

THE CORPORATION OF THE  
TOWN OF PELHAM

BY-LAW NO. 3533 (2014)

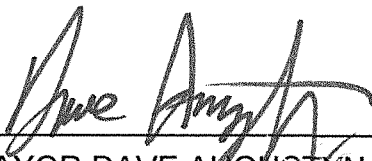
**Being a by-law to authorize the Mayor and Clerk to enter into a  
Site Plan Agreement with 1898262 Ontario Inc. for lands located  
at 156 Highway 20 West, legally described as PLAN 59 PT LOT  
116 RP 59R3555 Part 1**

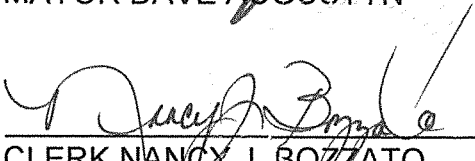
WHEREAS the Council of the Corporation of the Town of Pelham deems it desirable to enter into a Site Plan Agreement with 1898262 Ontario Inc. with regard to a commercial/professional office use located at 156 Highway 20 West.

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 1898262 Ontario Inc. be and the same is hereby approved.
2. THAT the Mayor and Clerk each be 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.

READ A FIRST, SECOND AND THIRD TIME  
AND FINALLY PASSED BY COUNCIL THIS  
25<sup>th</sup> DAY OF AUGUST, 2014 A.D.

  
MAYOR DAVE AUGUSTYN

  
CLERK NANCY J. BOZZATO

Schedule 'A': Location Map



Prepared: August 19 2014

SITE PLAN AGREEMENT  
1898262 ONTARIO INC.  
156 HIGHWAY 20 WEST

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THIS AGREEMENT made this 25th day of August, 2014 A.D.

BETWEEN:

**1898262 ONTARIO 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 looking forward to develop the parcel to a commercial (professional office use) in accordance with Schedule 'B' attached hereto, being a Site Plan 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 Financial 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 COMMUNITY PLANNING AND DEVELOPMENT SERVICES** shall mean the Director of Community Planning and 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 in good standing with the Association of Professional Engineers.

## **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 Schedule 'B' 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 Schedule 'B' 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. 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, drainage and servicing provisions have been installed in conformance with the approved Site Elevation and Drainage Plan prepared by Chambers and Associates Surveying Ltd., dated August 8, 2014 and revised August 13, 2014. The Owner shall provide a copy of the Design Engineer's verification to the Town.

#### **4. SANITARY SYSTEM**

- (a) 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.

#### **5. WATER SUPPLY**

- (a) The Owner shall, at its own expense, forever maintain all necessary connections and all internal water supply services necessary to serve the development.
- (b) 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.
- (c) The Owner shall comply with the provisions of the *Ontario Water Resources Act and Safe Drinking Water 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.

#### **6. SEWER SYSTEM**

- (a) The Owner undertakes the installation, repair and forever maintenance of the private storm water system (permeable pavers) as identified in the Chris Turner Associates Inc. Stormwater Brief dated June 26, 2014 and approved by the Niagara Peninsula Conservation Authority.

#### **7. ROADS AND ACCESS**

- (a) The Owner shall convey 3 metres for the road widening of Regional Road 20 (Highway 20) free and clear of any mortgages, liens, or other encumbrances to the Region of Niagara.
- (b) The Owner shall, at its own expense, prior to construction taking place within a Regional Road Allowance, obtain a Regional Construction Encroachment and/or Entrance Permit application from the Region's Permit Section of the Transportation Services Division, Public Works Department.
- (c) The Owner shall, at its own expense, restore any curb cuts and/or reinstate with topsoil and nursery sod the boulevards within the Regional Road Allowance to Regional standards.

#### **8. LANDSCAPING AND TREES**

- (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 Landscape Plan prepared by MacDonald Zuberec Ensslen Architects, dated June 18, 2014 attached hereto as Schedule 'D'. Minor changes to the Plan may be permitted subject to the approval of the Director of Community 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.

## **9. GARBAGE DISPOSAL**

- (a) The Owner shall at all times provide adequate collection and disposal of garbage and sanitary refuse.

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 Niagara Waste Collections Policies.

- Garbage – 7 bags or cans
- Recycling (blue and grey boxes) – unlimited
- Green bins – unlimited

For more information on curbside waste collection refer to  
<http://www.niagararegion.ca/living/waste/mixed-use-services.aspx>

## **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 prepared by MacDonald Zuberec Ensslen Architects, dated June 18, 2014 attached hereto as Schedule 'B'. Minor changes to the Site Plan may be permitted subject to the approval of the Director of Community Planning and Development Services.

## **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 and/or permeable pavers parking and driveway areas acceptable to the Town.

## **12. 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.

## **13. 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.

## **14. 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 Twenty Four Thousand Two Hundred and Sixty Five Dollars **(\$24,265.00)** excluding taxes as set out in Schedule 'E' 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 Qualified Designer 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.

## 15. 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.

## **16. 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.

## **17. REGISTRATION**

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

## **18. 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.

## **19. 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.

## **20. PLANS**

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

## **21. 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: 1898262 Ontario Inc.  
PO Box 770  
Fonthill, ON L0S 1E0

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 Schedule 'B', 'C' and 'D' are available at the offices of the Town at the address set out in Section 21.

## 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

OWNER, 1898262 ONTARIO INC.

ROSE AZOTINI  
(printed name)

JOHN COLANGELO  
(printed name)

Rose Azotini  
(signature)

[Signature]  
(signature)

Aug 27/14  
(date)

Aug. 27/14  
(date)

☒ I have the authority to bind the Corporation

THE CORPORATION OF THE TOWN OF  
PELHAM

[Signature]  
Mayor Dave Augustyn

[Signature]  
Clerk Nancy J. Bozzato