to implement this Agreement.

**13. POSTPONEMENT AND SUBORDINATION**

The Owner 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 Owner acknowledges that it shall not be permitted to sell any lots within Schedule "A" 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.

**14. NOTICE**

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:

Clerk  
Town of Pelham  
P. O. Box 400  
20 Pelham Town Square  
Fonthill ON L0S 1E0

To the Owner at:

Nancy Mary Pasko  
746 Quaker Road  
Welland ON L3C 3H4

or as such other address as the party to whom such notice is to be given shall have last notified the party giving the notice in the manner provided in section 14. Any notice delivered to the party to whom it is addressed in this section 14 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.

**15. 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.

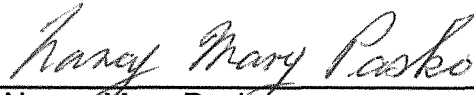
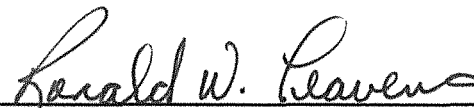

**16. BINDING EFFECT**

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

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

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

  
Witness

) NANCY MARY PASKO  
)  
)   
) \_\_\_\_\_  
) Nancy Mary Pasko  
)  
)  
) THE CORPORATION OF THE TOWN OF  
PELHAM  
)  
)   
) \_\_\_\_\_  
) Ronald W. Leavens, Mayor  
)  
)  
)   
) \_\_\_\_\_  
) Cheryl Miclette, Clerk