

GARY GROEN

Extension of Cream Street from Foss Road to Approximately 550m South of Foss Road

DEVELOPMENT AGREEMENT

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Number and Gender

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Binding Effect

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THIS AGREEMENT made this 28th day of May 2015.

BETWEEN:

Gary Groen and Meredith Groen

Hereinafter called the "Developer"

OF THE FIRST PART

- and -

THE CORPORATION OF THE TOWN OF PELHAM

Hereinafter called the "Town"

OF THE SECOND PART

WHEREAS the Developer covenants and warrants that it is the owner of the Lands which are described in Schedule "A" hereto annexed;

AND WHEREAS the Town has granted approval to the Developer for the extension of Cream Street (which extension is shown on the Plans), subject to the Developer entering into a development agreement with the Town concerning, among other things, the provision and installation of a municipal road;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the approval of the extension of Sumbler Road plans by the Town of Pelham and the covenants herein contained, the parties agree as follows;

**1. DEFINITIONS**

In this Agreement:

- (a) ASSUMPTION BY-LAW means a by-law passed by the Town accepting all of the Works to be constructed hereunder.
- (b) CLERK means the Clerk of the Town.
- (c) COMMISSION means the applicable local governing hydro-electric commission located in the Town.
- (d) CONSTRUCTION LIEN ACT means the *Construction Lien Act*, R.S.O. 1990, c.C. 30, as amended, and all regulations thereto.
- (e) COST OF CONSTRUCTION means the cost of construction approved by the Director and may include engineering fees ancillary thereto.
- (f) COUNCIL means the Council of the Corporation of the Town of Pelham.
- (g) DEVELOPER means Gary Groen, its successors and assigns, and includes its successors in title to the Lands or a Lot shown on the development plan.
- (h) DEVELOPER'S CONSULTING ENGINEER means the person or persons registered with the Professional Engineers of Ontario who are employed by the Developer, at its expense, to provide engineering services.

- (i) DEVELOPMENT CHARGES means the development charges as prescribed by the *Development Charges Act*, R.S.O. 1990, c.D. 9, as amended, or any successor thereto.
- (j) DIRECTOR means the Director of Public Works for the Town.
- (k) FINAL CERTIFICATE OF COMPLETION OF SERVICES means the certificate issued by the Director after the end of the maintenance period certifying that all Works required by this Agreement are acceptable for assumption by the Town.
- (l) FRONT LOT LINE means the front lot line as defined in the Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (m) LOT GRADING PLAN means a drawing showing grades, swales and drainage patterns and may include catch basins and floor heights in relation to grades for each individual building Lot or Block in the development plan.
- (n) LANDS means the lands described in Schedule "A" hereto annexed.
- (o) LETTER OF CREDIT means a standby municipal, irrevocable Letter of Credit issued by a major chartered bank or credit union, posted with the Town pursuant to the terms of this Agreement. The Letter of Credit shall be in form satisfactory to the Town and shall contain a clause that automatically renews it from year to year, unless the Town gives written notice that it does not require the Letter of Credit to be renewed.
- (p) LOCAL IMPROVEMENT shall include utilities, fencing, sanitary sewers, storm sewers, sidewalks, curbs and gutters, pavements and such other local improvements as are defined by the *Municipal Act*, as amended, or any successor thereto.
- (q) LOT FRONTAGE means lot frontage as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (r) MAINTENANCE GUARANTEE means an undertaking by the Developer to the Town that all Works constructed under this Agreement will function as designed and will not fail in any manner whatsoever so as to cause a risk to public safety or private lands, building or structures within the extension of Cream Street or immediately adjacent boundary lands, and that should the Works, or any of them, fail or not perform their intended function within the specified maintenance guarantee period, they will be replaced or repaired to the satisfaction of the Director by the Developer at its cost.
- (s) MUNICIPAL ACT means the *Municipal Act*, S.O. 2001, c.25, as amended, and all regulations thereto.
- (t) ONTARIO LAND SURVEYOR shall mean a surveyor commissioned by the Province of Ontario and qualified to establish monuments that define the boundaries of a parcel or parcels of land and to prepare all necessary reference plans and surveys for the purpose of the Agreement.
- (u) PLANNING ACT means the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, and all regulations thereto.
- (v) PLANS shall mean all drawings, plans, specifications, contracts and other documents providing for the installation, construction and erection of the Works approved by and filed in the office of the Director prior to execution of this Agreement by the Town.
- (w) CERTIFICATE OF COMPLETION OF PRIMARY SERVICES means the Certificate issued by the Director upon satisfactory completion of the Primary Services for the Lands prior to commencement of the maintenance period.

- (x) PRIMARY SERVICES means ditches, roads (including double bituminous surface treatment), subgrade, culverts, culvert extensions and signage.
- (y) PRIVATE UTILITIES means telephone, hydro electric systems and natural gas systems and cable television systems.
- (z) REGION means The Regional Municipality of Niagara.
- (aa) REGIONAL PUBLIC WORKS DEPARTMENT means the Region's Public Works Department.
- (bb) SECONDARY SERVICES means all works to be installed, constructed, or erected which are not Primary Services or private utilities.
- (cc) SECTION, when used in reference to a numbered part of the Agreement, means:
  - (i) a complete section including all its sections and subsections;
  - (ii) a particular subsection including its subsections; and
  - (iii) a particular subsection as the context may dictate or require.
- (dd) STREET means street as defined in the Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (ee) SUPERVISION means the full-time inspection and scrutiny of every phase of the Works for the express purpose of enforcing the provisions of this agreement and certifying that the Works have been performed and completed to Town standards in the form prescribed for this purpose and "SUPERVISE" means to carry out such Supervision.
- (ff) TOWN means The Corporation of the Town of Pelham.
- (gg) TREASURER means the Director of Financial Services of the Town.
- (hh) UTILITY SERVICES means physical plant including but not limited to pipes, valves, conduits, cables, terminals, transformers, etc. owned and operated by communications, television, hydro, gas and oil companies or any other utility companies.
- (ii) WORKS shall jointly and severally mean and include all Primary Services and Secondary Services and all other matters, both internal and external, required in connection with the extension of Sumbler Road to be completed or performed by the Developer pursuant to this Agreement.

## **2. LAND AFFECTED**

The Lands to be accessed by the extension of Cream Street are those Lands described in Schedule "A" attached hereto and this Agreement shall be registered on title to the Lands (and the Developer consent to the registration of this Agreement on title to the Lands). The registered ownership of the Lands shall be confirmed by the Developer's solicitor by way of certificate in form satisfactory to the Town.

## **3. GENERAL PROVISIONS**

- (a) Unless the context otherwise requires, where the Developer is obligated by this Agreement or the approved Plans to make any payments or install or construct or carry out any services or action the provisions therefor contained herein shall be deemed to include the words "at the sole expense of the Developer".
- (b) The Developer hereby covenants, warrants and agrees to save harmless and keep the Town indemnified from and against all manner of actions, causes of

actions, suits, claims and demands that may howsoever arise through or from the terms of this Agreement, other than claims arising from negligence by the Town of Pelham, its servants and agents.

- (c) The Developer and the Town acknowledge and agree that it is their intent that all terms, conditions and covenants contained herein:
  - (i) shall be binding upon the Developer, its heirs, executors, administrators, assigns and successors in title, from time to time; and
  - (ii) the benefits of the said covenants shall enure to the Town, its successors and assigns in title, of all roads, Streets and public lands.
- (d) Any notices required or permitted to be given pursuant to the terms of this agreement shall be given in the manner set out in Section 20.
- (e) The Schedules attached hereto are deemed to be a part of this Agreement and are to be interpreted as if the contents thereof were included in this Agreement.
- (f) The Developer agrees to be bound by the penalty provisions of the *Planning Act* including, but not limited to, Section 67 of said Act.
- (g) Notwithstanding the provisions of this agreement, the Developer shall be subject to all the by-laws of the Town and all provincial and federal government statutes and/or regulations and amendments thereto affecting the development of land and installation of municipal services.
- (h) If any term of this agreement shall be found to be ultra vires of the Town, or otherwise unlawful, such term shall conclusively be deemed to be severable and the remainder of this agreement shall be and remain in full force and effect.
- (i) The Developer shall not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any administrative or other tribunal the right of the Town to enter into this agreement and to enforce each and every term, covenant and condition thereof and this provision may be pleaded by the Town in any such action or proceeding as a complete and conclusive estoppel of any denial of such right.
- (j) Time shall be of the essence of this agreement.
- (k) The Developer shall reimburse the Town for all fees and disbursements incurred by it in connection with the preparation, approval, execution and registration of this Agreement and all related documentation in connection with the preparation and enactment of any by-law or registration of any subsequent Agreements which may be required to implement this Agreement.
- (l) All references in this Agreement to roads, road allowances, extension of the road, etc. shall mean and include the extension of Cream Street as set out in the Plans.
- (m) Any lands required to be conveyed by the Developer in accordance with the provisions hereof shall be in a neat and tidy condition, free of all debris and trash, and the Developer shall complete all services for the Lands in accordance with the terms of this Agreement.
- (n) The Developer shall ensure that adequate dust control and mud tracking control measures are carried out during the construction of all Works.

#### 4. **LAND FOR MUNICIPAL PURPOSES**

- (a) All lands required by the Town for public purposes as described in Schedule "C", hereto attached, shall be conveyed by the Developer to the Town in fee simple, free of all encumbrances.

- (b) The Developer shall convey to the Town, a private utility company or to the Commission, such easements as may be required for utility or drainage purposes in, over, across and under any part of the Lands.
- (c) The Developer shall, prior to the final approval of the Works, at its expense, obtain and convey to the Town such further easements that in the sole discretion of the Director are required for the construction of the public services to be constructed hereunder.

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

- (a) The Developer shall employ, at its cost, a competent and qualified Consulting Engineer approved by the Director, to:
  - (i) carry out all soil investigations required by the Director;
  - (ii) design all of the Works required to be completed by this Agreement;
  - (iii) provide the Director with an estimate of the cost of design, construction and maintenance of all Works to be constructed under this Agreement to be used as the basis for determining the amount of security to be posted by the Developer prior to execution of this Agreement to guarantee the construction and maintenance of all Works required under this Agreement.
  - (iv) prepare engineering drawings to include plans and profiles and specifications for the Works and to submit detailed plans, profiles and specifications to the Director for approval prior to the installation or construction of such Works;
  - (v) submit to the Director the detailed Plans in mylar matte surface for signing and provide the Director with two (2) sets of full-sized, signed hard copies and two (2) sets of signed hard copies reduced to 11" x 17" size;
  - (vi) obtain, in conjunction with the Town, all of the necessary approvals prior to installation or construction of the Works;
  - (vii) call tenders for the installation and construction of the Works;
  - (viii) obtain the approval from the Director of the contractor employed to install or construct the Works;
  - (viii) provide full-time resident supervision, inspection and contract administration of all Works covered by this Agreement;
  - (ix) maintain all of the records of the installation or construction of the Works and submit a copy of the same to the Director;
  - (x) supply to the Director "As Constructed" drawings of all of the Works installed or constructed by the Contractor in both hard copy and DWG digitized format (AutoCad 2000 or equivalent), at the time of completion of Primary Services;
  - (xi) obtain from the Director the details regarding the form and scale of these drawings prior to their presentation;
  - (xii) on the completion of the installation or construction of the Works, to supply the Town with a certificate, in form satisfactory to the Director, that the Works were installed or constructed in accordance with the approved Plans and specifications;

- (xiii) accompany the Director on a final inspection of the Works at the conclusion of the maintenance period herein specified and before the assumption of the Works by the Town;
  - (xiv) supervise the construction of any remedial work which the Director may direct;
  - (xv) provide building levels for construction purposes as hereinafter provided;
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- (a) The Developer shall not install Works prior to the receipt by it in writing of the approval of the Director of the detailed Plans and specifications therefor.
  - (b) All of the Works to be installed or constructed under this Agreement shall be installed or constructed under the direct Supervision of the Developer's Consulting Engineer at the expense of the Developer.

**6. CONSTRUCTION OF WORKS**

The Developer agrees to construct and pay the whole cost of such construction and materials required for all of the Works referred to in this Agreement and the Schedules attached, and in accordance with the conditions and specifications contained in said Agreement and Schedules.

**7. CONTRACTORS**

Before commencement of any Works, the Developer shall show satisfactory proof to the Director, that the proposed contractors or sub-contractors, whom the Developer has retained to construct Works described in this agreement, or any part of the Works, have sufficient and valid liability insurance policies, indicating that the Town and its agents and servants, and the Region are named insured; a certificate from the Workers' Safety Insurance Board showing that the contractor is in good standing; and satisfactory evidence that the contractor is qualified, experienced and has adequate equipment to successfully complete the Works. Any contractor employed by the Developer shall, as a condition of such employment, be approved by the Director.

**8. ROADS, DRIVEWAY APPROACHES, SIGNAGE**

**(a) ROADS**

- (i) The Developer shall rough grade to the Town's specifications the full width of the road allowance as shown on the Plans prior to the installation or construction of the Works. Prior to the construction of any Works, the topsoil shall be stripped and shall be stockpiled during the period of construction at a location which is approved by the Director and is conducive to the interim drainage requirements of this Agreement. The topsoil so stockpiled shall be used to grade the boulevards after construction thereon in accordance with the Plans filed with and approved by the Director. Topsoil shall not be removed from the Lands for any reason unless the prior written approval of the Director to the removal of such topsoil is received.
- (ii) The Developer shall keep all boulevards and easements clean and clear from all materials and obstructions.
- (iii) The Developer shall construct, install and complete roadways on the road allowance in accordance with the engineering drawings on file with the Town. The engineering drawings must be signed, approved and accepted by the Director.

**(b) DRIVEWAY APPROACHES**



- (i) The Developer shall provide granular driveway access on the boulevard prior to occupancy of any building to be constructed on the Lands. It shall be the responsibility of the Developer to ensure that driveway access is maintained at all normal times during the construction or maintenance of the Works.
- (ii) All driveway approaches between the edge of the road and the Street Line, shall be paved by the Developer by no later than the 1st day of November in the year after the year in which the buildings served by the driveway approaches are occupied.
- (iii) All driveway approaches shall be constructed to the satisfaction of the Director prior to the assumption of the Road.

**(c) STREET AND TRAFFIC SIGNS**

The Town shall supply and erect traffic control signs within the road allowance at the Developer's expense in accordance with Schedule "G". The signs shall conform to the Town standards in place at the time of installation. The Developer's cost per installation of each sign is \$300.00 including all applicable taxes.

**9. NATURAL GAS, ELECTRICAL, TELEPHONE AND CABLE TV DISTRIBUTION SYSTEMS**

The Developer shall be responsible for providing, at its sole expense, gas, electrical, telephone and cable TV service to the Lands in accordance with the approved Plans. All Utility Services shall be installed and constructed prior to the Director approving the Certificate of Completion of Primary Services.

**10. HYDRO-SEEDING AND LANDSCAPING - PUBLIC LANDS**

The Developer shall grade and place a minimum of one hundred (100) millimetres of topsoil and hydro-seed on all portions of the road allowance not covered by the road surface or shoulders shown on the Plans. All seeding as herein described shall be considered as Primary Services and shall be completed at the time of completion of road construction.

**11. EROSION AND SEDIMENT CONTROL**

All drainage ditches, swales or depressions within the road allowance shall be fine graded and maintained with approved silt traps. The Developer shall comply with the Ontario Guidelines on Erosion and Sediment Control for Urban Construction Sites, dated May 1987, to the satisfaction of the Director.

**12. PRIMARY SERVICES AND CERTIFICATE OF COMPLETION OF PRIMARY SERVICES**

- (a) The Developer shall proceed with the installation or construction of the Works required hereunder with all reasonable dispatch and shall complete all of the Primary Services before September 15, 2015. The Director may extend the time for the completion of the Primary Services or any of them for such length of time as he may deem expedient upon the written application of the Developer.
- (b) The performance by the Developer of its obligations hereunder to the satisfaction of the Director shall be a condition precedent to the acceptance by the Town of the Works or any of them.
- (c) Prior to the issuance by the Director of the Certificate of Completion of Primary Services, the Developer shall:
  - (i) furnish the Director with a statutory declaration in a form satisfactory to

the Director that all accounts for the installation, construction and maintenance of the Primary Services required to be installed or constructed hereunder have been paid and that there are no outstanding debts, claims or liens in respect of the Primary Services or any of them; and

- (ii) provide the Director with a Certificate signed by the Developer's Consulting Engineer certifying that the Primary Services have been fully completed, inspected, tested and maintained in accordance with the provisions hereof and the standards of the Town of Pelham and Plans as approved by the Director.
- (d) The Director shall furnish the Developer with a Certificate of Completion of Primary Services upon the completion by the Developer to the satisfaction of the Director of the installation or construction of the Primary Services and the receipt by the Director of the Maintenance Guarantee as required by Section 17 hereof, and the satisfaction by the Developer of all other requirements of this Agreement and the Plans.

### **13. MAINTENANCE AND ASSUMPTION OF THE WORKS**

- (a) Until the Town issues the Final Certificate of Completion of Services, the Town agrees to provide only snow plowing and sanding services on paved roads connected by paved road to a public roadway. The Developer shall provide all other services including, but not limited to, maintenance and repairs of silt fencing. The Developer agrees that any service provided by the Town prior to actual acceptance of the road by the Town shall not be deemed acceptance of the road.
- (b) The Developer shall, at its own expense and to the satisfaction of the Director, repair and maintain all Primary Services and other private services herein required to be installed or constructed for a minimum period of two (2) years from the date of issuance of the Certificate of Completion of Primary Services or until the date of issuance of the Final Certificate of Completion of Services, whichever is later. In the event that a dwelling is constructed on the Lands within the above noted maintenance period, the period shall be the aforementioned two (2) years following successful final inspection by the Town's Building and Enforcement Department whichever is the later.
- (c) The Developer shall guarantee all Secondary Services including any repairs and maintenance performed by it pursuant to Section 13(b) or by the Town pursuant to Section 13(d) for a minimum period of twelve (12) months from the date of completion of the said services, notwithstanding that the two (2) year period of maintenance provided under Section 13(b) may have elapsed.
- (d) The Town shall, notwithstanding the Developer's obligations to maintain services herein set forth, have the right to carry out any necessary maintenance or repairs:
  - (i) without notice to the Developer, where in the sole opinion of the Director, an emergency condition exists or where the Streets have not been kept free of mud and dust; and
  - (ii) where repairs to or maintenance of the Works have not been completed within forty-eight (48) hours after a notice requiring such repairs or maintenance has been forwarded to the Developer.
- (e) The cost of any repair or maintenance work undertaken by the Town pursuant to the provisions hereof shall be borne by the Developer and the amount thereof shall be paid to the Town within thirty (30) days after a statement of account therefor has been forwarded to the Developer at its last known address. If the Developer fails to pay the amount due to the Town within such thirty day period, then the Town may and is hereby expressly authorized to deduct the amount owing to it for such repairs or maintenance from any monies or Letters of Credit deposited by the Developer with the Town pursuant to the provisions hereof.

- (f) The decision of the Director that repairs or maintenance to the Works are required or that an emergency state exists requiring immediate repair or maintenance to such Works shall be final, conclusive and incontestable.
- (g) After the expiry of the maintenance period provided for in Section 13(c) hereof, the Town shall, subject to the compliance by the Developer with Section 13(h) hereof, issue a Final Certificate of Completion of Services upon written application by the Developer provided, however, that the Town may withhold the issuance of the Final Certificate of Completion of Services if, in the sole opinion of the Director, the Developer is in default of its obligations to repair, construct or maintain any of the Works pursuant to this Agreement.
- (h) The application in writing by the Developer for the Final Certificate of Completion of Services shall include the following:
  - (i) a statutory declaration in a form satisfactory to the Director that all accounts for the installation, construction and maintenance of all the Works required to be installed or constructed hereunder have been paid and that there are no outstanding debts, claims or liens in respect of the Works of any of them;
  - (ii) a Certificate in a format acceptable to the Director signed by the Developer's Consulting Engineer certifying that all the Works including any repairs and deficiencies have been fully completed, inspected, tested and maintained in accordance with the provisions hereof and the standards and specifications of the Town of Pelham and the Plans as approved by the Director;
  - (iii) the original Mylar Construction Drawings in hard copy and DWG digitized format (AutoCad 2000 or equivalent) showing each of the Works "As Constructed";

#### **14. BUILDING PERMITS AND OCCUPANCY**

The Developer agrees that, unless otherwise determined by Council, no building permits shall be issued on any parts of the Lands to be accessed until all primary services as defined elsewhere in this Agreement including roadways to both layers of surface treatment are completed and operational to the satisfaction of the Director. In addition the Developer shall comply with the building restrictions as set out in Schedule "E".

#### **15. INDEMNIFICATION AND INSURANCE**

##### **(a) Commercial General Liability Insurance**

Before commencing any of the Works, the Developer shall, at its expense, obtain and keep in force during the term of this Agreement, a certificate of insurance indicating that it has obtained Commercial General Liability Insurance satisfactory to the Town, indemnifying the Town from any loss arising from claims for damages, injury or otherwise in connection with the Works to be performed hereunder by the Developer, its servants or agents in, on or about the lands included with the Plans or adjacent thereto. The Commercial General Liability Insurance Policy shall also include the following:

- (i) a limit of liability of not less than \$5,000,000.00 or such greater amount as the Director of Public Works deems advisable,
- (ii) inclusion of the Town, its agents and servants and The Regional Municipality of Niagara as named insureds,
- (iii) a provision for cross liability in respect of the named insureds,

- (iv) non-owned automobile coverage with a limit of at least \$5,000,000.00 including contractual non-owned coverage,
  - (v) completed operations coverage,
  - (vi) that 60 days prior notice, of any alteration, cancellation or change in policy terms which reduces coverage, shall be given in writing to the Town,
  - (vii) owner's protective coverage.
- (b) Proof of Insurance

The Developer shall provide, together with its executed Agreement, a certificate of insurance or certified copy of the above referred to policy, satisfactory to the Town, together with proof of renewal at least ten (10) days prior to expiry. If a certificate is provided, all requirements as above set forth must be shown on the said certificate and notwithstanding the provision of any certificate, the Town may require that the Developer provide a certified copy of the policy. In addition the policy shall contain a clause providing the Town with a minimum period of thirty (30) days notice of cancellation or amendment to said policy.

## **16. SECURITY DEPOSITS AND REFUNDS**

The Developer shall be responsible for the full amount of the cost for the design, servicing and maintenance of the Works together with all Town administrative and consulting fees and legal costs and shall be required to post security, in a form satisfactory to the Town, on accounts of aforesaid costs, charges and fees in accordance with Schedule "F" annexed hereto prior to execution of this Agreement by the Town.

Security to be posted for Primary Services and Secondary Services and to cover the Town Administrative, Engineering and Legal costs shall be calculated on the basis of the Developer's Consulting Engineer's estimated cost of design, construction and maintenance of all Works as set out in Schedule "F" annexed hereto. From time to time, upon written request, the Developer's Consulting Engineer may be required to certify in writing the actual cost of design, construction and maintenance of all Works installed and constructed to date and the estimated cost of all outstanding Works and the Director may adjust the amount of security required if the actual Cost of Construction of all Works installed and constructed to date or the estimated cost of all outstanding Works exceeds the original estimated costs as set out in Schedule "F" annexed hereto by twenty (20%) percent of the original estimates or tender costs and the Developer shall be billed accordingly. Provided that in the event the Developer fails to increase the amount of security within fourteen (14) days of receipt of aforesaid written notice, then the Developer shall be deemed to be in final default of the terms and conditions of this Agreement.

### **(a) CASH PAYMENTS**

Prior to the execution of this agreement by the Town, for payment of services to be rendered by the Town, its servants and its agents as required by this Agreement, and for presently outstanding payments owing to the Town, the Developer shall, in accordance with Schedule "F" annexed hereto, deposit with the Town the following non-refundable cash amounts:

- (i) a cash amount to secure the Town's engineering, administrative consulting and legal costs for this Agreement, approval of the Plans, and enactment of by-laws calculated on the following basis:
  - (1) where the Cost of Construction of all Works is less than \$50,000.00, the charge shall be \$2,500;
  - (2) where the Cost of Construction of all Works is in excess of

Fifty thousand dollars (\$50,000.00) the charge shall be two thousand-five hundred dollars (\$2,500.00) plus five percent (5%) of the costs exceeding fifty thousand dollars (\$50,000.00);

- (ii) cash deposit to secure the Town's cost to supply and install traffic control signage at the rate of \$300.00 per sign;

(b) LETTERS OF CREDIT

- (i) Before commencing any of the Works provided for in this Agreement, the Developer will deposit with the Town a Letter of Credit drawn upon a chartered bank in favour of the Town and in a form satisfactory to the Treasurer, in an amount approved by the Director, which Letter of Credit shall be sufficient to guarantee the satisfactory completion of the Works or any portion of the Works as established by the Town in its sole discretion, and payments or any part thereof required to be made by this Agreement, and will, without restricting the generality of the foregoing, guarantee the following:
  - (1) payment of twenty percent (20%) of the approved estimated costs of the construction of the Primary Services, plus one hundred and twenty percent (120%) of the approved estimated construction costs of the Secondary Services as shown in Schedule "F" attached; and
  - (2) payment of one hundred percent (100%) of any other payments or Works as may be required of the Developer by the Town pursuant to this Agreement.
- (ii) The amount of the Letter of Credit required hereunder shall not be reduced unless all of the conditions of this Agreement are complied with and the estimated costs of rectifying any outstanding deficiencies, as estimated in the sole discretion of the Director, plus one hundred and twenty percent (120%) of the estimated costs of the completion of all outstanding Primary Services and Secondary Services plus all other outstanding costs payable under this Agreement, plus the Maintenance Guarantee as required under Section 17 of this Agreement, plus any *Construction Lien Act* requirements are all, in total, less than the amount of the Letter of Credit held by the Town. In such an instance, the amount of the Letter of Credit may, in the sole discretion of the Director be reduced from time to time to an amount equal to the total of all amounts set out above. Such reduction shall be based on the following:
  - (1) progress certificates from the Developer's Consulting Engineer setting forth the cost of the Works completed and paid to date and the cost of unfinished Works; and
  - (2) a request for reduction in the amount of the Letter of Credit in a form approved by the Director; and
  - (3) proof of payment in a form satisfactory to the Director of the amounts paid on account of the completed Works to the date of the application for reduction.

Notwithstanding anything herein contained, the amount of the Letter of Credit shall at all times be sufficient to cover the balance of the costs of the completion of the unfinished Works, including Works deferred for extended periods and the requirements of the *Construction Lien Act*.

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

17. MAINTENANCE GUARANTEE

- (a) The Letter of Credit deposited by the Developer pursuant to Section 16 hereof may, upon the completion of the Primary Services, and prior to the assumption of the Works by the Town, at the Director's discretion, be reduced to an amount equal to ten percent (10%) of the completed Works (Schedule "F") plus one hundred and twenty per cent (120%) of the value, as estimated by the Director, of any uncompleted Works and such Letter of Credit shall be retained by the Town as a Maintenance Guarantee to guarantee the workmanship and materials of the Works until such time as the maintenance guarantee periods as provided for in Sections 13(b) and 13(c) have both expired.
- (b) The Maintenance Guarantee as required under Section 17 (a) hereof, may be reduced further to five percent (5%) subject to the Developer meeting all requirements of the *Construction Lien Act*.
- (c) The Letter of Credit may be realized upon by the Town if the Developer defaults in any payment or condition contained herein.
- (d) The Developer shall be conclusively deemed to be in breach of the covenant contained in Section 17 (c) if, in the case of the cost of the Works or the fees of the Developer's Consulting Engineer and the Ontario Land Surveyor, a lien against the Lands or any part thereof is preserved pursuant to the *Construction Lien Act* and if, in the case of any other payment required to be made under this Agreement, a notice to that effect is forwarded to the Developer by the Director in accordance with Section 18 (b) hereof.

## 18. DEFAULT

- (a) Upon breach by the Developer of any covenant, term, condition or requirement of this Agreement, or upon the Developer becoming insolvent or making an assignment for the benefit of creditors, the Town, at its option, may declare that the Developer is in default.
- (b) Notice of such default ("Notice of Default") shall be given by the Town and if the Developer does not remedy such default within such time as provided in the notice, the Town may declare that the Developer is in final default under this Agreement and shall then forthwith give notice of final default ("Notice of Final Default") thereof to the Developer.
- (c) Upon Notice of Default having been given, the Town may require all work by the Developer, their servants, agents, independent contractors and sub-contractors to cease (other than any work necessary to remedy such default) until such default has been remedied and in the event of final default, may require all work as aforesaid to cease.
- (d) Upon Notice of Final Default having been given to the Developer, the Town may, at its option, adopt or pursue any or all of the following remedies, but shall not be bound to do so:
  - (i) Enter upon the lands shown on the Plan by its servants, agents and contractors and complete any work, services repairs or maintenance wholly or in part required herein to be done by the Developer and collect the cost thereof from the Developer and/or enforce any security available to it;
  - (ii) Make any payment which out to have been made by the Developer and upon demand collect the amount thereof from the Developer and/or enforce any security available to it;
  - (iii) Retain any sum of money heretofore paid by the Developer to the Town for any purpose and apply the same in payment or part payment for any work which the Town may undertake;

- (iv) Assume any work or services at its option, whether the same are completed or not, and thereafter the Developer shall have no claim or title hereto or remuneration therefor;
- (v) Bring action to compel specific performance of all or any part of this Agreement or for damages;
- (vi) Add any costs incurred by the Town to the tax collector's roll for the Lands and collect such costs by action or in like manner as municipal real property taxes; or
- (vii) Exercise any other remedy granted to the Town under the terms of this Agreement or available to the Town in law.

**19. INDEMNIFICATION**

Until the Town passes a By-law assuming the road extension shown on the Plan, the Developer, on behalf of itself, its successors and assigns, including its successors, hereby releases and discharges and indemnifies the Town from and against all actions, causes of action, suits, claims and demands whatsoever which may arise by reason of any damages or injuries (including death) to persons or damage to property occurring or arising on the road extension, however caused.

**20. NOTICE**

All notices required or permitted to be given by one party to the other shall be given in writing either by prepaid registered mail or delivered personally addressed, in the case of the Town, to 20 Pelham Town Square, P. O. Box 400, Fonthill ON L0S 1E0, and in the case of the Developer, 951 Church Street, P.O.Box 226, Fenwick, Ontario, L0S 1C0 or at such other addresses as may be given by either of them to the other in writing from time to time, and such notices shall be deemed to have been received, if mailed, on the third day following that on which it was so mailed and if delivered, on the day of such delivery.

**21. SCHEDULES**

The schedules attached hereto are a part of this Agreement. All schedules are to be interpreted as if the contents thereof were included in the Agreement.

**22. SPECIAL PROVISIONS - SCHEDULE "B"**

The Developer shall undertake and complete all other special provisions to this Agreement, as outlined in Schedule "B" which forms part of this Agreement.

**23. RECOVERY OF COSTS**

The Town acknowledges that other owners along the extension of Cream Street, as specifically set out in the Plan (the "Other Owners"), may receive benefit from the improvements to said extension of Cream Street, which may allow them to develop their lands. If the Developer is not in default pursuant to this Agreement and if any of the Other Owners should apply for a building permit to construct a dwelling on their lands within ten (10) years of the date of this Agreement then if:

- (i) the Town issues a building permit, and
- (ii) the Town is able to collect any monies from such Other Owner for any proportionate share of the costs of the extension of Cream Street through the Development Charges – Road Component (pursuant to the Town's development charge by-law) or said Other Owner voluntarily contributes his or her proportionate share of the costs of the extension of Cream Street,

then the Town will reimburse the Developer as to any such monies it receives and which it is permitted to pay to the Developer. The Developer acknowledges that the Town makes no representation, covenant or warranty that it will collect any such monies or be required to use any efforts to collect such monies beyond that which

its development charge by-law permits or which any Other Owner voluntarily contributes. This attempt to collect any such monies shall only apply to an application for a building permit by an Other Owner within ten (10) years of the date of this Agreement after which such time there shall be no requirement by the Town to attempt to collect such monies or to reimburse the developer.

**24. NUMBER AND GENDER**

- (a) In this Agreement, unless there is something in the subject-matter or context inconsistent therewith,
  - (i) words in the singular number include the plural and such words shall be construed as if the plural had been used,
  - (ii) words in the plural include the singular and such words shall be construed as if the singular had been used, and
  - (iii) words importing the use of any gender shall include all genders where the context or party referred to so requires, and the rest of the sentence shall be construed as if the necessary grammatical and terminological changes had been made.

**25. BINDING EFFECT**

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



SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

Sheppard  
Witness as to the signature of

Man

Witness as to the signature of

THE CORPORATION OF THE TOWN OF  
PELHAM

Dave Augustyn  
Dave Augustyn, Mayor

Nancy Bozzato  
Nancy Bozzato, Town Clerk

TABLE OF SCHEDULES

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E     BUILDING RESTRICTIONS	23
F     FINANCIAL OBLIBATIONS AND COST OF CONSTRUCTION	24

SCHEDULE "A"

LEGAL DESCRIPTION

\_\_Part Lot 12 Concession 11\_\_ in the Town of Pelham, being \_\_Part 1 of 59R-15332;  
Pelham in the Regional Municipality of Niagara and being all of \_\_PIN 64028-0085  
(LT)

SCHEDULE "B"

SPECIAL PROVISIONS

1. The Developer shall carry out or cause to be carried out all works including re-vegetating all disturbed areas and maintaining erosion and sediment control to the satisfaction of the Town of Pelham and the Regional Niagara Planning Department.
2. All references to Blocks and Lots in this Agreement are to be the preliminary Easement prepared by Donald Chambers\_\_\_\_\_
3. The Developer shall make arrangements satisfactory to Bell Canada, Enbridge Consumers Gas and other private utilities and the Town of Pelham for the provision of underground Utility Services, internal and external to the Works included in this agreement.

SCHEDULE "C"

LANDS CONVEYED FOR PUBLIC PURPOSES

The Developer shall grant by way of an easement to the Town for turning circle purposes.

All references to Blocks and Lots in this Agreement relate to the preliminary Plan of Subdivision prepared by \_Donald Chambers\_.

PIN 64028-0085

Plan 59R-15332

SCHEDULE "D"  
ROAD EXTENSION GENERAL PLAN

## SCHEDULE "E"

BUILDING RESTRICTIONS

The Developer shall not occupy the dwelling on the Lands concerned until the Chief Building Official for the Town has certified that such of the following services as are applicable to the Lands have been installed and are operating adequately to serve the dwelling: hydro, gas, water services, sanitary services and telephone.

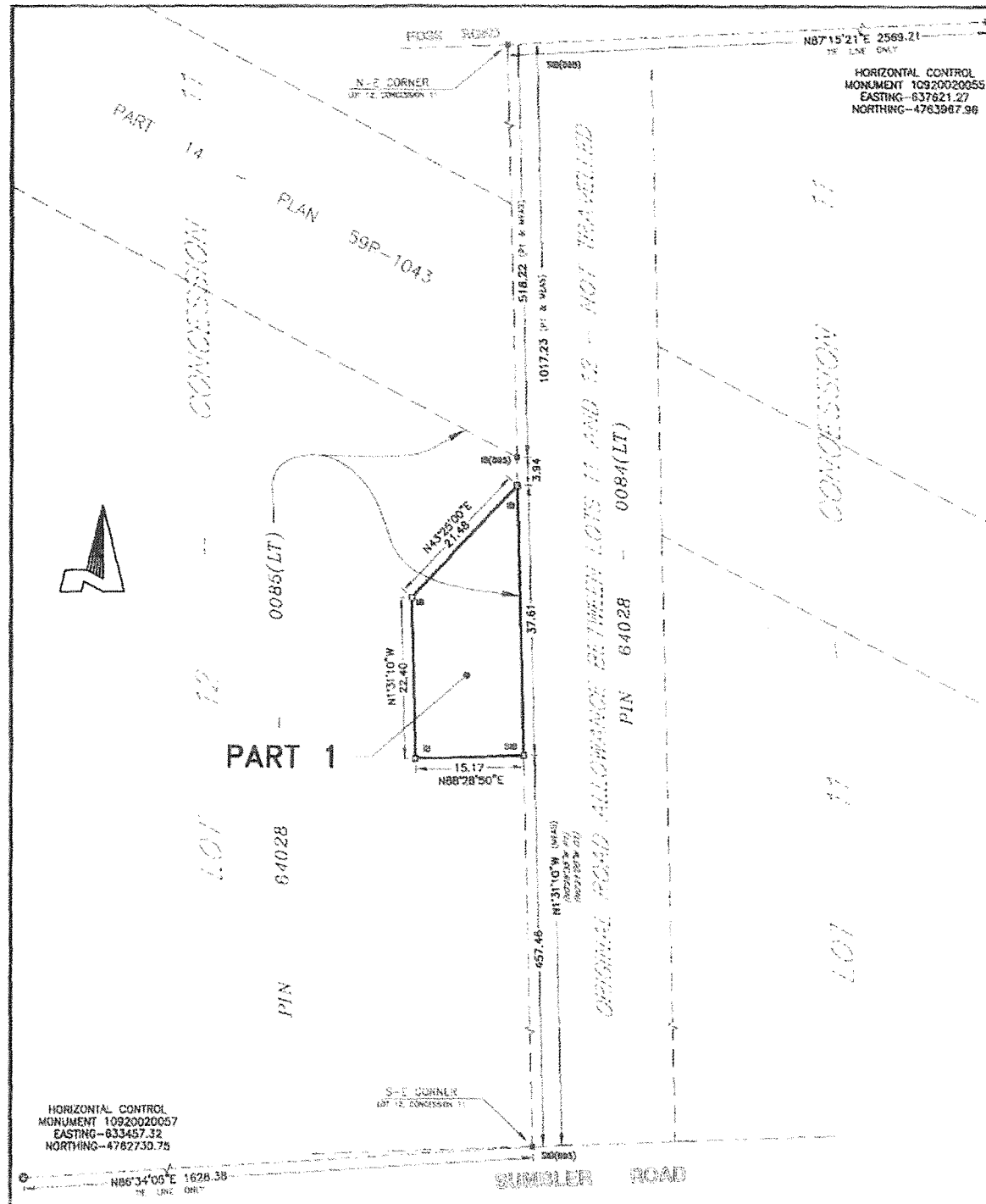
The Developer shall not impede, by the placing of fill, or constructing of buildings or other structures or the Works, any natural watercourse, swale, ditch, etc. which exists on the Lands or the lands included in the extension of the road.




The Developer agrees that no building permits shall be issued on any parts of the Lands to be accessed until all primary services, as defined elsewhere, are completed and operational to the satisfaction of the Director. Timing of construction for surface treatment may be adjusted at the discretion of the Director, but completion of primary services shall occur before September 15, 2015.

SCHEDULE "F"

FINANCIAL OBLIGATIONS





I REQUIRE THIS PLAN TO BE DEPOSITED UNDER THE LAND TITLES ACT.		<b>PLAN 59R-15332</b> RECEIVED AND DEPOSITED																																					
DATE 8 MAY 2015		DATE May 11 / 15																																					
 DONALD G. CHAMBERS, B. Sc., O.L.S.		<b>R Lane</b> REPRESENTATIVE FOR REGISTRAR FOR THE LAND TITLES DIVISION OF NIAGARA SOUTH(59)																																					
<b>SCHEDULE</b>																																							
<b>PART</b>	<b>LOT</b>	<b>PLAN/CONCESSION</b>	<b>PIN</b>																																				
1	PART OF LOT 12	CONCESSION 11	64028-0085(LT)																																				
<b>PART 1: PART OF PIN 64028-0085(LT)</b>																																							
PLAN OF SURVEY OF PART OF LOT 12, CONCESSION 11 GEOGRAPHIC TOWNSHIP OF PELHAM IN THE <b>TOWN OF PELHAM</b> REGIONAL MUNICIPALITY OF NIAGARA SCALE 1 : 500																																							
																																							
DONALD G. CHAMBERS ONTARIO LAND SURVEYOR																																							
<b>METRIC NOTE</b> DISTANCES AND COORDINATES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048.																																							
<b>BEARING NOTE</b> BEARINGS ARE UTM GRID, DERIVED FROM SPECIFIED CONTROL POINTS 10920020055 AND 10920020057, UTM ZONE 17, NAD83 (CSRS) (1997.0)																																							
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<b>LEGEND</b>																																							
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885		D. A. LANE, O.L.S.																																					
<b>SURVEYOR'S CERTIFICATE</b>																																							
I CERTIFY THAT:																																							
1) THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT, THE SURVEYORS ACT AND THE LAND TITLES ACT AND THE REGULATIONS MADE UNDER THEM;																																							
2) THE SURVEY WAS COMPLETED ON THE 7th DAY OF MAY, 2015.																																							
8 MAY 2015																																							
DATE		DONALD G. CHAMBERS, B. Sc., O.L.S.																																					
<b>CHAMBERS AND ASSOCIATES</b> <b>SURVEYING LTD</b>																																							
12 THOROLD ROAD EAST (905) 736-7841 / 735-7844 WELLAND, ONTARIO FAX (905) 735-7333 L3C 3T2 www.casl-surveying.com																																							

**ACKNOWLEDGEMENT AND DIRECTION**

TO: Callum Shedden  
(Insert lawyer's name)

AND TO: DANIEL & PARTNERS LLP  
(Insert firm name)

RE: GROEN Easement to The Corporation of the Town of Pelham for turning bulb ('the transaction')  
for emergency service personnel over Part 1, 59R-15332  
(Insert brief description of transaction)

**This will confirm that:**

- I/We have reviewed the information set out in this Acknowledgement and Direction and in the documents described below (the "Documents"), and that this information is accurate;
- You, your agent or employee are authorized and directed to sign, deliver, and/or register electronically, on my/our behalf the Documents in the form attached.
- You are hereby authorized and directed to enter into an escrow closing arrangement substantially in the form attached hereto being a copy of the version of the Document Registration Agreement, which appears on the website of the Law Society of Upper Canada as of the date of the Agreement of Purchase and sale herein. I/We hereby acknowledge the said Agreement has been reviewed by me/us and that I/We shall be bound by its terms;
- The effect of the Documents has been fully explained to me/us, and I/we understand that I/we are parties to and bound by the terms and provisions of the Documents to the same extent as if I/we had signed them; and
- I/we are in fact the parties named in the Documents and I/we have not misrepresented our identities to you.
- I, \_\_\_\_\_, am the spouse of \_\_\_\_\_, the (Transferor/Chargor), and hereby consent to the transaction described in the Acknowledgment and Direction. I authorize you to indicate my consent on all the Documents for which it is required.

**DESCRIPTION OF ELECTRONIC DOCUMENTS**

The Document(s) described in the Acknowledgement and Direction are the document(s) selected below which are attached hereto as "Document in Preparation" and are:

- ☐ A Transfer of the land described above.
- ☐ A Charge of the land described above.
- ☐ Other documents set out in Schedule "B" attached hereto.

Dated at Town of Pelham, this 11th day of September, 2015.

**WITNESS**

(As to all signatures, if required)

\_\_\_\_\_  
THE CORPORATION OF THE TOWN OF PELHAM  
Dave Augustyn, Mayor

\_\_\_\_\_  
Nancy J. Bozzato, Town Clerk

Properties			
PIN	64028 - 0085   LT	Interest/Estate	Easement <input checked="" type="checkbox"/> Add Easement
Description	PART LOT 12 CONCESSION 11, PELHAM DESIGNATED AS PART 1, 59R-15332; PELHAM  THIS IS AN EASEMENT IN GROSS		
Address	CREAM STREET FENWICK		

Consideration	
Consideration	\$ 1.00

Transferor(s)	
The transferor(s) hereby transfers the easement to the transferee(s).	
Name	GROEN, GARY RICHARD Acting as an individual
Address for Service	P. O. Box 226 Fenwick, ON L0S 1C0.
I am at least 18 years of age.	
GROEN, MEREDITH MARGARET and I are spouses of one another and are both parties to this document	
This document is not authorized   under Power of Attorney by this party.	

Name	GROEN, MEREDITH MARGARET Acting as an individual
Address for Service	P. O. Box 226 Fenwick, ON L0S 1C0.
I am at least 18 years of age.	
GROEN, GARY RICHARD and I are spouses of one another and are both parties to this document	
This document is not authorized   under Power of Attorney by this party.	

Transferee(s)	Capacity	Share
Name	THE CORPORATION OF THE TOWN OF PELHAM Acting as a company	
Address for Service	P. O. Box 400 20 Pelham Town Square Fonthill, ON L0S 1E0	

Statements
Schedule:   See Schedules

Calculated Taxes	
Provincial Land Transfer Tax	\$0.00

File Number	
Transferee Client File Number :	43029

LAND TRANSFER TAX STATEMENTS

In the matter of the conveyance of: 64028 - 0085 PART LOT 12 CONCESSION 11, PELHAM  
DESIGNATED AS PART 1, 59R-15332; PELHAM

THIS IS AN EASEMENT IN GROSS

BY: GROEN, GARY RICHARD  
GROEN, MEREDITH MARGARET  
TO: THE CORPORATION OF THE TOWN OF PELHAM % (all PINs)

1. DAVE AUGUSTYN, MAYOR AND NANCY J. BOZZATO, TOWN CLERK

- I am
- ☐ (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
  - ☐ (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
  - ☐ (c) A transferee named in the above-described conveyance;
  - ☐ (d) The authorized agent or solicitor acting in this transaction for \_\_\_\_ described in paragraph(s) ( ) above.
  - ☒ (e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for THE CORPORATION OF THE TOWN OF PELHAM described in paragraph(s) (c) above.
  - ☐ (f) A transferee described in paragraph ( ) and am making these statements on my own behalf and on behalf of \_\_\_\_ who is my spouse described in paragraph ( ) and as such, I have personal knowledge of the facts herein deposed to.

3. The total consideration for this transaction is allocated as follows:

(a) Monies paid or to be paid in cash	1.00
(b) Mortgages (i) assumed (show principal and interest to be credited against purchase price)	0.00
(ii) Given Back to Vendor	0.00
(c) Property transferred in exchange (detail below)	0.00
(d) Fair market value of the land(s)	0.00
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	0.00
(f) Other valuable consideration subject to land transfer tax (detail below)	0.00
(g) Value of land, building, fixtures and goodwill subject to land transfer tax (total of (a) to (f))	1.00
(h) VALUE OF ALL CHATTELS - items of tangible personal property	0.00
(i) Other considerations for transaction not included in (g) or (h) above	0.00
(j) Total consideration	1.00

4. Explanation for nominal considerations:  
o) Transfer of easement or right of way for no consideration.

5. The land is not subject to an encumbrance

PROPERTY Information Record

A. Nature of Instrument: Transfer Easement  
LRO 59 Registration No. Date:  
B. Property(s): PIN 64028 - 0085 Address CREAM STREET Assessment -  
FENWICK Roll No  
C. Address for Service: P. O. Box 400  
20 Pelham Town Square  
Fonthill, ON L0S 1E0  
D. (i) Last Conveyance(s): PIN 64028 - 0085 Registration No.  
(ii) Legal Description for Property Conveyed : Same as in last conveyance? Yes ☐ No ☒ Not known ☐

NOW THEREFORE THIS INDENTURE WITNESSES that in consideration of the premises and of the sum of One Dollar (\$1.00) of lawful money of Canada now paid by the Transferee to the Transferor, receipt whereof is hereby acknowledged:

The Transferor hereby grants to the transferee, their successors and assigns, the following rights:

1. The free, uninterrupted and unobstructed easement in the nature of a right-of-way in perpetuity at any time or times to enter the lands described as Part of PIN 64028-0085 (LT) and being Part Lot 12 Concession 11 Pelham designated as Part 1, 59R-15332; Pelham (the "Servient Lands") for the purpose of a turning bulb for emergency service personnel such as the police, paramedics, firemen and other similar type individuals over, as well as road maintenance personal including snow plows along and across the surface of the Servient Lands at all times and from time to time now or hereafter.
2. The Transferor covenants with the Transferee to keep the Lands free and clear as may be necessary for the exercise of and for the enjoyment of the rights and easements herein granted.
3. The aforesaid rights and easements are hereby granted, conveyed and transferred by the Transferor unto the Transferee on the following terms and conditions which are hereby covenanted and agreed to by and between the Transferee and the Transferor:
  - (a) the rights and easements herein granted are and shall be of the same force and effect to all intents and purposes as a covenant running with the land and this grant Including all the covenants and conditions herein contained shall extend to and shall be binding upon and enure to the benefit of the respective parties, their heirs, executors, administrators and assigns; and
  - (b) this grant of easement for access purposes does not confer any additional rights on the Transferee to use the Lands for the purpose of vehicle parking, and the Transferee shall not use the Lands in such a manner as would impede the use of the Lands by the Transferor.
4. The Transferee will indemnify and save harmless the Transferor in respect of any damage, injury, expense or loss caused to any person or property resulting from the use of the Lands by the Transferee.
5. The Transferees shall have quiet possession of the said rights and easements.
6. The Transferor Covenants with the Transferee that it will execute such further assurances of the said rights and easements as may be requisite.
7. This is an easement in gross.