

THE CORPORATION OF THE
TOWN OF PELHAM

BY-LAW NO. 3397 (2013)


Being a by-law to authorize the Mayor and Clerk to enter into a Site Plan Agreement with Pelham Portfolio Inc., and to repeal and replace By-law No. 2354 (2002).


WHEREAS the Council of the Corporation of the Town of Pelham deems it desirable to enter into a Site Plan Agreement with Pelham Portfolio Inc., with regard to a Commercial development.

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

- (1) THAT the Site Plan Agreement attached hereto and made part of this by-law between the Corporation of the Town of Pelham and Pelham Portfolio Inc., be and the same is hereby approved.
- (2) THAT the Mayor & 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 Site Plan Agreement and the Clerk is hereby authorized to affix the Corporate Seal thereto.
- (3) THAT By-law No. 2354 (2002) be and is hereby repealed.

READ A FIRST, SECOND AND THIRD TIME
AND FINALLY PASSED BY COUNCIL THIS
15th DAY OF JULY, 2013 A.D.


MAYOR DAVE AUGUSTYN


CLERK NANCY BOZZATO

THIS AGREEMENT made this 15th day of July, 2013 A.D.

BETWEEN:

PELHAM PORTFOLIO INC.

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 it is the owner of the lands in the Town of Pelham described in Schedule 'A' attached hereto (the "Lands");

AND WHEREAS the Owner has assumed and agreed to be bound by the terms and conditions of the Site Plan Agreement;

AND WHEREAS the Owner is desirous to construct an addition to the existing building and for the construction of a separate commercial building in accordance with Schedules 'B', 'C', 'D', 'E' and 'F' attached hereto, filed in the Town's offices;

AND WHEREAS the Town has agreed to permit the said construction subject to certain terms and conditions;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One Dollar (\$1.00) now paid by the Owner to the Town (the receipt whereof is hereby acknowledged), the Parties hereto mutually covenant and agree as follows:

1. DEFINITIONS

In this Agreement:

- (a) **CHIEF BUILDING OFFICIAL** shall mean the Chief Building Official of the Corporation of the Town of Pelham.
- (b) **CLERK** shall mean the Clerk of the Corporation of the Town of Pelham.
- (c) **COUNCIL** shall mean the Council of the Corporation of the Town of Pelham.
- (d) **DIRECTOR OF CORPORATE SERVICES** shall mean the Director of Corporate Services of the Corporation of the Town of Pelham.
- (e) **DIRECTOR OF PUBLIC WORKS AND UTILITIES** shall mean the Director of Public Works and Utilities of the Corporation of the Town of Pelham.
- (f) **DIRECTOR OF PLANNING & DEVELOPMENT SERVICES** shall mean the Director of Planning & Development Services of the Corporation of the Town of Pelham.
- (g) **FACILITIES AND WORKS** shall mean and includes those facilities and works which are shown on or referred to in any one or more of the plans, drawings and schedules to this Agreement.
- (h) **LANDS** shall mean the lands described in Schedule 'A' attached hereto.
- (i) **PROFESSIONAL ENGINEER** shall mean a Professional Engineer registered with the Association of Professional Engineers.
- (j) **PROFESSIONAL ARCHITECT** shall mean a Professional Architect registered with the Ontario Association of Architects.

2. GENERAL PROVISIONS

- (a) The Owner shall develop and maintain the Lands only in accordance with the terms and conditions contained herein and any other applicable by-law of the Town.
- (b) The Owner shall perform any and all construction and installation on the Lands in accordance with the terms and conditions contained herein and as shown on Schedules 'B', 'C', 'D', 'E' and 'F' attached hereto and forming part of this Agreement to the reasonable satisfaction of the Town.
- (c) The Owner shall not perform any construction or installation on the Lands except in accordance with the terms and conditions contained herein and shown on said Schedules 'B', 'C', 'D', 'E' and 'F' attached hereto and forming part of this Agreement and to the reasonable satisfaction of the Town.
- (d) The Owner shall maintain and keep in good repair, driveways and access servicing the buildings located in the development.
- (e) The Owner grants to the Town, its servants, agents and assigns permission to enter upon the Lands for the purpose of inspection of any Facilities and Works referred to in this Agreement and for the purpose of the completion of any Facilities and Works in accordance with this Clause and this Agreement.
- (f) The Owner will, at all times, indemnify and save harmless the Town from all loss, costs, damages and injuries which the Town may suffer or be put to for or by reason of the construction, maintenance or existence of any Facilities and Works done by the Owner, its contractors, servants or agents on the Lands or which the Town may suffer or be put to for or by reason of the completion by the Town of any of the required Facilities and Works in accordance with this clause and this Agreement.
- (g) The Owner shall not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any administrative tribunal the right of the Town to enter into this Agreement and to enforce each and every term, covenant and condition herein contained and this Agreement may be pleaded as an estoppel against the Owner in any such proceeding.

3. STORM DRAINAGE SYSTEM

- (a) The Owner shall, at its own expense, construct a storm drainage system and outlet on the site to adequately serve the development proposed on the Lands, such construction to be in accordance with the approved Site Removals and Grading Plan attached hereto as Schedule 'C' and filed in the Town of Pelham offices.
- (b) The Owner further undertakes, at its own expense, to repair and forever maintain the storm drainage system located on the said Lands. Minor changes to the Grading Plan may be permitted subject to the approval of the Director of Operations.
- (c) The Owner shall provide siltation control fencing and maintenance during the site servicing and building construction stages.
- (d) The above noted stormwater drainage system on the site shall be maintained in proper operating condition at all times and in particular during the site servicing and building construction stages.

4. GRADING

- (a) The Owner shall have prepared by an Ontario Land Surveyor or Professional Engineer, a detailed Plan for the site, said plan to clearly indicate the existing drainage pattern on all adjacent Lands originally flowing through, into or over the area of the site, to the street storm sewer system or other outlet approved by the Director of Public Works and Utilities. This Plan, attached hereto as Schedule 'C' shall be approved by the Director of Public Works and Utilities prior to the execution of this Agreement. Minor changes to the Plan may be permitted subject to the approval of the Director of Public Works and Utilities.

- (b) The Owner shall submit, upon completion of facilities and works, a certificate signed by an Ontario Land Surveyor or Professional Engineer which indicates that the grades as stipulated on Schedule 'C' to this Agreement have been complied with.
- (c) Unless otherwise approved or required by the Town, the Owner shall not alter the grades of the said Lands until such time as a Building Permit is issued for the construction of the buildings contemplated herein on the said Lands.
- (d) The Owner shall provide his Design Engineer's verification that all grading and servicing provisions have been installed in conformance with the approved Site and Grading Plan prepared by Delcan Corporation. The Owner shall provide a copy of the Design Engineer's verification to the Town.

5. SANITARY SYSTEM

- (a) The Owner shall, at its own expense, construct a sanitary sewer system on the said Lands to adequately serve the building to be erected thereon, such construction to be in accordance with specifications and a design approved by the Director of Operations and filed in the Town's offices. All Building Permits will be required and approved by the Chief Building Official prior to the construction of said works. This Plan, attached hereto as Schedule 'C', shall be approved by the Director of Operations prior to the execution of this Agreement. Minor changes to the Plan may be permitted subject to the approval of the Director of Operations.
- (b) The Owner undertakes to repair and forever maintain the private sanitary sewer system located on the said Lands and, without limiting the generality of the foregoing, no storm, surface or roof water or weeping tiles shall be discharged into the sanitary sewer system.
- (c) The Owner agrees to provide full-time resident inspection of the relocated municipal sanitary sewer installation.
- (d) The Owner agrees to provide to the Director 'As Constructed' drawings of the municipal sanitary sewer installed or constructed in both hard copy and DWG digitized format (AutoCad 2000 or equivalent), at the time of completion of the services.
- (e) The Owner shall obtain a Regional Construction Encroachment Permit concerning the required connection to the sanitary sewer system.

6. WATER SUPPLY

- (a) The Owner shall, at its own expense, construct, install and forever maintain all necessary connections and all internal water supply services necessary to serve the development, such construction to be in accordance with the requirements of and with specifications and a design approved by the Director of Operations and filed in the Town's offices. All Building Permits will be required and approved by the Chief Building Official prior to the construction of said works.
- (b) The Owner shall ensure that Town Staff certified in accordance with Ontario Regulation 128/04 witness the required connection to the municipal water supply service.
- (c) The operation of valves which cause the internal water supply service to be charged from existing municipal water mains shall **ONLY** be carried out by Town Staff certified in accordance with Ontario Regulation 128/04.
- (d) The Owner shall comply with the provisions of the *Ontario Water Resources Act* and amendments thereto and all regulations thereunder, on all internal water supply services, which said act and regulations shall be enforced by the Town.

- (e) The Owner agrees to provide to the Director 'As Constructed' drawings of the municipal watermain installed or constructed in both hard copy and DWG digitized format (AutoCad 2000 or equivalent), at the time of completion of the services

7. LANDSCAPING

- (a) The Owner shall, at its own expense, adequately landscape, plant and maintain all of the Lands not required for buildings, parking or roads so as at all times to provide effective green areas enhancing the general appearance of the development contemplated herein, said planting and landscaping shall be in accordance with the approved Plan attached hereto as Schedule 'D'. Minor changes to the Plan may be permitted subject to the approval of the Director or Acting Director of Planning and Development Services.
- (b) Unless otherwise approved or required by the Town, the Owner shall not remove trees or other vegetation from the said Lands until such time as a Building Permit is issued for the construction of the buildings contemplated herein on the said Lands.

8. HYDRO

The Owner shall cause to be installed, at its own expense, a hydro system to serve the development, in accordance with the plans and specifications approved by Hydro One or Niagara Peninsula Energy Inc. The Owner shall be responsible for the cost of maintaining and repairing the hydro system located on said Lands in perpetuity.

9. GARBAGE DISPOSAL

- (a) The Owner shall at all times provide adequate collection and disposal of garbage and sanitary refuse.
- (b) If it is the intention of the Owner to provide for Regional solid waste collection services within the proposed development, the Owner shall follow the Regional Policy entitled "Waste Collection By Way Of Entry On Private Property" and attachments thereto.

10. FLOODLIGHTING

- (a) The Owner shall ensure that any lighting facility used to illuminate any building or parking area shall be designed and installed as to deflect from adjacent buildings and streets.
- (b) The Owner shall, at its own expense, provide exterior lighting in accordance with the Site Plan attached hereto as Schedule 'B' and Schedule 'E'. Minor changes to the Site Plan may be permitted subject to the approval of the Director of Public Works and Utilities.

11. PARKING, CURBING, DRIVEWAYS AND SIDEWALKS

- (a) The Owner shall, at its own expense, provide and at all times maintain on the said Lands, paved asphalt parking areas and driveways acceptable to the Town.
- (b) The Owner shall, at its own expense, curb all asphalt areas as detailed on the Plan attached hereto as Schedules 'B' and 'C'.
- (c) The Owner shall obtain a Regional Entrance Permit in order to secure approval to construct within the Regional roadway.

12. PARK DEDICATION

"The owner acknowledges and agrees that neither the owner or any person under its authority shall be entitled to the issuance of any building permit to construct any building or structure contemplated by this agreement and that the Town shall be

under no obligation to issue a Building permit on the Lands until the required cash-in-lieu- of land for park purposes has been paid to the Town”.

13. BUILDING AND SERVICES

The Owner shall construct and the Town shall permit the construction of the buildings and other structures on the Lands in accordance with the Schedules attached hereto to permit the development provided that all such uses shall comply with all building and zoning requirements of the Town. All Building Permits will be required and approved by the Chief Building Official prior to the construction of said works.

14. ADMINISTRATIVE AND CONSULTING COSTS

The Owner shall pay the Town's reasonable costs in connection with this Agreement for preparation, processing, administration and supervision including, but not limited to, all administrative, legal, inspection and consulting expenses.

15. DEPOSIT FOR FACILITIES AND WORKS

(a) At the time of execution of this Agreement, the Owner shall pay to the Town a deposit to guarantee its compliance with this Agreement in an amount equal to the lesser of:

- i. the estimated cost of completing the Facilities and Works; or
- ii. \$60,000.00.

The parties have calculated that the estimated cost for completion to be One Hundred and Three Thousand, Four Hundred and Seventy Nine Dollars and Eighteen Cents (**\$103,479.18**) as set out in Schedule 'F' attached hereto and forming part of this Agreement.

(b) The deposit shall be paid to the Town in cash or in the form of an irrevocable letter of credit from a chartered bank or from a recognized lending institution, subject to the approval of the Director of Corporate Services and shall be held as security to ensure the completion of the Facilities and Works until such time as the Town permits its release as ordered herein. The deposit may be used to pay for the cost of any work performed by the Town in accordance with the following clause in the event of the failure of the Owners to comply with the terms of this Agreement.

(c) Upon completion of the Facilities and Works, the Owner shall provide to the Town, at the Owner's expense, confirmation in writing by the Owner's Professional Architect or Professional Engineer or both, that the approved plans appended hereto have been complied with. When such confirmation has been received, the Chief Building Official shall confirm such compliance and the deposit, less any amounts expended to enforce compliance with the Agreement and any amounts refunded or reduced as the work required by this Agreement progresses, shall be returned to the Owner, without interest.

(d) The Town may, from time to time, demand an increase in the sum of the deposit in accordance with increases in the cost of performing the Facilities and Works required herein to be completed and the Owner covenants and agrees to make such increase. At the sole discretion of the Chief Building Official the amount of the deposit may be reduced at any time after the Owner has reached the stage where the costs to complete the Facilities and Works is less than the amount of the deposit.

(e) The release of the deposit by the Town does not release the Owners from their obligation to maintain all of the Facilities and Works pursuant to this Agreement.

- (f) The Owner agrees that all of the Facilities and Works required to be provided by the Owner shall be provided, installed or constructed by the Owner within one hundred and eighty (180) days after the date of substantial completion of the proposed development as determined by the Chief Building Official and shall be maintained at all times in good condition.

16. DEFAULT

Upon breach by the Owner of any covenant, term, condition or requirement of this Agreement, or upon the Owner becoming insolvent or making any assignment for the benefit of creditors, the Town, at its option, may declare the Owner to be in default. Notice of such default shall be given by the Town, and if the Owner shall not remedy such default within such time as provided in the notice, the Town may declare the Owner to be in final default under this Agreement. Upon notice of default having been given, the Town may require all work by the Owner, its servants, agents, independent contractors and sub-contractors to cease (other than any work necessary to remedy such default) until such default shall have been remedied, and in the event of final default, may require all work as aforesaid, to cease. Upon final default of 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:

- (a) enter upon the subject Lands by its servants, agents and contractors and complete any work, service, repair 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;
- (b) make any payment which ought to have been made 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;
- (c) 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;
- (d) bring action to compel specific performance of all or any part of this Agreement for damages; and
- (e) exercise any other remedy granted to the Town under the terms of this Agreement or available to the Town in law.

17. COVENANTS

The Owner covenants for itself, its successors and assigns and the Owners from time to time of the said Lands and the burden of the covenants contained in this Agreement shall be deemed to be negative and shall run with and be binding upon the Lands to and for the Town, its successors and assigns.

18. REGISTRATION

The Owner agrees and consents to the registration of notice of this Agreement against the said Lands.

19. OBLIGATION

This Agreement and the provisions hereof do not give to the Owner or any person acquiring any interest in the said Lands (each hereinafter in this paragraph called "such person") or any other person any rights against the Town with respect to the failure of any such person to perform or fully perform any obligation under this Agreement, or the failure of the Town to force any such person to perform or fully perform any obligation under this Agreement or any negligence of any such person in the performance of the said obligation.

20. BUILDING PERMIT

Notwithstanding any of the provisions of this Agreement, the Owner, its successors and assigns, shall be subject to all of the by-laws, as amended, of the Town at the time of the issuance of a Building Permit required pursuant to the terms of the Agreement or at the time of the execution of this Agreement, whichever is applicable.

21. PLANS

The Owner agrees that all plans shall be drawn by a Professional Architect or by a Professional Engineer and all surveys by an Ontario Land Surveyor, subject to the reasonable satisfaction of the Town.

22. NOTICES

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: | Pelham Portfolio Inc. 3625 Dufferin Street, Suite 500 North York, Ontario M3K 1Z2 |

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 this Section 21. Any notice delivered to the party to whom it is addressed in this Section 21 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.

22. SCHEDULES

The originals of the plans set out in Schedules 'B', 'C', 'D', 'E' and 'F' are available at the offices of the Town at the address set out in Section 22.

23. BINDING EFFECT

This Agreement shall be binding upon the parties hereto and their 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.

WITNESS

James M. Kach

(printed name)

James M. Kach

(signature)

July 29/13

(date)

PELHAM PORTFOLIO INC.

NATHAN VHR

(printed name)

[Signature]

(signature)

July 29 2013

(date)

☒ I have the authority to bind the Corporation

THE CORPORATION OF THE TOWN OF
PELHAM

[Signature]
Mayor Dave Augustyn

[Signature]
Nancy J. Bozzato, Town Clerk