

THE CORPORATION OF THE
TOWN OF PELHAM

BY-LAW NO. 2923 (2007)

Being a by-law to authorize the Mayor and Clerk to enter
into an Agreement with George Eller and Jeffery Eller

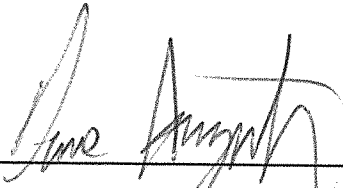
WHEREAS the Council of the Corporation of the Town of Pelham deems it
desirable to enter into a Development Agreement with George Eller and Jeffery Eller with
regard to the development of lands located at 37 Hurricane Road.

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

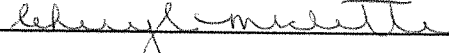
(1) THAT the Development Agreement attached hereto and made part of this by-law
between the Corporation of the Town of Pelham and George Eller and Jeffery Eller be and
the same is hereby approved.

(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
17TH DAY OF DECEMBER, 2007 A.D.



MAYOR DAVE AUGUSTYN



CLERK CHERYL MICLETTE

GEORGE FREEMAN ELLER AND JEFFERY GEORGE ELLER

STATION MEADOWS

DEVELOPMENT AGREEMENT

TABLE OF CONTENTS

<u>Title</u>	<u>Section #</u>	<u>Page #</u>
Definitions	1	3
Lands Affected	2	6
General Provisions	3	6
Design and Supervision of Construction of Services	4	8
Construction of Works	5	9
Contractors	6	9
Water Supply	7	9
Sanitary Sewers	8	10
Grade Control Plan	10	10
Driveways	11	10
Trees	12	10
Security Deposits and Refunds	13	11
Building Permits and Occupancy	14	13
Maintenance Guarantee	15	13
Cash-In-Lieu of Parkland Dedication	16	13
Inhibiting Order on the Lands	17	13
Default	18	14
Rescission of Agreement	19	14
Right of Entry	20	15
Warning Clauses	21	15
Indemnification	22	15
Covenants That Run With the Land	23	15
Notice	24	16
Postponement and Subordination	25	16
Schedules	26	16
Number and Gender	27	16
Notice Re: Development Charges	28	17
Binding Effect	29	17

THIS AGREEMENT made this 12th day of June, 2008

BETWEEN:

GEORGE FREEMAN ELLER AND JEFFERY GEORGE ELLER

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 purports to be the owner of the lands in the Town of Pelham described in Schedule "A" and has applied to the Town of Pelham Committee of Adjustment for consent under applications B-01/07P, B-02/07 and B-03/07P and has obtained such consent subject to conditions;

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

AND WHEREAS the Town requires the Developer, before final approval of the consents, to agree to certain terms and conditions for the development for which approval is sought;

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

1. **DEFINITIONS**

In this Agreement:

- (a) **BUILDER** means the person engaged by the Owner or subsequent Owner to construct a Building or any other work on the Lot.
- (b) **BUILDING BY-LAW** means the Building By-law No. 2277 (2001) passed by the Town and amended from time to time.
- (c) **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.
- (d) **BUILDING CODE ACT** means the *Building Code Act*, R.S.O. 1990, c.B. 13, as amended, and all regulations thereto.
- (e) **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.
- (f) **CHIEF BUILDING OFFICIAL** means the Chief Building Official of the Town as appointed by by-law of the Council.
- (g) **CLERK** means the Clerk of the Town.
- (h) **COMMISSION** means the applicable local governing hydro-electric commission located in the Town.
- (i) **CONSTRUCTION LIEN ACT** means the *Construction Lien Act*, R.S.O. 1990, c.C. 30, as amended, and all regulations thereto.

- (j) **COST OF CONSTRUCTION** means the cost of construction approved by the Director and may include engineering fees ancillary thereto.
- (k) **COUNCIL** means the Council of the Corporation of the Town of Pelham.
- (l) **DEVELOPER** means George Eller and Jeffery Eller its successors and assigns, and includes its successors in title to the Lands or a Lot shown on the Development Plan.
- (m) **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.
- (n) **DEVELOPMENT CHARGES** means the development charges as prescribed by the *Development Charges Act*, R.S.O. 1990, c.D. 9, as amended, or any successor thereto.
- (o) **DEVELOPMENT PLAN** means the Development Plan attached hereto as Schedule "A-1" over the Lands pursuant to the provisions of the *Planning Act*, as amended, or any successor thereto.
- (p) **DIRECTOR** means the Director of Operations or designate for the Town.
- (q) **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.
- (r) **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.
- (s) **LANDS** means the lands described in Schedule "A" hereto annexed.
- (t) **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.
- (u) **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*, as amended, or any successor thereto.
- (v) **LOT** means a lot as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (w) **LOT FRONTAGE** means lot frontage as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (x) **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.
- (y) **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.

- (z) **MUNICIPAL ACT** means the *Municipal Act*, S.O. 2001, c.25, as amended, and all regulations thereto.
- (aa) **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.
- (bb) **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.
- (cc) **PLANNING ACT** means the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, and all regulations thereto.
- (dd) **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.
- (ee) **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 "D" (Financial Obligations) attached to and forming part of this Agreement.
- (ff) **PRIVATE UTILITIES** means telephone, hydro electric systems and natural gas systems and cable television systems.
- (gg) **REGION** means The Regional Municipality of Niagara.
- (hh) **REGIONAL PUBLIC WORKS DEPARTMENT** means the Region's Public Works Department.
- (ii) **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 "D" (Financial Obligations) attached to and forming part of this Agreement.
- (jj) **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.
- (kk) **STREET** means street as defined in the Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (ll) **STREET LINE** means Street Line as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (mm) **SUPERVISION** means the full-time inspection and scrutiny of all 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.
- (nn) **TREASURER** means the Director of Financial Services of the Town.
- (oo) **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.

- (pp) **WORKS** shall jointly and severally mean and include all Services and all other matters, both internal and external, required to be completed or performed by the Developer pursuant to this Agreement.

2. LANDS 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 23.
- (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 "C" 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. DESIGN AND SUPERVISION OF CONSTRUCTION OF SERVICES

- (a) The Developer shall employ, at its cost, a competent and qualified 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 for signing and provide the Director with two (2) sets of full-sized, signed hard copies and two (2) sets of signed hard copies reduced to 11" x 17" size;
 - (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 a 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.

5. 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.

6. 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 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.

7. WATER SUPPLY

- (a) Water laterals have already been installed.
- (b) The location of the water service laterals shall be illustrated on the Site Servicing and Grading Plan including restoration of affected road and boulevard surfaces. The Site Servicing and Grading Plan shall be attached to this Agreement as Schedule "B".

8. SANITARY SEWERS

- (a) Sanitary laterals have already been installed.
- (b) Domestic waste from any building constructed on any Lot shall be discharged into the sanitary sewer system through a drain connected to the sanitary sewer system through a drain connected to the sanitary sewer lateral servicing each Lot.
- (c) The location of the sanitary sewer laterals shall be illustrated on the Site Servicing and Grading Plan including restoration of affected road and boulevard surfaces. The Site Servicing and Grading Plan shall be attached to this Agreement as Schedule "B".

9. STORMWATER MANAGEMENT AND STORM SEWERS

- (a) Storm laterals have already been installed.
- (b) The Developer shall, prior to issuance of Certificate of Completion of Primary Services, supply the Director with lot plans showing the locations, depths and dimensions of all rear yard infiltration trenches and front yard soakaway pits including locations of all roof rainwater leader connections to the Stormwater Management Facility.
- (c) The location of the storm service laterals shall be illustrated on the Site Servicing and Grading Plan including restoration of affected road and boulevard surfaces. The Site Servicing and Grading Plan shall be attached to this Agreement as Schedule "B".

10. GRADE CONTROL PLAN

The Developer shall be responsible for providing, at their expense, a Grade Control Plan for the land described in Schedule "A" attached hereto; said plan to meet with the approval of the Director. Building Restrictions shall be imposed upon each Lot and included in each deed prohibiting a subsequent owner thereof from altering such flow or from impeding the same to an extent sufficient to cause ponding in another Lot or adjacent property. Said Grade Control Plan shall be attached to this Agreement as Schedule "B". All elevations shown on Schedule "B" shall be maintained after construction of any building or structure upon the lands affected, and this provision shall be included in the Building Restrictions hereinbefore referred to. Minor changes to the storm drainage system may be permitted subject to the approval of the Director.

11. DRIVEWAYS

- (a) The Developer shall provide 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.
- (b) All driveway approaches between the edge of the road and the sidewalk, or in the absence of a sidewalk between the edge of the road 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.
- (c) All driveway approaches shall be constructed to the satisfaction of the Director.

12. TREES

- (a) The Developer shall, at its own expense, be responsible for implementing the 'Hurricane Road Tree Analysis, prepared by W.S. Hall, Upper Canada Forestry Limited, dated March 14, 2007
- (b) In order to maintain a high standard of amenity and appearance, the Owner shall retain the maximum number of existing trees as approved by the Director consistent with good subdivision design and conservation practices;

- (c) In order to maintain a high standard of amenity and appearance, the Owner agrees to plant trees 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 millimetre caliper, measured at a height of 1500 millimetres above grade, be contained 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; (Black Maple, Basswood, Red Oak, Pin Oak)

In accordance with Schedule "D" affixed hereto, prior to execution of this Agreement by the Town, the Owner shall post with the Town security for the planting of trees at the rate of four hundred (\$500.00) per tree to be planted.

The Owner 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.

Provided, however, that in the event the Owner 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. 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 Plans together with all Town administrative and consulting fees 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 "D" affixed hereto prior to execution of this Agreement by the Town.

Security to be posted for Services and to cover the Town administrative, engineering and legal costs shall be calculated on the basis of the Developer's estimated cost of design, construction and maintenance of all Works as set out in Schedule "D" annexed hereto.

(a) CASH PAYMENTS

Prior to the execution of this Agreement by the Town, 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 "D" annexed hereto, deposit with the Town the following non-refundable cash amounts:

- (i) a cash amount to secure the Town's engineering, administrative consulting and legal costs for this Agreement, approval of the Plans, and enactment of by-laws calculated on the following basis:
 - (1) where the Cost of Construction of all Works is less than \$100,000.00, the charge shall be \$10,000.00;
 - (2) where the Cost of Construction of all Works is between one hundred thousand dollars (\$100,000.00) and four hundred thousand dollars (\$400,000.00) the charge shall be ten thousand dollars (\$10,000.00) plus four percent (4.0%) of the costs between one hundred thousand dollars (\$100,000.00)

and four hundred thousand dollars (\$400,000.00); and

- (3) where the Cost of Construction of all Works is in excess of four hundred thousand dollars (\$400,000.00) the charge shall be fourteen thousand-five hundred dollars (\$22,000.00) plus three and one-half percent (3.5%) of the costs exceeding four hundred thousand dollars (\$400,000.00);

- (ii) 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; and

(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 "D" 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 14 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

14. BUILDING PERMITS AND OCCUPANCY

- (a) 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 including roadways to base asphalt and curbs, are completed and operational to the satisfaction of the Director and closed circuit TV camera video inspection and soundness testing have been completed and results provided to and accepted by the Director.
- (b) In addition to paying the building permit fee, the Owner of a lot shall:
 - (i) Pay the amount of the development charges which are applicable at the time of application for building permit; and
 - (ii) Pay the amount of the cash-in-lieu of lands for parks purposes pursuant to Section 15 of this Agreement.

15. MAINTENANCE GUARANTEE

- (a) The Letter of Credit deposited by the Developer pursuant to Section 12 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 "D") 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 Works are completed.
- (b) The Maintenance Guarantee as required under subsection 14(a) hereof, may be reduced further to five percent (5%) subject to the Developer meeting all requirements of the *Construction Lien Act*.
- (c) The Letter of Credit may be realized upon by the Town if the Developer defaults in any payment or condition contained herein.
- (d) The Developer shall be conclusively deemed to be in breach of the covenant contained in Section 14(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 23 hereof.

16. CASH-IN-LIEU OF PARKLAND DEDICATION

Prior to the issuance of a building permit, the Owner agrees to pay five percent (5%) of the value of the lands to the Town in lieu of lands for parks purposes pursuant to the provisions of Subsection 42(6) of the *Planning Act*. The Developer shall have the Lots appraised by a qualified appraiser to determine the value of each Lot pursuant to Subsection 42(6) the *Planning Act*. Such appraisal is valid for a period of twelve (12) months, after such period the Town may, at its sole discretion, require an updated appraisal.

17. 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.

18. 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.

19. RESCISSION OF AGREEMENT

- (a) In the event that the Development Agreement is 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 Development Plan a notice to that effect.

- (b) The Developer shall not sell or convey any Lot shown on the Development Plan until this Agreement is registered on title.

20. RIGHT OF ENTRY

The Developer shall obtain from any Purchaser of any of the Lots shown on the Development Plan, a written statement 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 written statement to the Town upon demand therefor.

21. WARNING CLAUSES

- (a) The Developer acknowledges and agrees to insert into all offers and agreements of purchase and sale the following clause: "All Works within the Plan, including but not limited to storm sewers, storm water management facilities, sanitary sewers, watermain, roads, curbs and gutters, street lighting and drainage works and swales, are contracted by the Developer. The Developer is obligated to maintain the Works in accordance with the Agreement and Plans registered on title."
- (b) The Developer acknowledges and hereby agrees to insert into all offers and agreements of purchase and sale the following clause: "The lands in the Plan are subject to the payment of development charges which are payable prior to the issuance of a building permit."
- (c) The Developer acknowledges and hereby agrees to insert into all offers and agreements of purchase and sale the following clause: "The lands in the Plan are subject to the payment of cash-in-lieu of the dedication of land for park purposes prior to the issuance of a building permit."

22. INDEMNIFICATION

Until the expiration of the Maintenance Guarantee, the Developer, on behalf of itself, its successors and assigns, including its successors in title of the Lands in the Development Plan, 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.

23. 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, 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".
- (b) The Developer agrees that it shall, upon the sale or transfer by it of the Lands included within the Development Plan 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 Plan for the purpose of construction.

24. 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:

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

and in the case of the Developer to:

George Eller
2826 Eller Road
Fonthill, ON L0S 1E6

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.

25. 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 Plan 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.

26. 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.

27. NUMBER AND GENDER

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.

28. **NOTICE RE: DEVELOPMENT CHARGES**

The Developer agrees to provide notice to the first purchaser of any Lot in the Development, upon transfer of the Lots, of all Development Charges related to the Development, including Development Charges already paid by the Developer or Development Charges that may be payable in the future.

29. **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
Susan Smythe
(Print Name)

GEORGE FREEMAN ELLER

George Eller

Witness
Susan Smythe
(Print Name)

JEFFERY GEORGE ELLER

J. Eller

THE CORPORATION OF THE TOWN OF PELHAM

Dave Augustyn, Mayor

Cheryl Mickle, Clerk