

THIS AGREEMENT made in triplicate, this            day of  
1977, A.D.

BETWEEN:

AMROY LIMITED,

Hereinafter called the  
PARTY OF THE FIRST PART,

- and -

THE CORPORATION OF THE TOWN OF PELHAM,

Hereinafter called the "Town",  
OF THE SECOND PART.

DEFINITIONS in this Agreement:-

(a) "TOWN CLERK" shall mean the Clerk of the Corporation of the Town of Pelham.

(b) "COUNCIL" shall mean the Council of the Corporation of the Town of Pelham.

(c) "TOWN ENGINEER" shall mean the Engineer of the Corporation of the Town of Pelham.

(d) "TREASURER" shall mean the Treasurer of the Corporation of the Town of Pelham.

(e) "MINISTER" shall mean the Minister of Housing.

WHEREAS the Owners purport to be the Owners of the lands in the Town of Pelham, described in Schedule "A", attached hereto and has applied, or proposes to apply to the Minister of Housing for approval of a plan of subdivision thereof, hereinafter called "THE PLAN" for the purpose of registering the same in the Registry Office for the Registry Division of Niagara South, Land Titles Section;

AND WHEREAS the Town requires the Owners, before final approval of the proposed plan of subdivision, to agree to pay for the construction and installation of certain municipal services hereinafter described to serve such a subdivision or that part of such subdivision for which approval is sought and to agree to the other provisions herein contained;

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the Town approving the said proposed plan of subdivision, and in consideration of the sum of ONE DOLLAR (\$1.00) of lawful money of Canada now paid by the Owners to the Town (the receipt thereof is hereby acknowledged) the Parties hereto mutually covenant and agree as follows:

1. REGISTRATION

The Owners covenant and agree:

(a) to register this Agreement against every lot and parcel of land, within "The Plan" at the same time as "The Plan" is registered, and,

(b) to register "The Plan" in the Registry Office for the Registry Division of Niagara South, Land Titles Section within

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one (1) month after approval of "The Plan" is granted by the Minister.

2. TRANSFER TO TOWN FOR MUNICIPAL PURPOSES:

The Owners will:

- (a) pay to the Town the sum of \$4,800.00 in lieu of conveying 5% of the land to the Town pursuant to Section 35 (5) of the Planning Act; and,
- (b) grant such easements to the Town as may be required for water, telephone, sewer, gas, or other services free of charge.

3. ENGINEERING SERVICES AND INSPECTIONS:

(a) The works herein may be undertaken by either the Town Engineer, or the Owners shall engage at their own expense the services of Professional Engineers who are registered under the Professional Engineers Act of Ontario. In the event the Owner engages the services of a Professional Engineer, he shall perform the following engineering services, subject to the approval thereof by the Town Engineer and the Council:

- (i) preliminary investigation,
- (ii) layout drawings and design criteria of roads and services,
- (iii) detailed estimates of cost,
- (iv) contract drawings and specifications,
- (v) calling of tenders if so requested by the Owners,
- (vi) analysis of bids and recommendations to the Owners,
- (vii) setting out the work,
- (viii) general field supervision, and
- (ix) preparation of progress certificates.

(b) The said Professional Engineer shall file with the Town Engineer a written undertaking, prior to the commencement of any of the works described herein:

- (i) that he has been engaged by the Owners to supervise the work,
- (ii) that the work will be done in accordance with the contract drawings and specifications and all other provisions of this Agreement,
- (iii) that all phases of the work will be subject to the approval of the Town Engineer, and,
- (iv) that he will provide the Town Engineer, prior to the acceptance of the works by the Town Engineer on behalf of the Town, with a complete set of linen tracings or duplicates approved by the Professional Engineer for making reproductions of the works as constructed pursuant to this Agreement, as well as detailed design engineering data.

The linen tracings, or duplicates, or detailed design engineering data:

- (1) tracings shall be plan-profile linen 22" x 34" sheets and ink lettering;

(2) title blocks (5" x 3") to be placed in lower right hand corner and shall indicate nature of work, location, limits and scales;

(3) a complete copy of design details of storm and sanitary sewer layouts which said design details shall be based on design formula provided by the Town Engineer;

(4) plan profiles shall be fully detailed and where reference is made to other construction drawings, specific reference to those drawing numbers shall be made;

(5) horizontal ties shall be made to property lines;

(6) levels shall be to datum and all field surveys shall be tied into Geodetic Bench Marks.

(v) that he understands that any contractor employed by the Owners shall, as a condition of such employment, be approved by the Town Engineer.

#### 4. INSPECTION BY TOWN ENGINEER:

All work undertaken by the Owners pursuant to this Agreement shall be inspected by the Town Engineer from time to time and so often as he shall deem necessary.

#### 5. INSPECTOR'S FEES:

The Owner shall pay the full cost of all Inspector's wages including overhead. All inspectors shall be appointed by the Town and paid at the prevailing rate, as the case may be, during the duration of the construction, out of the deposit set out in Clause 6.

The Owner shall, in the event that Council changes or revises its policy concerning inspectors fees, as contained in the Town Policy with respect to the development of residential subdivisions, adopted by Council in March, 1970, have the option of going to the new policy.

#### 6. ENGINEERING, ADMINISTRATION AND INSPECTION COSTS:

(a) The Owner shall deposit with the Town, cash or an irrevocable letter of credit from a Canadian Chartered Bank or Trust Company for an amount equal to the estimated fees and disbursements billed to the Town by its Engineers for services performed by its Engineers in connection with the subdivision, including waterworks and covering the costs of administration, engineering and supervision. All such fees shall be as set out in the Schedule of Fees for Consulting Engineers Services recommended by the Association of Professional Engineers of Ontario.

(b) Such deposit shall also include wages of the Town Inspector including overhead and shall be at the prevailing rate during the duration of construction.

(c) Upon approval of the services herein required, the Town will supply the Owner with an accounting of the engineering, con't.....

administration and inspection costs. The Town will repay any money left on deposit for this purpose.

7. REGIONAL INSPECTION:

The Regional Municipality of Niagara shall have the right at any time to inspect any of the works in progress, at no cost to the Owners.

8. CONSTRUCTION OF SERVICES:

The Owners agree to construct and to pay the whole cost of such construction and materials required for all the works referred to in Schedules "C", "D", "E", "F", "G", "J" and "K" attached hereto and in accordance with the conditions and specifications contained in such Schedules.

9. CONTRACTORS:

Before commencement of any works, the Owners shall show satisfactory proof to the Council, that the proposed contractors or sub-contractors to whom the Owners propose to contract or sub-contract have sufficient and valid liability insurance policies, a certificate from the Workmens Compensation Board showing that the contractor is in good standing, and satisfactory evidence that the contractor is qualified, experienced and has equipment to successfully complete the works. Any contractor employed by the Owners shall, as a condition of such employment, be approved by the Town Engineer.

10. PERFORMANCE BOND:

The Owners shall obtain from their contractors, performance bonds guaranteeing all of the construction required by the Town and the bond shall include maintenance for twelve (12) months after acceptance by the Town of all such construction. Bonds shall be in the amount of 50% of construction value of all municipal services, except hydro electric distribution plant and street lights.

11. MATERIALS:

All the works required hereunder shall be done and performed to the satisfaction of the Town Engineer and all material required for the said works shall conform with the specifications and directions and to the satisfaction of the Town Engineer.

12. STRIPPING TOPSOIL:

The Owners shall not remove any topsoil from the lands described in Schedule "A" attached hereto without first obtaining written approval from the Town Engineer.

13. STRIPPING AND TREE REMOVAL:

The Owners shall remove from all the lands any unkept,  
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diseased, or infested trees, vines or bushes. In the event of non-removal within fourteen (14) days of written notice delivered to the Owners by the Town, the Town may cause the unkept, diseased, or infested trees, vines or bushes to be removed and the Owners agree to pay to the Town the cost incurred thereby.

14. ROUGH GRADING ROADS:

The Owner agrees to rough grade all roads connected with the development of the land to the Town Engineer's specifications after the installation or construction of water and sewer systems and other ground systems as may be required. The Owner further agrees to keep boulevards and easements clear and free of all material and obstructions which might interfere with the construction of telephone, gas, water and hydro installations.

15. CLEANING SEWERS AFTER ROAD CONSTRUCTION:

Upon completion of paving of roads, the Town shall, after inspection and if it deems it necessary, at the expense of the Owner, clean the storm and sanitary sewers serving the lands described in Schedule "A" attached hereto.

16. STORM SEWERS:

The Owners shall be responsible for determining and providing, at their expense, a proper storm sewer outlet for the ultimate drainage area for the future servicing of the area as shown on the engineering drawing.

17. LOCAL IMPROVEMENT CHARGES:

(a) The Owner hereby agrees to commute and pay to the Town before the final approval of the said Plan of Sub-division is requested, any and all frontage charges with respect to the existing local improvements assessed against such of the property shown on this Plan, as may become non-assessable when the said Plan is registered.

18. EXPANSION AND RENEWAL FUND:

The Owner shall pay the Town the sum of Seven Thousand, Five Hundred Dollars (\$7,500.00) for the total acreage of 2.3 acres for the purpose of expanding and renewing services within the Town limits.

19. SURFACE DRAINAGE PLAN:

The Owners shall be responsible for providing, at their expense, a surface drainage plan for all lands described in Schedule "A" attached hereto, said plan to meet with the approval of the Town Engineer. The said plan shall show inter-alia the intended description of flow of storm water to, within, and from each lot on the Plan. Building restrictions shall be imposed

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upon each lot prohibiting a subsequent owner thereof from altering such flow or from impeding the same to an extent sufficient to cause ponding in another lot. The said drainage plan shall be attached to this Agreement as Schedule "K".

20. NATURAL DRAINS:

The Owners shall not change or do any work that will prejudicially affect any natural watercourse or drainage ditch without making full and proper provisions to the satisfaction of the Town Engineer for the continuance of such drainage facilities. The changes proposed by the Owners shall be subject to the approval of the Town Engineer, and if changes are permitted, the Owners shall nevertheless continue to be solely responsible for any damage caused thereto, and shall indemnify and save harmless the Town therefrom.

21. REPLACING UTILITIES, ETC.:

The Owner shall assume complete responsibility and make all necessary arrangements for the moving or disturbance of any water, sewer, hydro electric, gas or telephone pipes, conduits, wires or pole lines, or any other public utility works as required or approved by the Town Engineer and shall be solely responsible for any damage caused to the said pipes, conduits, wires, pole lines, hydrants or other works.

22. LIABILITY INSURANCE:

Before commencing any of the work provided for herein, the Owner shall supply the Town with a Liability Insurance Policy (with no exclusions) in a form satisfactory to the Town, and in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) indemnifying the Town until the issue of the certificate referred to in Clause 28, from any loss arising from claims for damage, injury or otherwise in connection with the work done by the Owners, their employers, servants or agents, or any independent contractor to serve the lands described in Schedule "A" attached hereto. The Owners shall submit to the Town evidence from the Insurer that the premium for the said Policy has been paid for a period of one (1) year and so on from year to year during the currency of the work provided for herein.

23. RE-STAKING LOTS ON THE PLAN:

Upon completion of all works required under this Agreement and prior to the issuance of the final certificate, the Owner shall be responsible for re-staking all one inch key bars in the subdivision. It is further understood and agreed that no lot may be severed by sale or conveyance until such sale or conveyance has been approved, pursuant to the provisions of the Planning Act.

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24. DEFINITION OF PRIMARY AND SECONDARY SERVICES:

(a) Primary Services -

(i) sanitary sewers and appurtenances complete  
(ii) drainage facilities sufficient, in the opinion of the Town, to provide safety and protection from undue inconveniences to residents and their visitors,

(iii) waterworks complete,

(iv) roadways,

(a) of final design width;

(b) with a granular thickness at least three-quarters of the final granular thickness;

(c) with a surface which, in the opinion of the Town, will provide the residents and their visitors with convenient access and parking;

(v) fencing as referred to in Schedule "J"

(b) Secondary Services -

All services as required not considered "Primary Services." These include top coarse roadway granular, roadway asphalt, sodding, electrical distribution, street lighting, gas, telephone, etc. where applicable.

25. CASH DEPOSIT & LETTERS OF CREDIT:

The Owner will be required to deposit cash equal to the sum of:

(a) the expansion and renewal impost (\$7,500.00)

(b) letter of credit for inspection and administration fees as set out in Clause 6 (\$3,300.00)

(c) letter of credit for the cost of power and lighting installations, unless other satisfactory arrangements have been made with Ontario Hydro - Nil

(d) the cost of Hurricane Road improvements - (\$8,500.00)

(e) 5% in cash for park purposes (\$4,800.00)

(f) local improvement charges for outstanding sewer and water charges, Hurricane Road (\$3,218.44)

(g) Driveway Culverts (\$2,250.00)

(h) deposit for tree planting (\$225.00)

(i) sidewalk construction (\$1,182.50)

(j) storm sewer construction (\$5,550.00)

(k) contribution for storm sewer oversizing (\$1,000.00)

N.B. - This amount will be returned to the Owner in the event that the lands north of Hurricane Road in lots 161 and 162 are removed from the Pelham Urban Area.

(l) deposit for 1977 taxes (\$125.00)

26. RETURN OF PORTION OF DEPOSIT:

Unless otherwise directed by the Council, the Town shall upon satisfactory completion of ALL of the works and subject to the provisions of this Agreement authorizing deductions therefrom and subject further to providing the Town with a satisfactory

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Maintenance Bond for 50% of the cost thereof for a period of one (1) year from the completion of the said works as approved by the Town Engineer, return upon the written application of the Owners, the remainder of the cash deposit required hereunder. The Treasurer, after receipt of satisfactory securities shall, from and out of monies on deposit, pay firstly any engineering fees and maintenance costs still owing; secondly any arrears of taxes; thirdly, the taxes for the current year whether levied or unlevied, based on the assessment applicable; and finally shall return the balance, if any, to the Owners.

27. MAINTENANCE:

The Owner shall, at their own expense, pending acceptance by the Town, repair, and maintain to the satisfaction of the Town Engineer, roads, sewers, culverts, and water system appurtenances. In case of emergency, as determined by the Town Engineer, the Town shall have the right to enter on the lands and carry out the necessary maintenance to repair without notice to the Owners and bill the Owners for any reasonable and justifiable costs. In other cases where the Owners fail to repair or maintain after 48 hours' notice in writing, the Town shall have the right to enter on the lands and carry out the necessary work, and in such case and in the case of emergency work the Town shall be entitled to deduct the cost thereof from monies on deposit, if any, or by action, or in the like manner as taxes.

28. MAINTENANCE AND ONE (1) YEAR GUARANTEE:

Upon compliance with the terms of this Agreement, and upon completion of all the said work in accordance with the specifications and directions of and to the satisfaction of the Town Engineer, and upon payment of all financial requirements herein, the Town Engineer under authority of resolution to Council, shall at the expiration of the maintenance period, upon written application by the Owners, issue a certificate so stating to the Owners. Upon the said certificate being issued, ownership of all the services referred to herein shall be vested in the Town.

29. TAXES:

The Owners agree to pay all arrears of taxes outstanding against the property described in Schedule "A" hereto annexed and shall pay all taxes on this property on the present basis of assessment, whether previously levied or not, until such time as the lands being subdivided have been assessed according to the Registered Plan, before final approval of the Plan is requested. The Owner further agrees that at such time as the said lands have been re-assessed, the Owner shall pay all current taxes as established by the re-assessment, or any additional amounts as thereby required.

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30. LEGAL COSTS:

The Owner shall pay to the Town all legal costs incurred by the Town in connection with the negotiation, consideration, and final preparation of this document and of the plan of subdivision.

31. BUILDING PERMITS AND OCCUPANCY:

(a) The Owner agrees that unless otherwise determined by the Council, no building permit shall be issued nor any excavation or building commenced on any part of the lands described in Schedule "A" attached hereto, until all primary services are completed and operational.

(b) The Owner agrees to insert a clause in all sale contracts and deeds to the effect that no person shall be permitted to occupy the dwelling on the lot concerned until the Building Inspector for the Town has certified by letter that such of the following services are applicable to the property, have been installed and are operating adequately to serve the dwelling, or in the case of telephone service are at least available to houses within the Plan:

- (i) hydro
- (ii) gas
- (iii) telephone

The Building Inspector will not issue occupancy permits until it has been certified that the above three services are operable within the subdivision.

32. BUILDING RESTRICTIONS:

The Owner shall cause to be registered against all lots in the Plan, deed restrictions and restrictive covenants outlined in Schedule "M" attached to this Agreement.

33. INDEMNIFICATION:

The Owner hereby agrees and undertakes to save harmless and keep indemnified the Town, its successors and assigns from and against all manner of actions or claims for loss, costs, charges, damages, injuries, expenses, or otherwise arising before the issue of the certificate referred to in Clause hereof, in connection with the work required to be done herein by the Owner, his or its contractors, servants or agents.

34. SCHEDULES:

The provisions of all schedules attached hereto shall form part of this Agreement.

35. COVENANTS TO RUN WITH THE LAND:

The Owner and the Town acknowledge and agree that it is their intent that all the terms, conditions and covenants contained in this Agreement shall be covenants that run with the  
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land and that the burden of such covenants shall be binding upon the Owner, their heirs, executors, administrators, assigns and successors in title and owners from time to time of the lands described in Schedule "A" attached to this Agreement and any part or parts thereof and that the benefit of the said covenants shall enure to the Town, its successors and successors in title of all roads, streets and public lands forming part of or abutting on the said lands described in Schedule "A" and the said covenants shall continue in force for a period of ten (10) years from the date of this Agreement, except for Clause 19 (Surface Drainage Plan) which shall be in perpetuity.

36. PAYMENT FOR IMPROVEMENTS TO EXISTING ROADS:

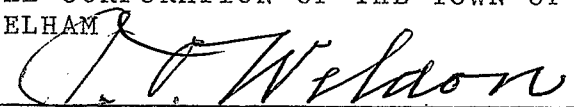
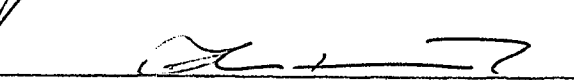
Some of the land described in Schedule "M" attached hereto abuts the existing travelled road allowance of Hurricane Road. The Owner shall be required to pay to the Town in cash Eight Thousand, Five Hundred Dollars (\$8,500.00) being a portion of the cost of improvements to Hurricane Road.

37. RECOMMENDATION TO THE MINISTER:

Upon receipt of the payments required and the execution of this Agreement, the Council will recommend to the Minister that the Plan be approved.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement by affixing their respective Corporate Seals duly attested by the proper officers in that behalf.

SIGNED, SEALED AND DELIVERED  
- In the Presence of -

(	THE CORPORATION OF THE TOWN OF
(	PELHAM
(	
(	MAYOR
(	
(	CLERK
(	
(	AMROY LIMITED
(	
(	PRESIDENT
(	
(	SECRETARY-TREASURER
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