

**Site Plan Agreement
U. Lucchetta Construction Limited
2, 4, and 6 Brayden Way**

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THIS AGREEMENT made this 7th day of April, 2015 A.D.

BETWEEN:

U. Lucchetta Construction Ltd.

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 (the "Lands") in the Town of Pelham described in Schedule 'A' attached hereto and as stated in the solicitor's certificate in Schedule 'B' attached hereto;

AND WHEREAS pursuant to Section 41 of the *Planning Act* the Council of the Town of Pelham enacted By-law 1118 (1987) designating all of the Town as a Site Plan Control Area;

AND WHEREAS by an application, dated February 4, 2015 (File no. SP-01-15), the Owner applied to the Town for site plan approval in respect to the development of the Lands;

AND WHEREAS the Town approved, on April 7, 2015, the plans and drawings submitted, subject to the Owner entering into a Site Plan Agreement with the Town as permitted by Section 41 (7) of the *Planning Act*;

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

AND WHEREAS the Owner is to develop the Lands for residential use in accordance with Schedule 'H' 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;

AND WHEREAS Section 41 (10) of the *Planning Act* permits the registration of this Agreement against the Lands in order to secure the provision of facilities and works referred to in Sections 41(7) and (8) of the *Planning Act*;

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:

BUILDING PERMIT shall mean a building permit issued by the Chief Building Official of the Corporation of the Town of Pelham.

CHIEF BUILDING OFFICIAL shall mean the Chief Building Official of the Corporation of the Town of Pelham.

CLERK shall mean the Clerk of the Corporation of the Town of Pelham.

COUNCIL shall mean the Council of the Corporation of the Town of Pelham.

DIRECTOR OF COMMUNITY PLANNING AND DEVELOPMENT shall mean the Director of Community Planning and Development of the Corporation of the Town of Pelham.

DIRECTOR OF CORPORATE SERVICES shall mean the Director of Corporate Services of the Corporation of the Town of Pelham.

DIRECTOR OF PUBLIC WORKS shall mean the Director of Public Works of the Corporation of the Town of Pelham.

FACILITIES AND WORKS shall mean and include those facilities and works, including landscaping, which are shown on or referred to in any one or more of the plans, drawings and schedules to this Agreement.

FIRE CHIEF shall mean the Fire Chief of the Corporation of the Town of Pelham.

LANDS shall mean the lands described in Schedule 'A' attached hereto.

PROFESSIONAL ENGINEER shall mean a Professional Engineer registered in good standing with the Association of Professional Engineers of Ontario.

ONTARIO LAND SURVEYOR shall mean an Ontario Land Surveyor registered in good standing with the Association of Ontario Land Surveyors.

QUALIFIED DESIGNER shall mean a designer that undertakes design activities and is required to be qualified, but not registered.

PART 1: TERMS AND CONDITIONS

2. GENERAL PROVISIONS

- (a) The Parties agree that upon full execution and registration of this Agreement it shall supersede and replace any previous site plan control agreement (s) registered on title to the Lands.
- (b) The Owner shall develop and maintain the Lands only in accordance with the terms and conditions contained herein and any applicable by-law of the Town.
- (c) The Owner agrees that no signs advertising or otherwise, shall be permitted on the Lands unless approved by this Agreement or are in compliance with the Town's Sign By-law #3548 (2014).
- (d) The Owner shall perform any and all construction and installation of Facilities and Works on the Lands in accordance with the terms and conditions contained herein and the approved plans and drawings as shown on Schedules 'H', 'I', and 'J' attached hereto forming part of this Agreement to the reasonable satisfaction of the Town.
- (e) The Owner shall not make deviations or changes to the approved plans and drawings without the prior written approval of the Town.
- (f) The Owner shall maintain and keep in good repair driveways and access servicing the buildings located in the development.
- (g) The Owner shall take all necessary steps to prevent the raising of dust and the erosion of soil from the Lands onto adjacent lands or onto abutting municipal roads during construction, and should such incident occur, the Owner will take the necessary steps to correct said incident to the reasonable satisfaction of the Town.
- (h) The Owner will be fully liable for all costs and any damages incurred as a result of the raising of dust, or the erosion, spillage, or tracking of soil or other debris from the Lands onto adjacent lands and onto abutting municipal roads, and will indemnify the Town against any claim made as a result of such problems.
- (i) The Owner, prior to any works being undertaken, shall erect and maintain a temporary siltation and snow fence and install any erosion and silt control devices deemed necessary around the perimeter of the Lands to prevent the discharge of silt to waterways, open channels, or municipal storm sewers.
- (j) The temporary fence and erosion and silt control measures shall be regularly inspected to ensure their continued effectiveness throughout the construction period. The Owner shall provide inspection reports to the Town, upon request, and the Owner shall immediately repair any deficiencies identified in the inspection reports.
- (k) The fence and erosion and silt control measures shall remain in place until the majority of the development is completed and / or when hard surfacing or vegetative cover has stabilized the Lands, and the Lands are deemed to be in a safe condition by the Chief Building Official, and their removal is approved by the Director of Community Planning and Development.
- (l) The Owner grants to the Town, its servants, and 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.

- (m) The Owner grants to the Town, its servants, and agents and assigns permission to enter upon the Lands for the purpose of completing or repairing work undertaken or not completed that, in the opinion of the Town, is an emergency situation, or a circumstance which may give rise to an emergency situation, at the expense of the Owner. The Town shall provide written notice or verbal advisement to the Owner, at the earliest possible opportunity, when an emergency situation is declared.
- (n) The Owner will be fully responsible for any, and all, damage to existing Town owned property, and anything thereon, which is located in the vicinity of the Lands that, in the opinion of the Director of Public Works, was damaged as a result of the development. Furthermore, if necessary, securities submitted for the development, in accordance with Schedule 'E', may be used towards any required repair or restoration of existing Town owned property, and anything thereon, if not satisfactorily repaired within a reasonable timeframe to be determined by the Director of Public Works.
- (o) 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.
- (p) 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 Lands, said plan to clearly indicate the existing drainage pattern on all adjacent lands originally flowing through, into, or over the area of the Lands, to the street storm sewer system, or other outlet approved by the Director of Public Works. This plan, attached hereto as Schedule 'J', shall be approved by the Director of Public Works 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.
- (b) The Owner will construct the lot grading at its sole risk and expense in compliance with this Agreement.
- (c) Unless otherwise approved or required by the Town, the Owner shall not alter the grades of the Lands until such time as a Building Permit is issued for the construction of the buildings contemplated herein on the Lands.
- (d) 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, drainage, and servicing provisions as stipulated on Schedule 'J' hereto attached to this Agreement have been complied with.
- (e) The Owner agrees that any securities required by this Agreement in accordance with Schedule 'E' will not be released until the certificate signed by an Ontario Land Surveyor or Professional Engineer has been provided to the Town.

4. SANITARY SYSTEM

- (a) The Owner undertakes to repair and forever maintain the private sanitary sewer system located on the 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.
- (b) The Owner shall be fully responsible for the capping off of all surplus services no longer required for the development of the Lands at its sole risk and expense to the satisfaction of the Director of Public Works.
- (c) The Owner shall provide, construct, and install sanitary services to the standards and specifications of the Town under the direction and supervision of the Professional Engineer who will certify completion of the services to the satisfaction of the Town.
- (d) The sanitary services shall front only on respectively serviced properties.
- (e) The minimum acceptable horizontal and vertical separation of the water service and the sanitary services shall be maintained.
- (f) The Owner shall, at its own expense, verify or correct the servicing requirements.

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.
- (d) The water services shall front only on respectively serviced properties.
- (e) The water services shall not be located under driveways.
- (f) The minimum acceptable horizontal and vertical separation of the water service and the sanitary services shall be maintained.
- (g) The Owner shall, at its own expense, verify or correct the servicing requirements.

6. STORM WATER MANAGEMENT SYSTEM

- (a) The Owner shall undertake the installation, repair and maintenance of the storm water management system as identified in the plan attached hereto as Schedule 'J' under the direction and supervision of the Professional Engineer who will certify completion of the services to the satisfaction of the Town.
- (b) The storm services shall front only on respectively serviced properties.
- (c) The grades and drainage facilities shall be established to implement and

maintain an on-site storm water management system to limit storm run-off from the Lands to a pre-development rate of flow and to indemnify and save harmless the Town from any liability for excess run-off as a result of construction or development on the Lands.

- (d) The Owner shall ensure that monitoring and inspection of the storm water management system shall be conducted pre, during, and post construction, by its Professional Engineer, or designate, in accordance with the following:
 - i. The Professional Engineer, or designate, shall visit the Lands, at a minimum, on a weekly basis and also during and after each storm event, to ensure that the storm water management system continues to function in accordance with the approved design.
 - ii. The Professional Engineer, or designate, shall provide to the Town at its request, within forty-eight (48) hours of a storm event, a list of deficiencies observed during the inspection and the proposed timeframe for the completion of any necessary corrective measures. The Professional Engineer, or designate, shall be responsible for ensuring corrective works are performed immediately.
 - iii. In conjunction with all site inspections, the Professional Engineer, or designate, shall maintain a journal and prepare photographic records of pre, during, and post construction conditions. Deficiencies and confirmation of the completion of necessary corrective measures shall be entered into the journal. Once established, a copy of the journal and photographic records shall be provided to the Director of Public Works, including any updates, on a monthly basis.
- (e) The Owner agrees that if storm water management system corrective measures are not implemented immediately, the Town is authorized to have the corrective measures completed at the expense of the Owner by drawing on the security deposit/letter of credit. The Owner agrees that the security deposit/letter of credit shall guarantee payment to the Town, its servants, and agents for the total cost of inspection time deemed necessary with respect to the Lands.
- (f) The Owner shall allow the Town, its servants and agents, in perpetuity, access to the Lands to inspect roof drains, inlet control devices, and storm water management facilities.
- (g) The Owner shall, at its own expense, restore or relocate any storm sewers or catch basins within the road allowance to Town standards.
- (h) The Owner agrees to indemnify and save harmless the Town from actions, claims, and/or suits that may arise out of the implementation and/or lack of maintenance of the storm water management system.
- (i) The Owner shall, at its own expense, verify or correct the servicing requirements.

7. ENVIRONMENTAL RISK MANAGEMENT

- (a) The Owner agrees that if decommissioning or remediation of the Lands is required it will be done to the satisfaction of the Town and the Ministry of the Environment and Climate Change prior to the commencement of any development contemplated under this Agreement.
- (b) The Owner agrees that, if identified, any applicable environmental risk

management assessment shall be completed on the Lands and the record of site condition shall be submitted to the Environmental Site Registry.

- (c) The Owner agrees to fully implement all requirements of any applicable environmental risk assessment to the satisfaction of the Director of Community Planning and Development, and/or Director of Public Works, and/or any applicable government ministry or agency.

8. ROADS AND ACCESS

- (a) The Owner shall, at its own expense, prior to construction taking place obtain a Road Occupancy Permit from the Department of Public Works prior to starting any works on, under, or within an existing municipal road allowance or right of way.
- (b) The Owner shall, at its own expense, restore any boulevards, sidewalks, and curb cuts, and reinstate with topsoil and nursery sod the boulevards within the road allowance to Town standards.

9. EASEMENTS

- (a) The Owner shall convey to the Town the easements set out in Schedule 'D', free of all encumbrances, for the construction, maintenance and improvement of watercourses, ditches, land drainage works, sanitary sewage facilities, and other public utilities prior to the return of any securities.
- (b) The Owner shall, at its own expense, satisfy the Town in regard to the existing environmental condition of all real property interests to be dedicated, conveyed, transferred, or granted prior to the Town accepting any real property interests. Furthermore, the Owner shall, at its own expense, be responsible for all efforts necessary to resolve existing adverse environmental conditions that are identified.
- (c) The Owner shall be responsible for the relocation of any utilities and utility apparatus, including but not limited to: hydro, fibre optics, telephone, gas, cable, community mail boxes, etc.

10. 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 site plan attached hereto as Schedule 'H'. Minor changes to the plan may be permitted subject to the approval of the Director of Community Planning and Development.
- (b) The Owner shall maintain all plant material in a healthy, growing, and trimmed condition and kept free of debris or otherwise replace affected plant material as approved by the Director of Community Planning and Development, or designate. Furthermore, the Owner agrees to maintain all landscape features in a safe and functional condition until the final release of all securities.
- (c) The Owner shall grade, top-soil, hydro-seed or sod, maintain and water all undeveloped portions of the Lands that are not contemplated for immediate development and left vacant for a period greater than 90 days upon execution of this Agreement to the Town's satisfaction. The Owner agrees that securities submitted for this development may be used towards these improvements if not satisfactorily installed and maintained

within a reasonable timeframe.

- (d) Unless otherwise approved or required by the Town, the Owner shall not remove trees or other vegetation from the Lands until such time as a Building Permit is issued for the construction of the buildings contemplated herein on the Lands.
- (e) The Owner shall, at its own expense, pay the amount stipulated on Schedule 'C' to the Town as its boulevard tree planning contribution. The Owner acknowledges that the boulevard tree planting contribution shall in no way bind or commit the Town to plant boulevard trees abutting the Lands.

11. PARKLAND DEDICATION

- (a) The owner shall, at its own expense, pay the amount stipulated on Schedule 'C' to the Town as cash-in-lieu of dedication of land for park purposes pursuant to the Town's Parkland Dedication By-law #2682 (2005).

12. GARBAGE DISPOSAL

- (a) The Owner shall at all times provide adequate collection and disposal of garbage, sanitary refuse, and recyclable materials to the satisfaction of the Town.
- (b) The Owner shall not permit any refuse, junk, debris or other material to be deposited onto any public or privately owned lands without the prior permission of the land owner. The unauthorized deposit of any refuse, junk, debris, or other material will be removed from the affected lands at the Owner's expense.
- (c) If the Owner fails to remove the aforesaid material within a period of forty-eight (48) hours from issuance of notice, the Town may enter the affected lands, and remove said material, and the Owner will be charged for all expenses incurred by the Town. The Owner further agrees that the Town may make such charge against the security deposit/letter of credit filed with the Town.
- (d) The Owner shall regularly inspect the property for discarded waste material and/or items that may accumulate on the Lands for its appropriate disposal to prevent unsightly conditions.
- (e) If it is the intention of the Owner to provide for Regional waste collection services within the proposed development the Owner shall follow the Regional Niagara Waste Collections Policies.

13. PARKING, CURBING, DRIVEWAYS AND SIDEWALKS

- (a) The Owner shall, at its own expense, provide and at all times maintain on the Lands, paved and/or permeable pavers for off-street parking, driveway, loading and storage areas in accordance with the site plan attached hereto as Schedule 'H'. Minor changes to the site plan may be permitted subject to the approval of the Director of Community Planning and Development.

14. BUILDING AND SERVICES

- (a) 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

uses shall comply with the applicable zoning by-law and other by-laws of the Town and with all of the provisions of the Ontario Building Code.

- (b) The Owner agrees to hold back in its payments to any contractor who may construct services, facilities or works such amounts as may be required under the provisions of the *Construction Lien Act*. The Owner agrees to indemnify and save completely harmless the Town from and against all claims, demands, actions, causes of actions and costs resulting from any construction being performed by the Owner, its agents, and assigns pursuant to the provisions of this Agreement, and, on demand by the Town the Owner will take such steps as may be necessary to immediately discharge all liens registered upon the services.
- (c) The Owner agrees not to permit occupancy of any building, or part thereof, for which Building Permits have been issued until all works required under this Agreement are completed in accordance with the requirements of the Ontario Building Code, the applicable zoning by-law and other by-laws of the Town.
- (d) The Owner agrees that the Town may draw upon any security the Owner has provided to the Town to complete any or all works which may have the potential to negatively affect the health and safety of the occupants or visitors to the Lands if in the opinion of the Chief Building Official a building or part thereof is occupied contrary to sub-clause 14 (c).
- (e) The Owner agrees that in the event that any building or unit is occupied otherwise than in accordance with the provisions of sub-clause 14 (c) that the Town shall be entitled to obtain an order from a court of competent jurisdiction prohibiting the occupancy of any building or unit until such time as the terms of this Agreement have been fully complied with and the Owner shall be estopped from opposing such application on the part of the Town.
- (f) The Owner agrees to provide an acceptable dye test certificate, if required by the Chief Building Official. The Owner agrees that the securities required by this Agreement, in accordance with Schedule 'E', will not be released until said certificate is provided to the Town.

15. FIRE PROTECTION AND ACCESS

- (a) That no Building Permit involving the use of combustible materials, at the discretion of the Chief Building Official, will be issued for any development on the Lands until all fire hydrant services, including but not limited to valves, chambers, and other appurtenances, as deemed necessary by the Fire Chief, have been approved and connected to existing facilities that are in operation and, in the opinion of the Fire Chief, are capable of providing adequate fire protection services.
- (b) The Owner agrees that any proposed private hydrants must comply with the Town's specifications for water mains and fire hydrant services and be installed, pressure and flow tested by the contractor, and be accepted by the Fire Chief prior to the issuance of a building permit involving combustibles.
- (c) The Owner agrees that during development an access route shall be maintained to the Lands capable of supporting fire-fighting equipment to the satisfaction of the Fire Chief. The access route shall be kept clear of all construction equipment, material and debris.
- (d) The Owner agrees that fire hydrant services shall remain clearly identified, operational, and remain unobstructed by construction, parking, landscaping, storage, or any other means to the satisfaction of the Fire

Chief.

- (e) The Owner agrees to display an adequate and clear unit number on the front of each unit in close proximity to the unit's main entrance during construction and to install a permanent unit number on the exterior front of each unit, prior to the release of securities, to the satisfaction of the Director of Community Planning and Development and the Fire Chief.

16. WARNING CLAUSES

- (a) The Owner agrees to include the following warning clauses in all Agreements of Purchase and Sale:
 - i. Due to further development in the area, residents may be temporarily inconvenienced by construction activities, noise, dust, dirt and construction traffic.
 - ii. The transfer of title to this townhouse unit from the Developer is authorized pursuant to a By-law passed by Pelham Town Council under Section 50 (7) of the *Planning Act* which exempts this townhouse block from the part lot control provisions of the *Planning Act*. This is different than the creation of a lot by a plan of subdivision, as the By-law will expire in 1 year. After the expiry of the By-law, any townhouse units which abut and which have the same registered owner (s) will merge in title. This means that the abutting units cannot be sold individually without either the passage of another By-law under Section 50 (7) or with the approval of a Consent application by the Town of Pelham Committee of Adjustment. Part Lot Control Exemption by-laws and Consent applications are both costly and time consuming processes. The Buyer is advised to obtain legal advice in this regard if purchasing more than one townhouse unit.

PART 3: FINANCIAL CONDITIONS, SECURITY AND INSURANCE

17. ADMINISTRATIVE AND CONSULTING COSTS

- (a) 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 as set out in Schedule 'C' attached hereto and forming part of this Agreement.
- (b) The Owner shall pay the Town any outstanding taxes (including arrears, interest, and penalties), local improvement charges and development charges, if applicable.

18. SECURITY DEPOSIT FOR FACILITIES AND WORKS

- (a) The Owner shall pay to the Town a security deposit to guarantee its compliance with this Agreement in the amount as set out in Schedule 'E' attached hereto and forming part of this Agreement.
- (b) The security 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 Owner agrees that the security deposit shall be kept

in full force and effect and that it will pay all premiums of the letter of credit that are due or until such time as the Town returns the letter of credit.

- (c) The letter of credit shall contain the following automatic renewal clause:

"It is a condition of this Letter of Credit that it shall be deemed to be automatically extended without amendment from year to year from the present or any future expiration date hereof, unless at least 30 days prior to the present or any future expiration date, we notify you in writing by registered mail that we elect not to consider this letter of credit to be renewable for any additional period."

- (d) The Owner agrees that the security deposit may be used to pay for the cost of any work performed by the Town in the event of the failure of the Owner to comply with the terms of this Agreement within thirty (30) days of the Town providing written notice to the Owner
- (e) The Owner agrees that, notwithstanding Schedules 'E' and 'F' hereto attached to this Agreement, the Town may, from time to time, demand an increase in the sum of the security deposit in accordance with increases in the cost of performing the Facilities and Works required herein to be completed and the Owner agrees to make such increase.
- (f) The Owner agrees that in the event that the Town determines that any reduction in the security deposit will create a shortfall with respect to securing the completion of any work or matter remaining to be carried out by the Owner pursuant to this Agreement, the Town will not be obligated to reduce the security deposit until such time as work is satisfactorily completed, or the Town has sufficient security to ensure that such work will be completed.
- (g) At the sole discretion of the Director of Community Planning and Development, the amount of the security 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 security deposit.
- (h) 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.
- (i) 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 attached hereto have been complied with. When such confirmation has been received, the Director of Community Planning and Development shall confirm such compliance and the security 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.
- (j) The release of the security deposit by the Town does not release the Owner from its obligation to maintain all of the Facilities and Works pursuant to this Agreement until this Agreement is amended or otherwise released from title.
- (k) The Owner agrees that in the event that any of the Facilities and Works are not being maintained to the satisfaction of the Town, or if the Owner is otherwise in default of this Agreement, the Town may, on written notice to the Owner, require the Owner to comply with the terms of this Agreement.
- (l) That upon the transfer of ownership of the Lands the Town will not return

the security deposit required under this Agreement until the new owner files with the Town a substitute security deposit, as may be permitted, in the required amount or the Facilities and Works are completed to the Town's satisfaction.

19. GUARANTEE

- (a) The Owner guarantees the workmanship and materials for the construction of Facilities and Works and to maintain same free of defects for a period of one (1) year from the date of certification of substantial completion. The Owner covenants and agrees that it will promptly and properly repair all defects of Facilities and Works to the complete satisfaction of the Town.

20. 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 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:
 - i. 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;
 - ii. 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;
 - 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. Bring action to compel specific performance of all or any part of this Agreement for damages; and,
 - v. Exercise any other remedy granted to the Town under the terms of this Agreement or available to the Town in law.

21. INSURANCE

- (a) The Owner shall provide to the Town a general comprehensive liability insurance policy (and *certificate of insurance*) in the amount of five million (\$5,000,000) dollars in a form satisfactory to the Town, indemnifying the Town from any loss arising from claims or damages, injury or otherwise in connection with the work done by or on behalf of the Owner. The policy shall contain a cross-liability clause naming the Town as a coinsured. The policy shall be maintained in full force and effect until the Town has

assumed the public works. In the event that any renewal premium is not paid, the Town, in order to prevent the lapse of such liability insurance policy, may pay the renewal premium or premiums and the Owner agrees to pay the cost of such renewal or renewals within thirty (30) days of the account being rendered by the Town. The issuance of such policy of insurance shall not be construed as relieving the Owner from any liability or responsibility for any claims in excess of the aforementioned policy limits.

PART 4: ADMINISTRATION

22. PLANS

- (a) 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.
- (b) Within three (3) months following the completion of construction of Facilities and Works, a complete set of "as constructed drawings" in AutoCAD (release version, as approved), PDF, and hard copy formats must be submitted to the Director of Community Planning and Development and the Director of Public Works.

23. SCHEDULES

- (a) The originals of the plans set out in Schedules 'H', 'I', and 'J' are available at the offices of the Town at the address set out in Section 24.

24. NOTICES

- (a) 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: U. Lucchetta Construction Ltd.
402 Rice Road
Welland, ON L3C 2V8

or as such other address as the party to whom such notice is to be given shall have last notified the party giving the notice in the manner provided in Section 24.

Any notice delivered to the party to whom it is addressed in Section 24 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.

25. COVENANTS

- (a) The Owner covenants for itself its successors and assigns and the Owners from time to time of the 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.

26. REGISTRATION

- (a) The Owner agrees and consents to the registration of notice of this Agreement against the Lands.

27. OBLIGATION

- (a) This Agreement and the provisions hereof do not give to the Owner or any person acquiring any interest in the 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.

28. BINDING PARTIES

- (a) This Agreement and everything herein contained shall enure to the benefit of and be binding upon the Parties hereto and their heirs, executors, administrators, successors, and assigns.
- (b) This Agreement may be signed in counterparts, each of which shall be deemed effective as if each Party had signed each of the counterparts.

29. POSTPONEMENT AND SUBORDINATION

- (a) The Owner agrees, at its own expense, to obtain and register such documentation from its mortgagees or encumbrances 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 shall take effect and have priority as if it had been executed and registered prior to the execution and registration of the document or documents giving to the mortgagee and/or encumbrances their interest in the Lands.

30. ENFORCEMENT

- (a) The Owner hereby acknowledges and agrees that the Town, in addition to any other remedy it may have at law, shall also be entitled to enforce this Agreement in accordance with Section 446 of the *Municipal Act, 2001*.

31. OTHER APPLICABLE LAWS

- (a) The Owner hereby acknowledges and agrees that nothing in this Agreement shall relieve the Owner from compliance with all applicable municipal by-laws, laws, regulations, notices or other policies or laws and/or regulations established by any other governmental body that may have jurisdiction over the Lands.

32. BUILDING PERMIT

- (a) The Owner agrees that neither it nor any person under its authority shall be entitled to the issuance of one or more building permits to construct any buildings or structures contemplated under this Agreement until this Agreement has been fully executed and registered on title to the Lands.
- (b) 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.

33. TERMINATION OF AGREEMENT

- (a) The Owner hereby acknowledges and agrees that if the proposed development governed by this Agreement is not commenced within two (2) years from the date of the execution of this Agreement, the Town may, at its sole option and on sixty (60) days' notice to the Owner, declare this Agreement null and void and of no further force and effect. Any fees, levies or other charges (excluding deposited securities) paid by the Owner or designate, pursuant to this Agreement, shall be forfeited to the Town. Deposited securities shall be released once the site has been restored back to its pre-development preparation condition.

34. INTERPRETATION OF AGREEMENT

- (a) The Owner agrees:
 - i. That the part numbers and headings, subheadings and sections, subsections, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
 - ii. That this Agreement shall be construed with all changes in number and gender as may be required by the context.
 - iii. That every provision of this Agreement by which the Owner is obligated in any way shall be deemed to include the words "at the expense of the Owner" unless the context otherwise requires, including the payment of any applicable taxes (including HST).
 - iv. That references herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto.
 - v. That all obligations herein contained, although not expressed to be covenants, shall be deemed covenants.
 - vi. That whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference.
 - vii. That the Owner and the Town agree that all covenants and conditions contained in this Agreement shall be severable and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.

35. WAIVER

- (a) The failure of the Town at any time to require performance by the Owner of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Town of the performance of any obligation hereunder be taken or be held to be a waiver of the performance of the same, or any other obligation hereunder at any later time. The Town shall specifically retain its rights at law to

enforce this Agreement.

36. EXTENSION OF TIME

- (a) Time shall always be of the essence of this Agreement. Any time limits specified in this Agreement may be extended with the consent in writing of both the Owner and the Town, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit.

37. NO CHALLENGE TO AGREEMENT

- (a) The Parties agree with each other not to call into question or challenge, directly or indirectly, in any proceeding or action in court, or before any administrative tribunal the Parties right to enter into and enforce this Agreement. The law of contract applies to this Agreement and the Parties are entitled to all remedies arising from it, notwithstanding any provision in Section 41 of the *Planning Act* interpreted to the contrary. The Parties agree that adequate consideration has flowed from each Party to the other and that they are not severable. This provision may be pleaded by either Party in any action or proceeding as an estoppel of any denial of such right.

38. GOVERNING LAW

- (a) This Agreement shall be interpreted under and be governed by the laws of the Province of Ontario, Canada.

39. NO FETTERING OF DISCRETION

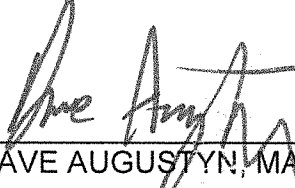
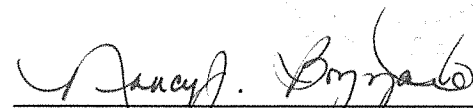
- (a) Notwithstanding any other provisions of this Agreement, the Parties hereto agree with each other that none of the provisions of this Agreement (including a provision stating the Parties intention) is intended to operate, nor shall have the effect of operating, in any way to fetter either the Council which authorized the execution of this Agreement or any of its successor Councils in the exercise of any of Council's discretionary powers, duties or authorities. The Owner acknowledges that it will not obtain any advantageous planning or other consideration or treatment by virtue of it having entered into this Agreement or by virtue of the existence of this Agreement.

40. BINDING EFFECT

- (a) 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.

SIGNED, SEALED AND
DELIVERED

) THE CORPORATION OF THE
) TOWN OF PELHAM
)
)
)
)
) 
) DAVE AUGUSTYN, MAYOR
)
)
)
)
) 
) NANCY BOZZATO, CLERK
)

) OWNER
) U. LUCCHETTA
) CONSTRUCTION
) LIMITED
)
)
)
) 
) ROBERT LUCCHETTA
) (Print Name)
)
)
) 
) (Signature)

☒ I have the authority to bind the Corporation

S C H E D U L E 'A': LEGAL DESCRIPTION

PIN 64072-0780 (LT)

Block 13, Plan 59M-406; Subject to an Easement in Gross over Part of Block 13, Plan 59M-406 being Parts 8, 9 & 10 on 59R-15100 as in SN403733; Town of Pelham.

[2, 4 and 6 Brayden Way]

SCHEDULE 'B': SOLICITOR'S CERTIFICATE OF OWNERSHIP

I, _____, a Solicitor of Ontario, do hereby certify that U. Lucchetta Construction Ltd. is/are the sole Owner(s) in fee simple of all land described in Schedule 'A' to the Site Plan Control Agreement herein referred to.

I further certify that there are no mortgages or other encumbrances upon the said Lands or any part thereof save and except the following:

Subdivision Agreements in favour of the Corporation of the Town of Pelham, registered as instrument numbers: LT114579 registered January 27, 1997, SN38341 registered June 24, 2004; SN104196 registered December 20, 2005 and SN403253 registered May 9, 2014;

A first charge/mortgage in favour of Inter-Now Corp. registered February 23, 2011 as instrument number SN306577, in the amount of \$675,000.00 partially transferred to Meridian Credit Union Limited on February 23, 2011 by instrument number SN306586 and further transferred to Inter-Now Corp. on October 3, 2011 by instrument number SN326800;

An Easement in Gross over Part Blk 13, 59M-406 being Parts 8, 9 and 10 on 59R-15100, in favour of The Corporation of the Town of Pelham, registered May 16, 2014 as instrument number SN403733; and,

An Application to Annex Restrictive Covenants, registered May 16, 2014 as instrument number SN403734.

I further certify that U. Lucchetta Construction Ltd. is/are the sole Owner(s) in fee simple of all land to be conveyed to the Town pursuant to the said Site Plan Control Agreement. All easements, licenses or rights-of-way to be conveyed to the Town will be so conveyed with the consent of all mortgagees or other encumbrances.

This certificate is given by me to the Town for the purpose of having the said Town act in reliance on it in entering into this Site Plan Control Agreement.

DATED at _____ this _____ day of _____, 2015.

Solicitor for the Owner(s)

SCHEDULE 'C': FINANCIAL PAYMENTS

<u>TYPE</u>	<u>AMOUNT</u>
Site Plan Amendment Fee [Where municipal services are not required to be extended, \$2560.00 plus five percent (5%) of the costs exceeding fifty thousand dollars (\$50, 000.00)]	\$ 0.00
Cash in Lieu of Parkland [Town By-law No. 2682 (2005)]	[Refer to Subdivision Agreement, registered as instrument number SN403253]
Boulevard Tree Planting Contribution [\$250 / 9 m frontage]	[Refer to Subdivision Agreement, registered as instrument number SN403253]
Cash in Lieu of Parking	\$ 0.00
Total	<u>\$ 0.00</u>
Less Received	- <u>\$ 0.00</u>
Balance Owing	<u>\$ 0.00</u>

SCHEDULE ‘D’: LANDS TO BE CONVEYED TO THE MUNICIPALITY

- | | | |
|----|----------------------------------|---------------------------------------|
| 1. | Road and Highway Widenings: | N/A |
| 2. | Public Transit Right of Way: | N/A |
| 3. | Easements: | [Refer to instrument number SN403733] |
| 4. | Reserves: | N/A |
| 5. | Parkland Dedication: | N/A |
| 6. | Landscaping Blocks and Walkways: | N/A |

LANDS TO BE CONVEYED IN FAVOUR OF ADJACENT LANDS

1. Easements:
- Access easement from Unit A to Unit B as depicted on Schedule ‘H’ attached hereto and forming part of this Agreement.

S C H E D U L E 'E': SECURITY DEPOSIT / LETTER OF CREDIT

In accordance with Section 18 (a) of this Agreement, the amount of the security deposit shall be in the amount of seven thousand two hundred dollars (\$7200.00) excluding taxes.

SCHEDULE 'F': REDUCTION OR RELEASE OF SECURITY

Application for Reduction of Securities

Prior to the reduction or release of any security held by the Town for the works, facilities and matters set out in this Agreement, the Owner must supply the Town with the following documentation as available:

- i. Letter of application for reduction/release;
- ii. Detailed professional consultant's certificate confirming that services completed;
- iii. As-constructed drawings; and,
- iv. Satisfactory evidence of no construction liens filed.

Reduction of Securities

(a) Reduction for Internal Services

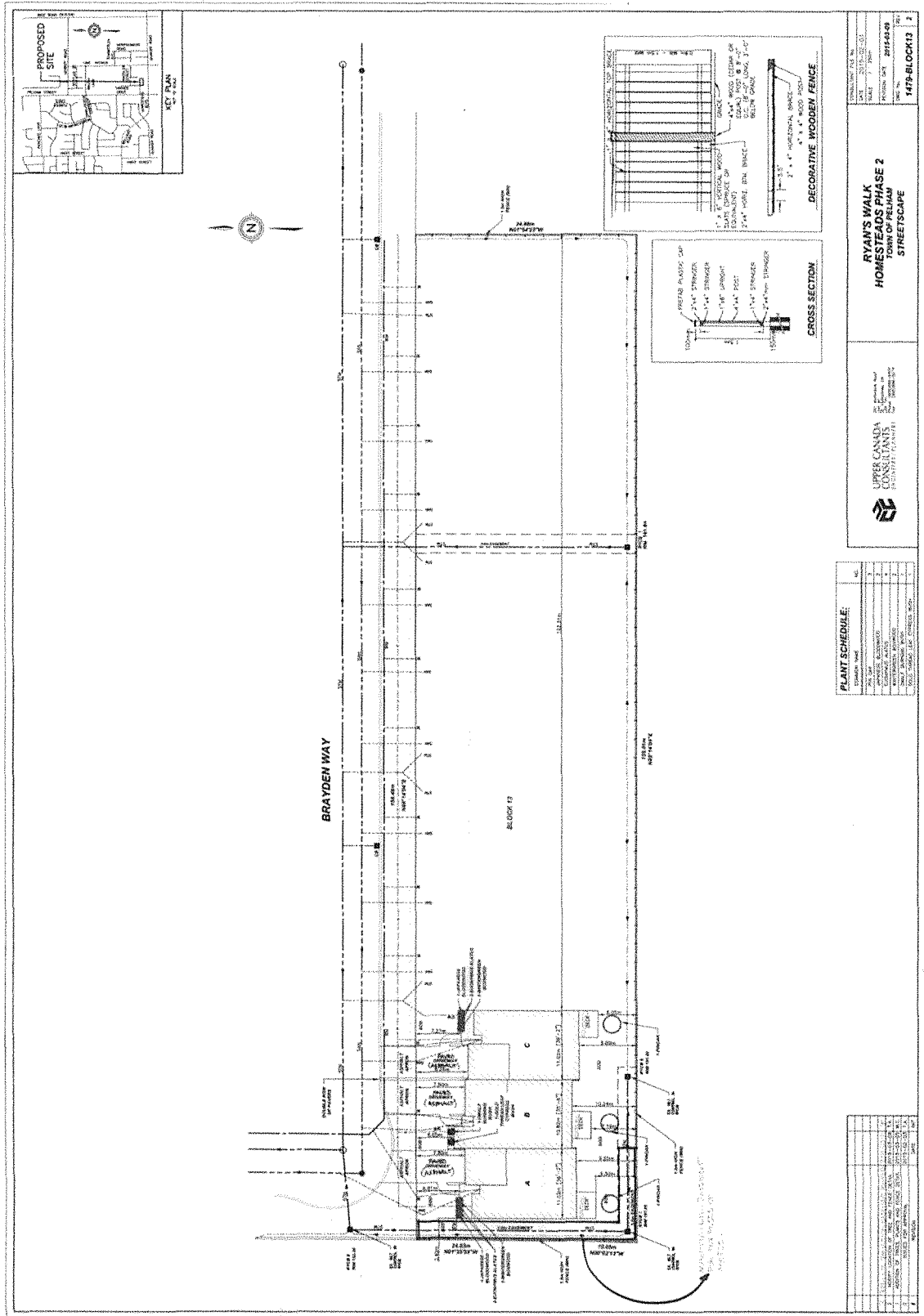
Upon the completion of the works, facilities or matters as certified by the Professional Engineer, and as accepted by the Town, and the receipt by the Town of all the documents identified above, the Town may reduce the security required under Schedule 'E'.

SCHEDULE 'G': SPECIFICATIONS FOR LANDSCAPE PRESERVATION

- (a) All existing trees and shrubs to be retained shall be fully protected with fencing erected beyond the "drip line". Groups of trees and other existing plantings shall be done in a like manner with snow fencing around the entire group(s). Areas within the protective fencing shall remain undisturbed and shall not be used for the storage of building materials or equipment. All fencing must be erected prior to the commencement of any/all site grading work(s), and maintained for the duration of the construction period.
- (b) No rigging cables shall be wrapped around or installed in trees.
- (c) Surplus soil, equipment, debris, or materials shall not be placed over root systems of the trees within the protective fencing.
- (d) No contaminants shall be dumped or flushed where feeder roots of trees exist.
- (e) Where limbs or portions of trees are removed to accommodate construction work, they will be removed carefully and cleanly.
- (f) Where root systems of protected trees are exposed, are located directly adjacent to, or are damaged by construction work, they shall be trimmed neatly and the area immediately backfilled with appropriate material to prevent desiccation.
- (g) Where necessary, the trees will be given an overall pruning to restore the balance between roots and top growth and/or to restore the appearance of the trees.
- (h) Where trees to be preserved have died or have been damaged beyond repair, they shall be replaced by the Owner at his/her expense with trees of a size and species as approved by the Town.
- (i) Alterations to grade around trees to be preserved should be minimized. If grades to be preserved are likely to change, the developer shall be required to take such precautions as dry-welling and root-feeding to the satisfaction of the Department of Public Works.
- (j) All tree work must be undertaken by a certified Arborist or other approved qualified professional with proven specific experience and detailed knowledge of trees and ecological systems.

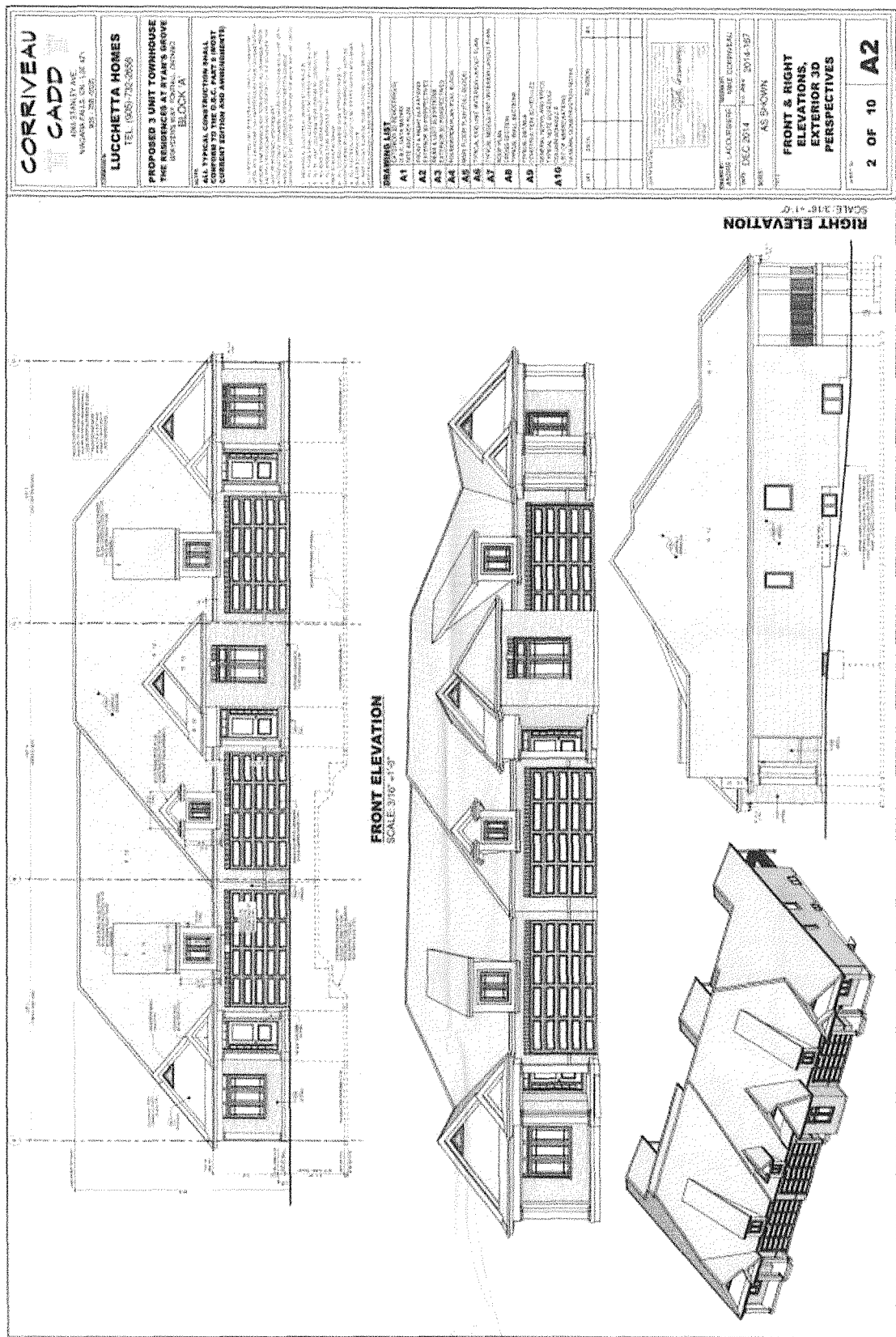
SCHEDULE 'H': SITE PLAN

Streetscape (plan: 1479-BLOCK13), prepared by Upper Canada Consultants, dated February 3, 2015, red line revised March 11, 2015.

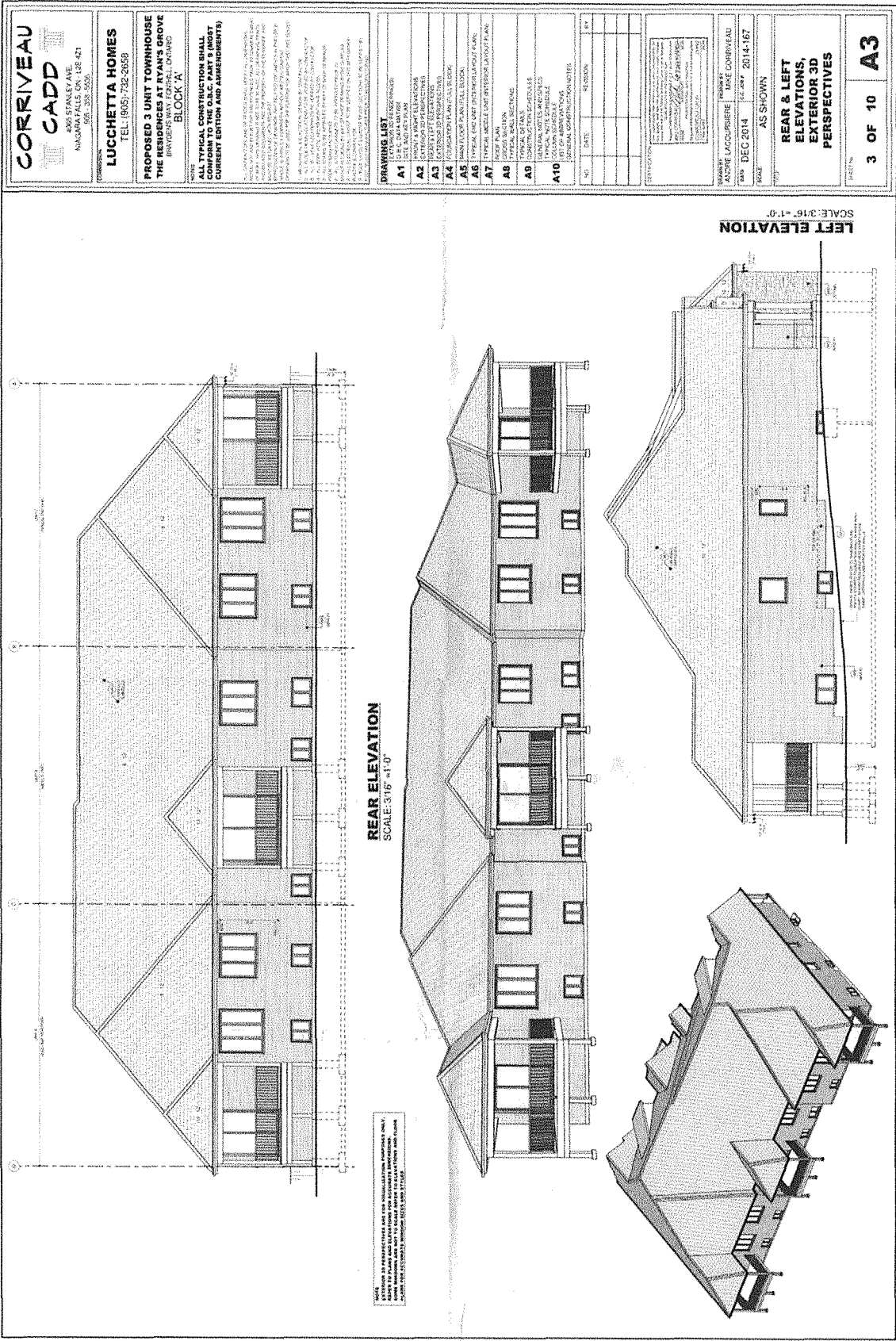


SCHEDULE 'I': SITE ELEVATION PLANS

Front and Right Elevations, Exterior 3D Perspectives (plan: A2), prepared by Corriveau Cadd, dated December 2014.

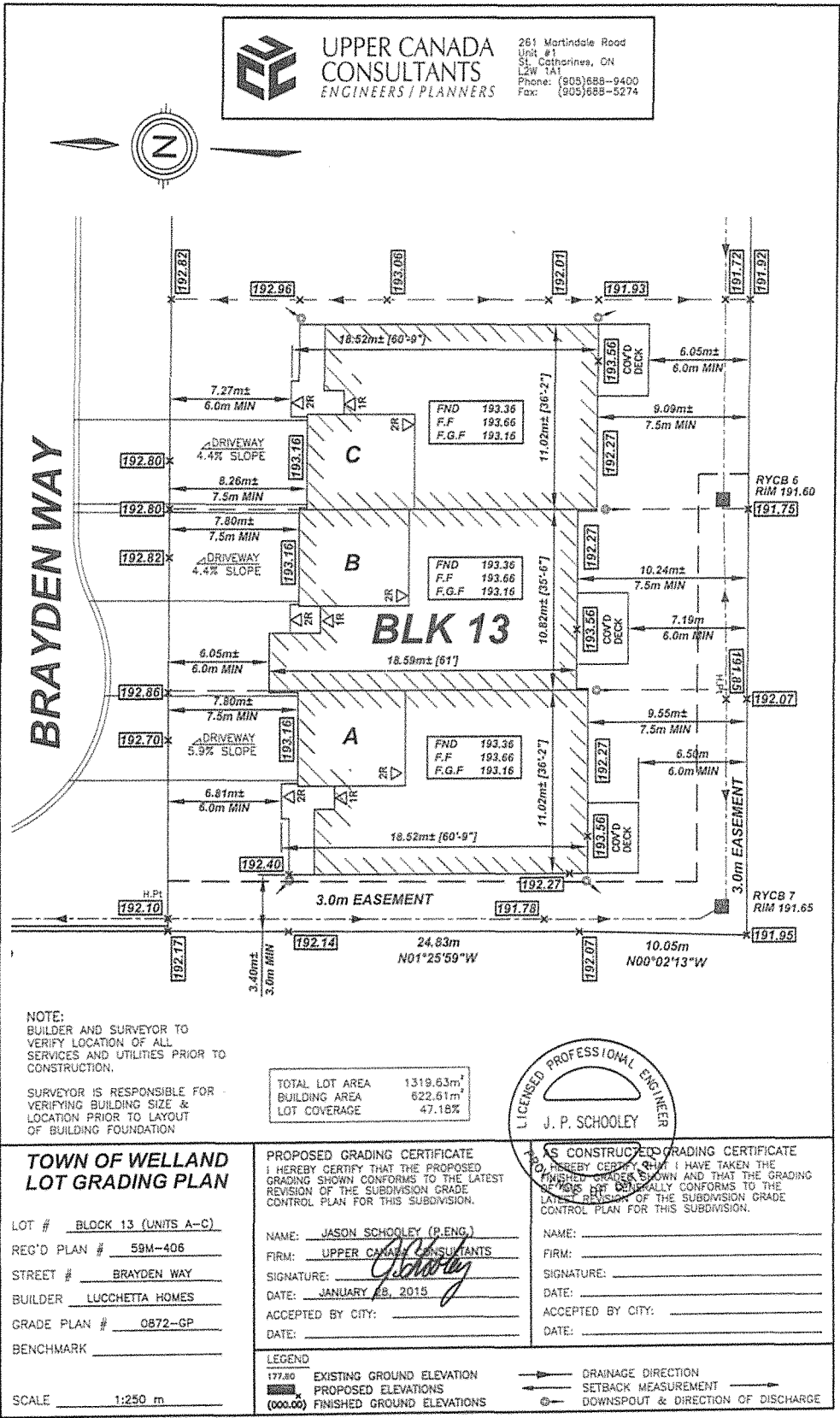


Rear and Left Elevations, Exterior 3D Perspectives (plan: A3), prepared by Corriveau Cadd, dated December 2014.



SCHEDULE 'J': SITE SERVICING, GRADING, AND DRAINAGE PLAN

Lot Grading Plan (plan: 0872-GP), prepared by Upper Canada Consultants, dated January 28, 2015.



Properties

PIN64072 - 0780 LT

DescriptionBLOCK 13, PLAN 59M406; SUBJECT TO AN EASEMENT IN GROSS OVER PART
BLOCK 13, PLAN 59M406 BEING PARTS 8, 9 & 10 ON 59R15100 AS IN SN403733;
TOWN OF PELHAM

AddressBRAYDEN WAY
FONTHILL

Consideration

Consideration \$ 1.00

Applicant(s)

The notice is based on or affects a valid and existing estate, right, interest or equity in land

NameTHE CORPORATION OF THE TOWN OF PELHAM

Address for ServiceP. O. Box 400
20 Pelham Town Square
Fonthill, ON L0S 1E0

I, Dave Augustyn, Mayor and Nancy J. Bozzato, Town Clerk, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Statements

This notice is pursuant to Section 71 of the Land Titles Act.

This notice is for an indeterminate period

Schedule: See Schedules

Signed By

Monica Evelyn Wolfe39 Queen St. P.O. Box 24022 acting for Signed 2015 04 28
St. Catharines
L2R 7P7 Applicant(s)

Tel9056881125

Fax9056885725

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

DANIEL & PARTNERS LLP39 Queen St. P.O. Box 24022 2015 04 28
St. Catharines
L2R 7P7

Tel9056881125

Fax9056885725

Fees/Taxes/Payment

Statutory Registration Fee\$60.00

Total Paid\$60.00

File Number

Applicant Client File Number :43029