

TIMOTHY WRIGHT
1185 MAPLE STREET
DEVELOPMENT AGREEMENT
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THIS AGREEMENT made this 3rd day of December, 2008

BETWEEN:

TIMOTHY WRIGHT

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 represents and warrants that he is the owner of the lands in the Town of Pelham described in Schedule "A" and has consented to the drainage of stormwater over the lands to accommodate the development of lots created under consent applications B-10/07P and B-11/07P;

AND WHEREAS the Town requires the Owner to agree to certain terms and conditions in regard to 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 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) **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) **DIRECTOR** means the Director of Operations or designate for the Town.
- (m) **LANDS** means the lands described in Schedule "A" hereto annexed.
- (n) **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.
- (o) **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.
- (p) **LOT** means a lot as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (q) **MAINTENANCE GUARANTEE** means an undertaking by the Owner 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 Owner at its cost.
- (r) **MUNICIPAL ACT** means the *Municipal Act*, S.O. 2001, c.25, as amended, and all regulations thereto.
- (s) **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.
- (t) **OWNER** means Timothy Wright, its successors and assigns, and includes its successors in title to the Lands or a Lot shown on the Development Plan.
- (u) **OWNER'S CONSULTING ENGINEER** means the person or persons registered with the Professional Engineers of Ontario who are employed by the Owner, at its expense, to provide engineering services.
- (v) **PLANNING ACT** means the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, and all regulations thereto.
- (w) **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.
- (x) **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 "E" (Financial Obligations) attached to and forming part of this Agreement.
- (y) **PRIVATE UTILITIES** means telephone, hydro electric systems and natural gas systems and cable television systems.
- (z) **REGION** means The Regional Municipality of Niagara.

- (aa) **REGIONAL PUBLIC WORKS DEPARTMENT** means the Region's Public Works Department.
- (bb) **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.
- (cc) **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.
- (dd) **SITE SERVICING 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.
- (ee) **STREET** means street as defined in the Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (ff) **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.
- (gg) **TREASURER** means the Director of Financial Services of the Town.
- (hh) **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.
- (ii) **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 Owner pursuant to this Agreement.

2. **LANDS AFFECTED**

The Lands are those lands described in Schedule "A" attached hereto and this Agreement shall be registered against all of such 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 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 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, 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 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 Owner shall impose restrictions as set forth in Schedule "D" 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 Owner 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 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.
- (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 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.
- (l) Time shall be of the essence of this agreement.
- (m) 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.
- (n) 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 Owner shall forthwith upon demand enter into such further Agreement or give such further assurances as the Town may require and the Owner shall not contravene any condition or requirement of the Minister of Housing or the Region notwithstanding that the same is not contained herein.
- (o) The Owner 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.

- (p) All Streets and properties 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.
- (q) All trucks making deliveries to or taking materials from the Lands included within the Agreement shall be adequately covered and not unreasonably loaded so as to scatter refuse, rubbish, dust or debris on abutting Streets or properties.
- (r) Any lands required to be conveyed by the Owner in accordance with the provisions hereof shall be in a neat and tidy condition, free of all debris and trash, and the Owner shall complete all services for the Lands in accordance with the terms of this Agreement.

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

- (a) The Owner 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 Owner 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 Owner 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 Owner's Consulting Engineer at the expense of the Owner.

5. CONSTRUCTION OF WORKS

The Owner 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 Owner shall show satisfactory proof to the Director, that the proposed contractors or sub-contractors, whom the Owner 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 Owner shall, as a condition of such employment, be approved by the Director.

7. SITE SERVICING PLAN

The Owner shall be responsible for providing, at their expense, a Site Servicing 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 the Lands 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 Site Servicing Plan shall be attached to this Agreement at Schedule "B". All elevations shown on Schedule "B" shall be maintained after construction, 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.

8. SECURITY DEPOSITS AND REFUNDS

The Owner shall be responsible for the full amount of the cost for the design,

servicing and maintenance of the Site Servicing Plan 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 "E" 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 Owner's estimated cost of design, construction and maintenance of all Works as set out in Schedule "E" annexed hereto.

(a) LETTERS OF CREDIT

- (i) Before commencing any of the Works provided for in this Agreement, the Owner 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 "E" attached; and
 - (2) payment of one hundred percent (100%) of any other payments or Works as may be required of the Owner 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 9 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 Owner'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*.

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

9. **MAINTENANCE GUARANTEE**

- (a) The Letter of Credit deposited by the Owner pursuant to Section 8 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 9(a) hereof, may be reduced further to five percent (5%) subject to the Owner meeting all requirements of the *Construction Lien Act*.
- (c) The Letter of Credit may be realized upon by the Town if the Owner defaults in any payment or condition contained herein.
- (d) The Owner shall be conclusively deemed to be in breach of the covenant contained in Section 8(b), if, in the case of the cost of the Works or the fees of the Owner'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 Owner by the Director in accordance with Section 14 hereof.

10. **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 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 out 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.

11. RESCISSION OF AGREEMENT

- (a) In the event that this 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 Owner, declare this Agreement null and void and may Register against the title to the Lands a notice to that effect.
- (b) The Owner shall not sell or convey any part of the Lands until this Agreement is registered on title.

12. INDEMNIFICATION

Until the expiration of the Maintenance Guarantee, the Owner, on behalf of itself, its successors and assigns, including its successors in title of the Lands 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 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 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, however caused.

13. COVENANTS THAT RUN WITH THE LAND

- (a) 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".
- (b) The Owner 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 Owner 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.

14. 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 Owner to

Timothy Wright
1185 Maple Street
Fenwick ON L0S 1C0

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.

15. 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 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.

16. 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.

17. 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.


18. BINDING EFFECT

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

TIMOTHY WRIGHT

Timothy L Wright
(Print Name)

THE CORPORATION OF THE TOWN OF PELHAM


Dave Augustyn, Mayor

Cheryl Miclette
Cheryl Miclette, Clerk

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SCHEDULE "A"

LEGAL DESCRIPTION

Part of Lot 9, Plan 703, Town of Pelham, The Regional Municipality of Niagara and more particularly described as Part 1 on Reference Plan No. 59R-2241.

The described lands being all of PIN 64030-0292(LT).

SCHEDULE "B"

SITE SERVICING PLAN

Site Servicing Plan, drawing no. 01147-2- lot grading, prepared by P.D. Reitsma Surveying (2005), dated October 16, 2007, the original of which is located at the Town at the address shown in Section 14 of this Agreement.

SCHEDULE "C"

EASEMENT

The Developer shall convey, free and clear of all encumbrances and at its own expense, easements for drainage purposes, described as Part 1 on Reference Plan 59R-2241, prepared by Donald G. Chambers, O.L.S..

SCHEDULE "D"

BUILDING RESTRICTIONS
(To be included in all Deeds)

The Owner shall cause to be registered against all Lots in the Development Plan the transfer restrictions and restrictive covenants outlined below.

According to the nature of the annexed instrument, the words "Vendor", "Purchaser" and "Land" shall have the following meaning:

- (a) "VENDOR" means and includes also a grantor, transferor or seller and the heirs, successors and assigns of the Vendor.
- (b) "PURCHASER" means and includes also a grantee, transferee or buyer and the heirs, successors and assigns of the Purchaser.
- (c) "LAND" means and includes the land intended to be sold, conveyed or transferred by such instrument.

The Purchaser shall, in respect of the herein described land, adhere to and comply with the Grade Control Plan attached to the Agreement registered in the Land Titles Office for Niagara South and, in particular, shall do nothing to interfere with or impede the drainage patterns shown thereon. All grade elevation shown on the said Grade Control Plan shall be maintained after construction of any Building or structure upon the herein described land in accordance with the Town's Lot Grading Control Policy. In the event that the Purchaser fails to maintain such elevations, or to maintain the proper grades and levels herein referred to, or in the event that the Purchaser impedes any drainage system or pattern on the herein described Lands or neighbouring lands, the Purchaser shall be responsible for the immediate rectification and alteration of the land to conform with the drainage system or patterns laid out in the Agreement for any consequential damages, costs, expenses or other loss caused by the failure to maintain such grades or drainage patterns.

The Purchaser shall, in the event of requiring a different driveway entrance from that installed by the Vendor, relocate services/utilities at Purchaser's expense, cut and reconstruct the concrete curb where necessary on the roadway adjacent to the land herein described. He shall install, keep and maintain his driveway entrance or entrances from the traveled portion of the roadway to the Street line in good condition until the concrete sidewalk, concrete curbs and/or asphalt roadways for the said Development are constructed.

The Purchaser shall, within twelve (12) months of being able to occupy the home in accordance with the *Ontario Building Code* and to the satisfaction of the Chief Building Official, sod the lot.

The Purchaser shall maintain the road allowance between the Street line and the edge of the road in good condition and free from weeds and shall cut the grass thereon at frequent intervals.

The Purchaser will not remove any topsoil or strip the Lot of vegetation prior to commencing construction of a Building unit on the Lot. Only then will the Purchaser strip and excavate to the limit approved by the Town.

The Purchaser shall not occupy the dwelling on the Lot concerned until the Chief Building Official for the Town has certified that such of the following services as are applicable to the property have been installed and are operating adequately to serve the dwelling, or in the case of telephone services, are at least available to houses within the Development Plan: hydro, gas, water services, sanitary sewers and telephone.

SCHEDULE "D"

BUILDING RESTRICTIONS
(To be included in all Deeds)

(Continued)

The Purchaser shall not impede by the placing of fill, Buildings or other structures or Works any natural watercourse, swale, ditch, etc. which exists on the Lands.

The Purchaser shall not discharge by direct connection to a sanitary or storm sewer any discharge from eavestroughing, downspouts or swimming pools.

The Purchaser shall not erect any free standing tower, radio antenna, communication tower or similar structure.

SCHEDULE "E"

FINANCIAL OBLIGATIONS AND COST OF CONSTRUCTION